Global Human Rights and Local Social Movements
in a Legally Plural World

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Abstract — The problem of universalism and relativism in human rights needs to be considered through ethnographic examinations of the mobilization of global human rights in local political struggles. Using the example of a local movement against gender violence in the United States, this article argues that the rights approach provides important resources for local movements but contains particular Western concepts and categories of subjectivity. Given the extent to which legal strategies are subverted within and outside the legal system, here the rights strategy creates new cultural spaces far more than it produces coercive intervention. A framework of legal pluralism and local mobilization provides a perspective which moves beyond the dichotomies of the universalism/relativism debate.

Résumé — Le problème de l'universalité et de la relativité des droits de l’Homme doit être abordé sous l’angle de l’ethnographique de la mobilisation de l’ensemble des droits de l’Homme sur le théâtre des luttes politiques locales. Prenant l’exemple des groupes d’intervention contre la violence faite aux femmes aux États-Unis, le présent article défend la thèse selon laquelle l’approche légaliste fournit des armes considérablement plus efficaces aux groupes locaux mais aborde le problème selon une conception et un découpage subjectif propres à l’Occident. Étant donné que les stratégies d’intervention légalistes sont perverties par le contexte légal au sein duquel elles sont appliquées, dans ce contexte, la stratégie légaliste ne fait qu’instaurer un espace

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culturel sans pour autant mettre en place une force de coercition. Une structure d'intervention faisant acception tant du pluralisme juridique que de la mobilisation locale offre une perspective située bien au-delà du débat sur la dichotomie entre universalité et relativité.

As human rights increasingly become the dominant discourse of social justice for the post-cold war world, the debate between universalism and relativism continues to preoccupy theorists and activists. Human rights must be universal if they are to create an international standard against which the behavior of states can be judged. On the other hand, it is widely recognized within the human rights system that cultural differences are undeniable and need to be respected. The Western construct of rights, the historical basis for the contemporary system of human rights, entails an emphasis on individualism, legalism, and property which many non-Westerners argue are values alien to their society and culture.


3. There is little question that human rights as a model for social justice developed from Western cultural roots and was promoted, in the early post-war period, largely by representatives of the Americas and Europe. Virginia Leary, “The Effect of Western Perspectives on International Human Rights” in An’Naim & Deng, eds., *ibid.*, 15. The 1948 Universal Declaration of Human Rights was drafted almost entirely by Westerners or Western-trained representatives from Africa and Asia, and the two Covenants, on Economic, Social, and Cultural Rights and on Civil and Political Rights, although passed in 1966, were largely drafted before the period of decolonization and the admission of many African states into the United Nations. Abdullahi Ahmed An-Na’im, “Problems of Universal Cultural Legitimacy for Human Rights” in An-Na’im & Deng, eds., *ibid.* 331 at 348–51.

The expansion of human rights is, from this perspective, a new form of imperialism.5

On the other hand, many human rights proponents are deeply concerned with cultural difference and emphasize the importance of retaining it. Some worry that claims to cultural difference are used by national leaders to escape international scrutiny for their own human rights violations. Thus, the question of universalism in human rights defies easy resolution, but there is considerable work within the field to construct a theoretical position between universalism and relativism.6

Many of these debates are conducted at a highly abstract and theoretical level rather than through examinations of the way global human rights talk and rights strategies affect political struggles in local communities. Ethnographic studies of local social movements using rights discourse can make important contributions to this debate, framed not as an either/or question but examining how global rights discourses are appropriated in local communities and how these global discourses are themselves constructed out of local struggles. From the perspective of local movements, rights are cultural resources deployed in specific cultural contexts by local agents operating within legally and culturally plural frameworks.

As Preis notes, the cultural relativist position is premised on an outdated concept of culture as integrated, holistic, and static rather than on the understanding developed within anthropology over the last 15 years that culture

is fragmentary, contested, and shifting.\textsuperscript{7} Anthropology now sees culture as connected to global systems of meaning and power, continually constituted and reconstituted through processes of interpretation, invention, and imposition. As Wilson observes, an anthropological study of human rights "becomes an exploration of how universal discourses on rights are produced, translated and materialised in a variety of contexts."\textsuperscript{8} O'Donovan notes that "the concept of human rights opens up possibilities for individuals to claim their identities and subjectivities in a language outside that of national legal systems."\textsuperscript{9} This discursive space is open to the emergence of new discourses and subjectivities not recognized in national cultures or laws and is enhanced by indeterminacy in the definitions of rights.

Local social movements take shape within a legally plural world. Multiple legal orders are arrayed side by side in various geographical locations as well as up and down in local, state, national, regional, and global systems. These orders are not autonomous, but in constant interaction: the power of each is constrained by the power of the others. As considerable research on legal pluralism indicates, in both its side-to-side and up-and-down manifestations, the nature of these orders and their relationships are locally and historically variable.\textsuperscript{10} This multiplicity is not new, but the relative importance of each legal order and the nature of the interactions among them is constantly changing. During the post-war period, there has been a long-term strengthening of regional and global legal orders at the expense of the national ones. At the same time, local orders, which were supplanted by national orders with the growth of the modern nation-state,\textsuperscript{11} show signs of resurgence in movements such as indigenous sovereignty movements and ethnic separatism, particularly in the post-cold war era. There has been recent expansion of regional legal orders, exemplified by the European Community and N.A.F.T.A. Although international law dates back to the 19th century and earlier, human rights emerged as a global legal order in the post-war period. During the 1980s and 1990s, the transnational human rights order developed and expanded largely within the U.N. system.

Now, a global legal order offering concepts, rules, and resources is transnationally available to local groups such as indigenous peoples, battered women, or families of political prisoners. Local actors face a richer and more diverse legal terrain than they did, a terrain which provides new possibilities for using the law as a form of resistance. And local actors are using it extensively.

\textsuperscript{7} Preis, supra note 1 at 298.
\textsuperscript{8} Wilson, supra note 1 at 16.
\textsuperscript{9} O'Donovan, supra note 6 at 362.
One of the striking developments of the last decade is the extent to which local groups, such as indigenous peoples, wage their struggles on this terrain. These multiple legal orders interact with one another, defining and constraining one another's power. Some are more powerful than others, some better endowed with systems of sanction and enforcement. Some have greater legitimacy than others. But each provides resources and constraints for actors navigating the possibilities of law.

