

SOCIAL JUSTICE AS DESISTANCE: RETHINKING APPROACHES TO GENDER VIOLENCE

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It is not only a good theory in theory but also a good theory in practice for people engaged in the spectrum of social justice struggles to figure out unexpected sites where their agendas align with those of others.¹

INTRODUCTION

Scholars and activists have directed increasing attention to the failure of the U.S. criminal legal system and the institutions of mass incarceration it has wrought and have identified the need for transformative changes in approaches to acts of harmful behaviors. Proponents of reforms have advocated for legal corrections to constrain sentencing practices, and remedy racial disparities in imprisonment to mitigate rates of incarceration and related punishments.² COVID-19 release campaigns have revealed both the egregious conditions of prisons and the irrationality of punishment paradigms.³ Indeed, not a few abolitionists have repudiated the criminal legal system.⁴

1. RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 7 (2007).

2. NICOLE D. PORTER, *SUCCESSES IN CRIMINAL LEGAL REFORMS* 1 (2021), <https://www.sentencingproject.org/wp-content/uploads/2021/12/Successes-in-Criminal-Legal-Reforms-2021.pdf> [<https://perma.cc/DM99-SMAD>].

3. Mary Price, *The Compassionate Release Clearinghouse, COVID-19, and the Future of Criminal Justice*, 35 *CRIM. JUST.* 37, 40 (2020).

4. Michelle Alexander, *Reckoning with Violence*, *N.Y. TIMES* (Mar. 3, 2019), <https://www.nytimes.com/2019/03/03/opinion/violence-criminal-justice.html> [<https://perma.cc/FY54-CUYA>] (noting that in New York City, approximately 90 percent of survivors would have opted for restorative justice practices as a way to deal with the offense).

This Article seeks to join the scholarly conversation to recalibrate criminal justice-related responses to harmful behaviors by rethinking desistance theories and their applications to gender violence. Desistance theories focus on the “different mechanisms leading to the exit from criminal lifestyle” with a concomitant emphasis on the importance of outside influences” in reducing transgressive behaviors.⁵ Desistance theorists suggest that material support and social networks are key factors in assisting persons implicated in the criminal legal system as a way to reduce the likelihood of recidivism.⁶ This Article seeks to expand upon desistance theory *ex ante* by taking into account the context of criminal behavior through a brief review of the scholarship on the determinants of transgressive behavior. It seeks to develop desistance theory and draws on the research that demonstrates that engagement with social justice-related networks serves to mitigate harmful behavior. Social justice organizations often adopt as a point of departure the importance of addressing the structural determinants of social problems, including the systemic sources of criminal behavior. As this Article argues, when social justice organizations function as desistance-related support mechanisms, the ameliorating benefits inure not only to individuals implicated in criminal legal matters but more broadly to community well-being.

This Article engages desistance theory through the lens of domestic violence intervention programs (DVIPs), often known as abuser treatment or batterer intervention programs.⁷ Legal scholarship often

5. Daniel J. O’Connell, Tihomir N. Even, Steven S. Martin & James A. Inciardi, *Working Toward Recovery: The Interplay of Past Treatment and Economic Status in Long-Term Outcomes for Drug-Involved Offenders*, 42 *SUBSTANCE USE & MISUSE* 1089, 1093 (2007).

6. There are several theories related to desistance. This Article focuses on desistance dependent on social bonds and network. See Ray Paternoster & Shawn Bushway, *Desistance and the “Feared Self”: Toward an Identity Theory of Criminal Desistance*, 99 *J. CRIM. L. & CRIMINOLOGY* 1103, 1106 (2009) (highlighting the importance of social networks while shifting the conversation to the key role that individually driven cognitive developments also play in preventing recidivism); Shadd Maruna, Russ Immarigeon & Thomas P. LeBel, *Ex-offender Reintegration: Theory and Practice*, in *AFTER CRIME AND PUNISHMENT: PATHWAYS TO OFFENDER REINTEGRATION* 3, 9 (Shadd Maruna & Russ Immarigeon eds. 2004).

7. Deborah M. Weissman, *In Pursuit of Economic Justice: The Political Economy of Domestic Violence Laws and Policies*, 2020 *UTAH L. REV.* 1, 56 (2020). The author attempts to use language to describe those who commit transgressive acts without conflating violent acts with being a violent or criminal person to avoid ascribing immutable characteristics and as a means of maintaining the human dignity of all. See Micere Keels, *Development & Ecological Perspective on the Intergenerational Transmission of Trauma & Violence*, 151 *DAEDALUS* 67, 68 (2022).

“siloes” issues related to gender violence. The scholarly discourse addressing the excesses of the carceral state often fails to extend the analyses to the prevailing intervention practices designed to mitigate gender violence.⁸ Intimate partner violence (IPV) and the state’s response cause calamitous consequences to partners, families, and communities, with long-lasting consequences. The Article seeks to remedy this omission by describing DVIPs’ shortcomings and their potential to achieve desistance goals through collaborations with social justice entities to accomplish meaningful legal and social reform.

Of course, violence between intimate partners raises particular concerns, and domestic violence survivors are situated differently than other crime victims.⁹ However, despite these differences, IPV and the institutions that address this social problem deserve to be situated within a larger body of work that generally addresses violence and the punitive state.¹⁰ DVIPs have the potential to mitigate a type of violence experienced within the family, perhaps the most intimate of all social arrangements. If reconfigured, these programs may function as social justice-driven desistance mechanisms. While these programs are worth scholarly attention, legal literature and research on desistance theories and IPV are sparse. The few studies that consider desistance theories and IPV are limited to examining modifications to the immediate circumstances of the intimate relationship wherein violence has taken place without considering structural concerns and external social supports as desistance factors.¹¹

A focus on DVIPs is particularly timely given the current nationwide conversations about ending mass incarceration and reallocating

8. For a review of the ways that gender violence has been excluded from progressive anti-carceral campaigns, see Deborah M. Weissman, *Gender Violence, The Carceral State, and the Politics of Solidarity*, 55 U.C. DAVIS L. REV. 801, 803, 807, 810, 813, 815 (2021). There are some notable exceptions, including, for example, the writings of Donna Coker, Leigh Goodmark, Aya Gruber, Andrea J. Ritchie, and Beth E. Ritchie.

9. Alafair S. Burke, *Domestic Violence as a Crime of Pattern and Intent: An Alternative Reconceptualization*, 75 GEO. WASH. L. REV. 552, 566–67 (2007).

10. See generally CHRISTOPHER WILDEMAN, THE IMPACT OF INCARCERATION ON THE DESISTANCE PROCESS AMONG INDIVIDUALS WHO CHRONICALLY ENGAGE IN CRIMINAL ACTIVITY 1, 3 (2021) (noting the importance of centering conversations around rehabilitation and reform on the impact of imprisonment as a means of dismantling the extremely carceral nature of our justice system).

11. Lisa V. Merchant & Jason B. Whiting, *A Grounded Theory Study Of How Couples Desist From Intimate Partner Violence*, 44 J. FAM. & MARITAL THERAPY 590, 595 (2018) (e.g., the frequency, severity, and mutuality of violence, along with factors like interpersonal communication skills or individual choices).

criminal legal system funding to other types of intervention and prevention programs.¹² DVIPs are governed by laws and regulations and are intended to function as an alternative to incarceration to reduce recidivism related to gender violence. Recently the importance of DVIPs as entities that serve to mitigate violence has been the subject of national conversations.¹³ Indeed, the White House Gender Policy Council, established by Executive Order¹⁴ recently sponsored a national listening session to include advocates and practitioners as well as people who have caused harm through IPV to share their perspectives and recommendations on improving abusive partner intervention work.¹⁵ Many anti-gender violence advocates are rethinking the structure and content of these programs, thus offering a propitious occasion to reconsider their purpose.¹⁶ This Article provides the opportunity to examine DVIPs as a means to mitigate a most pernicious form of violence.

12. Brandon M. Scott & Jack French, *Mayor Scott Announces \$50 Million for Violence Prevention Over Three Years* (Oct. 26, 2021), <https://mayor.baltimorecity.gov/news/press-releases/2021-10-26-mayor-scott-announces-50-million-violence-prevention-over-three-years> [<https://perma.cc/Q69X-PQV9>] (highlighting efforts to reinvest community resources from systems of mass incarceration); *Governor Wolf Announces \$23 Million in Second Round of Violence Intervention and Prevention Grant Program Awards* (Jan. 26, 2022), <https://www.governor.pa.gov/newsroom/governor-wolf-announces-23-million-in-second-round-of-violence-intervention-and-prevention-grant-program-awards> [<https://perma.cc/9R8N-SE4A>] (demonstrating efforts states such as Pennsylvania have taken to invest in non-carceral systems of rehabilitation and integration).

13. *Fact Sheet: Reauthorization of the Violence Against Women Act (VAWA)*, (Mar. 16, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/16/fact-sheet-reauthorization-of-the-violence-against-women-act-va-wa> [<https://perma.cc/HTZ3-WMQ9>] (discussing recent efforts by the Biden Administration to increase funding to programs devoted toward providing services to female victims of violence and domestic violence).

14. *Executive Order on Establishment of the White House Gender Policy Council*, (Mar. 8, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/08/executive-order-on-establishment-of-the-white-house-gender-policy-council> [<https://perma.cc/N4TN-Z39E>].

15. *Listening Session on Abusive Partner Intervention Programming with the White House on the Development of a National Action Plan to End Gender-Based Violence* (Oct. 19, 2021) (documents on file with the author).

16. See, e.g., REBECCA THOMFORDE HAUSER, WHAT COURTS SHOULD KNOW: TRENDS IN INTERVENTION PROGRAMMING FOR ABUSIVE PARTNERS, CTR. FOR CT. INNOVATION 1, 3 (2017), https://www.courtinnovation.org/sites/default/files/documents/Monograph_Marc_h2017_What_Courts_Should_Know.pdf [<https://perma.cc/NLG4-Q5XN>].

Part I of this Article describes most DVIPs as they currently function with regard to gender violence. It critiques the structure of these programs, their close partnership with criminal legal system actors, perceived deficiencies, and it identifies missed opportunities to provide meaningful intervention strategies with those who have harmed. It demonstrates the ways that laws, regulations, and policies governing DVIPs constrain most programs from moving beyond established practices informed by punitive approaches to address the structural conditions that situate gender violence within a political economic framework.

Part II begins with a brief overview of the research on determinants of criminal behavior as applied to gender violence.¹⁷ It then examines the literature on desistance theory that demonstrates the benefits of social bonds in reducing criminal behavior. It posits that DVIPs can implement desistance theories by reconstituting program structures to promote social bonds for offenders through partnerships with social justice movements. These partnerships may help to address the determinants of transgressive behavior and promote political and social identities committed to social good.¹⁸

Restructured DVIPs can serve as instruments for social justice and incentives for change by integrating anti-violence advocacy within a range of social movement organizations. Such innovations would support the development of reciprocal agendas that avoid the problem of addressing gender violence as an addendum to an existing mission.¹⁹ That gender violence is rooted in social structures implies the need for remedies that are “diffused throughout the rest of our

17. This Article alternately refers to gender violence, domestic violence, or intimate partner violence. A number of different terms describe what was once ubiquitously called “domestic violence” giving rise to useful critiques about the terminology. See Julie Goldscheid, *Gender Neutrality, the “Violence Against Women” Frame, and Transformative Reform*, 82 UMKC L. REV. 623, 624 (2014).

18. See, e.g., Shawn D. Bushway & Christopher Uggen, *Fostering Desistance*, in A BETTER PATH FORWARD FOR CRIMINAL JUSTICE 47, 49 (Brookings ed. 2021), https://www.brookings.edu/wp-content/uploads/2021/04/5_Better-Path-Forward_Ch5_Fostering-Desistance.pdf [<https://perma.cc/C8LE-UKZA>]; Sara Vestergren, John Drury & Eva Hammar Chiriac, *The Biographical Consequences of Protest and Activism: A Systematic Review and a New Typology*, 16 SOC. MOVEMENT STUD. 203, 209 (2017).

19. See Mariame Kaba & Andrea Ritchie, *In It Together: A Framework For Conflict Transformation In Movement-Building Groups*, at 10, <https://files.cargocollective.com/c1257150/InItTogether.pdf> [<https://perma.cc/N2NL-5MVK>] (describing accountability at the importance of a community needing accountability as determinant of positive social health).

politics—not held apart from it.”²⁰ In turn, social justice organizations have the ability to “deploy their . . . political power in ways that go beyond the particular issues around which they were formed”²¹ and thus contribute to effective anti-carceral approaches to IPV that the anti-domestic violence movement has thus far failed to accomplish.

Part III moves the analytical framework discussed in Part II into the realm of praxis. It offers several proposals for restructuring DVIPs to facilitate desistance through social justice partnerships. It advocates for DVIPs to disengage with the criminal legal system and turn to social justice collaborators through approaches informed by restorative and transformative justice principles. Partnerships with social justice movements provide the opportunity for offenders to engage in collaborative efforts with groups that address the causes of gender violence and promise to provide mutual benefits between anti-domestic violence work and other forms of social justice advocacy. Part III argues that DVIP-social justice partnerships promise meaningful legal reforms to the benefit of IPV survivors and offenders and the organizations with which they collaborate. These legal reforms address the programs’ structural weaknesses, strengthen resources for survivors and offenders, and resituate DVIPs in the realm of progressive social justice efforts.

I. DOMESTIC VIOLENCE INTERVENTION PROGRAMS: OVERVIEW, CRITIQUE, AND CONSTRAINTS

Anti-carceral critiques of state approaches to gender violence have focused on police and prosecutorial practices as well as the harms of incarceration. DVIPs have received little attention despite the fact that the majority of IPV offenders are mandated to attend these programs in lieu of incarceration or as a condition of supervised release.²² This

20. Lorna Finlayson, *Travelling in the Wrong Direction*, LONDON REV. OF BOOKS, (July 4, 2019), <https://www.lrb.co.uk/the-paper/v41/n13/lorna-finlayson/travelling-in-the-wrong-direction> [<https://perma.cc/TS3W-PPS3>] (reviewing CINZA ARRUZA, TITHI BHATTACHARYA & NANCY FRASER, *FEMINISM FOR THE 99% A MANIFESTO* (2019)).

21. Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 546, 586 (2021).

22. 18 U.S.C.A. § 3583 (West) (requiring DVIP type rehabilitation programs for domestic violence offenders); Kaitlin Sidorsky & Wendy J. Schiller, *Litigating Lives and Gender Inequality: Public Defenders, Policy Implementation, and Domestic Violence Sentencing*, 20 J. WOMEN, POL., & POL’Y 303, 326 (2020) (based on a survey of public defenders); see *Other State’s Standards*, BISC-MI, <https://www.biscmi.org/resources/other-states->

Part emphasizes the importance of understanding how DVIPs function in order to address the underlying ideologies about offender intervention. It identifies program weaknesses that result from tendencies to focus on individual offenders without addressing the structural determinants of IPV. DVIPs which are non-profit entities are constrained by laws that tie them to the criminal legal system as well as a lack of public funding.²³ Prevailing attitudes dismiss and devalue the importance of DVIPs and the offender/participants they serve, thus undermining their potential as means of achieving desistance.

A. *DVIPs: A Brief Overview*

Domestic Violence Intervention Programs established during the 1970s expanded rapidly as a result of the turn to the criminal legal system to remedy domestic violence.²⁴ Nearly all states and the federal government have enacted statutes and standards authorizing treatment programs as sentencing options.²⁵ Mandated treatment programs are also included as part of a civil domestic violence protection order.²⁶

Most programs rely on two principal treatment models each established approximately fifty years ago. The first, known as the Duluth model, relies upon premises of “patriarchal ideology” where men are encouraged to control their female partner and the second, known as Emerge, considers IPV as result of cognitive-behavioral

standards [<https://perma.cc/FR6P-WZTN>]. The Violent Crime Control and Law Enforcement Act of 1994, which included as a subsection the Violence Against Women Act of 1994, also included batterer treatment programs as a sentencing tool. Pub. L. No. 103-322, tit. IV, § 320921, 108 Stat. 1902, 2130 (codified at 18 U.S.C. § 3563(a)).

23. Corinne Peek-Asa, Anne Wallis, Karisa Harland, Kirsten Beyer, Penny Dickey & Audrey Saftlas, *Rural Disparity in Domestic Violence Prevalence and Access to Resources*, 20 J. WOMEN'S HEALTH 1743, 1748 (2011) (finding that discrepancies in available resources such as funding, transportation, or access to DVIPs results in rural women experience worse rates of violence and less access to critical aid than their urban counterparts).

24. Shih-Ying Cheng, Maxine Davis, Melissa Jonson-Reid & Lauren Yaeger, *Compared to What? A Meta-Analysis of Batterer Intervention Studies Using Nontreated Controls or Comparisons*, 22 TRAUMA, VIOLENCE, & ABUSE 496, 496 (2021); CTRS. FOR DISEASE CONTROL & PREVENTION, MENU OF STATE BATTERER INTERVENTION PROGRAM LAWS 1–2 (Jan. 29, 2015), <https://www.cdc.gov/phlp/docs/menu-batterer.pdf> [<https://perma.cc/6MQL-5CH6>].

25. CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 24 at 1–2.

26. *See id.* at 2–5.

deficits.²⁷ Although curricula offerings have modified and additional models have materialized, national program surveys demonstrate that most DVIPs offer similar generic curricula established through statutory mandates and regulations.²⁸ Staff are required to complete an assessment to evaluate the risk of danger and lethality.²⁹ Information is obtained from collateral informants, most of whom are criminal legal system actors.³⁰ Facilitators seek to change behaviors through psycho-educational approaches designed to teach alternative responses to violence and new modes of communication with an intimate partner.³¹ Joint sessions or counseling with offenders and victims are prohibited.³² Similarly, participants are required to attend in person, notwithstanding the burdens of accessible transportation.³³ Most

27. SHELLEY JACKSON, LYNETTE FEDER, DAVID R. FORDE, ROBERT C. DAVIS, CHRISTOPHER D. MAXWELL & BRUCE G. TAYLOR, *BATTERERS INTERVENTION PROGRAMS: WHERE DO WE GO FROM HERE? I* (2003) <https://www.ojp.gov/pdffiles1/nij/195079.pdf> [<https://perma.cc/X6N4-FEQR>]; *Domestic Abuse Intervention Programs: What is the Duluth Model?*, <https://www.theduluthmodel.org> [<https://perma.cc/NZ8U-AMF4>] [hereinafter *What Is the Duluth Model?*]; DAVID ALAN SKLANSKY, *A PATTERN OF VIOLENCE: HOW THE LAW CLASSIFIES CRIMES AND WHAT IT MEANS FOR JUSTICE* 145 (2021) (noting that most programs rely on the Duluth model); see Carolyn B. Ramsey, *The Stereotyped Offender: Domestic Violence and the Failure of Intervention*, 120 PA. ST. L. REV. 337, 360 (2015) (surveying 46 jurisdictions to assess batterer intervention programs).

28. See generally Cheng et al., *supra* note 24 at 496–97. Shelly Wagers & Dana L. Radatz, *Emerging Treatment Models and Programs in Intimate Partner Violence Treatment: An Introduction*, 11 PARTNER ABUSE 202, 211 (2020) (noting that “offenders are sentenced to attend ‘one size-fits-all’ programming that does not reflect the diverse needs IPV offenders may have”); THOMFORDE HAUSER, *supra* note 16, at 5; Laura A. Voith, Katie Russell, Hyunjune Lee & Raeann E. Anderson, *Adverse Childhood Experiences, Trauma Symptoms, Mindfulness, and Intimate Partner Violence: Therapeutic Implications for Marginalized Men* 59 FAM. PROCESS 1588, 1591 (2020) (“Nearly 90% of BIPs in the United States have used a one-size-fits-all model”); BRITTNEY R. CHESWORTH, *EXPLORING STATE POLICIES AND PROGRAM PRACTICES FOR OFFENDERS OF INTIMATE PARTNER VIOLENCE* 23 (2020), <https://cdr.lib.unc.edu/downloads/3197xv856?locale=en> (last visited Oct. 19, 2022).

29. CHESWORTH, *supra* note 28, at 15.

30. *Id.* at 26.

31. Julia Babcock, Nicholas Armenti, Clare Cannon, Katie Lauve-Moon, Fred Buttell & Regardt Ferreira et al., *Domestic Violence Perpetrator Programs: A Proposal for Evidence-Based Standards in the United States*, 7 PARTNER ABUSE 355, 360 (2016).

32. *Id.* at 384.