But the rights frame is not a blank slate. It introduces particular conceptions of personhood and responsibility and points to possible remedies while excluding others. Empirical studies of local social movements based on rights approaches are important in understanding how global human rights shape local social action, and thus, moving beyond abstract debates about universalism and relativism.

National and global legal orders provide new forms of cultural and coercive capital to these movements but at the same time introduce categories of identity, conceptions of redress, and modes of defining problems which constrain and channel them. Legal orders are productive as well as repressive in their exercise of power, shaping meanings as well as imposing punishments. Legal orders define, name, and constitute identities and relationships, construct narratives of virtuous and criminal behavior, and create new cultural meanings. These meanings exert power far beyond any capacity to impose sanctions. For example, the law which apologized to the Hawaiian people for the United States takeover of the Kingdom of Hawaii in 1893, passed in 1993, is frequently cited by sovereignty activists in Hawaii although it provides no penalties nor remedies for this wrong. As we will see below, laws against domestic violence do important cultural work in reshaping ideas of gender despite considerable slippage in implementation and resistance from victims, offenders, and the

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system itself. Human rights, like other kinds of law, provide resources, both coercive and cultural, to actors who can find ways to use them productively. But a close look at the way laws are implemented reminds us that there are myriad ways of subverting law's sanctioning capacity.

This article is written from the perspective of an anthropologist, not a specialist in international human rights law. My primary interest is in the local manifestations of global human rights movements and in the analysis of the underlying cultural meanings of such local phenomena. I do not attempt to deal with the long history of debate about universalism and relativism within the human rights field but instead try to bring local ethnography to the question. Moreover, I write from the perspective of an American, recognizing that there is considerable research on these questions in other countries to which I cannot do justice. Indeed, this paper should be read as a foray by an anthropologist of law working on the problems of legal pluralism and local communities into questions of global human rights law. I hope that my case study of a program to control wife battering in a small town in Hawai'i which uses a rights-based cultural frame can provide some insight into the shape of the plural legalities which are emerging as a result of contemporary globalization and to the debates about universalism and relativism within the field of human rights.

Since I have written on this program in more detail elsewhere, here I will primarily examine the underlying cultural assumptions of this program. This case study considers how a rights-based approach to gender violence channels, transforms, and empowers the movement. The law does significant cultural work in challenging men's sense of entitlement to hit partners and providing women with a new understanding that hitting is a crime no matter what they have done. Yet, the uphill struggle of local activists in this town to mobilize the law in support of their movement suggests that the law is frequently subverted in its intervention on behalf of battered women.

The movement against gender violence in this town, along with many in the United States, relies largely on state-defined rights and legal remedies. These are supported by a system of shelters, support groups, and mandated batterer retraining programs. Similar approaches are being incorporated into the global movement against gender violence. During the last ten years, there has been a


striking growth in the use of a human rights frame for gender violence. The global movement builds on local initiatives which began a decade earlier. Beginning in the 1970s, grassroots feminist movements in Europe, the United States, Australia, Argentina, Brazil, India, the Virgin Islands, as well as many other parts of the world developed strategies to protect women from violence in the home based on a critique of male power within gender relationships and using approaches such as shelters, support groups for victims, and criminalization of battering.

More recently, programs dealing with gender violence have appeared in Bolivia and Mexico, Kenya and Senegal, while recent Internet postings indicate new programs in Quezon City, the Philippines, Budapest, Hungary, and New Delhi, India while the need for intervention is being recognized in Ghana. Some of these programs take inspiration from human rights. For example, the new Hungarian group, NaNE! proposes to make concrete suggestions for strengthening current laws and developing “new laws and protections in line with the U.N. Declaration of Human Rights and the European Charter of Human Rights, both of which have been signed and ratified by Hungary.”

Starting in the mid-1980s, gender violence was redefined as a human rights violation within the U.N. system. The Nairobi Forward-looking Strategies developed in 1985 placed violence against women as a basic strategy for

25. The Internet address is http://www.umn.edu/mincava/internat/nane.html and was located during research in April or May 1996.
addressing the issue of peace. In 1990, the Economic and Social Council adopted a resolution recommended by the Commission on the Status of Women recognizing that violence against women in the family and society derives from their unequal status in society and recommending that governments take immediate measures to establish appropriate penalties for violence against women as well as developing policies to prevent and control violence against women in the family, work place, and society. This recommendation suggests developing correctional, educational, and social services including shelters, training programs for law enforcement officers, and judiciary, health, and social service personnel. The national reports prepared for the review and reappraisal of the Nairobi recommendations preceding the 1995 Beijing conference revealed that most countries now recognize the problem of violence against women and have placed emphasis on legal reforms. It is noteworthy that, while most countries have adopted programs to prevent domestic violence, the initiative came from non-governmental organizations which were subsequently supported by governments. Clearly, it is not possible to make any sharp distinction between local and global movements. It is local actors and groups which have pushed to bring this issue to global attention. Transnational non-governmental organizations (N.G.O.s) have been in the lead in many of these changes, have bases in several countries and have worked together across national borders.

Although a 1980 Convention on the Elimination of All Forms of Discrimination against Women did not mention violence against women, the Committee on the Elimination of Discrimination against Women adopted a recommendation against violence in 1989, and in 1992, formulated a broad recommendation which defined gender-based violence as a form of discrimination, placing it squarely within the rubric of human rights and fundamental freedoms and making clear that states are obliged to eliminate violence perpetrated by public authorities and by private persons. The Commission on the Status of Women recommended the formulation of an international instrument for the prevention of violence against women and developed the Declaration on the Elimination of Violence against Women in 1993, working with groups of experts. In 1994, the General Assembly of the United Nations adopted the Declaration on the Elimination of Violence against Women. In the same year, the U.N. Commission on Human Rights condemned gender-based violence and appointed a special rapporteur on violence against women.

26. Secretary General, supra note 16 at 125.
27. Ibid.
28. Ibid. at 26.
29. Ibid. at 131–32.
30. Van Bueren, supra note 1 at 759.
31. Secretary General, supra note 16.
The 1995 Platform for Action of the Fourth World Conference on Women in Beijing included a section on gender-based violence. It named as a violation of human rights any act of gender-based violence in the family, the community, or perpetrated by the state that results in physical, sexual, psychological harm or suffering inflicted upon women in private or public life, including acts of violence and sexual abuse during armed conflict, forced sterilization and abortion, and female infanticide. The text reads: "Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed." 32

Violence against women is defined broadly as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life." 33 By declaring the right of women and girl children to protection from violence as a universal human right, the conference reasserted this dramatic expansion of human rights. 34

Local social movements, primarily in the United States, Canada, and Europe, have worked for the past two decades to mobilize state law to redefine battering as a crime and then to globalize their approaches through N.G.O.s and the U.N.. U.N. statements about gender violence and human rights in turn inspire and inform local movements and programs in different parts of the world. The reappropriation may introduce unfamiliar categories of self and personhood, including a redefinition of women's rights to safety, but it is the result of local agents mobilizing national and global law in the face of local resistance rather than global imposition of a new moral order. 35

In addition to the emergence of U.N. documents declaring violence against women and children a violation of human rights, there has been, in the last decade, a significant exchange of model program approaches and legal documents outside the realm of government around the world. For example, the Domestic Abuse Intervention Project developed in Duluth, Minnesota in the early 1980s became the prototype for the program I studied in Hilo, Hawai‘i. In

32. Platform for Action, Address (Fourth World Conference on Women, Beijing, 1995) section D at 112.
33. Ibid., section D at 113.
34. This is part of a broader movement over the last few years to redefine violence against women as a human rights violation. Thomas & Beasley, supra note 17.
1986, activists in Hilo adopted this approach to battering. Perpetrators were taught to use negotiation and collaboration in dealing with their partners instead of violence, isolation, intimidation, and the exercise of male privilege, a philosophy depicted iconically in the “power and control wheel.” Yet, the cultural backgrounds of the people in Hilo are quite different from those in Minnesota. Most of the men in the program come from Filipino, Native Hawaiian, Portuguese, Korean, Japanese, or Hispanic backgrounds but have been more or less assimilated into dominant U.S. models of gender and family over the last 50 to 100 years.

The D.A.I.P. approach has been used in New Zealand for about the same length of time as in Hilo, but there part of the program has been modified for Maori people, who participate in separate men’s groups. Non-Maori New Zealanders, largely of European ancestry, participate in a program more similar to the Minnesota prototype. Similar programs operate in Germany, Scotland, Canada, and the U.S. even in such culturally distinct locations as the Pine Ridge Indian Reservation and Marine Corps bases, according to Ellen Pence, its originator. It is also in use in Israel and, in 1992, was adopted on St. Croix in the Virgin Islands. A more comprehensive review of the spread of approaches and ideas within the field of gender violence is beyond the scope of the paper, but this example suggests that programmatic approaches to gender violence are spreading globally along with declarations of rights in the human rights system.

Yet, there is an inevitable collision between protecting women and preserving marriages. It is not surprising that efforts to control gender violence confront enormous resistance. Gender violence is inextricably linked to culturally rooted systems of kinship and marriage. If the only way to provide security and safety for a woman is to allow her to separate from her husband, reducing violence against women will diminish the permanence of marriage, the power of husbands over wives, and change the meanings of masculinity and femininity. It pits protecting the woman against safeguarding the marriage. In the U.S., protecting women from violence has typically meant separating the woman from her battering husband. Despite extensive interest in treatment programs for batterers, for example, success has been limited, and the surest route to safety has been separation. Clearly, this kind of intervention challenges the permanence and sanctity of the family.

Clearly, there are other possible approaches to gender violence, many of which are rooted in religion. For example, in Hilo, evangelical Christian movements provide anger management training programs while condemning divorce. Battered women are encouraged to engage in prayer and batterers are

37. Morrow, supra note 22 at 583.
38. The term “gender violence” is helpful since it emphasizes that this is violence defined by the nature of the gendered relationship within which it occurs.
encouraged to seek divine assistance in controlling not only their hitting but also their angry thoughts. This cultural frame pulls in the moral order of Biblical injunctions about ending marriage. Another Hilo alternative roots intervention in community identity. One of the most prominent is *ho'oponopono*, a Native Hawaiian form of conflict resolution in which the larger community gathers together under the direction of an influential spiritual leader in the Hawaiian community. Using Native Hawaiian prayers and values, the leader and community members help the perpetrator of violence move through repentance toward reconciliation.

Such alternative approaches, particularly those based on religion or ethnic identity, appear in global discourses as well. For example, the debates at the Beijing conference concerning violence against women focused on the extent to which the proposed language contradicted basic cultural practices and values, primarily ideas about the sanctity and religious meanings of the family and the relationship between church and state. A recent study in Canada considered whether aboriginal women would prefer sentencing circles to criminal forms of intervention in battering incidents.\(^\text{39}\)

Yet, wife beating would be considered a crime if committed between people who were not married.\(^\text{40}\) It is shielded by its location in a legally and culturally constructed private sphere. Historically, in the United States as well as many other parts of the world, it has been regarded as less serious than other kinds of assault. Contemporary social movements seeking to eliminate gender violence have often produced new statutes which specifically name and define the offense. In the state of Hawai‘i, for example, a law passed in 1973 defined “abuse of a family or household member” as a crime distinct from assault. Naming the crime as distinct has proved necessary to counteract tendencies to minimize assault within a domestic relationship. The new name does cultural work: it singles out and emphasizes this particular kind of assault, resisting the old pattern of ignoring this violence.

I argue that the creation of an international language of human rights, particularly its recent application to the prevention of violence against women, is deeply paradoxical. It has, on the one hand, provided a transnational discourse of justice and offered resources and political allies across national lines. It constructs a social vision of gender equality in the authoritative voice of the law with claims to universal applicability. On the other hand, use of a rights frame channels and directs efforts for social justice into institutional systems which often absorb and deflect energy through the intricacies of procedure,


\(^{40}\) The UN Report of the Secretary General, *supra* note 16 at 137, notes that all countries have legal measures which are applicable to cases of assault and therefore theoretically available in cases of domestic assault.
implementation, and enforcement. The tendency to focus on civil and political rights ignores significant differences in resources and social connections. Moreover, fundamental categories of personhood, responsibility, and subjectivity embedded in the Western legal tradition are incorporated into movements which adopt a rights-based strategy. The movement to eliminate wife battering through law has meant mobilizing state, national, and even global legal resources and discourses which are powerful as well as deeply transformative. However, it remains an open question whether local movements against gender violence simply adopt a rights-based frame or whether they reshape this model in different cultural terms. Moreover, it is unclear to what extent local communities in different political contexts are, in fact, remote from the cultural categories and systems of meaning embedded in Western law. Only further empirical research will provide answers to this question.