33. Chelsea M. Spencer, Sandra M. Stith & Erika L. King, *Preventing Maltreatment at Home: A Meta-Analysis Examining Outcomes From Online Programs*, 31 RSCH. ON SOC. WORK PRAC., 138 (2021).

programs list goals that pertain to individual offender accountability and describe their central purpose as achieving victim safety.³⁴

DVIPs are generally not eligible for state and federal domestic violence-related funding and thus must rely on the fees paid by program participants which may exceed \$1,000.³⁵ Fees may be assessed at a sliding scale, but programs have decreed as a matter of accountability that some payment must be made independent of a participant's means.³⁶ Moreover, most programs do not allow the

34. EDWARD W. GONDOLF, *GENDER-BASED PERSPECTIVES ON BATTERER PROGRAMS* 16 (2015) (describing the purpose of programs as “giv[ing] the man’s partner or victim an hour-and-a-half of freedom a week”); Wagers & Radatz, *supra* note 28, at 204; Juliet B. Austin & Juergen Dankwort, *Standards for Batterer Programs: A Review and Analysis*, 14 *J. INTERPERSONAL VIOLENCE* 152, 158 (1999); MELISSA LABRIOLA, MICHAEL REMPEL, CHRIS S. O’SULLIVAN & PHYLLIS B. FRANK, *COURT RESPONSES TO BATTERER PROGRAM NONCOMPLIANCE*, REPORT SUBMITTED TO THE NATIONAL INSTITUTE OF JUSTICE 35–37 (2007), <https://www.ojp.gov/pdffiles1/nij/grants/230399.pdf> [<https://perma.cc/UWC9-SQU6>]; Babcock et al., *supra* note 31, at 361 (describing the Duluth model); *Goals for Group Members*, EMERGE (2020), <https://www.emergedv.com/goals-for-group-members.html> [<https://perma.cc/8S4J-WHT5>].

35. 4 U.S.C.A. § 10441 (West), (setting out the purpose of federal grants focused exclusively on criminal legal strategies and victim services). It is worth noting that the recommendations following the national listening sessions organized about DVIPs note the prohibition on funds for DVIPs (e.g., STOP grants) (on file with the author). A 2020 report to the Washington State Legislature on obstacles to DVIP treatment references the lack of funding available for these programs as interfering with programs’ missions. Mary Logan & Eric Lucas, *DOMESTIC VIOLENCE INTERVENTION TREATMENT, REMOVING OBSTACLES TO IMPLEMENTATION* 3 (2020). Some states, while funding DVIPs, restrict the funding to services that such programs might provide to solely victims. See U.S. DEP’T OF HEALTH & HUM. SERVS., *NAVIGATING THE FAMILY VIOLENCE PREVENTION AND SERVICES PROGRAM: A GUIDE FOR STATE AND TERRITORIAL ADMINISTRATORS* 1, https://www.acf.hhs.gov/sites/default/files/documents/fysb/fvpsa_admin_guide_20121119_0.pdf [<https://perma.cc/YHW3-4TUG>] (describing Colorado’s Domestic Abuse Assistance Program); Robert V. Wolf, *Creating Holistic Abusive Partner Intervention Programming: A View of the Field*, <https://www.courtinnovation.org/publications/in-practice-holistic-abusive-partner-programming> [<https://perma.cc/4RWU-TRJ2>] (noting that DVIPs have little to no outside funding other than “fee for service”); Weissman, *supra* note 7, at 58.

36. See, e.g., *MASSACHUSETTS GUIDELINES AND STANDARDS FOR THE CERTIFICATION OF INTIMATE PARTNER ABUSE EDUCATION PROGRAMS* 34 (2015) (requiring indigent participants to do community service in lieu of full payment); *NEBRASKA BATTERER INTERVENTION PROGRAM STANDARDS* 13 (2016), https://nebraskacoalition.org.presencehost.net/file_download/b548aa53-b387-4659-831f-a75e609f0765 (last visited Oct. 19, 2022) (noting that a fee, no matter how small, must be assessed and paid by

offender to seek insurance coverage for program costs, even if available.³⁷ Researchers disagree as to whether program staff are under-educated or sufficiently well-educated to carry out their tasks; however, it is generally acknowledged that they are underpaid and overworked, and usually committed to the mitigation of IPV.³⁸

B. DVIPs: Critique

1. Eliding systems and structures

DVIPs treat individuals, not systems.³⁹ Yet criminologists have rejected the proposition of crime as a function of individual failings and idiosyncratic behaviors. Danielle Sered, the Executive Director of Common Justice, has observed that “[m]ost violence is not just a matter of individual pathology—it is created. Poverty drives violence. Inequity drives violence. Lack of opportunity drives violence. Shame and isolation drive violence.”⁴⁰ These factors are no less relevant to IPV.⁴¹ Economic strain attending low wages and unemployment have been identified as the most significant risk factors for IPV.⁴² The socio-ecological factors associated with IPV are understood to be conditions

the offender); NORTH CAROLINA BATTERER INTERVENTION PROGRAMS: A GUIDE TO ACHIEVING RECOMMENDED PRACTICES 19 (2013), <https://files.nc.gov/ncdoa/documents/files/BattererInterventionHandbook.pdf> (“Insurance reimbursement is not allowed because domestic abuse is not a mental health diagnosis but a behavior choice”); Austin & Dankwort, *supra* note 34, at 162.

37. NORTH CAROLINA BATTERER INTERVENTION PROGRAMS: A GUIDE TO ACHIEVING RECOMMENDED PRACTICES, *supra* note 36, at 19.

38. See *NAP Listening Session Comments, Director of the Colorado Domestic Violence Offender Management Board* (Oct. 19, 2021) (on file with author) (practitioners are suffering burnout due to low pay and overwork). *But see* CHESWORTH, *supra* note 28, at 26 (describing a range of educational requirements, or the absence of any in some instances, for program facilitators); Babcock et al., *supra* note 31, at 412 (noting the lack of standards or agreement regarding staff qualifications); Jacquelyn W. White, Holly C. Sienkiewicz & Paige Hall Smith, *Envisioning Future Directions: Conversations with Leaders in Domestic and Sexual Assault Advocacy, Policy, Service, and Research*, 25 VIOLENCE AGAINST WOMEN 105, 116–17.

39. Some DVIPs do not consider their program as offering treatment but rather an intervention. Babcock et al., *supra* note 31, at 361.

40. DANIELLE SERED, ACCOUNTING FOR VIOLENCE: HOW TO INCREASE SAFETY AND BREAK OUR FAILED RELIANCE ON MASS INCARCERATION 4 (2017).

41. See Weissman, *supra* note 8, at 846–57 (mentioning the various ways gender violence has been excluded from domestic violence awareness efforts in the criminal legal system); *infra* Section II.A (discussing the criminality factors as they relate to IPV).

42. Babcock et al., *supra* note 31, at 376.

of systems and political economic structures.⁴³ Yet programs rarely address systemic issues and, notwithstanding mandatory risk assessments that identify structural determinants, fail to assure that treatment follows the assessment results.⁴⁴ Any acknowledgement of the underlying factors tends to produce recommendations that focus on individualized solutions such as stress reduction exercises.⁴⁵ As one DVIP expert observed, identifying systemic and structural factors relating to IPV cannot be successfully addressed by focusing on “individual responsibility in ways that are unfair and misguided,” adding “[t]his admittedly can be difficult to do in a culture that over psychologizes social problems.”⁴⁶

DVIPs rely principally on the concept of “Power and Control,” a paradigmatic construct in the form of a wheel that in its simplest form defines IPV as “a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.”⁴⁷ The wheel has been criticized for its reliance on the accounts of heterosexual couples, and while some

43. See generally, Charvonne N. Holliday, Sophie M. Morse, Nathan A. Irvin, Angelique Green-Manning, Lisa M. Nitsch & Jessica G. Burke et al., *Concept Mapping: Engaging Urban Men to Understand Community Influences on Partner Violence Perpetration*, J. URB. HEALTH 96, 98 (2019). See Benjamin Levin, *Carceral Progressivism and Animal Victims*, in CARCERAL LOGICS: HUMAN INCARCERATION AND ANIMAL CONFINEMENT 87, 87 (Lori Gruen & Justin Marceau eds. 2022).

44. Clare Cannon, John Hamel, Fred Buttell & Regardt J. Ferreira, *A Survey of Domestic Violence Perpetrator Programs in the United States and Canada: Findings and Implications for Policy and Intervention* 7 PARTNER ABUSE, 226, 228 (2016); CHESWORTH, *supra* note 28, at 6; Weissman, *supra* note 7, at 58–59; SURVEY OF BATTERER/ABUSER/INTERVENTION/TREATMENT PROGRAMS (2018) (on file with author) (demonstrating, as an example, that Georgia, Kentucky, Maryland, Massachusetts, Missouri, Ohio, Oregon, Rhode Island, Tennessee, Utah, Washington all indicate the need to treat, for example, substance as an unrelated matter); see also Ramsey, *supra* note 27, at 378 (surveying forty-six jurisdictions to assess batterer intervention programs and noting that individuals with mental health or substance abuse may be banned from the program, referred out, but are not treated for such problems as part of the abuser treatment program).

45. Babcock et al., *supra* note 31, at 377.

46. GONDOLF, *supra* note 34, at 55.

47. National Domestic Violence Hotline, Power and Control Wheel, https://www.thehotline.org/identify-abuse/power-and-control/Emily_Labatut, *The Effects of Parental Narcissistic Personality Disorder on Families and How to Defend “Invisible Victims” of Abuse in Family Court*, 48 S. UNIV. L. REV. 225, 237 (2021) (referring to the definition of domestic violence as set forth by the U.S. Department of Justice); Teresa Manring, *Minding the Gap in Domestic Violence Legislation: Should States Adopt Course of Conduct Laws?*, 111 J. CRIM. L. & CRIMINOLOGY 773, 775 (2021).

efforts have been made to adapt it to the experiences of different groups, all models emphasize an individualized exercise of power.⁴⁸ Yet for many offenders, particularly Black and Brown men, the experience of social disempowerment suggests that “violence is not the expression of a power they have, but of power they lack.”⁴⁹ Benjamin Levin has correctly noted that “defendants selected for prosecution and punishment are themselves often relatively powerless or marginalized, even if they enjoy some power or advantage over a given victim.”⁵⁰ The reliance on the power and control construct that avoids the socio-political forces affects some DVIP staff who have observed:

While we believe this [emphasis on power and control] to be entirely appropriate—indeed, essential to this work—discussing power issues with our program participants rings hollow and hypocritical unless we are also inviting discussions of the monumental power imbalances in their own lives. Many of those we serve are homeless, unemployed, or underemployed, lack literacy skills, and, whether they name it or not, all too familiar with the experience of discrimination and institutionalized oppression.⁵¹

The prevalence of gender hierarchy notwithstanding and the accompanying narrative about misogyny as the driver of gender violence, the research is at best mixed about the degree to which patriarchy is at the core of IPV.⁵² Gendered attitudes are one of several factors contributing to gender violence; others include but are not

48. SKLANSKY, *supra* note 27, at 147 (noting that treatment is based on the notion that “domination is at the heart of the offense”); Jane K. Stoever, *Transforming Domestic Violence Representation*, 101 KY. L.J. 483, 513–14 (2013).

49. Christine Smallwood, *The Power of Questions*, THE N.Y. REV. (July 22, 2021), <https://www.nybooks.com/articles/2021/07/22/jacqueline-rose-power-of-questions> [<https://perma.cc/SJ6H-NRMQ>] (reviewing Jacqueline Rose’s views on gender violence in *On Violence and On Violence Against Women*); Holliday, *supra* note 43, at 97, 103; Christopher M. Murphy, Tara N. Richards, Lisa J. Nitsch, Angelique Green-Manning, Ann Marie Brokmeier, Adam D. LaMotte & Charvonne N. Holliday, *Community-Informed Relationship Violence Intervention in a High-Stress, Low-Income Urban Context* 11 PSYCH. OF VIOLENCE 509, 509–10 (2021) (noting that most IPV intervention programs emphasize “gendered expressions of power and control [locating] male IPV offenders in a unitary position as oppressors, and ignor[ing] or discount their experiences of trauma, marginalization, and systemic racism”).

50. Levin, *supra* note 43, at 95.

51. Lisa Nitsch & Angelique Green-Manning, GATEWAY PROJECT, A PATH TO NONVIOLENCE 7 (2019). One DVIP staff person noted that “[t]he power and control model can feel punitive. So many of my clients are walking in with so much shame and they are so sensitive to it.” CHESWORTH, *supra* note 28, at 128.

52. Babcock et al., *supra* note 31, at 361.

limited to childhood trauma, racial discrimination, financial stress, and other forms of socio-inequality.⁵³ These studies demonstrate that correlation between victimization and offending further negates the nearly singular focus on unmediated patriarchy manifested as power and control.⁵⁴

It is true that some programs have started to address the relationship between trauma, particularly childhood trauma (often described as Adverse Childhood Experiences or ACEs), and IPV.⁵⁵ However, the structural factors that contribute to ACEs are rarely addressed.⁵⁶ The failure to consider social-structural trauma inevitably undermines programmatic content, particularly as experienced by marginalized groups. Numerous studies have demonstrated the ways in which trauma is produced through racism, historic violence, and “chronic race-related stress” contribute to IPV.⁵⁷ Racism as a systemic arrangement is a critical factor that causes extreme trauma and underlies IPV perpetrated by Black men.⁵⁸

Few programs adapt or revise content for diverse groups.⁵⁹ The conceptual basis for IPV intervention has been criticized for failing to consider violence in same-sex relationships as well as instances of men abused by women.⁶⁰ Most programs admit to having no specialized

53. *Id.* at 355, 361; Levin, *supra* note 43, at 88–89; SERED, *supra* note 40, at 6.

54. SERED, *supra* note 40, at 6.

55. *Adverse Childhood Experiences*, CTRES. FOR DISEASE CONTROL, & PREVENTION (2021), <https://www.cdc.gov/violenceprevention/aces> [<https://perma.cc/75KL-MH45>]; Babcock et al., *supra* note at 31, at 362.

56. See Clare Huntington, *Early Childhood Development and the Replication of Poverty*, in *HOLES IN THE SAFETY NET: FEDERALISM AND POVERTY* 130, 130 (Ezra Rosser ed., 2019); MICHAEL K. BROWN, MARTIN CARNOY, ELLIOTT CURRIE, TROY DUSTER, DAVID B. OPPENHEIMER, MARJORIE M. SHULTZ & DAVID WELLMAN, *WHITEWASHING RACE: THE MYTH OF A COLOR-BLIND SOCIETY* 155 (2003); see also Keels, *supra* note 7, at 74 (listing the ecological factors that affect trauma as it relates to violent behavior, beginning with “historical and contemporary social policies and practices,” e.g., colonization and Jim Crow).

57. Tara E. Sutton, Leslie Gordon Simons, Brittany T. Martin, Eric T. Klopach, Frederick X. Gibbons, Steve R. H. Beach & Ronald L. Simons, *Racial Discrimination as a Risk Factor for African American Men’s Physical Partner Violence: A Longitudinal Test of Mediators and Moderators*, 26 *VIOLENCE AGAINST WOMEN* 164, 165 (2020) (collecting sources) (citations omitted).

58. Robert Hampton, William Oliver & Lucia Magarian, *Domestic Violence in the African American Community: An Analysis of Social and Structural Factors* 9 *VIOLENCE AGAINST WOMEN* 533, 538 (2003).

59. CHESWORTH, *supra* note 28, at 28.

60. SKLANSKY, *supra* note 27, at 145, 147 (observing that domestic violence is generally considered a problem of abusive men and victimized women).

services for LGBTQ+ offenders and there are few studies on best practices with this cohort.⁶¹ Nor are there validated studies on intervention modes with women offenders.⁶² DVIPs are often not accessible to non-English speaking offenders.⁶³ Black and Brown males who are mandated to treatment programs have received disproportionately less attention in program studies than their white counterparts.⁶⁴ The few innovative approaches that include the “bidirectional aspects of IPV” to address the circumstances of offenders have not been implemented or evaluated with racial/ethnic male participants.⁶⁵ This, in turn, inhibits opportunities to develop programmatic content to address and “undo historical harms perpetrated against marginalized populations” that often underlie IPV and further contributes to an epistemic injustice.⁶⁶

These findings demonstrate the importance of addressing the structural forces when working with offenders. According to responses to a national survey of DVIP staff, however, the majority mis-identify unmediated patriarchy as the near-single cause of domestic violence, and fail to acknowledge the complex factors that drive IPV.⁶⁷ The predominant program content has engaged in a “dispositional rather than situational understanding of intimate abuse,” focusing on individualized attitudes and behaviors without addressing poverty,

61. Cannon et al., *supra* note 44, at 249; Babcock et al., *supra* note 31, at 405.

62. JOHN HAMEL, BEYOND GENDER: FINDING COMMON GROUND IN EVIDENCE-BASED BATTERER INTERVENTION 14, 16 (2019) <https://www.researchgate.net/publication/341737250> (last visited Oct. 19, 2022) (noting the lack of randomized clinical trials, considered the gold-standard for research for women or LGBTQ+ offenders).

63. CHESWORTH, *supra* note 28, at 129.

64. Laura A. Voith, Hyunjune Lee & Katie Russell, How Trauma, Depression, and Gender Roles Lead to Intimate Partner Violence Perpetration Among a Sample of Predominately Low-Income Black, Indigenous, Men of Color: A Mixed Methods Study, 37 J. OF INTERPERSONAL VIOLENCE 1, 4 (2022).

65. Voith et al., *supra* note 28, at 1589.

66. Voith et al., *supra* note 64, at 2, 4. *See generally* M. Eve Hanan, *Invisible Prisons*, 54 U.C. DAVIS L. REV. 1185, 1213 (2020), for a discussion of the theories of epistemic injustice. *See also* Reginald J. Alston, Debra A. Harley & Renee Middleton, *The Role of Rehabilitation in Achieving Social Justice for Minorities with Disabilities*, 24 J. VOCATIONAL REHAB. 129, 134 (2006) (exhorting social-justice-oriented counselors to use their profession “as a political and liberatory mechanism for dismantling oppressive systems in society, beginning with the institutions in which we work”).

67. HAMEL, *supra* note 62, at 16. *See infra* Section II.A. for a discussion of the determinants of IPV.

racism, and inequality that are foundational to the understanding of IPV.⁶⁸

It is true that crimes of domestic violence raise a different set of concerns than offenses committed by strangers, and the dangers victims face are significant and must be addressed. However, decades of research demonstrate that the same social forces that drive violent behavior apply equally to domestic violence offenses.⁶⁹ Other schools of thought—including human rights, public health, and family well-being—have examined racism, economic strain, and inequality as a way to understand and respond to transgressive behaviors.⁷⁰ Efficacious responses to IPV deserve no less effort and must address the failure of social institutions. Without addressing the structural forces of racism, poverty, and inequality, program efforts will remain “superficial” at best.⁷¹

68. SKLANSKY, *supra* note 27, at 147; CHESWORTH, *supra* note 28, at 42 (highlighting standards that promote improving relationships and addressing substance abuse without reference to the structural causes of these concerns); *see also* Huntington, *supra* note 56, at 130; Valandra, Brandon M. Higgins, Yvette Murphy-Erby & Lucy M. Brown, *An Exploratory Study of African American Men's Perspectives of Intraracial, Heterosexual Intimate Partner Violence Using a Multisystems Life Course Framework*, 10 J. SOC'Y FOR SOC. WORK & RSCH. 69, 79, 87 (2018) (noting how African American males' perceptions of IPV are shaped by experiences of racism and histories of oppression and the importance of addressing these structural issues).

69. *See* Michael L. Benson, Greer L. Fox, Alfred DeMaris & Judy Van Wyk, *Violence in Families: The Intersection of Race, Poverty, and Community Context*, in 2 FAMILIES, CRIME AND CRIMINAL JUSTICE 91, 91 (Greer Litton Fox & Michael L. Benson eds. 2000); Rebecca Miles-Doan, *Violence Between Spouses and Intimates: Does Neighborhood Context Matter?*, 77 SOC. FORCES 623, 623–25 (1998); Judy A. Van Wyk, Michael L. Benson, Greer Litton Fox & Alfred DeMaris, *Detangling Individual-, Partner-, and Community-Level Correlates of Partner Violence*, 49 CRIME & DELINQ. 412, 413–14 (2003). A National Institute of Justice study demonstrated the role that different neighborhood conditions (particularly those conditions that relate to poverty and economic stress) play in producing domestic violence. Greer Litton Fox & Michael L. Benson, *Household and Neighborhood Contexts of Intimate Partner Violence*, 121 PUB. HEALTH REP. 419, 425–26 (2006); *see also* Gary L. Bowen, Natasha K. Bowen & Patricia G. Cook, *Neighborhood Characteristics and Supportive Parenting Among Single Mothers*, in 2 FAMILIES, CRIME AND CRIMINAL JUSTICE, *supra*, at 183, 184–85; Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 48–49 (1991); Daniel Schneider, Kristen Harknett & Sara McLanahan, *Intimate Partner Violence in the Great Recession*, 53 DEMOGRAPHY 471, 471 (2016).