Gender Violence and Legal Intervention in Hilo, Hawai'i

I have spent the last six years exploring the way the law transforms everyday life, particularly family and gender relations, in colonial and post-colonial Hawai'i. During the 200 years from the first recorded European contact in 1778 to the present, Hawai'i has experienced mercantilism, capitalism in the form of plantation agriculture, American colonialism, and now statehood—a postcolonial status for some of the residents of Hawai'i. Much of the anthropological research on law and colonialism focuses on British colonialism. The American version of colonialism bears striking similarities to the British form, particularly in its emphasis on the centrality of the rule of law as a means of civilizing as well as a mark of civilization. The Hawaiians always regretted that the American merchants, whalers, missionaries, and sugar planters, many of whom were severe Republicans from New England, lacked the traditions and ceremonials of aristocracy and kingship that they so admired among the British.

The law took little notice of violence by husbands against their wives in Hawai'i during the 19th and most of the 20th centuries. A Western legal system was introduced into the sovereign Kingdom of Hawai'i in 1847 and court records from Hilo, a port town in Hawai'i, from 1852 to 1913 reveal a small but steady trickle of cases brought to the courts by women battered by their husbands. But these cases were never more than 5% of the total caseload. In order to examine changes in the legal management of wife battering cases, I recorded the texts and the characteristics of all domestic violence and wife desertion cases from the Hilo District Court from 1852 to 1913, a total of 683 cases. These records are housed in the Hawai'i State Archives in Honolulu. The minute books have been preserved in a virtually complete set from Hilo from the 1850s until 1913, but subsequent records were destroyed. This laborious work was done by Erin Campbell and Marilyn Brown. To place these cases in context, I
tried for assault, assault and battery, or fighting and causing injury. Although 66% of the defendants between 1852 and 1913 were convicted, 87% of defendants were convicted overall. Fines were typically small, as in petty assault cases, and were far less than the penalties for distilling liquor without a license or stealing a horse.

Since the late 1970s, an activist feminist movement has produced a gradual change in the law’s stance toward gender violence in Hawai‘i. Laws have targeted wife battering and penalties have become more stringent. A law passed in the state in 1973 distinguished domestic violence from other assaults, but it did not immediately produce significant numbers of arrests and convictions. During the 1980s, it was augmented by stronger sentences, longer cooling-off periods, more energetic police arrest policies, and more diligent prosecution. A 1985 addition to the statute required all convicted batterers to attend a treatment program for battering.

My research focuses on the town of Hilo, a small port city of about 45,000 population, which serves a sprawling agricultural region and provides a hub for governmental, educational, medical, and retail services as well as some tourism. Local feminists started a shelter in Hilo in 1978 and, in 1986, working with an active and committed local judiciary, developed a violence control program which offered training for batterers and a women’s support group.

Caseloads mushroomed in the late 1980s and early 1990s as more and more women went to court for restraining orders and to prosecute their batterers.

**Tabulated all the cases coming before this court at ten-year intervals beginning in 1853, a total of 2,325 cases. For each case, I recorded the charge, plea, conviction, disposition, presence of an attorney, and gender and ethnicity of the defendant. I also collected the texts of cases at ten-year intervals, involving interpersonal relationships. For half of this period, court records were in Hawaiian; the rest were in English. These records have been ably translated by Esther Mookini, an experienced translator of 19th-century Hawaiian court records.**

42. Dixon provides a chronology for the United States, usefully describing how the 1970s feminist movement, which focused on male domination in patriarchal institutions such as the family, was eclipsed during the early 1980s by social science researchers and family intervention experts who reframed the problem in terms of family functioning. Since the mid-1980s, there has been increasing attention toward stronger arrest policies and criminalization. J. Dixon, “The Nexus of Sex: Spousal Violence, and the State” (1995) 29 Law and Society Rev. 359 at 360-62.


44. In Hilo, the number of requests for Temporary Restraining Orders (T.R.O.s) has increased dramatically since the early 1970s. Between 1971 and 1978, there were
During the 20-year period from 1974 to 1994, the population of the County of Hawaii almost doubled, but the number of calls to the police for domestic trouble cases more than quadrupled. The increase in requests for civil protective orders, commonly called T.R.O.s, almost doubled in the last ten years, increasing by 182% between 1985 and 1995. The most spectacular increase has been in criminal cases: during the 16 years between 1979 and 1995, the number of criminal cases of wife battering increased 25 times from a very small initial number to almost 800 out of a population of 135,000. In 1993, there was one call to the police for every 58 residents and one charge of abuse of a household member for every 183 residents in the county. In 1994, domestic violence cases were about 30% of the active probation caseload of the criminal court.

The increase in T.R.O.s suggests that women are more inclined to turn to the legal system for help. The even greater increase in criminal cases indicates that police are more energetic in making arrests and prosecutors in pressing charges. By 1995, this increase began to level off and the courts handled approximately the same number of civil and criminal cases, a pattern which persisted into 1997. I interpret these statistics as indicating that wife battering has long existed as a social practice but that, as public consciousness increased during the 1980s, more women turned to the courts for help. Help-seeking, not battering, has changed. As courts became more attuned to this problem, a higher proportion of cases were prosecuted. However, the fact that calls to the police for help have increased more slowly than criminal prosecutions suggests that the change is not the result of more wife battering but victims’ greater willingness to turn to the law for help and for police, prosecutors, and judges to take their complaints seriously. Over the last 20 years, there has been a sea change in the legal system as police, prosecutors, and judges have been willing to take domestic violence seriously and to arrest and prosecute the behavior. At the same time, women have become far more active in asking the help of the legal system in situations of battering.

Violence control programs are the cornerstone of the local judiciary's approach to violence. All convicted batterers and many of those subject to seven T.R.O.s issued in Hilo for domestic violence situations. In 1985, there were 250, in 1991, 320, in 1992, 404, in 1993, 451, and by the middle of 1994, there were 252. The number of criminal cases of domestic violence has increased even more, from 31 in 1979, 9 in 1980, to 291 in 1990 and 551 in 1991.


46. A 1985 statute defining abuse of a family or household member as a misdemeanor adds the provision that a convicted person will serve a minimum jail sentence of 48 hours and “be required to undergo any available domestic violence treatment and counseling program as ordered by the court.” Hawaii Revised Statutes, 709, s. 5.

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restraining orders, particularly for contact restraining orders, are mandated by the court to attend a violence control program. Judges sometimes require women to attend the women's support group. Over 300 women (316) and 668 men were referred to the local program, called Alternatives to Violence (A.T.V.), over a five-year period from 1990 to 1994 from a region of about 70,000 people. The violence control program teaches men to manage their anger and provides them new beliefs about gender privilege. Leaders of the program say that their main concern is with women's safety, but because the government was interested in rehabilitating men, they offer training for batterers. By monitoring the violence of the men while they are in the program, they give some protection to women.

Over the three-year period from the summer of 1990 to the summer of 1993, the program did intake interviews on 443 men, 89% of whom said they were mandated by the court, and 263 women, of whom about 54% said they were mandated. Most of the women participants' partners were sent to A.T.V., but few of the men's partners were required to attend. This is a relatively young population, with a modal age in the 20s, but the women are younger than the men. Both men and women have an ethnic diversity typical of the town. Among the men, part-Hawaiians make up 29%, Portuguese 15%, whites 15%, and Filipinos 13%, along with smaller numbers of Hawaiians, Chinese, Japanese, Puerto Ricans, and a variety of others. The women show a similar ethnic mix, with part-Hawaiians making up 26%, whites 25%, Filipinos 12%, Portuguese 10%, along with smaller numbers of Puerto Ricans, Hawaiians, Japanese and Chinese. The Japanese-American population is particularly underrepresented while the Hawaiians, Filipinos and Portuguese are slightly overrepresented in

47. This is an order which allows the restrained person to see the other person but prohibits him from using violence against that person.
48. Program staff believe that batterers should be offered education and will respond when they are ready, although they have limited hopes for reforming men who batter.
49. This information is based on intake forms filled out by the staff of A.T.V. when a person begins the program. Since those who have another violent incident which comes to the attention of the court may be sent back to A.T.V., these numbers count separate intakes, not separate people. I was unable to determine how many people repeated part or all of the program because they dropped out or had new violent incidents, but from observation, it appears that there were some. Information from the intake forms was collected by staff members in a face-to-face interview, with the staff member recording the answers. All the data is self-report. The men may have underestimated their incomes in order to avoid paying the full price for attending the program. The form itself was designed by the program and reflects what the staff wanted to know and the categories which they thought made sense. I am grateful to Marlene King and Tami Miller for their help in collecting this information and to Erin Campbell for entering the data. I have shared this data with the A.T.V. program.
comparison to the town. These ethnic differences reflect class differences. The less affluent ethnic groups are overrepresented in the A.T.V. population. Three quarters claim some religious affiliation.

Feminist advocates are endeavoring to construct new gender identities through this program and the legal system in which it is embedded. The women with battering partners are told they do not deserve to be hit no matter what they do and the men are told that they can win love, trust, and affection through negotiation and collaboration instead of force. The men are taught how to control their violence and to rethink their beliefs about male/female relationships. The women are offered support in negotiating the legal system and provided with linkages to other women who have experienced violence.

I first visited the violence control program in Hilo in 1991. My research assistants and I were ushered into a plainly furnished room with a sofa, folding metal chairs, and a large blackboard where we met several enthusiastic women who described their innovative approach to handling men who batter in a town where gender identities are reminiscent of the rural American West of the silver screen. In some parts of the town, masculinity is defined by toughness and self-sufficiency achieved through hunting, fishing, drinking, and fighting and is epitomized by the omnipresent pickup truck toting a gun rack. In the past, mothers often told their daughters that once they chose to marry a man, they had to put up with his violence. The women running A.T.V., who have themselves experienced battering, seek to change these beliefs against the resistance of men who fail to show up, arrive for classes high on drugs, joke with one another or complain about the violation of their rights because they were sent to class, and intimidate their partners into dropping the charges against them.

As these statistics indicate, with extensive legal muscle, there can be a much greater intervention into violent family situations. There is no doubt that energetic support of the judiciary and prosecutor's office, community education efforts, and local feminist activists have helped to change local cultural understandings of battering. The caseloads reflect this change, since they indicate that more women are asking for help and feeling entitled to ask. And as more couples sit through court hearings, trials, meetings with prosecutors, mandated violence control programs and women's support groups, they are confronted with this new cultural understanding. Men who have gone to the violence control program now talk differently about their violence, referring to

50. In comparison, the 1980 Census reported the following ethnic breakdown for the 35,000 people living in the town of Hilo: 38% Japanese, 27% whites, 19% Hawaiian (probably includes those the A.T.V form labels Hawaiian/mix), 9% Filipino, 8% Spanish origin, 3% Chinese, and smaller numbers of Koreans, Vietnamese, Blacks, and other groups.

51. Almost half of the men (45%) are Catholic and 27% Protestant, while 40% of the women are Catholic and 36% Protestant.

the need for positive self-talk, cool downs, and the problems with male privileges. New cultural work in the definition of gender is taking place. It is important to recognize that this change is the result of predominantly local efforts: advocates who created the programs, judges who supported them, women who appeared at shelters, support groups, and the courts to protest the violence they experienced, and local political leaders who provided funding for battering treatment programs, shelters, and victim/witness advocates in the court. At the same time, the models used by these local leaders came from elsewhere in the United States, such as the power/control wheel developed in Duluth, Minnesota and the use of the criminal law to target this behavior.

By 1994, there were some indications that the law's actions were changing behavior in Hilo. Women told me that their partners are now more careful not to hit them, choosing instead verbal forms of abuse and harassment. Thus, naming gender violence as a distinctive kind of assault shifted the historic pattern of minimizing its importance and generated an enormous increase in recourse to the law for help.