70. Deborah M. Weissman, *Law, Social Movements, and the Political Economy of Domestic Violence*, 20 DUKE J. GENDER L. & POL'Y 221, 239 (2013).

71. Voith et al., *supra* note 64, at 1, 11.

2. DVIPs and the criminal legal system

DVIPs are fully ensconced within the criminal legal system.⁷² Participation is usually a condition of a criminal sentence.⁷³ Programs are often required to enter into memoranda of understanding with the probation department, and prosecutors and must report participants who fail to comply, even when noncompliance results from an inability to pay program fees.⁷⁴ Staff may thus be poised to pursue measures which subject participants to additional criminal sanctions. These policies and practices act to undermine relationships between participants who fear criminal legal sanctions and program staff who have the power to precipitate additional punishments.

DVIPs are required to engage in a “coordinated community response” (CCR).⁷⁵ CCRs receive federal funds for the purpose of enhancing law enforcement and prosecutorial responses to IPV.⁷⁶ The criminal legal system’s domination of CCRs is apparent by their composition which include law enforcement, prosecutors, probation officers as well as victim services agencies.⁷⁷ DVIPs are described as “naturally situated within a coordinated community response,” thus signaling their status as a criminal legal system entity.⁷⁸ CCRs’ principal function is to “ensure consequences for non-compliance and accountability for the man’s behavior. It exercises the ‘stick’ in the classic ‘carrot and stick’ approach to behavior change.”⁷⁹ Program staff must agree to share information, policies, and procedures with all criminal legal system actors as well as civil justice systems.

72. Rosanna Langer, *A Continuum of Services for Men Who Abuse: Developing a Small-City Coordinated Community Response Model*, in *INNOVATIONS IN INTERVENTIONS TO ADDRESS INTIMATE PARTNER VIOLENCE* 108, 110, (Tod Augusta-Scott, Katreena Scott & Leslie M. Tutty eds. 2017). See *Navigating the Family Violence Prevention and Services Program*, *supra* note 35, at 17 (identifying batterer intervention programs along with arrest policies, and victimless prosecution as part of criminal justice responses); *What Is the Duluth Model?*, *supra* note 27.

73. *Id.*

74. Weissman, *supra* note 7, at 58.

75. *What is the Duluth Model?*, *supra* note 27.

76. See Gavin Keene, Comment, *Preserving VAWA’s “Nonreport” Option: A Call for the Proper Storage of Anonymous/Unreported Rape Kits*, 93 WASH. L. REV. 1089, 1119 (2018) (describing the purposes of the federal STOP Violence Against Women Formula Grant Program).

77. See Battered Women’s Justice Project, *Coordination Models*, <https://www.bwjp.org/our-work/topics/ccr-models.html> [<https://perma.cc/9CWW-9CBL>].

78. Wagers & Radatz, *supra* note 28, at 211.

79. GONDOLF, *supra* note 34, at xviii.

CCRs provide an important mechanism for survivors, to be sure. Survivor advocates may articulate and explain survivor needs and decisions.⁸⁰ However, as Professor Elizabeth MacDowell has observed, notwithstanding CCRs' potential benefits, they may result in negative consequences that "allow the coordinated state to both tighten (around a shared ideology and narrative about abuse) and extend its grip (into civil society) in a way that further marginalizes particularly affected survivors (and defendants)."⁸¹ That is, CCRs may serve to enhance the repressive capacity of the state that harms victims as well as offenders.⁸²

Some DVIP staff have expressed discomfort with the program relationship to the criminal legal system, specifically that DVIPs over-rely on the criminal legal system and are confined to paradigms that exclude the interests of local communities.⁸³ Bound to the legal requirements that govern these programs, they nevertheless criticize the lack of discourse among program staff about structural inequalities and forms of discrimination through which the criminal legal system wreaks havoc on Black men and poor men.⁸⁴ They note that these relationships politically compromise their work and further constrain dialogue and debate.⁸⁵ These concerns illustrate the ways in which DVIPs' ties to the criminal justice system undermine both the concept and practice of offender treatment and undermine rehabilitation and

80. For example, survivor advocates can explain a victim's resolve to return to the offender, and thus educate those state actors who may view an offender as beyond redemption and thus question the proper exercise of victim agency. See Elizabeth Ben-Ishai, *The Autonomy-Fostering State: "Coordinated Fragmentation" and Domestic Violence Services*, 17 J. POL. PHIL. 307, 323, 327–28 (2008).

81. Elizabeth L. MacDowell, *Vulnerability, Access to Justice, and the Fragmented State*, 23 MICH. J. RACE & L. 51, 75 (2018).

82. In a recent study on Family Justice Centers that function in ways similar to CCRs, Jane Stoever warned that women who seek help risk unanticipated criminal justice and governmental involvement, monitoring, and control, contrary to the assistance they expect to receive. Jane K. Stoever, *Mirandizing Family Justice*, 39 HARV. J.L. & GENDER 189, 191–92, 194 (2016).

83. GONDOLF, *supra* note 34, at 91, 97, 111, 118. This critical assessment of the over-reliance on the criminal justice system and its relationship to DVIPs holds true throughout the "global north." See LIZ KELLY & NICOLE WESTMARLAND, *DOMESTIC VIOLENCE PERPETRATOR PROGRAMS, STEPS TOWARD CHANGE* 3 (2015) <https://www.dur.ac.uk/criva/projectmirabal> [<https://perma.cc/W5DJ-MT46>].

84. GONDOLF, *supra* note 34, at 105.

85. *Id.* at 49, 87.

behavior-changing measures.⁸⁶ Other studies note that the association of DVIPs with the criminal legal system creates disincentives for offenders to seek assistance voluntarily: “There is simply no socially acceptable process for individuals who have engaged in partner violence to ask for help.”⁸⁷

3. *Culture and constraints*

There is an abundance of research attempting to measure the efficacy of DVIPs.⁸⁸ Program assessments are challenging. Rates of IPV have not reduced significantly during the years of DVIPs.⁸⁹ The rise of recidivism as the primary metric for measuring program or participant successes is not uncontested.⁹⁰ It is not the purpose of this Article to determine how best to measure the worth of DVIPs.⁹¹ Because most programs privilege patriarchy as the main driver of IPV, thus constructing intervention around that theoretical model, the research is limited in its ability to identify what “works.” Some experts note that proper assessments of program efficacy require more attention to the circumstances of offenders.⁹² Notwithstanding the lack of agreement about assessment studies, the research underscores existing problematic program culture including dubious program

86. Wagers & Radatz, *supra* note 28, at 214 (noting that these programs are not set up “to evoke a person to take responsibility, which is imperative to rehabilitating a person and changing their behavior”).

87. Babcock et al., *supra* note 31, at 436.

88. See generally, e.g., Stephen M. Cox & Pierre M. Rivolta, *Evaluative Outcomes of Connecticut’s Batterer Intervention for High Risk Offenders*, 30 J. AGGRESSION, MALTREATMENT & TRAUMA 931, 931-32 (2021); Desiree Cuevas & Ngoc Bui, *Social Factors Affecting the Completion of a BATTERER INTERVENTION PROGRAM*, 31 J. FAM. VIOLENCE 95, 95 (2016); Wagers & Radatz, *supra* note 28, at 202, 203, 207; White et al., *supra* note 38, at 106, 120-21; Babcock et al., *supra* note 31, at 356, 369-71; HAMEL, *supra* note 62, at 2, 4, 5, 13.

89. CHESWORTH, *supra* note 28, at 2, 7.

90. Wagers & Radatz, *supra* note 28, at 215.

91. Cecelia Klingele, *Measuring Change: From Rates of Recidivism to Markers of Desistance*, 109 J. CRIM. L. & CRIMINOLOGY 769, 815 (2019) (criticizing recidivism as a measure of success for encouraging risk aversive behavior by criminal system actors resulting in a “paralyzed system”).

92. KELLY & WESTMARLAND, *supra* note 83, at 3 (noting that DVIPs are held to “more stringent levels of scrutiny and measures of success than criminal justice interventions”); GONDOLF, *supra* note 34, at 77 (noting the difficulty in determining indicators for program successes).

92. White et al., *supra* note 38, at 116 (noting a focus on more research and evaluation to reduce recidivism).

philosophies and norms that shape DVIP practices and function to inhibit innovations.

DVIPs are disincentivized from addressing IPV's structural determinants due to enduring ideological principles that limit the purposes and value of programs and the offenders who are mandated to attend them. Offender treatment programs are undervalued, and often disparaged.⁹³ They are deemed undeserving of public funding and dissuaded from seeking public funds lest they compete with survivor agencies that are also without sufficient resources.⁹⁴ As a result, DVIPs are underfunded and hence understaffed, and unable to provide the necessary resources to participants.⁹⁵ Staff salaries are dependent on participant fees which contribute to a contentious circumstance that affects treatment.⁹⁶ Because fees are essential to the ability of programs to remain open and viable, participant payment has become a metric of accountability; nonpayment, in turn, is a violation of the rules with carceral consequences.⁹⁷

It is worth considering the impact these circumstances have upon a participant's loss of faith in the treatment modalities. Studies demonstrate that economic-related penalties "have rehabilitation-defeating propensities."⁹⁸ They have demonstrated that persons implicated in the criminal legal system are often "trapp[ed] in a cycle of poverty and punishment" as a result of their inability to pay fees.⁹⁹ Fee payment requirements imposed without regard to one's means interferes with a participant's ability to meet daily obligations, including those that inure to the benefit of his family. The deleterious consequences of DVIP fee requirements are similar to those that affect

93. CHESWORTH, *supra* note 28, at 66; GONDOLF, *supra* note 34, at 87.

94. See *supra* note 35 and accompanying text; Austin & Dankwort, *supra* note 34, at 159; GONDOLF, *supra* note 34, at 8; KELLY & WESTMARLAND, *supra* note 83, at 4; CHESWORTH, *supra* note 28, at 75 (describing survey respondents' concerns that "there is only so much in the 'pot' and giving funding to BIPs results in less funding for initiatives that serve survivors and their children").

95. GONDOLF, *supra* note 34, at 8, 87 (noting staff turnover due to lack of sufficient funds).

96. *Id.* at 92 (critiquing the "business model" . . . which aims to make money through treating individual men").

97. *Id.* at 26 (noting that many program fees are more than low-income families can pay).

98. Kevin R. Reitz, *The Economic Rehabilitation of Offenders: Recommendations of the Model Penal Code (Second)*, 99 MINN. L. REV. 1735, 1743 (2015).

99. *Eliminating Fines and Fees*, <https://www.policylink.org/our-work/just-society/fines-fees> [<https://perma.cc/V7NS-89LL>] (noting that the impact is disproportionately felt by low income and Black and Brown communities).

defendants who fail to pay court costs. Recognition of the harm that can result from these sorts of fees has been identified as the “single most important . . . provision in the Model Penal Code (Second)” which would prohibit the imposition of such sanctions unless the offender had sufficient ability to maintain himself and his family.¹⁰⁰ Yet the problem of DVIPs fees have been ignored in “fines and fees” studies or campaigns to address the issue.¹⁰¹

Attitudes about offenders inhibit innovative treatment practices that fall outside of the culture of punishment. Some studies find that DVIPs rely on authoritarian-style leadership and intolerance for dissent.¹⁰² Other researchers have described DVIP programming as “heavy-handed and bullying,” noting that it relies on a “curriculum that stereotyp[es] and vilif[ies] offenders.”¹⁰³ Program staff have noted that “there is a general lack of passion and interest in helping offenders because it is ‘politically unpopular.’”¹⁰⁴ These circumstances further limit the effectiveness of these programs.

As with other crimes of violence, domestic violence is a politically charged matter. Politicians either demand harsh sentences or circumvent meaningful dialogue on how best to address the problem with implications for DVIP content.¹⁰⁵ For example, during the debates concerning the most recent version of the Violence Against Women Act Reauthorization Act of 2022, a provision allowing for the allocation of funds for “rehabilitative work with offenders, restorative practices,

100. Reitz, *supra* note 98, at 1750–51.

101. *Id.*; see, e.g., *About Us*, <https://finesandfeesjusticecenter.org/about-fines-fees-justice-center> [<https://perma.cc/6Q2N-HSRL>] (addressing the injustice that results when courts impose fines as a punishment for minor and serious offenses that are then used to fund the justice system and other government services). See generally MATHILDE LAISNE, JON WOOL & CHRISTIAN HENRICHSON, PAST DUE: EXAMINING THE COSTS AND CONSEQUENCES OF CHARGING FOR JUSTICE IN NEW ORLEANS 4, 12, 15 (2017), <https://www.vera.org/downloads/publications/past-due-costs-consequences-charging-for-justice-new-orleans.pdf> [<https://perma.cc/ZGV8-X8KX>].

102. GONDOLF, *supra* note 34, at 8; HAMEL, *supra* note 62, at 23–24 (noting, however, that some programs, e.g., Manalive, focus on an offender’s childhood trauma and seek to avoid shame-based communication).

103. SKLANSKY, *supra* note 27, at 147.

104. CHESWORTH, *supra* note 28, at 75.

105. Michelle Kuo, *What Replaces Prisons?*, THE N.Y. REV. (Aug. 20, 2020), <https://www.nybooks.com/articles/2020/08/20/what-replaces-prisons> [<https://perma.cc/D7JB-HN27>] (reviewing DANIELLE SERED, UNTIL WE RECKON: VIOLENCE, MASS INCARCERATION, AND A ROAD TO REPAIR) (describing crimes of violence as a “fraught issue”).

and similar initiatives” proved to be contentious.¹⁰⁶ Notwithstanding the promising research on restorative justice as a mechanism to respond to IPV, the bill’s proposals were met with harsh critique by those who suggested that such a provision would fail to hold predators accountable.¹⁰⁷ Benjamin Levin has observed, “punitive politics are and have been a bipartisan problem in the United States.”¹⁰⁸ Domestic violence offenders, deemed unworthy, have been excluded from other criminal legal reforms including bail reform and COVID-19 related compassionate release campaigns.¹⁰⁹

These attitudes constrain programs from considering the benefits of restorative justice approaches, as well as most any form of dialogue between an offender and a victim, notwithstanding the research that promotes the benefits of such interactions when survivors desire or assent to them.¹¹⁰ Programs are further discouraged, if not prohibited from including curriculum content that include a “Strong Fathers” approach which works on the beliefs “that the men have strengths as fathers and that improving how the men relate to their children also improves how they relate to their intimate partners.”¹¹¹ Strong Fathers

106. H.R.1620 - Violence Against Women Act Reauthorization Act of 2021, 117th Congress (2021–2022). Title I, Section 101, STOP Grants, (a) (1) (D). The literature describing restorative justice and related practices may be best described as expansive.

107. Joni Ernst, *Democrats’ Violence Against Women Act Pressures Women to Negotiate with Abusers*, USA TODAY (Apr. 8, 2021), <https://www.usatoday.com/story/opinion/voices/2021/04/08/joni-ernst-violence-against-women-act-reauthorization-democrats-column/7124333002> [<https://perma.cc/BLB7-5MJJ>]. See *infra* notes 239–243 and accompanying text for a definition and discussion of restorative justice. The reauthorization of VAWA did include what many consider to be watered down restorative justice provisions with a number of restrictions and prohibitions. See Casey Gwinn, *Update on VAWA Reauthorization*, DOMESTIC VIOLENCE REPORT APR/MAY 51 (2022).

108. See Levin, *supra* note 43, at 89; Aya Gruber, *#metoo and Mass Incarceration*, 17 OHIO ST. J. CRIM. L. 275, 279 (2020); Deborah M. Weissman, *Countering Neoliberalism and Aligning Solidarities: Rethinking Domestic Violence Advocacy*, 45 SW. L. REV. 915, 916 (2016) (critiquing domestic violence advocacy as incorporating neoliberal approaches that privilege criminal legal responses).

109. Weissman, *supra* note 8, Part II.

110. HAMEL, *supra* note 62, at 5; Merchant & Whiting, *supra* note 11, at 602.

111. JOAN PENNELL WITH R.V. RICKARD & AMY RYDER-BURGE, STRONG FATHERS: COMMUNITY GUIDANCE 2 (2012), https://cdn.chass.ncsu.edu/sites/cfface.chass.ncsu.edu/documents/Strong_Fathers_Focus_Groups_2010_and_2011_Report.pdf [<https://perma.cc/HR67-DNAH>]. Juan Carlos Areán & Lonna Davis, *Working with Fathers in Batterer Intervention Programs*, in PARENTING BY MEN WHO BATTER: NEW DIRECTIONS FOR ASSESSMENT AND INTERVENTION 118, 120 (Jeffrey L. Edleson & Oliver J.

programs have been deemed too “soft[]” on offenders, although studies indicate their effectiveness in mitigating domestic violence, with the caveat that survivors should be the gatekeepers for offender-children contact.¹¹²

Juan Carlos Areán and Lonna Davis describe the effect on communities of color as a result of the dominant cultural contexts that pervade DVIPs and result in an unwillingness to include fatherhood approaches in DVIPs:

It is essential to understand the cultural context in which fathering happens in communities of color. Racism and oppression are systematic ways in which to dehumanize certain populations. This dehumanization can take various forms; one is to deprive men of their ability to protect and provide for their families. This is most obvious in the cases of slavery and genocide, but it has been perpetuated in other forms of oppression, such as colonization, discrimination, marginalization, and poverty. These injustices have had and continue to have profound consequences on the fathering abilities and styles of men of color. Batterer intervention programs have the responsibility to start understanding the role of culture in the treatment of abusive men.¹¹³

The failure to address systemic racism and economic inequality as contributing circumstances in offender behavior has been attributed to a fear of “undermin[ing] accountability.”¹¹⁴ Indeed, the one-size-fits-all model encourages the view that IPV offenders are incorrigible and will continue abusive behavior, and thus promotes a punitive form of “treatment.”¹¹⁵

Similarly, an ideological framework ascribing IPV as a function of individualized choices unmediated by structural forces shapes DVIP

Williams eds. 2006) (noting that DVIPs are discouraged from using fatherhood in DVIPs).

112. PENNELL ET AL., *supra* note 111, at 10; CHESWORTH, *supra* note 28, at 29–30, 44; JOAN PENNELL, CHILD MALTREATMENT AND DOMESTIC VIOLENCE: BEFORE AND AFTER ENROLLMENT IN STRONG FATHERS 11 (2015), <https://tinyurl.com/3b34m7hs>; Deborah M. Capaldi, David C. R. Kerr, J. Mark Eddy & Stacey S. Tiberio, *Understanding Persistence and Desistance in Crime and Risk Behaviors in Adulthood: Implications for Theory and Prevention*, 17 PREV SCI. 785, 786 (2016). Areán & Davis, *supra* note 111, at 119; *see also* Thomas P. LeBel & Shadd Maruna, *Life on the Outside: Transitioning from Prison to the Community*, in THE OXFORD HANDBOOK OF SENTENCING AND CORRECTIONS 657, 667 (Joan Petersilia & Kevin R. Reitz eds. 2012) (noting that offender relationships with children offer the promise of improving transgressive behavior generally).

113. Areán & Davis, *supra* note 111, at 120.

114. GONDOLF, *supra* note 34, at 105.

115. Merchant & Whiting, *supra* note 11, at 603.

programming. As noted above, poverty, inequality, and racism exacerbate the risk of ACEs and is a critical factor to the perpetration of IPV.¹¹⁶ Yet implementing trauma-informed approaches is often considered an inappropriate response by those who perceive it to offer an offender an excuse for his behavior.¹¹⁷ Similarly, a turn to trauma-informed approaches may be considered suspect because such innovations might reduce ties to the criminal legal system. And in many instances, when issues related to childhood trauma are addressed, the burden, if not blame falls to parents, especially mothers, while structural issues related to social inequality are ignored.¹¹⁸

Given the challenges of this work, and the overwhelming support that survivors themselves express for DVIPs, scholars and practitioners would do well to reconsider the culture and politics of DVIPs and to identify ways to provide expressive and actual support.¹¹⁹ These programs are often undervalued, if not disparaged, and remain outside of important social justice movements. These circumstances cannot but signal to participants an indifference to their efforts in the program and imply that their own identities as offenders are fixed and their social capital limited.