**Gender Violence and Legal Processes**

*The Subversion of Penalties*

But there are difficulties with the use of the legal framework in dealing with gender violence. First, there is a pervasive subversion of penalties. Law as a system of sanctions is much less successful than law as a cultural system. Despite the efforts of the Family Court judge to persuade women to leave batterers, 40% of a set of 111 T.R.O.s he issued for male batterers and female victims during my period of observation in the early 1990s were contact T.R.O.s, orders which allowed the parties to stay together but enjoined the batterer to refrain from violence. Many of those who are required to attend A.T.V., the violence control program, either as a condition of a protective order or because of conviction for abuse of family or household member or a lesser charge, drop out and fail to finish the program, although program statistics are not organized to allow me to judge how many. One staff member estimated that, for every 35 referrals, two or three finish the program. Others fail to schedule intake sessions, or schedule as many as five and fail to show up, or do the intake but fail to come to the meetings. Those who violate their temporary restraining orders by failing to attend A.T.V. are simply sent back again and again until the program refuses to take them. A few say they prefer going to jail to the protracted A.T.V. program. But the jail is full, and in recent years, men sentenced for these cases were turned away because of a lack of beds. Those who stop coming often live in the back country down long dirt roads, in cars, on the beach or with relatives. They are hard to find. Many of those thrown out of
their homes for violence become homeless, lacking an address or phone by which they could be contacted.

Criminal convictions are also difficult. Police have some discretion whether to arrest and whether to issue a warning citation. A.T.V. workers note that, when the police arrive, the violence is typically over, the man is relaxed and calm, and the woman is furious and screaming, suggesting that it is she who is the problem. Police who are repeatedly called to an address get discouraged from making an arrest if the woman fails to press charges. And, in this small town, the police officers may know or at least sympathize with the man. A 1987 list of abuse of household member cases reported to the police on the island of Hawai‘i indicates that, of 151 incidents, there were only 23 arrests. Based on A.T.V. intake interviews, although police are often called in situations of violence, in the majority of cases when they are called, they neither arrest nor issue a citation. Only 41% of the cases which had an A.T.V. intake had been referred to the prosecutor's office.53

Even when a case reaches the prosecutor, she can choose whether or not to take on a case based on the police report. These are tough cases for prosecutors. Despite a strong commitment in the prosecutor’s office, attorneys find this work difficult and frustrating. It is hard to find attorneys willing to take on this caseload.54 The most common complaint by prosecutors and victim/witness counselors is the difficulty in persuading victims to testify. The prosecutor’s office sends the defendant a letter saying that the case now belongs to the state and she cannot drop the charges even if she chooses to in order to prevent pressure from an angry spouse. Nevertheless, women are often intimidated by their partners into withdrawing or refusing to testify during the months they await prosecution. I watched one woman sit through a T.R.O. hearing in the morning with her very large husband in Family Court and, in the afternoon, after he had been to criminal court, I saw her drive by and pick him up. The possibility that this man sees his wife as the source of his troubles seems great. One victim/witness counselor noted that the woman is often not contacted for six months after the incident. By this time, she is frequently living with the man, depending on his support, and seeking to believe his promises to reform.

Although the offense—abuse of a family or household member—mandates a 48-hour prison sentence, in the absence of a cooperative witness, the prosecutor is frequently forced to work out a plea bargain in which the charge is dropped to third-degree assault. Typically, the agreement mandates participation

53. A.T.V. did intake interviews of 984 people, three-fourths of whom had been referred from either the civil or the criminal court. Of these, 70% said the police came to their house because of family violence but only 28% said the police issued a warning citation. Forty-four percent of the men and seven percent of the women said they were arrested for abuse.

54. In 1994–1995, the office received a foundation grant to develop a program targeted at coordinating various agencies dealing with domestic violence.
in the violence control program but not jail time. If the witness refuses to cooperate, the prosecutor may settle for a deferred prosecution, but this is not a conviction or suspended sentence. Men who fail to attend A.T.V. may go off probation, which is typically a year, before they can be located and forced to complete the six-month violence control program. Attendance was first monitored by an overworked probation department but is now handled by the overworked prosecutors office. The prosecutor assigned this task showed me with despair a huge pile of case files of men not attending A.T.V., many of whom live in remote rural areas without telephones. Even those who do attend the program often resort to violence again.

Thus, despite the strong commitment of the prosecutor's office and the judiciary to controlling gender violence, there is considerable slippage in actually imposing sanctions against men who batter their wives. The legal system encounters resistance from the police, from the victims/witnesses, and from the men required to attend a batterers program. The probation department, prosecutor's office, and A.T.V. program are constantly facing people who are hard to find, must be contacted over and over, and who resist by failing to cooperate. Only a small percentage of batterers actually gets sent to prison or completes the A.T.V. program. Is this surprising? Not at all. We fully recognize the inability of law to control widespread, everyday forms of behavior such as drug use, gambling, and extramarital sexuality. Rights to protection from violence are similarly vulnerable to subversion when they depend on the legal apparatus for enforcement.

The Cultural Frame of Rights

As the courts and police endeavor to criminalize wife battering, they place a distinctive cultural frame on the problem. First, the problem is defined narrowly as a physical assault. But wife battering takes place within an unequal gender relationship which authorizes male violence, withholding of resources, psychological and verbal insults, and sexual assaults. Women whose self-esteem has been undermined by men are far less likely to prosecute or even complain. From the perspective of the law, the problem is simply the assault on a woman's body. Consequently, the law focuses on the moment of assault itself rather than the surrounding psychological, financial, and emotional abuse that typically makes the victim vulnerable to violence. It attends to the act, not to the meaning the event holds for the victim.

Second, if the law is to help, the woman must behave like a good victim. She should leave the battering man, ask for a no-contact T.R.O., avoid all subsequent contact with him, follow through with the prosecution, and prevent any contact between her children and the batterer. If she fails to prosecute, asks for a contact T.R.O., calls the police and fails to come to court, files for an
emergency T.R.O. and fails to show up for the hearing, she appears irresponsible, unable to take control of her life. Battered women often want some help from the law, such as police intervention, but not its full sanctioning power. This may be because they care about the man, but more often because they fear his retaliation. Indeed, women frequently discovered that, when their call to the police elicited a prison term, a requirement to attend a six-month program meeting once a week for two hours where men are told how to control their violence, and probation, their male partners constantly blamed them for these added burdens to their lives. When the battered woman withdraws from the system, fails to cooperate as a witness, consents to a contact rather than a no-contact T.R.O. and allows the man back into the house, the law finds her uncooperative, frustrating, and irresponsible. When the police find that the man they have thrown out of the house is home the next day and when they are called again, they grow tired of coming to the house.

Yet, women fail to leave battering men for a wide variety of reasons, largely emotional and financial. Fear of more serious battering is a common and realistic reason. Some women, in talking about their partners, acknowledge that they still feel for them, romantically or sexually, despite the battering. Women are often dependent on these men for financial support and help in the care of their small children. Information derived from intake interviews with 316 women at the A.T.V. program, as well as some information from those who go to Family Court requesting restraining orders, indicates that these are mostly young, working class and poor women whose lives are constrained by poverty, a lack of education and job skills, and several small children. The men are similarly relatively poor, young, and uneducated. To sever the relationship with a man, or to leave the house for a shelter which is likely to be overcrowded and uncomfortable, imposes serious economic hardship on these women. The pain of a beating may be less than the pain of homelessness or hunger, particularly for one’s children. Indeed, 40% of the respondents interviewed at the A.T.V. program say they still live with their partners after the abuse.

Although many women had supportive families, several women found that their relatives were so angry that they had gone to court against their husbands that they isolated them until they agreed to go back. Mothers who had themselves endured battering told their daughters that they chose to marry this man, now they had to put up with him. Many women feared being isolated from their network of relatives if they left their partners or even called the police. Some feared the shame this would bring on their family. Thus, women fail to

55. All respondents report low incomes: 57% earn under $8,000 a year and 79% earn under $13,000. Men have slightly higher incomes, with 23% reporting incomes over $13,000 while only 16% of the women earn over $13,000. One quarter of the men have education beyond high school while 38% of the women do. Half of all men and women are under the age of 30. Over 80% have children.
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act like "good victims" because of concerns about friends and family, face, and economic hardships.

A good victim must also be innocent and non-provocative. When court proceedings revealed that a woman hit back, drank, and provoked fights, she lost credibility before the law. When conflicts involve mutual fault and responsibility, legal relief seems less appropriate. I observed neighbor and family cases sliding into the category of garbage cases in my work in Massachusetts courts. 56 Only the powerful political movement against wife battering in the United States is currently preventing the deterioration of gender violence cases into the category of garbage cases as it becomes clear that women are often active and aggressive participants in family battles, even if they are injured far more often than men. 57 The fact that these are often mutual conflicts without innocent, passive victims means that these problems may again be defined as garbage cases, despite the fact that women are disproportionately injured. Allowing wife battering to slip back into the category of garbage cases would deploy the cultural power of law against the protection of battered women.

Thus, despite the help the law offers battered women, it does so far better if the woman conforms to its image of responsible personhood: an autonomous choice-maker, rationally determining her best interests, self-governing and self-disciplining. This is the bourgeois legal subject, crafted at considerable cost from the sociocultural variability of the world during the Enlightenment in Europe and transplanted through colonial processes to the rest of the world. The possessing subject possesses itself as well as its property. Capable of rational self-reflection, this subject needs only opportunity in order to maximize its own self-interest and rights. Failing to act in this way, however, condemns the liberal legal subject to less than adult status. Those unable to achieve these standards of self-regulation and rationality become redefined as children or "others," often racially and/or gender-coded others. Women become rethought as children. Battered women must fit into this category of adult male bourgeois personhood to get help. When they fail to prosecute, to keep the man out of the house, to insist on a no-contact T.R.O., they disenfranchise themselves. In the process of using the law, they must define themselves within its categories and its assessments of morality and subjectivity. When they fail, they become unworthy of its help. Thus, despite the radical possibilities the law offers to undermine gender inequalities and its very real cultural contributions to naming and condemning this behavior, it demands conformity to its hegemonic categories of

57. Dixon notes that some evidence indicates that both genders are aggressive in marital situations but that women are more often and more seriously injured by fights than men. Dixon, supra note 42 at 363.
personhood and action. The danger of the law lies not in its culturally destructive interventions but in its failure to act.

A third facet of the cultural frame of the law is its focus on rights rather than situations. The woman’s financial inability to leave, her lack of family support, and even the absence of non-violent men in a world which celebrates male violence are outside the consideration of the law. The law treats everyone as equal in rights by virtue of their humanity, yet at the same time defines economic and kinship differences as beyond its purview. While provision of services is by no means foreclosed by a legal intervention, the legal definition of the problem points toward separation rather than alternatives that acknowledge the economic and social needs of battered women and battering men or tackle the broader cultural productions that foster violence against women. This parallels the focus on civil and political rights to the neglect of social, economic, and cultural rights in the human rights legal order.

Gender violence is part of a regime of gender power which is culturally produced in the wider society. The law speaks in one voice against this violence while a cacophony of other voices celebrate it. Masculinity is often defined in terms of the ability to dominate and control beautiful and powerful women who are thought to actually find it erotically exciting to be dominated. Women who submit to violence and bondage are portrayed as feminine and desirable. How, in other words, can a society which celebrates James Bond also condemn men who hit their wives? A legal strategy for controlling gender violence establishes and limits the domain of concern.

In sum, the adoption of a rights framework has provided an effective way to draw women who have experienced violence in Hilo into the courts for help, to prosecute men, and to bring significant numbers of men and women into programs for support or retraining concerning violence. The authority of the law has been mobilized in support of this social transformation. Despite the cultural diversity of the client population, however, there has been little attention to tailoring the program to the specific cultural images of masculinity or femininity held by any particular group. Nor has there been attention to alternative processes of conflict management beyond the forms of conciliation which take place in courts. There are alternative programs available in Hilo which accept court referrals. One is located in an evangelical Christian church, another in an agency which works with the Native Hawaiian population and offers a form of family conflict resolution rooted in Hawaiian cultural practices. A third is offered by a professional who specializes in 12-step self-help programs. None of these puts the same emphasis on separation in order to achieve safety as the rights-based program nor on the importance of declaring battering a crime.