4. *Law and constraints*

The legal framework that governs intervention in IPV is weighted toward criminal strategies. Mandatory arrests and evidence-based prosecution policies (sometimes referred to as “no-drop” prosecution) have proliferated. These strategies were developed in response to the failure of legal systems to address domestic violence as a public harm. In recent years, however, they have been widely critiqued by survivors, practitioners for survivors, as well as scholars, particularly because they

116. See *supra* note 56 and accompanying text; Voith, *supra* note 64, at 14 (noting that trauma informed approaches are “an important evolution for IPV intervention”).

117. GONDOLF, *supra* note 34, at 85 (critiquing this view by noting that a diagnosis helps to understand the issue, not avoid accountability).

118. Ruth Müller & Martha Kenney, *A Science of Hope? Tracing Emergent Entanglements between the Biology of Early Life Adversity, Trauma-informed Care, and Restorative Justice*, 46 *SCL., TECH., & HUM. VALUES* 1230, 1233 (2021).

119. KELLY & WESTMARLAND, *supra* note 83, at 38 (noting that IPV survivors respond to DVIPs with “deep-felt hope”).

often deprive survivors of agency in determining the preferred course of action.¹²⁰

The turn toward criminal strategies has had a decisive impact on the development of DVIPs and the regulatory standards by which they are governed.¹²¹ As noted above, the CCRs with which DVIPs collaborate are criminal-law centered, particularly due to federal funding requirements.¹²² Courts generally may refer an offender only to a certified program which requires among other mandates, a commitment to collaboration with criminal legal actors.¹²³

The legal standards that govern program structure and content have been developed without sufficient attention to research.¹²⁴ Findings from a multisite study of DVIPs that examined state standards found that “only 5% of states rely on state-of-the-art evidence-based models of partner violence [treatments].”¹²⁵ Notwithstanding research about best practices, these standards that were developed in the 1980s have not

120. For articles and books that discuss the harm occasioned by criminal justice system responses to gender violence, see MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 47 (rev'd ed. 2012); MARIE GOTTSCHALK, *THE PRISON AND THE GALLOWS: THE POLITICS OF MASS INCARCERATION IN AMERICA* 78 (2006); LEIGH GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE* 14, 15 (2018); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241, 1257 (1991); Barbara Fedders, *Lobbying for Mandatory-Arrest Policies: Race, Class, and the Politics of the Battered Women's Movement*, 23 *N.Y.U. REV. L. & SOC. CHANGE* 281, 287 (1997); Alexandra Grant, *Intersectional Discrimination in U Visa Certification Denials: An Irremediable Violation of Equal Protection?*, 3 *COLUM. J. RACE & L.* 253, 262 (2013); Radha Vishnuvajjala, *Insecure Communities: How an Immigration Enforcement Program Encourages Battered Women to Stay Silent*, 32 *B.C. J.L. & SOC. JUST.* 185, 208–09 (2012); Deborah M. Weissman, *The Personal Is Political—and Economic: Rethinking Domestic Violence*, 2007 *BYU L. REV.* 387, 401 (2007); Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 *BUFF. CRIM. L. REV.* 801, 852–54 (2001).

121. Katreena Scott, Lisa Heslop, Randal David & Tim Kelly, *Justice-Linked Domestic Violence Intervention Services: Description and Analysis of Practices Across Canada*, in *INNOVATIONS IN INTERVENTIONS TO ADDRESS INTIMATE PARTNER VIOLENCE*, *supra* note 72, at 53, 81; CHESWORTH, *supra* note 28, at 21, 28; see Benjamin Levin, *Criminal Law Exceptionalism*, 108 *VA. L. REV.* 110, 117 (forthcoming 2022) (noting that the criminal system informs many institutions that address social problems creating the likelihood that entities outside of the carceral state *per se* will be tainted with the same punitive ideologies).

122. See *supra* notes 76–77 and accompanying text.

123. See, e.g., N.C. GEN. STAT. ANN. § 50B-3 (12).

124. White et al., *supra* note 38, at 116 (noting widespread agreement that there has been a dearth of attention on offenders or programs that serve them).

125. Babcock et al., *supra* note 31, at 367.

changed over the years.¹²⁶ These legal requirements mandate a one-size-fits-all model, and often prohibit alternative treatment options and modalities notwithstanding empirical evidence that indicates other models may be more efficacious.¹²⁷ For example, DVIPs have been prohibited from implementing promising and innovative strategies, including restorative justice and trauma-informed approaches as a result of the standards governing the programs.¹²⁸ The one-size-fits regulatory mode often eliminates opportunities for culturally-appropriate intervention strategies based on heteronormative assumptions.¹²⁹ State legal standards also dictate training requirements for DVIP staff which are usually circumscribed by the certification regulations themselves.¹³⁰ Compounding the lack of research-informed standards, inadequate legislative funding allocations has compromised the ability of governing bodies to undertake research, provide technical assistance, and otherwise assist with questions regarding legal standards.¹³¹ These regulations are administrative in nature; however, as Benjamin Levin has suggested, there may be no “clean line between criminalization and regulation.”¹³² The influence of the criminal legal system has led to “binary thinking and approaches that are ineffective and problematic.”¹³³

DVIPs face significant limitations and obstacles due to current state standards regulating these programs.¹³⁴ The regulations are sufficiently problematic such that a “sizeable minority” of programs resist or disregard them.¹³⁵ It is also reasonable to assume that outdated and questionable legal standards undermine community and public support for these programs. Indeed, legal reforms related to DVIPs

126. *Id.* at 366; CHESWORTH, *supra* note 28, at 7–8.

127. Babcock et al., *supra* note 31, at 388; Wagers & Radatz, *supra* note 28, at 212.

128. DVIPs are also prohibited from providing couples therapy, which many victims want and may be effective in certain circumstances. CHESWORTH, *supra* note 28, at 21.

129. Babcock et al., *supra* note 31, at 401, 407.

130. CHESWORTH, *supra* note 28, at 125 (noting the need for more rigorous state standards to improve training).

131. *Id.* at 72.

132. Levin, *supra* note 121, at 134.

133. Wagers & Radatz, *supra* note 28, at 214.

134. Babcock et al., *supra* note 31, at 356; *see* 2020 Report to the Washington State Legislature, *supra* note 35, at 3.

135. HAMEL, *supra* note 62, at 16; CHESWORTH, *supra* note 28, at 74; GONDOLF, *supra* note 34, at 116.

have become politicized and efforts to innovate standards lag behind other fields of study that address transgressive behaviors.¹³⁶

II. DESISTANCE THEORIES AND SOCIAL JUSTICE

Notwithstanding the critiques described in Part I, DVIPs hold promise to reduce rates of gender violence. These programs are designed to prevent and treat IPV, an insidious type of violence that wreaks havoc within households, breaches private spaces, exposes the shortcomings of public institutions and degrades the normative framework of daily life.¹³⁷ DVIP's efforts to mitigate IPV are crucial. Indeed, survivors of domestic violence uniformly acknowledge treatment programs for offenders as a matter of critical importance.¹³⁸

Desistance theories that explore the sources of transgressive behaviors provide insight into efficacious strategies of remedy.¹³⁹ In this Article, the term desistance refers to "the causal process that supports the termination of offending."¹⁴⁰ It privileges theories of desistance that understands cessation of harmful behaviors as a process.¹⁴¹ It also posits that desistance theories as applied are most useful when joined with an understanding of the determinants of the offense.¹⁴² This Part begins with a brief review of the current research on the factors that contribute to IPV. It then sets forth desistance theories that underscore the importance of establishing social bonds

136. Ernst, *supra* note 107; Amy J. Cohen, *The Rise and Fall and Rise Again of Informal Justice and the Death of ADR Draft*, 54 CONN. L. REV. 197, 197 (2022) (noting that "[o]utside the legal academy, prison and police abolitionists are turning to the tools of dispute resolution as an important mechanism of social change").

137. Marcy L. Karin, *Changing Federal Statutory Proposals to Address Domestic Violence at Work: Creating a Societal Response by Making Businesses a Part of the Solution*, 74 BROOK. L. REV. 377, 379 (2009); see Amy Ellison, *The Impact of Domestic Violence on Our Community*, NONPROFIT P'SHIP (Dec. 9, 2015), <https://perma.cc/W3YJ-QWCE> (describing how IPV affects family and community bonds).

138. This is true whether or not survivors intend to remain in the relationship. See Linda G. Mills, Peggy Grauwerler & Nicole Pezold, *Enhancing Safety and Rehabilitation in Intimate Violence Treatments: New Perspectives*, 121 PUB. HEALTH REPS. 363, 363 (2006).

139. John H. Laub & Robert J. Sampson, *Understanding Desistance from Crime*, 28 CRIME & JUST. 1, 1–2 (2001).

140. *Id.* at 11.

141. Maruna et al., *supra* note 6, at 9; see also Sam King, *Early Desistance Narratives: A Qualitative Analysis of Probationers' Transitions Toward Desistance*, 15 PUNISHMENT & SOC'Y 147, 149 (2013) (observing that the concept of desistance as a process provides important clarity to understanding why transgressive behavior ends).

142. See Laub & Sampson, *supra* note 139, at 3 ("[U]nderstanding desistance from crime requires a theory of crime and the criminal 'offender.'").

as a means to transform abusive behaviors. It argues that DVIPs are especially well situated to apply desistance methods through the transformation of program structure to encourage offenders to establish social bonds through partnerships and interactions with social justice movements. DVIPs promote relationships that act to influence offender behaviors, mitigate gender violence, and address the determinants of IPV.

A. *The Political Economy of IPV*

As explained above, DVIPs do not address systemic or structural concerns related to IPV.¹⁴³ While much has been written about the determinants of crime, it is helpful to provide a brief overview of the causal factors related to criminality, including those that pertain to IPV.¹⁴⁴ Indeed, any consideration of desistance strategies requires a review of these issues at the outset.¹⁴⁵ As desistance theorists have noted, the factors that may promote desistance are those that often “reverse” the contributing circumstances to offending in the first place.¹⁴⁶

The structural determinants of criminal conduct have been long understood to include historical circumstances, macro political conditions, and socio-economic forces.¹⁴⁷ No less important, these

143. See *supra* Section I.A (highlighting the narrow reach of DVIPs, which typically focus on individual offenders).

144. DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* 15–16 (2001); see CLIFFORD R. SHAW & HENRY D. MCKAY, *JUVENILE DELINQUENCY AND URBAN AREAS: A STUDY OF DELINQUENCY IN RELATION TO DIFFERENTIAL CHARACTERISTICS OF LOCAL COMMUNITIES IN AMERICAN CITIES* 315 (rev. ed. 1969) (identifying structural factors that produce social disruption leading to high crime rates); John Hagan, *Introduction: Crime in Social and Legal Context*, 27 L. & SOC'Y REV. 255, 257–58 (1993); Jeffrey Fagan & Tracey L. Meares, *Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities*, 6 OHIO ST. J. CRIM. L. 173, 196 (2008); Bruce P. Kennedy, Ichiro Kawachi, Deborah Prothrow-Stith, Kimberly Lochner & Vanita Gupta, *Social Capital, Income Inequality, and Firearm Violent Crime*, 47 SOC. SCI. & MED. 7, 8 (1998); Bebonchu Atems, *Identifying the Dynamic Effects of Income Inequality on Crime*, 82 OXFORD BULL. ECON. & STATS. 751, 759–60, 767–68, 779 (2020); Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271, 1285 (2004).

145. See *supra* note 142 and accompanying text (encouraging a comprehensive examination of crimes and offenders).

146. Laub & Sampson, *supra* note 139, at 5.

147. GARLAND, *supra* note 144, at 6; see April L. Cherry, *Shifting Our Focus from Retribution to Social Justice: An Alternative Vision for the Treatment of Pregnant Women Who*

factors—particularly racism—often determine who is most likely to be implicated in the criminal legal system and to be incarcerated.¹⁴⁸ The effects of economic strain, diminishing economic opportunities, and growing social inequality have demonstrable social costs to individuals, families, and communities.¹⁴⁹ Indeed, it is no longer plausible to ascribe crime to individual failings or idiosyncratic behaviors, concepts that scholars have deemed are “never very clearly articulated, nor [] supported by carefully assembled social science evidence.”¹⁵⁰

IPV poses different and often more destructive consequences than other types of crimes.¹⁵¹ Violence perpetrated within intimate relationships undermine a victim’s autonomy in the most pernicious of ways.¹⁵² Moreover, the obstacles to exiting from an abusive intimate relationship are more complex than those which other crime victims face.¹⁵³ Yet, IPV is not an exceptional category as a consequence of contributing structural factors. IPV is often the result of patriarchal norms based on notions of a male-dominated society—although this explanation tends to neglect the structural conditions from which

Harm Their Fetuses, 28 J.L. & HEALTH 6, 49 (2015) (pointing out the need to consider the social and economic context of women criminally charged for harming their fetuses).

148. Victor J. St. John & Kwan-Lamar Blount-Hill, *Place, Space, Race, and Life During and After Incarceration: Dismantling Mass Incarceration Through Spatial and Placial Justice*, 2019 HARV. KENNEDY SCH. J. AFRICAN AM. POL’Y 46, 46–47 (2019).

149. See Benedict Sheehy, *Corporations and Social Costs: The Wal-Mart Case Study*, 24 J.L. & COM. 1, 3 (2004) (defining social costs as those problems that result from economic activity and cause uncompensated harm to society); see also SHAW & MCKAY, *supra* note 144, at 315 (identifying structural factors that produce social disruption leading to high crime rates); Jennie E. Brand, *The Far-Reaching Impact of Job Loss and Unemployment*, 41 ANN. REV. SOCIO. 359, 365 (2015) (detailing the psychological and physical stress affecting families as a result of unemployment); Tracey L. Meares, *Praying for Community Policing*, 90 CAL. L. REV. 1593, 1603 (2002); Roberts, *supra* note 144, at 1285; William Julius Wilson, *When Work Disappears*, 111 POL. SCI. Q. 567, 580 (1996) (explaining that “[t]he problems of joblessness and social dislocation in the inner city are, in part, related to the processes in the global economy that have contributed to greater inequality and insecurity”); see generally Daniel Schneider, Kristen Harknett & Sara McLanahan, *Intimate Partner Violence in the Great Recession*, 53 DEMOGRAPHY 471, 472 (2016) (finding that high unemployment rates were associated with increases in men’s violent behavior towards their wives).

150. BROWN ET AL., *supra* note 56, at 153.

151. See *supra* note 137 and accompanying text (demonstrating how IPV impacts families and communities).

152. Andrew King-Ries, *Teens, Technology, and Cyberstalking: The Domestic Violence Wave of the Future?*, 20 TEX. J. WOMEN & L. 131, 135–36 (2011).

153. Mahoney, *supra* note 69, at 5–6.

patriarchy emerged as a cultural arrangement.¹⁵⁴ In fact, domestic violence scholarship has expanded its understanding of the ways that corollary hierarchies of power and authority contribute to patriarchal structures.¹⁵⁵

Hard times—in all its forms: unemployment, economic insecurity, downward mobility—have exacerbated stress levels and wrought havoc on mental health and inevitably accompanied an increase in IPV as demonstrated in reports of rising incidents of domestic violence during the COVID-19 pandemic.¹⁵⁶ COVID-19 related stress is not dissimilar to conditions associated with the 2008–2009 recession when the collapse of household economies contributed to a documented rise of domestic violence.¹⁵⁷ The National Domestic Violence Hotline reported that the national increase in telephone calls in 2009 resulted from the decline in household finances and the resulting financial strain.¹⁵⁸ Additional recent studies similarly call attention to the

154. Gwen Hunnicutt, *Varieties of Patriarchy and Violence Against Women: Resurrecting “Patriarchy” as a Theoretical Tool*, 15 VIOLENCE AGAINST WOMEN 553, 553–54 (2009).

155. See Benson et al., *supra* note 69, at 91; Miles-Doan, *supra* note 69, at 624–25; Van Wyk et al., *supra* note 69, at 413–14; see Bowen et al., *supra* note 69, at 183–85; Mahoney, *supra* note 69, at 48–49; Schneider et al., *supra* note 69, at 472. A National Institute of Justice study demonstrated the role that different neighborhood conditions, particularly those conditions that relate to poverty and economic stress, play in producing domestic violence. Fox & Benson, *supra* note 69, at 425–26.

156. Karen Nikos-Rose, *COVID-19 Isolation Linked to Increased Domestic Violence, Researchers Suggest Financial Stress Contributes*, U.C. DAVIS (Feb. 24, 2021), <https://www.ucdavis.edu/curiosity/news/covid-19-isolation-linked-increased-domestic-violence-researchers-suggest> [https://perma.cc/6R9U-HSU2]; Jeffrey Kluger, *Domestic Violence is a Pandemic Within the COVID-19 Pandemic*, TIME (Feb. 3, 2021, 11:15 AM), <https://time.com/5928539/domestic-violence-covid-19> [https://perma.cc/4JUJ-NWYM]. See Weissman, *supra* note 8, at 838–39, for a fuller discussion of IPV and COVID-19. See also *supra* Sections II.B & III.B (discussing how COVID-19 has exacerbated the need for safe housing for IPV survivors).

157. *Domestic Abuse on Rise as Economy Sinks*, NBC (Apr. 10, 2009, 4:20 PM), <https://www.nbcnews.com/health/health-news/domestic-abuse-rise-economy-sinks-fna1C9465262> [https://perma.cc/2EJ8-K46J].

158. *Id.*; see Ian Urbina, *Philadelphia to Handle Abuse Calls Differently*, N.Y. TIMES (Dec. 30, 2009), <https://www.nytimes.com/2009/12/31/us/31philadelphia.html> (last visited Oct. 19, 2022) (noting an increase in domestic violence calls due to the recession after a fifteen-year decrease); see also Presentation, “Mary Kay Truth About Abuse” Survey: National Findings from Third Survey of Domestic Violence Shelters in the United States 2–4 (Apr. 2011), http://www.ncdsv.org/images/marykay_truthaboutabusesurvey_2011.pdf [https://perma.cc/3NAH-MG9T] (reporting increasing numbers of women seeking assistance from shelters).

relationship between social disempowerment, lack of employment, and community stressors—including racism—as bearing on IPV.¹⁵⁹

These circumstances are vital to understanding of desistance theories and IPV. To think critically about how best to mitigate domestic violence obliges researchers to contextualize IPV within the political economy. Without these considerations, the efficacy of desistance will be limited.¹⁶⁰ As scholars John Laub and Robert Sampson have observed, “it appears that most predictors of desistance are the reverse of risk factors predicting offending.”¹⁶¹

B. Desistance Theories and the Importance of Social Bonds

Desistance theories are the subject of expanding scholarship by criminologists and social psychologists.¹⁶² Scholars have hypothesized a number of factors that lead to a shift away from criminal behavior.¹⁶³ This Article does not seek to engage in a comprehensive review of the literature on the cessation of transgressive behavior. Rather, it seeks to examine desistance as a “structural break[.]” from acts of harm produced by the influences of meaningful social interactions that serve as both motive and opportunity to modify behavior.¹⁶⁴

Desistance is a process that takes place outside of the criminal legal system. It summons social supports and deploys innovative practices designed to include and reintegrate offenders within family and community through collective action networks.¹⁶⁵ Persons who have committed criminal acts are thus incorporated within social networks and provided with an opportunity to develop a level of awareness about

159. Holliday et al., *supra* note 43, at 98, 101; Sutton et al., *supra* note 57, at 165.

160. See SERED, *supra* note 40, at 26 (observing that violence is always more than individual behaviors, but is “systemic and historical”).

161. Laub & Sampson, *supra* note 139, at 5.

162. *Id.* at 55; Maruna et al., *supra* note 6, at 9; Paternoster & Bushway, *supra* note 6, at 1105.

163. See Laub & Sampson, *supra* note 139, at 3, 13, 38–39 (including aging, stable family relations, and secure employment).

164. Paternoster & Bushway, *supra* note 6, at 1111. The benefits of social networks has been demonstrated in other realms of community problems, particularly health and medicine and demonstrate that such networks influence norms and expand opportunities to improve health outcomes. See Kirsten P. Smith & Nicholas A. Christakis, *Social Networks and Health*, 34 ANN. REV. SOCIO. 405, 406 (2008) (discussing how social networks affect health by expanding social support, social influence, social engagement, person-to-person contacts, and access to resources).

165. Maruna et al., *supra* note 6, at 14.

principled behaviors.¹⁶⁶ To reconstitute social bonds acts to promote a sense of civic legitimacy and improves self-esteem to inspire individuals to desist from harmful conduct.¹⁶⁷ Offenders often desist when their behavioral choices are influenced by positive social contexts that occur within certain types of organizations and social structures.¹⁶⁸ Criminologists have argued that the “[s]uccessful creation of bonds with conventional others and lines of legitimate activity indisputably is the most important contingency that causes men to alter or terminate their criminal careers.”¹⁶⁹

C. *Desistance and Social Justice*

Scholars have dedicated increasing attention to the impact of social movements.¹⁷⁰ These entities act as “sustained and organized collective actions to effect change in institutions by citizens or members of institutions who are excluded from routine decision-making.”¹⁷¹ They “make claims on the state” and often work in broad coalitions with various groups and institutions as a means to achieve their goals.¹⁷² They aspire to ameliorate power imbalances that negatively impact communities whose rights are constrained by political economic forces.¹⁷³ Social justice movements have achieved important gains on behalf of economically stressed groups, and have influenced governments in attempts to address racism, wealth inequality, and other rights deprivations.¹⁷⁴ The desired solidarity that emerges from

166. See Yuval Feldman & Yotam Kaplan, *Preferences Change & Behavioral Ethics: Can States Create Ethical People?*, 22 THEORETICAL INQUIRIES L. 85, 109 (2021) (arguing that social networks improve ethical decision-making); Gary Charness, Luca Rigotti & Aldo Rustichini, *Individual Behavior and Group Membership*, 97 AM. ECON. REV. 1340, 1342 (2007) (stating that one’s social identity is a “self-concept derived from perceived membership in social groups”).

167. Vestergren et al., *supra* note 18, at 203–04, 213.

168. Laub & Sampson, *supra* note 139, at 48–49.

169. NEAL SHOVER, *GREAT PRETENDERS: PURSUITS AND CAREERS OF PERSISTENT THIEVES* 129 (1996).

170. EDWIN AMENTA, *WHEN MOVEMENTS MATTER: THE TOWNSEND PLAN & THE RISE OF SOCIAL SECURITY* 5 (2006).

171. Edwin Amenta & Francesca Polletta, *The Cultural Impacts of Social Movements*, 45 ANN. REV. SOCIO. 279, 281 (2019).

172. David S. Meyer, *Protest and Political Process*, in *THE WILEY-BLACKWELL COMPANION TO POLITICAL SOCIOLOGY* 397, 399–400 (Edwin Amenta, Kate Nash & Alan Scott eds. 2012) (emphasis omitted).

173. Amenta & Polletta, *supra* note 171, at 287–88; see St. John & Blount-Hill, *supra* note 148, at 48 (noting the importance of social services to assist with recidivism rates).

174. Andrias & Sachs, *supra* note 21, at 579.

engaging in social justice initiatives is the development of a sense of mutual support and commitments.¹⁷⁵

Social movements act to shift cultural norms and offer the potential to transform the quotidian experience of participants.¹⁷⁶ Local community groups that attend to neighborhood factors, including a lack of affordable housing, environmental improvements, and strategies to promote social cohesion, have been found to reduce crime.¹⁷⁷ Increases in the number of community nonprofits are of critical importance in developing social capital and local networks and thus are of equal importance to the mitigation of violence.¹⁷⁸

Scholars have documented beneficial changes in the well-being of individuals who participate in social justice-related collective action.¹⁷⁹ Engaging in collective progressive activism has been shown to result in a sense of empowerment and legitimacy as well as sustained commitment, improved self-esteem, and general well-being.¹⁸⁰ These findings apply to persons who have harmed.¹⁸¹ Offenders who participate in social justice initiatives share collective experiences designed to encourage an appreciation of common values and the development of trust and social capital, all of which contribute to reduced recidivism.¹⁸² Indeed, offenders report that these types of

175. Tamar Hostovsky Brandes, *Solidarity as a Constitutional Value*, 27 BUFF. HUM. RTS. L. REV. 59, 62 (2021).

176. Kate Nash, *Toward a Political Sociology of Human Rights*, in THE WILEY-BLACKWELL COMPANION TO POLITICAL SOCIOLOGY, *supra* note 172, at 444, 451.

177. Patrick Sharkey, Gerard Torrats-Espinosa & Delaram Takyar, *Community and the Crime Decline: The Causal Effect of Local Nonprofits on Violent Crime*, 82 AM. SOCIO. REV. 1214, 1216–17, 1227–29 (2017).

178. *Id.* at 1233–34.

179. *See id.* at 1218 (observing that the “prevalence of resident engagement with community organizations is inversely associated with rates of violence”); Vestergren et al., *supra* note 18, at 203, 213–14 (stating that activism has a positive effect on a number of measures of well-being, including improved ability to cope with “inner conflicts” in ways that psychiatric treatment could not); *see also* Stephen McConnell, *Advocacy in Organizations: The Elements of Success*, 28 GENERATIONS J. 25, 27 (2004) (characterizing advocacy as therapeutic).

180. *See* Vestergren et al., *supra* note 18, at 211 (seeing self-reported changes).

181. LeBel & Maruna, *supra* note 112, at 674–75; *see* Marlaina Freisthler & Mark A. Godsey, *Going Home to Stay: A Review of Collateral Consequences of Conviction, Post-Incarceration Employment, and Recidivism in Ohio*, 36 UNIV. TOL. L. REV. 525, 531 (2005) (observing that persons who have been incarcerated and who have the opportunity to contribute to the community are less likely to recidivate).

182. Freisthler & Godsey, *supra* note 181, at 531; Olav Sorenson & Michelle Rogan, *(When) Do Organizations Have Social Capital?*, 40 ANN. REV. SOCIO. 261, 275 (2014); John

mutual relationships have been more successful in their desistance efforts than various forms of official supervision.¹⁸³

A review of desistance theories in practice suggest that offenders who are incorporated in civic life activities experience identity shifts that contribute to reformed behavior.¹⁸⁴ For example, integrating persons who have offended within social organizations that are actively addressing poverty and racism has been demonstrated to enhance desistance.¹⁸⁵ Community members who engaged with offenders create “desistance signals” by indicating that “[offenders] share the same moral space as ordinary citizens.”¹⁸⁶ Similarly, studies of the impact of the inclusion of convicted felons in the jury process have found that their sense of acceptance and trust allowed them to find value in themselves and facilitated a “prosocial identity shift[]” contributing to their desistance.¹⁸⁷ Indeed, survey findings demonstrate that “engaging in political activism is associated with higher levels of well-being.”¹⁸⁸ In their study of social movements, Kate Andrias and Benjamin Sachs

Drury & Steve Reicher, *Collective Action and Psychological Change: The Emergence of New Social Identities*, 39 BRIT. J. SOC. PSYCH. 579, 595 (2000).

183. LeBel & Maruna, *supra* note 112, at 673; see THOMAS W. VALENTE, SOCIAL NETWORKS AND HEALTH: MODELS, METHODS, AND APPLICATIONS 3 (2010) (describing how social networks can constrain and change certain behaviors). Other studies find that offenders who enter treatment programs are more likely to change their behaviors when working with peers, as opposed to professionals. See Kathryn O. Sowards, Kathleen O’Boyle & Marsha Weissman, *Inspiring Hope, Envisioning Alternatives: The Importance of Peer Role Models in a Mandated Treatment Program for Women*, 6 J. SOC. WORK PRAC. ADDICTIONS 55, 62–63 (2006) (explaining that offenders may be more willing to engage with social justice initiatives than with medical professionals).

184. James M. Binnall, *Summoning Criminal Desistance: Convicted Felons’ Perspectives on Jury Service*, 43 L. & SOC. INQUIRY 4, 6 (2018).

185. Gregory B. Markus, *Organizing in Detroit Soup Kitchens for Power and Justice*, 8 DEPAUL J. FOR SOC. JUST. 1, 2, 22, 23 (2015) (“Research has demonstrated that social integration is important in enabling formerly incarcerated persons to lead peaceful, productive lives.”).

186. See Kathryn J. Fox, *Theorizing Community Integration as Desistance-Promotion*, 42 CRIM. J. & BEHAV. 82, 83 (2015) (arguing that community participation encourages desistance).

187. Binnall, *supra* note 184, at 5, 15, 19; see Daniel P. Moynihan, Thomas DeLeire & Kohel Enaml, *A Life Worth Living: Evidence on the Relationship Between Prosocial Values and Happiness*, 45 AM. REV. PUB. ADMIN. 311, 312, 323 (2015) (finding that people benefit when they engage in social justice initiatives to help others and may arrive at an improved psychic state); Ronna Milo Haglili, *The Intersectionality of Trauma and Activism: Narratives Constructed from a Qualitative Study*, 60 J. HUMANISTIC PSYCH. 514, 523 (2020) (“[S]ocial change may be intertwined with personal change.”).

188. Malte Klar & Tim Kasser, *Some Benefits of Being an Activist: Measuring Activism and Its Role in Psychological Well-Being*, 30 POL. PSYCH. 755, 771 (2009).

observed that these organizations “can serve as a countervailing force to the extraordinary power of economic elites in our political economy” and, thus, address the socio-economic factors that underlie transgressive behaviors.¹⁸⁹ These entities address the very determinants of IPV related to socio-economic factors while promoting healthy behaviors.

1. Desistance, social justice movements, and IPV

Few studies that examine desistance theories as related to IPV consider the benefits of social bonds, particularly those established through social movement activism.¹⁹⁰ Most of the (sparse) IPV-desistance research has been limited to examining the modifications of the immediate circumstances of the intimate relationship where violence has occurred but pay little attention to the importance of external social supports.¹⁹¹ New research initiatives have examined what works in relation to the cessation of IPV, and offer growing evidence that social supports and networks created through social justice participation are no less relevant to reducing IPV.¹⁹²

IPV experts have acknowledged the benefits of enlisting “pro-social, anti-violence” workers to engage persons who have harmed.¹⁹³ They have noted the importance of engagement strategies for offenders to create opportunities for offenders to develop violence-free relationships.¹⁹⁴ Social movements that provide resources and support rank high among the factors that reduce such behaviors.¹⁹⁵ Studies examining future directions in addressing IPV have identified the

189. Andrias & Sachs, *supra* note 21, at 559.

190. *Supra* note 11 and accompanying text; see Laub & Sampson, *supra* note 139, at 24 (observing that gender issues tend to be unexplored in desistance research).

191. See Merchant & Whiting, *supra* note 11, at 602 (referencing factors such as “deep conversations, getting on the same page, noticing initial changes, giving up the fast life, and changing conflict”).

192. Jacquelyn W. White, Holly C. Sienkiewicz & Paige Hall Smith, *Envisioning Future Directions: Conversations with Leaders in Domestic and Sexual Assault Advocacy, Policy, Service, and Research*, 25 VIOLENCE AGAINST WOMEN 105, 109 (2019).

193. CTR. FOR CT. INNOVATION, A NATIONAL PORTRAIT OF RESTORATIVE APPROACHES TO INTIMATE PARTNER VIOLENCE: PATHWAYS TO SAFETY, ACCOUNTABILITY, HEALING, AND WELL-BEING 49 (2019), https://www.courtinnovation.org/sites/default/files/media/document/2019/Report_IPV_12032019.pdf [<https://perma.cc/7E5Q-T9UR>].

194. CTR. FOR CT. INNOVATION, GUIDING PRINCIPLES FOR ABUSIVE PARTNER INTERVENTION AND ENGAGEMENT 1 (2018), <https://www.courtinnovation.org/sites/default/files/media/document/2020/Guiding%20Principles%20for%20Abusive%20Partner%20Intervention.pdf> [<https://perma.cc/49ZL-GUC3>].

195. Holliday, *supra* note 43, at 104.

need to develop community-led initiatives that address issues including poverty, housing, and transportation as a means to improve outcomes.¹⁹⁶

Integrating DVIPs within social justice movements allows these programs to address many of the deficiencies identified in Part I.¹⁹⁷ As noted above, DVIPs are currently enmeshed in the criminal legal system.¹⁹⁸ Many IPV intervention experts lament that inclusion of DVIPs in the criminal legal system and outside of social justice: “[w]e put too many of our eggs into the criminal justice response, and too few of our eggs into the social justice response.”¹⁹⁹ Revising program structure to collaborate with social justice movements responds to recommendations that suggest that interventions to mitigate IPV should seek alternatives to the criminal legal system and develop partnerships with local community groups.²⁰⁰ Indeed, as one DVIP expert stated, “unless the batterer programs are well connected to and trusted by the advocacy programs in their community, it’s difficult for effective intervention to happen both systemically and case-by-case.”²⁰¹ These types of program transformations promote organizational legitimacy among the offenders who might otherwise seek treatment on their own but remain distant from DVIPs because of their relationship with the criminal legal system.²⁰²

Incorporating social justice activism within DVIPs also serves to address the “one-size-fits-all” problem and the absence of culturally

196. White et al., *supra* note 38, at 113. Experienced IPV staff have argued that DVIP intervention requires “context,” and encourage investment of program resources into organizing communities and a commitment to social justice. GONDOLF, *supra* note 34, at 103.

197. See, e.g., *supra* Section I.B (criticizing DVIPs for failing to address structural determinants and underlying factors and questioning their efficacy).

198. See *supra* notes 72–75 and accompanying text (explaining that participation in DVIPs is typically attached to criminal sentences, requiring prosecutors to report people who do not participate); see Laub & Sampson, *supra* note 139, at 57 (arguing that punitive sanctions are often counterproductive to the cessation of transgressive behaviors).

199. GONDOLF, *supra* note 34, at 111.

200. See *id.* at 100 (recognizing the need to expand beyond DVIP and work with local communities); White et al., *supra* note 38, at 113 (recommending community level support when working with survivors).

201. GONDOLF, *supra* note 34, at 25.

202. *Supra* note 83 and accompanying text; see also Cathryn Johnson, Timothy J. Dowd & Cecilia L. Ridgeway, *Legitimacy as a Social Process*, 32 ANN. REV. SOCIO. 53, 58 (2006) (describing the process of legitimization through social psychology).

relevant intervention mechanisms.²⁰³ DVIP program staff have noted the importance of developing programs that are actively anti-racist and incorporate an anti-oppression focus.²⁰⁴ Working in collaboration with a number of different social justice organizations provides the opportunity to engage in anti-racism work which in turn may improve racially sensitive intervention strategies within DVIPs.²⁰⁵ These strategies have been promoted as a means to assist with desistance and at the same time mitigate racism.²⁰⁶

2. *DVIPs, social justice movements, and reciprocity*

As is true in other contexts, community coalitions enhance the likelihood of fundamental political change that addresses social justice issues.²⁰⁷ Social networks offer the possibility of new ideas and practices through multiple strategies resulting in synergistic effects among various stakeholders.²⁰⁸ Collaborative relationships promote improved coordination of services and more efficient use of resources.²⁰⁹ Social justice movements provide opportunities to expand awareness and increase support for intersecting causes as a result of collaboration and education.²¹⁰ As Bert Klandermans has written, “[s]ocial movements play a significant role in the diffusion of ideas and values.”²¹¹

DVIP participation with social justice entities promote norm changes within communities, a way to allow both staff and offenders to address the structural factors that contribute to IPV. Just as importantly, DVIPs have the capacity to strengthen a community commitment to rethink IPV as a “‘private’ issue” and recognize instead the public nature and broad social harm resulting from gender

203. See *supra* notes 127–131 and accompanying text; see also White et al., *supra* note 38, at 113 (mentioning recommendations to develop culturally specific programs).

204. GONDOLF, *supra* note 34, at 114.

205. See White et al., *supra* note 38, at 118–19.

206. Adrienne Lyles-Chockley, *Transitions to Justice: Prisoner Reentry as an Opportunity to Confront the Counteract Racism*, 6 HASTINGS RACE & POVERTY L.J. 259, 288–89 (2009).

207. Gittell, *supra* note 182, at 5, 8.

208. See Smith & Christakis, *supra* note 164, at 418 (describing downstream effects as a result of social networks related to health behaviors).

209. Langer, *supra* note 72, at 118.

210. Jamillah Bowman Williams, Naomi Mezey & Lisa Singh, *#BlackLivesMatter—Getting from Contemporary Social Movements to Structural Change*, 12 CALIF. L. REV. 1, 16 (2021) (observing that social justice movements are also about “educating those who do not yet support a cause, but might under the right circumstances”).

211. Bert Klandermans, *The Demand and Supply of Participation: Social-Psychological Correlates of Participation in Social Movements in THE BLACKWELL COMPANION TO SOCIAL MOVEMENTS* 368 (David A. Snow, Sarah A. Soule & Hanspeter Kriesi eds. 2004).

violence.²¹² Social movements with which DVIPs collaborate, no matter their cause, can and should engage in supportive efforts to stop IPV.²¹³ “[A]ccountability [for gender violence] is not reserved solely for the harming individual,” as the Center on Court Innovation has written, “both the individual and the broader social network need to come together to stop the violence.”²¹⁴ Gender violence requires remedies that are “diffused throughout the rest of our politics—not held apart from it.”²¹⁵ Ruth Wilson Gilmore observed the benefits of social justice collaborations: “It is not only a good theory in theory but also a good theory in practice for people engaged in the spectrum of social justice struggles to figure out unexpected sites where their agendas align with those of others.”²¹⁶

Anti-gender violence activists who address survivor needs have affirmed the importance of social justice movements as a facet of mitigating IPV and have sought to deepen ties with grassroots movements that work in realms outside of gender violence.²¹⁷ Some survivor organizations have established partnerships with groups committed to addressing violence in spaces outside of the criminal legal system.²¹⁸ Survivor groups have urged that intervention strategies

212. See CTR. FOR CT. INNOVATION, *supra* note 193, at 54.

213. Tod Augusta-Scott, Pamela Harrison & Verona Singer, *Creating Safety, Respect, and Equality for Women Lessons from the Intimate Partner Violence and Restorative Justice Movements*, in INNOVATIONS IN INTERVENTIONS TO ADDRESS INTIMATE PARTNER VIOLENCE, *supra* note 72, at 157, 168. On this point, it is important to address the problem of “cops in new clothing.” See Levin, *supra* note 121, at 134 (citing THE DEMAND IS STILL #DEFUNDTHEPOLICE, INTERRUPTING CRIMINALIZATION 8 (2021), <https://static1.squarespace.com/static/5ee39ec764dbd7179cf1243c/t/60806839979abc1b93aa8695/1619028044655/%23DefundThePolice%2BUpdate.pdf> [<https://perma.cc/9BMH-8QG4>]).

214. CTR. FOR CT. INNOVATION, *supra* note 193, at 54.

215. Lorna Finlayson, *Travelling in the Wrong Direction*, 41 LONDON REV. OF BOOKS 15 (2019) (arguing feminism must be intersectional if it is to serve more than a minority of women).

216. GILMORE, *supra* note 1.

217. See Malia Maier & Terry McGovern, *The Centrality of Social Movements in Addressing the Impact of the COVID-19 Pandemic*, PETRIE-FLOM CTR. AT HARV. L. SCH. (Oct. 7, 2021), <https://blog.petrieflom.law.harvard.edu/2021/10/07/the-centrality-of-social-movements-in-addressing-the-impact-of-the-covid-19-pandemic> [<https://perma.cc/CS5A-6QZQ>] (describing organizational efforts such as engaging with social movements to advocate for more support for racial justice).

218. See MIMI E. KIM, MEGYUNG CHUNG, SHIRA HASSAN & ANDREA J. RITCHIE, DEFUND THE POLICE—INVEST IN COMMUNITY CARE: A GUIDE TO ALTERNATIVE MENTAL HEALTH RESPONSES 6, 43 (2021), <https://www.interruptingcriminalization.com/non-police-crisis-response-guide> [<https://perma.cc/B9PS-3EUC>].

should “arise from within communities,” and recognize the “multiple forms of violence and systems of oppression” that must be addressed to mitigate gender-based violence.²¹⁹ By creating opportunities for offenders develop violence-free relationships, these groups can promote desistance.

3. *Challenges and cautions*

The challenges to incorporating the concept of social justice as desistance within DVIPs in response to IPV are significant. As desistance scholars have relatedly observed:

Much of the blame for this predicament has to be laid at the feet of corrections officials and policy-makers who are too wedded to the status quo and too fearful of appearing ‘soft on crime’ to experiment with innovations that might improve life opportunities for ex-offenders. Practitioners also share some blame. Practitioners need to bring the everyday realities of offenders’ lives to the attention of policy-makers as well as academic researchers. Notably, they must identify key service delivery concerns that establish greater acceptance for the use of community-based interventions. In the course of several decades of a ‘nothing works’ mindset, practitioners have largely refrained from speaking—loudly at least—about ‘what works’ in this way.²²⁰

In addition to systems’ inertia, other challenges include the objective and subjective circumstances of offenders. DVIPs, survivor support groups, and community organizations may reasonably be concerned with victim safety.²²¹ Some offenders may reasonably fear reprisals if they were to engage in certain types of social justice movements deemed to challenge the status quo.²²² Others might have time limitations that interfere with participation with community organizations.²²³ Some individuals may be constrained from participating with other individuals who are part of these organizations

219. Ann Russo & Melissa Spatz, *Communities Engaged in Resisting Violence*, WOMEN & GIRLS CAN 8, 11 (2007), <https://transformharm.org/communities-engaged-in-resisting-violence> [<https://perma.cc/6NC9-SJAK>].