Although the rights-based program puts priority on safety, it must work through a legal system that often fails to deliver its sanctioning power behind this issue. Moreover, it frames the problem of violence narrowly, focusing on the blow, and fails to incorporate the experience of women or their financial and family situations. Because the law defines everyone as equal in terms of rights, it ignores those areas of inequality which lie outside the law. Social class differences, cultural images of masculine violence, and the absence of community support for those who complain to the law, are excluded from the legal frame. It insists on defining women as passive victims rather than agents of their own survival. At the same time, the entire legal intervention is located within a conception of bourgeois subjectivity. When women fail to conform to its stipulations, they are reconstituted as less deserving “others” rather than autonomous selves.

Conclusions

This study shows that the rights approach is a distinctive discourse that incorporates ideas of person and action embedded in Western modernity and instantiates a particular definition of responsibility and marriage which is not shared by all the local cultures in Hilo. As these groups are drawn into gender violence programs, they are taught new ideas about the individual and his or her relationship to the family, the community, and the state. The court remains the central site of managing and defining gender violence even though alternative discourses about the meanings of gender violence and ways of handling it co-exist. These define the individual, marriage, and the community in quite different ways, more reflective of cultural differences in the local community.

Yet, as the discussion of American colonialism in Hawai‘i indicates, the social histories of the groups which constitute the present-day population of Hilo have been deeply shaped since the early 19th century by American legal and governmental institutions and capitalist economy. The cultural relativist critique ignores the extent to which cultures have mingled as well as the extent of global capital, human, and cultural flows. The modern state, against which claims are made for rights, is itself a product of Western modernity now distributed globally while the media, transportation technologies, travel, and tourism have produced an overlapping and interpenetration of cultural experience and practice. As Preis observes, “[i]n several, formerly ‘remote’ areas of the world, different human rights discourses have now become a vehicle for the articulation of a wide variety of concerns of different people at different levels of society.”

60. Preis, ibid. at 289–90.
The limitations of a rights approach lie less in claims to universalism than in the emphasis on civil and political rights rather than social and economic ones. As my case study indicates, rights and legal remedies offer a narrow definition of social problems such as gender inequality and provide a restricted and individualistic set of remedies, primarily separation and reeducation. The sanctioning power of local police, prosecutors, and courts is undermined by slippage in effective conviction and punishment. By helping only good victims who will leave their partners and not fight back, the legal system restricts when and how it will intervene. Legal intervention is premised on a bourgeois concept of personhood—that of rational choice, self-governance, and property ownership. A person who fails to conform to its expectations does not deserve help and will not receive it. The rights-based approach imports this conception of the liberal legal subject.

This case study reveals the extent of resistance to the criminalization of wife battering and the widespread subversion of criminal penalties. Even here, in a society where the dominant groups accept Western legality, continuous political engagement is necessary to maintain effective legal intervention. If it is difficult to implement rights which transform fundamental relationships of everyday life in an American town with a very supportive judiciary and prosecutor's office, it will be far more difficult to enforce human rights in other countries where they lack broad cultural legitimacy. The extension of a rights-based approach to gender violence is less the imposition of a Western conception of individualism on culturally distinct societies than a symbolic global resource drawn on by local actors seeking to change national and local legal orders.

Rights generally act as a resource rather than a constraint. The proposition that human rights are a universal system of law imposed on cohesive local legal orders fails to acknowledge the openness and indeterminacy of rights models and the extent to which human rights are cultural practices embedded in local social and legal contexts. Rights are inevitably broad and vague, subject to

61. Lewis notes that Western liberal human rights scholars have prioritized civil and political rights over economic, social, and cultural rights while the opposite is true of African human rights scholars. Lewis, supra note 1 at 18.

62. Not so long ago, parts of the United States chose the marriage over the woman. In nineteenth-century Hilo, when Hawai'i was a sovereign nation but had adopted fundamentally the legal system of the United States and Britain, women who deserted their husbands were virtually always returned to them regardless of the degree and frequency of violence in the relationship. In fully one quarter of the cases I examined, court records referred to violence in the marriage, but judges nevertheless returned the women to their husbands and sentenced them to hard labor if they refused or deserted again. See An Na'im, supra note 3.

interpretation as they are converted into practices in everyday social life.\textsuperscript{64} Moreover, in distinction to cultural practices such as female genital mutilation or sati, gender violence is an act that is generally illegal in virtually all state law systems but is often neglected when it takes place within families.

The power of the idea of human rights is its universalism. Law has enormous cultural capital which is enhanced by claims to universality and grounding in international institutions. The claim that there are standards of rights which apply to all humans is radically democratic. This claim is based on notions that all humans are fundamentally the same and that differences are based on mutable factors such as culture and religion. There are many instances in which societies have not adopted this philosophical position but have constructed separate legal systems for people imagined as fundamentally different. For example, many of the dual legal systems created in colonial states were the consequence of decisions that the colonized were not able to conform to the laws of the colonial power. Such beliefs are typically rooted in racially coded ideas of difference: the notion that people of different races have some essential differences in moral character and nature. These ideas were pervasive during the height of empire in the 19th and early 20th centuries, legitimating widespread adoption of dual legal systems in colonial states. Universal human rights resist this dualism and the essentialized racial identities on which they are founded. It is here that the conception of human rights, whatever its practices, is profoundly radical and potentially democratizing.

In sum, the problem of universalism in human rights subsides when rights are understood as contextualized within multiple legal orders and resources to be mobilized in particular situations rather than as constraints. Yet, the paradoxical quality of rights-based approaches to social justice remains. Human rights strategies promote the hegemony of the rational self-governing subject as the only one deserving of help and intervention while "othering" those who fail to conform. Empirical research is necessary to assess to what extent current processes of global struggle are localizing conceptions of human rights and redefining them for local situations. The emergence of a global legal order opposed to gender violence might constitute a further pluralizing of law, the creation of an open, new resource with symbolic power available for mobilization by local movements rather than as the imposition of a homogenizing force.

\textsuperscript{64} Sarat & Kearns, eds., \textit{supra} note 15.