220. Maruna et al., *supra* note 6, at 8.

221. *See infra* notes 233–236 and accompanying text (noting that there are strategies in place to safeguard survivor safety).

222. Andrias & Sachs, *supra* note 21, at 620 (noting fear of reprisals as a chief barrier to organizing).

223. *Id.* at 621.

and have been implicated in the criminal legal system by the terms of their parole, probation or court orders.²²⁴

Social movements are no guarantee that participants will achieve their goals, of course. There are a number of reasons why community organizing and local networking has become increasingly difficult; thus, adding to a different form of stress.²²⁵ It would be unwarranted if not unfair, moreover, to impose on offenders an obligation to undertake advocacy through social justice organizations absent an interest in the organization's goals.

It is important to keep these challenges in mind and recognize the need to proceed with caution in efforts to transform approaches to IPV. Offenders are already required to designate a certain number of hours and weeks attending DVIPs.²²⁶ Thus, shifting how and where they spend those hours may add no additional burden, but rather provide opportunities to recreate or reclaim healthy social identities.²²⁷ Furthermore, there is a large array of community groups that respond to multiple issues, some of which may address an offender's immediate needs, for example, housing or employment-related matters.²²⁸ Participation thus serves individual needs and at the same time contributes to collective action to the benefit of the community.²²⁹ Notwithstanding challenges to community coalitions, the number of social movements has expanded and as Amna Akbar has observed, has drawn "larger and larger parts of the public toward a fundamental critique of the status quo and a radical vision for the future."²³⁰ The proposals that follow suggest the implementation of desistance-related interventions through partnerships with social justice movements

224. See, e.g., James M. Binnall, *Divided We Fall: Parole Supervision Conditions Prohibiting "Inter-Offender" Associations*, 22 UNIV. PA. J.L. & SOC. CHANGE 25, 60 (2019).

225. Markus, *supra* note 185, at 2–3 (identifying "globalization, neoliberalism, increasing residential mobility, and the retreat from civic life" as having negative effects on local organizing); Vestergren et al., *supra* note 18, at 214 (describing how "burnout" is a negative result that may arise from activism).

226. CTRS. FOR DISEASE CONTROL & PREVENTION, *Menu of State Batterer Intervention Program Laws 6–7* (Jan. 29, 2015), <https://www.cdc.gov/phlp/docs/menu-batterer.pdf> [<https://perma.cc/QSB3-QL9Y>].

227. Drury & Reicher, *supra* note 182, at 595–96.

228. Kimberly M. Sánchez Ocasio & Leo Gertner, *Fighting for the Common Good: How Low-Wage Workers' Identities Are Shaping Labor Law*, 126 YALE L.J.F. 503, 512 (2017).

229. *Id.* at 519.

230. Amna A. Akbar, *The Left Is Remaking the World*, N.Y. TIMES (July 11, 2020), <https://www.nytimes.com/2020/07/11/opinion/sunday/defund-police-cancel-rent.html> (last visited Oct. 19, 2022).

while attending to victim agency and safety in the belief that offenders wish to cease harmful behaviors.

III. RECONFIGURING DVIPS AS SOCIAL JUSTICE PARTNERS

This Part describes new approaches for DVIPs to collaborate with community partners to facilitate desistance strategies. It urges programs to shift intervention strategies by “acknowledging that . . . clients often have many underlying issues connected to their use of violence, all of which should be addressed to eradicate IPV.”²³¹ While this Article has focused on desistance as a strategy to intervene with offenders, the proposals offered here also address the needs of survivors and their communities.

It is not the purpose of this Article to suggest a blueprint to guide reconfiguration of DVIPs.²³² Rather, it seeks to draw from restorative and transformative justice theories and practice to indicate how such approaches would facilitate progressive partnerships. Program reforms would produce a synergistic expansion of efforts to mitigate IPV while addressing structural social problems.

These proposals are informed by two foundational concepts: first, as with other processes to reintegrate offenders into communities, the safety and support of survivors can and must be assessed. In fact, such processes have been developed and implemented by groups that practice approaches related to restorative justice (RJ).²³³ Despite the discomfort and risks it may pose, RJ practitioners recognize the possibility that social networks may inadvertently influence survivors to engage with offenders.²³⁴ RJ strategies include principles and operating standards so that innovative strategies can be implemented

231. Shelly M. Wagers, Margaret Pate & Anne Brinkley, *Evidence-Based Best Practices for Batterer Intervention Programs: A Report From the Field on the Realities and Challenges Batterer Intervention Programs Are Facing*, 8 PARTNER ABUSE 409, 424 (2017).

232. As a result of the growing efforts to reconsider responses to IPV outside of the criminal legal system, and for that matter, outside the legal system in general, there are frameworks that provide some general guidance regarding basic practices associated with innovations. *See, e.g.*, CTR. FOR CT. INNOVATION, *supra* note 193.

233. Joan Pennell, Gale Burford, Erika Sasson, Hillary Packer & Emily L. Smith, *Family and Community Approaches to Intimate Partner Violence: Restorative Programs in the United States*, 27 VIOLENCE AGAINST WOMEN 1608, 1609–10 (2010) (observing that restorative approaches mandate close attention to the agency and safety of survivors).

234. *Id.*

in safe and productive ways.²³⁵ Indeed restorative approaches “center their responses on the agency and safety of the harmed person(s).”²³⁶

Second, new community partners who establish relationships with DVIPs should be encouraged to challenge the dominant trope of domestic violence exceptionalism. That is, the premise that abusive partners will not seek help on their own without a court order.²³⁷ In sum, community partners must abandon the view that IPV offenders are incorrigible in order to facilitate progressive partnerships.²³⁸

A. *Restorative/Transformative Justice: Innovating DVIP Interventions*

Restorative justice (RJ) informed by a social justice analysis, serves as a method of intervention seeking to improve the circumstances of individuals, families, and the communities affected by violence.²³⁹ There is an abundance of literature that explains the purposes and processes of RJ.²⁴⁰ For purposes of this Article, RJ is considered an

235. *Id.* at 1619–21 (examining these guiding principles).

236. CTR. FOR CT. INNOVATION, *A National Portrait of Restorative Approaches to Intimate Partner Violence: Pathways to Safety, Accountability, Healing, and Well-Being* viii (2019), <https://www.courtinnovation.org/publications-RJ-IPV> [https://perma.cc/M375-7RDC].

237. Juan Carlos Areán & Terri Strodthoff, *The Other Side of Domestic Violence: Helping Survivors by Working with Their Abusive Partners*, FUTURES WITHOUT VIOLENCE (May 5, 2020), <https://medium.com/@FuturesWithoutViolence/the-other-side-of-domestic-violence-helping-survivors-by-working-with-their-abusive-partners-8916c9ac72cb> [https://perma.cc/NFY2-VYN6].

238. *Id.*

239. Augusta-Scott et al., *supra* note 213, at 168.

240. See Mimi E. Kim, *Anti-Carceral Feminism: The Contradictions of Progress and the Possibilities of Counter-Hegemonic Struggle*, 35 J. WOMEN & SOC. WORK 309, 316, 319 (2020) (describing RJ as “[p]ositioning itself in opposition to retributive or punitive forms of justice,” and “generally aims to (1) elevate the perspectives and voice of victims, (2) define accountability as a form of responsibility to harmed parties as opposed to punishment meted out by the state, and (3) leverage stakeholder and broader community relationships toward accountability and restoration for those impacted by harm”). There is general agreement that RJ includes a “process that gives the stakeholders affected by an injustice an opportunity to tell their stories about its consequences and what needs to be done to put things right,” for the purposes of healing and remedy, and that RJ “has to be about restoring victims, restoring offenders, and restoring communities as a result of participation of a plurality of stakeholders.” JOHN BRAITHWAITE, *RESTORATIVE JUSTICE AND RESPONSIVE REGULATION* vii (2002) (explaining that restorative justice has to be about “restoring victims, restoring offenders, and restoring communities”). Donna Coker, *Crime Logic, Campus Sexual Assault, and Restorative Justice* 49 TEX. TECH L. REV. 147, 187 (2016) (describing RJ as “useful in developing the nuanced and flexible response required to meet the

optimal approach because of the ways in which it creates opportunities for partnerships with social justice groups that support desistance.

RJ's precepts are often summed up by identifying three central questions: (1) Who has been harmed? (2) What are their needs? and (3) Whose obligation is it to meet those needs?²⁴¹ RJ approaches take into consideration that "harmful acts are not understood 'in isolation but within a broader social and cultural context,'" thereby necessitating a process that seeks community participation and responsibility.²⁴² Transformative justice (TJ) refers to community-based solutions as a way to build on and enrich RJ.²⁴³ TJ seeks to enhance individual justice, advance collective progress toward political, social, and economic equality, and address conditions that contribute to transgressive acts.²⁴⁴ Debates have ensued with respect to whether there are substantive or process differences between the two.²⁴⁵ This Article seeks to avoid what may be a semantical issue and suggests that DVIPs maximize opportunities for establishing desistance-related social networks for program participants through RJ/TJ practices that require "intentional and strategic community building practices."²⁴⁶ RJ/TJ groups invite community members to engage, and collaborate around issues that affect individual and

different experiences" as well as "useful in changing the social circumstances that promote sexual assault"). *See generally* HOWARD ZEHR, *CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE* (3d ed. 2005) (discussing RJ as a paradigm through which to view justice).

241. Howard Zehr, *Restorative or Transformative Justice*, ZEHR INST. FOR RESTORATIVE JUST. (Mar. 10, 2011), <https://emu.edu/now/restorative-justice/2011/03/10/restorative-or-transformative-justice> [<https://perma.cc/AV2V-ZLZY>].

242. *See* Coker, *supra* note 240, at 188; *see also* Alletta Brenner, Note, *Resisting Simple Dichotomies: Critiquing Narratives of Victims, Perpetrators, and Harm in Feminist Theories of Rape*, 36 HARV. J.L. & GENDER 503, 561 (2013).

243. SOCIO. LENS, *Restorative Justice and Transformative Justice: Definitions and Debates* (Mar. 5, 2013), <https://www.sociologylens.net/topics/crime-and-deviance/restorative-justice-and-transformative-justice-definitions-and-debates/11521> [<https://perma.cc/BDX7-KHHD>].

244. GENERATION FIVE, *Toward Transformative Justice: A Liberatory Approach to Child Sexual Abuse and Other Forms of Intimate and Community Violence* 5 (2007), https://www.transformativejustice.eu/wp-content/uploads/2010/11/G5_Toward_Transformative_Justice.pdf [<https://perma.cc/5U2D-LTHW>].

245. SOCIO. LENS, *supra* note 243; Zehr, *supra* note 241.

246. Ryan Virden, *3 Reasons We Need Restorative Justice Now*, THE GOOD MEN PROJECT (Jan. 14, 2022), <https://goodmenproject.com/featured-content/3-reasons-we-need-restorative-justice-now-kpkn> [<https://perma.cc/TR38-8RCJ>]; Lode Walgrave, *Investigating the Potentials of Restorative Justice Practice*, 36 WASH. UNIV. J.L. & POL'Y 91, 118-21 (2011).

collective well-being.²⁴⁷ These strategies provide opportunities to “use[] micro-level conflict as a critical framework through which to analyze [and achieve] macro-level transformations.”²⁴⁸

RJ/TJ approaches have already been adopted by some DVIPs.²⁴⁹ The benefits of these practices ameliorate many program deficiencies described above in Part I.²⁵⁰ Community groups that rely on RJ/TJ approaches seek to prevent violence and respond to harm in ways that avoid using the criminal legal system.²⁵¹ They may include violence interrupters, mediators, and provide other services to survivors and offenders.²⁵² These alliances support the delinking of DVIPs from the criminal legal system which would foster greater organizational legitimacy among community groups that otherwise may be wary of programs implicated in the carceral state.²⁵³ RJ/TJ creates a forum for survivors who eschew the criminal legal system to narrate their harm and needs without the need to “fit” their stories to the elements of a

247. See, e.g., *Family Support Unit*, ALL. OF FAMILIES FOR JUST., <https://afj-ny.org/family-support-unit> [<https://perma.cc/9DZJ-K4P8>] (using the example of holding regular weekly family empowerment circles for families with currently and formerly incarcerated loved ones, as well as formerly incarcerated people to strategize and mobilize about visitation, vaccinations and release of incarcerated people in New York State prisons).

248. Cohen, *supra* note 136, at 197.

249. See CTR. FOR CT. INNOVATION, *supra* note 193; Bailey Maryfield, *Research on Restorative Justice Practices*, JUST. RSCH. AND STAT. ASS'N 3 (2020), <https://www.jrsa.org/pubs/factsheets/jrsa-research-brief-restorative-justice.pdf> [<https://perma.cc/Y9B3-SJYZ>].

250. See *supra* Part I.

251. Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1629–30 (2019).

252. *Id.* at 1628.

253. *Resources*, RESTORATIVE JUST. EXCH., <http://restorativejustice.org/restorative-justice/rj-outside-criminal-justice/#sthash.1FwaIZa4.dpbs> [<https://perma.cc/Y9FY-ZL5Z>] (showing that some, but not all RJ initiatives operate outside of the criminal legal system); *Restorative Justice Focuses on Repairing Harm and Restoring Relationships*, CTR. FOR CT. INNOVATION, <https://www.courtinnovation.org/areas-of-focus/restorative-justice> [<https://perma.cc/4LU7-TGNK>] (showing that RJ can happen in a number of settings outside of the criminal justice system); see M. Eve Hanan, *Decriminalizing Violence: A Critique Of Restorative Justice And Proposal For Diversionary Mediation*, 46 N.M. L. REV. 123, 125 (2016) (noting that RJ processes do not always work outside of the criminal legal system); Cohen, *supra* note 136, at 231 (TJ proposes that “accountability [is] something that happens within communities, citing Mimi Kim); Kim, *supra* note 240.

criminal charge.²⁵⁴ These mechanisms create opportunities for meaningful offender accountability, provide affirmation of community norms opposed to violence, and community forgiveness.²⁵⁵ Moreover, because RJ/TJ relies on trauma-informed approaches for both parties, they each benefit from these processes.²⁵⁶

A pivot to an RJ/TJ approach enables DVIPs to establish new partners whose agendas have not been intentionally engaged in IPV issues but who organize to improve the structural conditions underlying IPV.²⁵⁷ In the Sections that follow, this Article suggests two such social justice entities that address key causal factors related to IPV and whose strategies meet the needs of survivors and offenders. These organizations are not the only community groups that could contribute to the mitigation of IPV; of course, there are multiple social justice movements that address issues related to IPV.²⁵⁸ They are representative of the ways that ways that social justice groups respond to the needs of survivors, offenders and the communities where they reside.²⁵⁹

B. *Housing Advocacy*

Housing is central to one's ability to participate in all aspects of daily life. As the "core of so many social, economic, political, physical, and

254. RESPONSES FROM THE FIELD: SEXUAL ASSAULT, DOMESTIC VIOLENCE, AND POLICING 29 (2015), https://www.aclu.org/sites/default/files/field_document/2015.10.20_report_-_responses_from_the_field.pdf [<https://perma.cc/3C98-9WZV>]; SERED, *supra* note 40, at 9, 12, 17, 22.

255. Gordon Bazemore & Carsten Erbe, *Reintegration and Restorative Justice: Towards a Theory and Practice of Informal Social Control and Support*, in AFTER CRIME AND PUNISHMENT: PATHWAYS TO OFFENDER REINTEGRATION, *supra* note 6, at 27, 44.

256. Mary Louise Frampton, *Finding Common Ground in Restorative Justice: Transforming Our Juvenile Justice Systems*, 22 U.C. DAVIS J. JUV. L. & POL'Y 101, 132 (2018); see also Heather L. Littleton, *The Impact of Social Support and Negative Disclosure Reactions on Sexual Assault Victims: A Cross-Sectional and Longitudinal Investigation*, 11 J. TRAUMA & DISSOCIATION 210, 223 (2010) (observing findings that indicate that social supports are a helpful response to victims who have experienced trauma); Caroline M. Angel, Lawrence W. Sherman, Heather Strang, Barak Ariel, Sarah Bennett & Nova Inkpen et al., *Short-Term Effects of Restorative Justice Conferences on Post-Traumatic Stress Symptoms Among Robbery and Burglary Victims: A Randomized Controlled Trial*, 10 J. EXPERIMENTAL CRIMINOLOGY 291, 292 (2014).

257. See CTR. FOR CT. INNOVATION, *supra* note 193, at 50.

258. *Id.*

259. Weissman, *supra* note 7, at 59–60.

even spiritual aspects of our lives,”²⁶⁰ housing has been recognized as a right embedded in international human rights treaties.²⁶¹ Housing provides shelter, of course, but just as importantly it ratifies community membership, determines prospects for employment, education, health-related benefits, and provides the space upon which communities are formed.²⁶² The absence of stable housing results in trauma, stress, poor health, and institutionalization.²⁶³ Substandard housing contributes to significant physical, psychological, and economic damage.²⁶⁴ Despite housing being fundamental to subsistence and well-being, and a core human right, it remains a commodity.

Housing advocacy has emerged into the realm of a number of intersecting social issues. The National Center for Homeless Education has provided reports and toolkits to call attention to the relationship between housing/homelessness and other social issues.²⁶⁵ According to Professor Kathryn Sabbeth, “affordable housing has attracted

260. BLAIR REEVES, *THE ROAD TO HOME: FAIR AND AFFORDABLE HOUSING FOR NORTH CAROLINA*, CAROLINA FORWARD 4 (2022), <https://www.carolinaforward.org/road-to-home> [<https://perma.cc/KL5G-QWGV>].

261. Eric Tars, *Housing as a Human Right*, NAT’L LOW INCOME HOUS. COAL. (2021), https://nlihc.org/sites/default/files/AG-2019/01-06_Housing-Human-Right.pdf [<https://perma.cc/8XW2-NXQC>] (reviewing the various international treaties applicable to housing issues).

262. REEVES, *supra* note 260, at 6 (describing the range of needs that housing addresses, including investment); *Housing Justice*, CTR. FOR CT. INNOVATION, https://www.courtinnovation.org/sites/default/files/media/document/2022/CCI_FactSheet_HousingJustice_11102021.pdf [<https://perma.cc/SU3B-STRJ>].

263. Ignacio Jauregilorda, Faith Laurel, Ruth Lopez & Merrill Rotter, *Eviction Prevention and Mental Health: A New Paradigm for Civil Justice Reform*, CTR. FOR CT. INNOVATION 4 (2021), https://www.courtinnovation.org/sites/default/files/media/document/2022/Guide_CCI_EvictionPrevention_MentalHealth_01242022.pdf [<https://perma.cc/MKZ3-226X>] (noting that these consequences more likely to affect individuals with behavioral health issues).

264. Kathryn A. Sabbeth, *(Under)enforcement of Poor Tenants’ Rights*, 27 GEO. J. ON POVERTY L. & POL’Y 97, 105–07 (2019).

265. See NAT’L CTR. FOR HOMELESS EDUC., <https://nche.ed.gov/topics> [<https://perma.cc/E6ZM-CJN6>] (sharing a compilation of reports and guides on how housing issues impacts other social concerns including civil rights, education, youth justice, poverty advocacy, and trauma services networks); see also NAT’L HOMELESSNESS L. CTR., <https://homelesslaw.org/publications> [<https://perma.cc/RU8Z-ZTJX>] (providing a list of resources related to housing and homelessness and intersecting concerns). As part of housing organizing, some groups have sought to address a range of housing-related issues including assistance to poor families to solve school enrollment-related problems, job searches, and obtaining health insurance. Markus, *supra* note 185, at 30.

significant interest from policymakers and popular media. The ‘Movement for Black Lives’ and ‘Fight for \$15’ have highlighted rising rents, while a new tenants’ rights movement has seized the attention of politicians and begun accumulating remarkable legislative victories.”²⁶⁶

The intersection of housing concerns with IPV has long been established.²⁶⁷ As early as 2003, a survey by U.S. mayors identified domestic violence as a primary cause of homelessness in a number of cities.²⁶⁸ Scholars have repeatedly identified the pernicious ways that survivors have been denied equal housing opportunities due to their status as IPV victims.²⁶⁹

Federal and state laws enacted to prevent the denial of subsidized housing to domestic violence victims has not ended discrimination against survivors based on assumptions that their presence poses a safety threat to other tenants or property and thus may be excluded

266. Sabbeth, *supra* note 264, at 101–02 (citations omitted).

267. See generally Joan Zorza, *Woman Battering: A Major Cause of Homelessness*, 25 CLEARINGHOUSE REV. 421 (1992) (discussing topics affecting legal needs of poor women and children, including relationship between domestic violence and homelessness); Joan H. Rollins, Renee N. Saris & Ingrid Johnston-Robledo, *Low-Income Women Speak Out About Housing: A High-Stakes Game of Musical Chairs*, 57 J. SOC. ISSUES 277, 280–81 (2001) (finding the victimization is a frequent precursor of homelessness and that victims of domestic violence were vulnerable to repeat episodes of homelessness); Rasheedah Phillips, *Addressing Barriers to Housing for Women Survivors of Domestic Violence and Sexual Assault*, 24 TEMP. POL. & CIV. RTS. L. REV. 323 (2015).

268. *The Impact of Safe Housing on Survivors of Domestic Violence*, NAT’L NETWORK TO END DOMESTIC VIOLENCE, https://nnedv.org/spotlight_on/impact-safe-housing-survivors [<https://perma.cc/4DA4-JNKV>]; *Domestic Violence, Homelessness, and Children’s Education*, NAT’L CTR. FOR HOMELESSNESS EDUC. AT SERVE, <https://nche.ed.gov/wp-content/uploads/2018/10/domestic.pdf> [<https://perma.cc/K55B-A5E2>].

269. See generally, Margaret E. Johnson, *A Home with Dignity: Domestic Violence and Property Rights*, 2014 B.Y.U. L. REV. 1 (2014) (demonstrating ways in which the law denies housing to survivors by failing to provide remedies for survivors to maintain or obtain a new home); Elizabeth M. Whitehorn, *Unlawful Evictions of Female Victims of Domestic Violence: Extending Title VII’s Sex Stereotyping Theories to the Fair Housing Act*, 101 NW. UNIV. L. REV. 1419, 1421–22 (2007) (detailing the various types of unlawful sex discrimination in landlord tenant relationships); Sandra S. Park, *Achieving Fair Housing for Survivors Through Domestic Violence Housing Policies: Lewis v. North End Village*, <https://www.aclu.org/other/achieving-fair-housing-survivors-through-domestic-violence-housing-policies-lewis-v-north-end> [<https://perma.cc/NH9E-ZKG6>] (summarizing a case in which a survivor was evicted on the grounds that “under her lease she was responsible for any damage resulting from ‘lack of proper supervision’ of her ‘guests’” after her abuser, against whom she had a restraining order, destroyed her rental property).

based on pretextual reasons.²⁷⁰ Federal funding allocated for survivors' housing falls woefully short of need and limits those who may benefit from housing assistance.²⁷¹ Successful legal challenges are difficult to pursue because of the unequal relations between tenants and landlords.²⁷² In addition, a gendered and racial dimension make

270. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013) (codified in scattered sections of the U.S. Code). The Violence Against Women Act (VAWA) of 2005 prohibited federally funded public housing agencies from limiting "a resident's right to summon police or other emergency assistance in response to domestic violence." Violence Against Women and Department of Justice Reauthorization Act (VAWA) of 2005, Pub. L. No. 109-162, tit. VI, § 601, 119 Stat. 2960, 3036 (2006). Note that the Fair Housing Act may also provide federal statutory protections to a victim of domestic violence who believes she has suffered discrimination on the basis of sex. *Fair Housing and Domestic Violence*, NAT'L HOUS. L. PROJECT, <https://www.nhlp.org/initiatives/fair-housing-housing-for-people-with-disabilities/fair-housing-and-domestic-violence> [<https://perma.cc/2DNV-SL9N>]; see also Johnson, *supra* note 269 at 163–64 (reviewing state statutes that deem to protect IPV survivors from housing discrimination).

271. *Funding to End Domestic Violence: FY 22 Federal Appropriations Requests*, NAT'L NETWORK TO END DOMESTIC VIOLENCE 1, 3 (2022), <https://nmedv.org/wp-content/uploads/2021/04/FY22-Funding-to-End-Domestic-Violence-FINAL.pdf> [<https://perma.cc/GFP2-L7JA>] (reporting on a 2019 data found that 68% of unmet needs were for safe housing, and that COVID-19 has exacerbated this problem); Alyse Faye Haugen, *When It Rains, It Pours: The Violence Against Women Act's Failure to Provide Shelter from the Storm of Domestic Violence*, 14 SCHOLAR 1035, 1057–58 (2012) (discussing the failure of VAWA to address the housing crisis); see also 34 U.S.C. § 12291 (b)(3)–(12) (2018) (allowing grant funding to nonprofits for evaluations, training, and legal assistance on housing and other IPV issues); *VAWA 2013 Continues Vital Housing Protections for Survivors and Provides New Safeguards*, NAT'L HOUS. L. PROJECT, (Jan. 2014), <http://nhlp.org/files/VAWA-2013-Bulletin-Article-Jan-2014-updated.pdf> [<https://perma.cc/9TEV-LTN7>] (summarizing VAWA 2013's housing provisions). Funding eligibility relies on a prototype crime-related definition although survivors may be more likely to suffer non-physical abuse, in the form of economic or social abuse, than physical abuse. See, e.g., Maureen Outlaw, *No One Type of Intimate Partner Abuse: Exploring Physical and Non-Physical Abuse Among Intimate Partners*, 24 J. FAM. VIOLENCE 263, 266 (2009) (finding that 15.6% of respondents reported that their partner exhibited emotionally abusive behavior and that 5.1% of respondents reported that their partner exhibited physically abusive behavior).

272. See Elizabeth M. Whitehorn, *Unlawful Evictions of Female Victims of Domestic Violence: Extending Title VII's Sex Stereotyping Theories to the Fair Housing Act*, 101 NW. UNIV. L. REV. 1419, 1420–21 (2007) (arguing that many women who are victims of domestic violence do not challenge their evictions by public and private landlords pursuant to the "zero-tolerance" criminal activity provisions that permit evictions for domestic violence).

enforcing housing rights difficult.²⁷³ As Kathryn Sabbeth and Jessica Steinberg demonstrate, poor Black women comprise the highest number of unrepresented parties in eviction matters.²⁷⁴

While housing advocacy illuminates the relationship between IPV's consequences on survivors, there has been little attention to housing insecurity and its relationship to desistance for IPV offenders. Yet the barriers to housing for persons implicated in the legal system have been well-established.²⁷⁵ IPV offenders are particularly likely to experience housing instability.²⁷⁶ They are usually ordered to vacate the premises where they resided with the survivor, or may be additionally constrained from residing in proximity to family members and their communities, or denied housing as a result of a criminal record.²⁷⁷ Their housing options are thus limited to particularly disadvantaged areas with greater residential instability and less community cohesion—all factors that impede desistance.²⁷⁸ The lack of housing opportunities further diminishes an offender's chances to maintain or keep a job—all of which are outcomes pernicious to desistance.²⁷⁹

These circumstances underscore the need to address housing instability as a matter related to IPV. DVIPs should incorporate

273. See Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants' Rights*, 27 GEO. J. ON POVERTY L. & POL'Y 97, 99 (2019) (describing differential treatment of tenants of color and "vulnerable" and "undesirable" tenants).

274. Kathryn A. Sabbeth & Jessica K. Steinberg, *The Gender of Gideon*, 69 UCLA L. REV. (forthcoming 2022).

275. See *Housing for All: Changing Policy, Advancing Justice*, CTR. FOR CT. INNOVATION (Jan. 21, 2022), <https://www.courtinnovation.org/about/announcements/housing-policy-advancing-justice> [<https://perma.cc/4EBN-KZBY>] (explaining that the unhoused have the police called on them and that those with housing may end up in court if facing eviction or seeking repairs).

276. See *State Domestic Violence and Housing Laws*, NAT'L CTR. ON DOMESTIC & SEXUAL VIOLENCE, <http://www.ncdsv.org/images/StateDVhousinglaws.pdf> [<https://perma.cc/RNS5-KTPX>] (chart showing state statutes authorizing removing an offender from shared premises in domestic violence cases).

277. See *id.*; *Zappaunbulso v. Zappaunbulso*, 842 A.2d 300, 308 (N.J. Super. Ct. App. Div. 2004) (prohibiting an offender from residing in the same neighborhood as their victim).

278. See Matthew J. McGowan, *Location, Location, Mis-Location: How Local Land Use Restrictions are Dulling Halfway Housing's Criminal Rehabilitation Potential*, 48 URB. LAW. 329, 340–41, 343 (2016) (noting the importance of a "place-centric theory of rehabilitation" and desistance).

279. See Mary Helen McNeal & Patricia Warth, *Barred Forever: Seniors, Housing, and Sex Offense Registration*, 22 KAN. J.L. & PUB. POL'Y 317, 345–46 (arguing for housing policies to accommodate senior sex offenders as a function of desistance).

housing advocacy and accurately reframe such activism situated within an anti-gender violence framework. Through these expanded partnerships, DVIP participants have the opportunity to establish the very social bonds and connections to support desistance while addressing the issues that often underlie transgressive behavior. A reframing of housing work as an anti-IPV agenda also serves to improve outcomes for survivors, who are confined within a legal framework that provides insufficient protection. For example, it has been well established that survivors, too, have been subject to the criminal legal system—arrested, prosecuted, and incarcerated for defending themselves against gender violence.²⁸⁰ VAWA's housing protections offer little remedy for survivors who may have a record, who were previously evicted, or who have had to break their lease.²⁸¹ Advocates who have endeavored to rely on the Fair Housing Act have found the act's provisions disappointing.²⁸²

Incorporating housing as anti-IPV work offers benefits to all parties involved who confront a political economic system that allows landlords who fix their rental rates per market fluctuations. Landlords remain relatively unrestrained in their ability to determine to whom to rent or how much to charge and are less likely to contract with economically unstable tenants—often a cause and consequence of IPV.²⁸³ A broader coalition that draws the link between housing issues and IPV may support legal efforts to shift the balance and achieve greater housing protections while advancing important and interlocking social movements.

It is lastly important to note that although housing advocates endeavor to work at the intersection of housing and IPV, they do not identify themselves as part of an anti-gender violence movement. DVIP-housing partnerships promote the opportunity, if not obligation

280. Mandatory arrest policies are carceral tools used to address domestic violence and have resulted in a sharp increase in the arrests of women victims who are often erroneously deemed to be mutual combatants or detained as material witnesses. Aya Gruber, *Rape, Feminism, and the War on Crime*, 84 WASH. L. REV. 581, 649 & n.381 (2009).

281. Phillips, *supra* note 267, at 324–25, 328 & n.36, 329.

282. See Anna Reosti, “We Go Totally Subjective”: *Discretion, Discrimination, and Tenant Screening in a Landlord’s Market*, 45 L. & SOC. INQUIRY 618, 619 (2020) (criticizing the Fair Housing Act as ineffective in regulating the discriminatory actions of independent landlords).

283. See Sabbeth, *supra* note 273, at 97, 109–11 (discussing the income, conviction, eviction, and credit factors that landlords consider when leasing; the fees that landlords might charge; and the negative impact of housing instability on families and communities).

for housing advocates to integrate anti-IPV work intentionally within the framework of their housing activism.²⁸⁴ This would require housing advocacy organizations to attend to gender violence and gender inequity within their organizations, that is to educate and elevate norms that reject such violence while supporting survivors. A DVIP restorative/transformatory justice framework provides the structure for these partnerships.

C. Labor Activism

Unemployment has long been recognized as a cause and consequence of IPV. As set forth in Part II A., the loss of livelihood is often the single most important contributing factor to acts of IPV.²⁸⁵ Survivors, too, are similarly implicated in the economic dislocation attending cycles of un-or-under employment and long-lasting economic instability.²⁸⁶

284. See Carmela DeCandia, Corey Anne Beach & Rosenie Clervil, *Closing the Gap: Integrating Services for Survivors of Domestic Violence Experiencing Homelessness*, NAT'L CTR. ON FAM. HOMELESSNESS 1, 2, 13 (2013), https://www.air.org/sites/default/files/downloads/report/Closing%20the%20Gap_Homelessness%20and%20Domestic%20Violence%20toolkit.pdf [<https://perma.cc/HBN6-GAJP>] (opining that domestic violence and homelessness services serve similar populations and must collaborate due to expanding demand and limited resources).

285. See *supra* notes 156–160 and accompanying text; see also Jacquelyn C. Campbell, Daniel Webster, Jane Koziol-McLain, Carolyn Block, Doris Campbell & Mary Ann Curry et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 AM. J. PUB. HEALTH 1089, 1090 (2003) (noting that the strongest sociodemographic risk factor for intimate partner lethality was an offender's lack of employment); Tara N. Richards, Angela Glover, Alyssa Nystrom, Caralin Branscum & Taylor Claxton, *Assessing States' Intimate Partner Violence Offender Treatment Standards using a Principles of Effective Intervention Framework*, CRIMRXIV 1, 4 (2021) (identifying unemployment as a demonstrated factor in IPV); Demetrios N. Kyriacou, Deirdre Anglin, Ellen Taliaferro, Susan Stone, Toni Tubb & Judith A. Linden et al., *Risk Factors for Injury to Women from Domestic Violence*, 341 NEW. ENG. J. MED. 1892, 1894–95, 1897 (1999) (finding that intermittent employment and recent and long-term unemployment in men were risk factors in domestic violence against their women partners).

286. See Jody Raphael, *Welfare Reform: Prescription for Abuse? A Report on New Research Studies Documenting the Relationship of Domestic Violence and Welfare*, 19 LAW & POL'Y 123, 124 (1997) (emphasizing that the mental and physical effects of IPV can impede survivors seeking and maintaining employment); see also Judy L. Postmus, Sara-Beth Plummer, Sarah McMahan, N. Shaanta Murshid & Mi Sung Kim, *Understanding Economic Abuse in the Lives of Survivors*, 27 J. INTERPERSONAL VIOLENCE 411, 412–13 (2012) (noting that economic links between partners are an avenue of abuse); Deborah M. Weissman, *Gender-Based Violence as Judicial Anomaly: Between "The Truly*

Job security serves to promote desistance and rehabilitation of offenders, which is likely to have a broader salutary effect on their communities.²⁸⁷ The U.S. Attorney General's office determined that gainful employment is the "leading factor" in preventing recidivism.²⁸⁸ Employment alleviates the stress factors that often precipitate transgressive behaviors, and provides opportunities for individuals to integrate into social structures, re-establishing bonds and supportive networks.²⁸⁹ Employment and economic stability are also crucial for survivors' ability to exercise their agency to determine whether to exit or remain in a relationship with an offender.²⁹⁰

Despite the promising benefits of employment, offenders and survivors implicated in the criminal legal system confront significant obstacles in returning to the wage labor market.²⁹¹ DVIP assessments identify unemployment as one of the highest criminogenic risk factors for domestic violence, but they have failed to address the issue through program interventions.²⁹² Survivor agency programs have neglected services to provide employment for their clients due to insufficient

National and the Truly Local," 42 B.C. L. REV. 1081, 1091 (2000) (citing Congressional hearings spanning a four-year period that demonstrate the pernicious effect of IPV on survivors' employment circumstances); Weissman, *supra* note 120, at 434.

287. See LeBel & Maruna, *supra* note 112, at 3–4 (asserting that obtaining employment is among the most important factors in preventing return to prison); Pauline Quirion, *Sealing and Expungement After Massachusetts Criminal Justice Reform*, 100 MASS. L. REV. 100, 100 (2019) (identifying stable employment as preventing recidivism and promoting post-carceral success); Amanda Johnson, *Challenging Criminal Records in Hiring Under the Americans with Disabilities Act*, 48 COLUM. HUM. RTS. L. REV. 211, 217–18 (2017) (explaining the finding and maintaining employment has "enormous influence" on recidivism and recovery from addiction); Jenny Roberts, *Expunging America's Rap Sheet in the Information Age*, 2015 WIS. L. REV. 321, 333 (2015) (citing studies finding that those with criminal records who work recidivate at lower rates). Offenders who are employed benefit from increased earnings as well as contributing to public tax coffers. *Id.* at 333 n. 73.

288. Michael Connett, *Employer Discrimination Against Individuals with a Criminal Record: The Unfulfilled Role of State Fair Employment Agencies*, 83 TEMP. L. REV. 1007, 1014 (2011).

289. Weissman, *supra* note 120, at 411–12 (describing the ways that work provides social stability and a range of other benefits).

290. See Holly Bell, *Cycles Within Cycles: Domestic Violence, Welfare, and Low-Wage Work*, 9 VIOLENCE AGAINST WOMEN 1245, 1250 (2003) (demonstrating how women cycle in and out of abusive relationships because of economic dependency on the abuser).

291. Johnson, *supra* note 287, at 218.

292. Richards et al., *supra* note 285, at 4.

funding, have.²⁹³ Few studies have examined the way domestic violence survivor agencies engage with employment referral agencies on behalf of survivors; these studies leave much to be desired.²⁹⁴ These referral agencies do not challenge the political economy of work, particularly for women who often need, but are unable to afford child care, and are obliged to accept exploitative jobs with meager wages and few employment protections.²⁹⁵

Social justice groups have recognized the importance of employment-assistance support to offenders and seek to integrate such work within their agendas. These entities promote quality jobs that pay a living wage and offer employment security—factors particularly

293. See Lise McKean, *Addressing Domestic Violence As A Barrier To Work: Building Collaborations Between Domestic Violence Service Providers And Employment Services Agencies*, NAT'L CTR. ON DOMESTIC & SEXUAL VIOLENCE 1, 4 (2004), http://www.ncdsv.org/images/CIR_AddressDVasABarrierToWork_10-2004.pdf [<https://perma.cc/V9G6-6PNV>] (stating that DVIPs are increasingly focusing on economic security for survivors).

294. Employment referral agencies who undertake to work with survivors address issues such as “self-esteem” and “personal change” with less attention on obtaining living-wage work. *Id.* at 20.

295. Alishau Diebold, *An Exploration of Employment Services for Survivors of Domestic Violence in the Region of Waterloo*, LAURIER: THESES & DISSERTATIONS (COMPREHENSIVE) 1, 39 (2015), <https://scholars.wlu.ca/etd/1696> [<https://perma.cc/3KPT-UMA6>] (reporting that employment assistance for survivors often resulted in work opportunities that did not cover the day-to-day costs of living); see also *Why It's So Hard to Get Off Welfare*, PBS (Apr. 15, 2015, 7:04 PM), <http://www.pbs.org/newshour/bb/hard-get-welfare> [<https://perma.cc/Q2K2-T4R7>] (discussing how, in the aftermath of the welfare-to-work reform of the 1990s, single mothers are recruited by private contract job placement agencies, only to face limited job training funding and stagnant wages); Joel Handler, *Reforming/Deforming Welfare*, 4 NEW LEFT REV. 114, 123–24 (2000) (explaining that referral agencies focus on job placement at the expense of training).

critical to desistance.²⁹⁶ Labor rights-related campaigns have raised wages, increased stable employment, and reduced recidivism.²⁹⁷

Partnerships with labor organizations fit within a DVIP restorative/transformational justice paradigm. For example, the Bargaining for the Common Good Network joins unions, community groups, racial justice organizations, and student organizations, which have coalesced to “expand the scope of bargaining beyond wages and benefits,” “[i]dentify issues that resonate with members, partners and allies and that impact [] communities,” and “[p]ut forth demands that address structural issues, not just symptoms of the problem.”²⁹⁸ Described as “common-good unionism,” labor is “increasingly pursuing innovative strategies spurred by the need to address the

296. See LeBel & Maruna, *supra* note 112, at 5 (discussing how transitional jobs and post-employment support increases chances of finding quality jobs and decreases chances of recidivism); Christopher Stafford, *Finding Work: How to Approach the Intersection of Prisoner Reentry, Employment, and Recidivism*, 13 GEO. J. ON POVERTY L. & POL’Y 261, 261 (2006) (noting the importance of living-wage employment for recidivism); see also About, THE WAY OUT, <https://www.twout.org/about> [<https://perma.cc/26GF-Y7R6>] (working with Justice Involved Job Seekers (JIJS) to gain living wage employment). Some groups have actively decried exploitative employment that pays minimum wage or less. See Dale Chappell, *Former Prisoners Making Less Than Minimum Wage Working for Nonprofit Doe Fund*, 32 PRISON LEGAL NEWS 44 (Jan. 2021) (reporting that the status of former prisoner workers as “clients” allows a nonprofit to take a fee out of their paychecks, leaving them with a below-minimum wage salary); Greg Lorentzen, *Discrimination Against Formerly Incarcerated People*, S.F. LIVING WAGE, <https://www.livingwage-sf.org/mass-incarceration/discrimination-against-formerly-incarcerated-people> [<https://perma.cc/82XC-4B8M>]; see also BRET BARDEN, RANDALL JURAS, CINDY REDCROSS, MARY FARRELL & DAN BLOOM, U.S. DEP’T OF HEALTH & HUM. SERVS., NEW PERSPECTIVES ON CREATING JOBS: FINAL IMPACTS OF THE NEXT GENERATION OF SUBSIDIZED EMPLOYMENT PROGRAMS, i, iii (2018), https://www.acf.hhs.gov/sites/default/files/documents/opre/etjd_sted_final_impact_report_2018_508compliant_v2_8232018_b.pdf [<https://perma.cc/C3MH-MQ4P>] (reporting on enhanced job training efforts).

297. See BARDEN ET AL., *supra* note 296, at 25, 55, 56 (finding that transitional jobs programs led to increased wages, increased employment, and mixed results on recidivism); Pallab K. Ghosh, Gary A. Hoover & Zexuan Liu, *Do State Minimum Wages Affect the Incarceration Rate?*, 86 S. ECON. J. 845, 856 (2020) (finding a causal relationship between an increase in minimum wages and reduced recidivism).

298. About Us, <https://www.bargainingforthecommongood.org/about> [<https://perma.cc/PGK4-RSE9>]; see also Diana Reddy, *Labor Bargaining and the “Common Good,”* LPE PROJECT (July 29, 2021), <https://lpeproject.org/blog/labor-bargaining-and-the-common-good> [<https://perma.cc/Q2F8-NCTK>] (reviewing the role of unions in “bargaining for the common good”); Kimberly M. Sánchez Ocasio & Leo Gertner, *Fighting for the Common Good: How Low-Wage Workers’ Identities Are Shaping Labor Law*, 126 YALE L.J.F. 503, 504 (2017) (identifying workers’ organizing demands that go beyond wages and working conditions).

multifaceted and complex nature of inequality in the United States.”²⁹⁹ Labor organizers engaged in low-wage worker campaigns seek wage benefits, and more; and expand the scope of their efforts to address housing, racial discrimination, environmental injustice, debt, healthcare, and civic education.³⁰⁰ The broad coalition of labor activists also recognize underlying racial and gender dynamics, and develop alliances with community groups to address sexual harassment, workplace discrimination against women, affordable childcare, and family leave issues.³⁰¹ These collaborative strategies are relevant to IPV.

Labor unions are especially efficacious partnerships for DVIPs.³⁰² In addition to the opportunities to implement and gain skills to achieve economic security, labor unions offer sites where offenders can create “relationship[s] . . . about a mutual instrumental commitment to a common task, which in turn provides the opportunity for developing affective connections to others”—all of which act to promote desistance.³⁰³ For similar reasons, labor unions are important sites to address the needs of survivors. Some unions have incorporated the issue of gender violence within the scope of organizing work and have identified domestic violence as an organizing strategy.³⁰⁴ They provide

299. Sánchez Ocasio & Gertner, *supra* note 298, at 506.

300. *Id.* at 512; see Erica L. Green, *New Leader Pushes Teachers' Union to Take On Social Justice Role*, N.Y. TIMES, Dec. 12, 2021, at A8 (discussing how the National Education Association teachers' union is getting involved in the racial justice movement); Vestergren et al., *supra* note 18, at 215 (explaining how activism teaches participants organizing skills, which can be used in other movements); *Unions Help Reduce Disparities and Strengthen Our Democracy*, ECON. POL'Y INST. 1, 6, 8–9 (Apr. 23, 2021), <https://www.epi.org/publication/unions-help-reduce-disparities-and-strengthen-our-democracy> [<https://perma.cc/6BHJ-ARLS>] (describing how unions ameliorate racial and gender economic disparities and encourage civic participation).

301. Sánchez Ocasio & Gertner, *supra* note 298, at 519–20.

302. *Id.* at 516 (quoting a leader of a local Fight for \$15 and Black Lives Matter movement on the ways in which living wage jobs would reduce crime and violence).

303. See Bazemore & Erbe, *supra* note 255, at 27, 42, 44 (describing building desistance strategies within an integrated restorative justice framework, and the importance of relationship building).

304. See *October is Domestic Violence Awareness Month*, <https://www.seiu1000.org/post/local-1000-stands-against-domestic-violence> [<https://perma.cc/R2QC-GB5N>] (union recognizing Domestic Violence Awareness Month and producing a brochure to inform on ways to combat domestic violence); *Empowering Women: The IBEW Woman's Resource Guide*, 1, 11–14 (2010), <https://www.ibew.org/Portals/31/documents/CivicCommunity/IBEW%20Women%27s%20Resource%20Guide.pdf> [<https://perma.cc/LX4K-ZGVH>] (informing on how domestic violence impacts employees, resources for survivors, how unions can help survivors, and what to do if

referrals and guidance for survivors, proscribe domestic violence, encourage offender accountability, and offer intervention strategies through negotiated employee assistance plans (EAPs) to include DVIP treatment programs.³⁰⁵ This approach would allow offenders to seek assistance without the drawbacks often attending criminal legal mandates.³⁰⁶

D. *Social Justice as Claims to the Benefits of the Law*

Legal scholars Kate Andrias and Benjamin Sachs persuasively argue that the law may serve to strengthen social justice organizations, noting that social justice entities are shaped by laws, both for the good and ill.³⁰⁷ “We start from the premise,” they write, “that the robustness of countervailing, mass-membership organizations should be understood as a problem both of and for law. The shape of civil society and organizational life is already a product of legal structures and rules.”³⁰⁸ That is, that legal reforms may indeed be deployed to advance social

an acquaintance is being abused); *AFSCME 35th Int'l Convention, Resolution No. 7: Stopping Domestic Violence at Work*, (2002), <https://www.afscme.org/about/governance/conventions/resolutions-amendments/2002/resolutions/7-stopping-domestic-violence-at-work> [<https://perma.cc/F5WZ-MMU4>] (union committing to advocate for the Victims' Economic Safety and Security Act of 2001, encourage training on domestic violence, and provide resources to survivors and offenders); *About CLUW*, http://www.cluw.org/?zone=/unionactive/view_page.cfm&page=About20CLUW [<https://perma.cc/6DTS-5J5P>] (noting a training program on domestic violence issues and incorporating links to anti-domestic violence programs); *Education, Training, and Support for Unions*, <https://www.workplacesrespond.org/resource-library/education-training-support-unions> [<https://perma.cc/DL57-CDTE>] (describing how unions can educate about domestic violence and provide services for survivors).

305. See Jennifer L. Hardison Walters, Keshia M. Pollack, Monique Clinton-Sherrod, Christine H. Lindquist, Tasseli McKay & Beth M. Lasater, *Approaches Used by Employee Assistance Plans to Address Perpetration of Intimate Partner Violence*, 27 *VIOLENCE & VICTIMS* 135, 143 (2012) (noting that some EAPs already address survivor need). EAPs are a “workplace resource that can address IPV perpetration in addition to victimization.” *Id.* at 144; see *Breaking the Cycle of Domestic Violence*, https://www.seiu1000.org/sites/main/files/file-attachments/womens_domestic_violence.pdf [<https://perma.cc/BZ7X-2VER>] (outlining resources and information for survivors).

306. Cf. Wagers & Radatz, *supra* note 28, at 210–11, 215–17 (discussing how the offender treatment programs that proliferated as alternatives and supplements to imprisonment are adopting more tailored approaches).

307. Andrias & Sachs, *supra* note 21, at 556.

308. *Id.*

justice initiatives.³⁰⁹ Many of their proposed reforms focus on tenant and labor unions and welfare and health policies.³¹⁰ But these reforms also have relevance to DVIPs which are generally omitted from the social justice paradigms, an omission made all the more anomalous given DVIPs potential to mitigate gender violence by addressing the same structural issues that social movements seek to ameliorate.³¹¹ Legal reforms may create opportunities for DVIPs to reconfigure their treatment modalities that are currently required by statutes and regulations and that prevent programs from enacting innovations. These entities should be included in efforts to reshape the law as a facet of social justice organizing.

Andrias and Sachs offer usable recommendations for legal reforms to move DVIPs from the carceral system and expand opportunities to engage in social justice initiatives.³¹² They propose to redirect public funds to support social movement groups, a reform that pertains to DVIPs which are constituted as non-profit entities that presently receive little or no public funds.³¹³ Public funding implies recognition and offers a measure of credibility. More important, public funding would also reduce the burden on offenders who are often unable to pay program fees and are therefore, likely to face criminal sanctions

309. *See generally id.*

310. *Id.* Most of the proposals, particularly those that build on Andrias' and Sachs' suggestions have focused on labor organizing. *See* Catherine L. Fisk, *The Once and Future Countervailing Power of Labor*, 130 YALE L.J.F. 685, 698–704 (2021) (expounding upon Andrias's and Sachs's argument that the law is a useful vehicle for organizing and recommending legal recognition of all worker-elected workplace health and safety committees, union-community coordination to bargain for the common good, and bargaining rights for unions chosen by a minority of workers); Sameer M. Ashar & Catherine L. Fisk, *Democratic Norms and Governance Experimentalism in Worker Centers*, 82 LAW & CONTEMP. PROBS., no. 3, 2019, at 151–52; Hiba Hafiz, *Structural Labor Rights*, 119 MICH. L. REV. 651, 651 (2021); Catherine L. Fisk, *Sustainable Alt-Labor*, 95 CHI.-KENT L. REV. 7, 10 (2020); Hiba Hafiz, *Interagency Coordination on Labor Regulation*, 6 ALR ACCORD 199, 201 (2020).

311. *See* Andrias & Sachs, *supra* note 21, at 620–30 (discussing the various ways legal reforms may improve the ability of social justice movements to address structural issues).

312. *See id.* at 586–87 (introducing the part of their article that “show[s] how law can facilitate organization in contexts that are populated by low- and middle-income Americans and rife with exploitation and power imbalances”).

313. *See id.* at 606–08 (discussing the precedent for and feasibility of public funding to supplement other social-movement organization funding methods).

should they fail to do so.³¹⁴ Survivor agencies are under-resourced and would benefit from the allocation of additional funds to non-profits.

Andrias and Sachs urge legislative mandates to facilitate access to both physical and digital spaces in order to alleviate the challenges social justice organizations face in arranging opportunities to congregate.³¹⁵ This recommendation is particularly relevant to DVIPs. Offenders are required to appear in-person for weekly sessions, often with prejudicial outcomes to those without means of transportation who may be thereupon subject to sanctions for failure to appear.³¹⁶ Legislative enactments that would create additional physical locations or expand broadband services for digital access, particularly in rural locations, would facilitate DVIP programming and reduce the risk of probation revocation for failure to appear.

Recommendations for legal protections for individuals engaged in organizing would similarly benefit DVIP program participants who fear surveillance by probation officers, especially when engaged in activity related to anti-racism and criminal justice reforms.³¹⁷ These protections also promise to benefit program staff who wish to expand their work to address structural racism but are constrained by the existing political ideology that governs these programs.³¹⁸ Finally, Andrias and Sachs proposed reforms to mandate bargaining, for example, landlords with tenants' unions, welfare agencies with benefit-recipient unions, and employers with employees would strengthen DVIPs efforts to incorporate RJ/TJ approaches.³¹⁹ RJ processes are not a form of bargaining but rather an approach to bring offender and survivor into circles for dialogue.³²⁰ However, it is worth considering whether the promotion of bargaining obligations in a range of circumstances might help to shape norms and constitute a cultural shift that creates space for such dialogue if chosen by the victim.

314. *See id.* at 606, 608 (stating that public funding can supplement other social-movement organization funding methods).

315. *Id.* at 609, 610.

316. *See generally id.* at 610 (advocating for increased utilization of digital spaces to facilitate social justice outcomes).

317. *See id.* at 614–15 (opining that spaces free from surveillance is essential to social justice movement organization).

318. *See id.* at 620–23 (discussing how legal protections for those engaged in organizing work would remove the fear of reprisal that impedes participation).

319. *See id.* at 624.

320. *See id.* at 624–25 (advocating for obligations to bargain between landlords and tenant unions, welfare agencies and benefit-recipient unions, and employers with workers unions to facilitate restorative justice).

Other scholars have similarly proposed legal reforms to address social justice issues that would benefit DVIP participants. For example, “Ban the Box” campaigns serve to remove barriers to employment for individuals with criminal records.³²¹ DVIP involvement in these campaigns would enhance opportunities for offenders and those survivors implicated in the criminal legal system to obtain a “fair chance” to have their qualifications evaluated before elimination due to their criminal history.³²²

Tenant groups have had some successes enacting legislation requiring appointed counsel in eviction matters, a right that is limited to few locations, and limited in scope.³²³ That housing instability is cause and consequence of IPV, DVIPs and survivor agencies working in concert with tenant groups could expand such legislation to cities where such mandates do not yet exist. They could organize to enlarge the scope of representation provided by the current right to counsel model beyond the specific issue of eviction to include representation regarding substandard conditions and discrimination.³²⁴ Housing rights groups and DVIPs could advocate for legislation that allocates

321. See Andrias & Sachs, *supra* note 21, at 624–25 (advocating for obligations to bargain between landlords and tenant unions, welfare agencies and benefit-recipient unions, and employers with workers unions to facilitate restorative justice).

322. See *About: The Ban the Box Campaign*, <http://bantheboxcampaign.org/about> [<https://perma.cc/N3B2-MEV4>]; see also Markus, *supra* note 185, at 22–24 (describing the work of local coalitions in Detroit to persuade the city to change its employment practices that adversely affected those with criminal records); Phil Hernandez, *NELP and NAACP-LDF File Amicus Supporting EEOC Guidance on the Formerly Incarcerated*, NAT'L EMP. L. PROJECT: BLOG (Sept. 27, 2018), <https://www.nelp.org/blog/nelp-naacp-ldf-file-amicus-supporting-eec-guidance-formerly-incarcerated> (describing employment rights and racial equity groups supporting employee rights for formerly incarcerated people); Beth Avery & Han Lu, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies*, NAT'L EMP. L. PROJECT (Oct. 1, 2021), <https://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide> (explaining that “fair chance” laws require an employer to remove conviction and arrest history questions from job applications, and postpone background checks until an applicant’s qualifications are first fairly considered).

323. See Kathryn Sabbeth, *Housing Defense as the New Gideon*, 41 HARV. J.L. & GENDER 55, 103–06 (2018) (noting that a right to counsel is limited to eviction but does not cover challenging substandard housing, discrimination, or harassment which contribute to loss of housing).

324. See *id.* at 76–77 (highlighting programs that have guaranteed representation in eviction proceedings).

funding for transitional and other forms of housing support for survivors.³²⁵

Mutual support through social justice partnerships thus enhances the possibilities for legal reforms that might transform DVIPs and social justice organizations. Efforts to challenge the legal hindrances that prevent DVIPs from moving into non-carceral and innovative approaches are more likely to succeed with the support of other social justice movements.³²⁶ To this point, Tamar Hostovsky Brandes argues that solidarity is a constitutional value and a “predisposition that underlies social duties [] required to construct a just society.”³²⁷ Indeed, this requires a reciprocal willingness of members of groups to act to “secure the well-being of other[s].”³²⁸

CONCLUSION

This Article contributes to the scholarship that seeks to recalibrate criminal legal responses to harmful behaviors. It argues for the efficacy of desistance theories as a strategy to intervene with IPV offenders. It asserts that desistance is best achieved through collaborations between DVIPs designed to mitigate violence and social justice organizations, a collaboration that promises to provide benefits to offenders, survivors, and progressive movements generally. Although DVIPs are the structures most commonly employed to address IPV, they are largely absent from the legal literature that critically examines either IPV or the structures of the carceral state. This Article seeks to remedy that oversight and provide an analysis that informs IPV, decarceral projects, and social justice movements. It has addressed the strengths, weaknesses, and possibilities of DVIPs, entities that purport to “treat” those who have committed violence within the family. These programs

325. See Larisa Kofman & Suzanne Marcus, *2017 Safe Housing Needs Assessment: Results Overview*, 1, 18, 19, <https://www.nationalallianceforsafehousing.org/wp-content/uploads/2018/10/Safe-Housing-Needs-Assessment-published-10-2018.pdf> [<https://perma.cc/W8X8-YVRW>] (describing needs assessment findings that communities did not have sufficient funds to house survivors and promoting cross-organizational training to enforce and expand legal rights for IPV survivors).

326. See, e.g., *Community-Driven Litigation*, <https://justicepower.org/community-driven-litigation> [<https://perma.cc/496Y-VC9T>] (noting that “community-driven litigation is one way that communities can use and shape the laws that impact their lives”); see also Andrias & Sachs, *supra* note 21, at 555 (explaining that the COVID-19 pandemic has highlighted inequalities, which have spurred protests among low- and middle-income Americans).

327. Hostovsky Brandes, *supra* note 175, at 68.

328. *Id.* at 67.

operate outside of the formal mechanisms of the carceral state, to be sure, but are nevertheless linked to systems of punishment by laws that regulate them. They are, thus, constrained from addressing the political economy of crime in general and gender violence specifically. This Article has demonstrated that DVIPs fail due largely to misplaced assumptions about the nature of interpersonal violence and inattention to the structural causes that precipitate IPV. “There is no surer way to fail to solve a problem,” Amanda Alexander and Danielle Sered argue, “than to misidentify what the problem is in the first place.”³²⁹

Underlying weaknesses notwithstanding, DVIPs have the potential to serve as important mechanisms by which desistance from IPV can occur through collaboration with social justice movements. Collaborations offer multiple benefits. Offenders who attend DVIPs are provided with the opportunity to establish social bonds and develop relationships to promote dignity and desistance.³³⁰ The expansion of DVIP-social justice networks promote improved outcomes for survivors and offenders, sustain movement organizations, perhaps to ameliorate the structural conditions that contribute to social problems, including IPV. These collaborations are “essential to generating social cohesion and informal social control, and thus limiting violence.”³³¹ Moreover, as this Article has demonstrated, DVIPs that work with social justice groups offer hope for legal reforms that enhance the capacities of social justice movements.³³²

Experts who seek to address IPV within a fair and humane justice system have noted that offenders identified “[n]o hope for the future’ []as the greatest contributor to IPV perpetration.”³³³ “Deep felt hope,”

329. Amanda Alexander & Danielle Sered, *What Makes a City Safe: Viable Community Safety Strategies that Do Not Rely on Police or Prisons*, THE SQUARE ONE PROJECT 1, 5 (Dec. 2021), <https://squareonejustice.org/paper/whatmakesacitysafe> [<https://perma.cc/4ZKZ-SNMC>].

330. See Fox, *supra* note 186, at 88 (emphasizing the benefits of offenders discussing their lives with others in a group setting).

331. Sharkey et al., *supra* note 177, at 1233.

332. See Norah Cunningham, *Housing Injustice as a Barrier to Reproductive Justice*, 56 UNIV. S.F. L. REV. F., 1, 15–16 (2021) (asserting that effective, unconventional lawyering on behalf of social movements wins the legal victories that successfully challenge injustice).

333. Holliday, *supra* note 43, at 104; see also *The Science of Hope* (Podcast Transcript), CTR. FOR CT. INNOVATION, (Sept. 2021), <https://www.courtinnovation.org/>

however, has been the most common response expressed by survivors when queried about the benefits of DVIPs.³³⁴ DVIPs are better situated to justify survivor hopes and create space for offender hope by addressing IPV as a phenomenon within a broader ecological model that considers community contexts and structural deficits. As this Article has urged, this may be best accomplished, through DVIP collaborations with social justice movements with common interests.³³⁵ In sum, a way to contribute to the “life-affirming social relations” that produce healing and sustain collective hope.³³⁶

publications/science-of-hope [https://perma.cc/5N85-J8TC] (discussing with Holliday the role of hope in IPV).

334. KELLY & WESTMARLAND, *supra* note 83, at 37.

335. *See generally* Holliday, *supra* note 43.

336. *See* Alexander & Sered, *supra* note 329, at 28 (emphasizing the role of “life-affirming social relations” in preventing and healing from violence); *The Science of Hope*, *supra* note 333 (discussing the role of hope in IPV).