

The Production of the “Battered Immigrant” in Public Policy and Domestic Violence Advocacy

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In the context of U.S. public policy, *battered immigrant* signifies a person who is eligible to adjust his or her status under immigration law if he or she can demonstrate they have suffered domestic violence in the United States perpetrated by a U.S. citizen or legal permanent resident. Among community organizers, the term *battered immigrant* signifies a broader range of people for whom legal immigration status plays a role in their options for safety planning and/or leaving an abuser, the potential threat of deportation, and the eligibility for public benefits. Based on an ethnographic study of domestic violence advocacy with South Asian immigrants in Seattle and around the United States, this article examines how the difference in signification has direct social and political consequences with regard to who may access the benefits and protection offered to victims of domestic violence in the United States.

Keywords: *domestic violence advocacy; public policy; Violence Against Women Act; immigrant women*

In the context of U.S. public policy, *battered immigrant* (and associated terms *battered alien* or *battered nonimmigrant*) signifies a person who is eligible to adjust his or her status under immigration law if he or she can demonstrate they have suffered domestic violence in the United States perpetrated by a U.S. citizen or legal permanent resident. Among community organizers, the term *battered immigrant* signifies a broader range of people for whom legal immigration status plays a role in their options for safety planning and/or leaving an abuser, the potential threat of deportation, and eligibility for public benefits. The rubric of battered immigrant is also used within discourses on women's rights to call attention to the social political

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interests of marginalized women. This article examines how the difference in signification has direct social and political consequences with regard to who may access the benefits and protection offered to victims of domestic violence in the United States. This article presents a gendered analysis of victims of partner or spousal abuse who are immigrant women. However, these battered immigrant provisions also apply to children of U.S. citizens and legal permanent residents (LPRs), as well as to parents of U.S. citizens and LPRs in cases where the abusive parent is a U.S. citizen or LPR.

Legislation for battered immigrants represents Congressional effort to limit the ability of abusers to use immigration procedures to abuse and control a spouse, partner, or child who is in the United States as a temporary or undocumented immigrant. Congress first introduced immigration provisions for battered immigrants with the battered spouse waiver of 1990. Provisions were also included in the Violence Against Women Act (VAWA) of 1994 and were expanded in each subsequent renewal of VAWA in 2000 and 2005. This series of legislation offers four types of immigration relief to battered immigrants, each with different eligibility and evidentiary requirements: the battered spouse waiver, VAWA self-petition, VAWA cancellation of removal, and the U visa for crime victims including victims of domestic violence (for a comprehensive summary of VAWA see Lin & Orloff, 2005; Wood, 2004). Successful recognition as a battered immigrant through one of these provisions considerably ameliorates the legal path to citizenship for immigrants who have suffered from domestic violence. Given recent legislative efforts to restrict immigration, provisions for battered immigrants represent what research participants referred to as "one of few bright spots" in immigration law. Nevertheless, only a narrow group of immigrants are eligible for immigration provisions as battered immigrants. Furthermore, the process of applying for immigration relief relies on mechanisms of control that discipline subjects according to dominant ideologies of gender, race, ethnicity, and heteropatriarchy. Immigrants who choose not to or who are unable to conform to ideal constructions of battered immigrant are virtually left outside the parameters of standard domestic violence advocacy and support.

Data and Method

This research grew out of a 2-year collaboration with domestic violence advocates and staff at Chaya, a community-based domestic violence organization serving South Asian women in crisis and need in Seattle, Washington.

This research employed ethnographic methods to explore how economic, political, and cultural processes impact domestic violence advocacy with immigrants (Manalansan, 2000). It involved four phases of data collection and analysis that took place between January 2003 and March 2005¹: (a) discourse analysis of immigration policy and immigrant provisions in federal violence against women legislation; (b) 6 months of participant observation at Chaya, and observation that took place at local and national trainings on domestic violence advocacy with immigrants; (c) 14 semi-structured interviews with domestic violence advocates and immigration lawyers who work with South Asian women in Seattle, and around the United States; and (d) analysis of community organizing and advocacy texts generated by domestic violence and immigrant rights’ organizations circulated online through Web pages, e-mailed as action alerts and policy briefs, and distributed during conferences and trainings on advocacy with immigrant survivors. Although the overarching study focused on advocacy with adult South Asian immigrants, the analysis for this article looks less at the cultural specificities of the immigrant subject and more at the ideological investments that are produced within battered immigrant provisions.

The texts used as data in this analysis include the legal discourse in public law, authoritative texts generated by immigrant rights’ groups through training materials and online legislative updates, and interviews with domestic violence advocates and immigration attorneys working with immigrant women. The use of texts from multiple genres requires multiple analytic strategies. Methods of discourse analysis involve the study of language and nonlanguage (ideology, beliefs, thinking, feeling, behaving, etc.) and the way that meaning is made through language in action across various social contexts (DiAngelo, 2004). Discourse analysis of interviews and public texts illustrates how the discourse of the “battered immigrant” outlined in public policy is taken up, responded to, contested, and reinterpreted in domestic violence advocacy.

In analyzing the discourse of the battered immigrant, I draw from semiotic theories of language that center on discourse as a representational system for social action. Discourse analysis might involve the study of how people talk to their doctors, interactions between social workers and their clients, or representations of battered immigrant women in public texts. Some operating assumptions of discourse analysis include: language is a social action or language is performative (Butler, 1990), meaning is relational and dialogic, and language is multivocal or heteroglossic (Bakhtin, 1981b, 1986). I also draw on conceptualizations of subjectivity and governmentality, introduced by Foucault (1980, 1989) and taken up in a broad

range of studies. Governmentality scholarship interrogates how the regulatory modes of government extend beyond the state through social actors at all levels of society (Ong, 2003; Sharma, 2006). The following terminology was central in this analysis.

Discourse: The integration of language and nonlanguage (ideology, beliefs, thinking, feeling, behaving, etc.) to produce meaning.

Discourse analysis: The study of language and the way that meaning is made through language in action and in social contexts.

Subjectivity and subject: This refers to the identities that are relevant or made possible within a given discourse. Individuals are asked to occupy or must occupy certain subject positions to be recognized within a given discourse.

Signification: A poststructural term that relates to the role of ideology and representation in language. The referential meaning of words are signified or produced through a shared symbolic system of representation.

Governmentality: A theory of the mechanisms of governance that extend beyond the state. Neoliberal governmentality refers to the type of governance that is common in advanced liberal democracies, where power is diffused away from any one authoritative figure through social actors of all levels. In this framework, individuals self-govern as well as discipline others via participation in capitalism market and democratic constructions of rights and freedom.

Analysis of subjectivity examines what subject positions are produced within discourse, in this case the discourse of the battered immigrant. Gadamer (1979) theorized that social actors do not create meaning, but rather assume the meaning already embedded in language given its social and historic practice. Bakhtin's (1981a) discussion of heteroglossia similarly theorizes the coexistence of multiple discourses within a single language such that discourses are always in tension and even competition with one another. Social actors achieve agency by reproducing and changing this linguistic inheritance through their participation in it (Allen, 1995).

Foucault surmised that mechanisms of control are dispersed throughout society such that subjects are disciplined, not only from the potential threat of state violence, but through the promise of democratic freedom (Foucault, 1982, 1989). In the example of immigration policy, the process of regulating immigrants inevitably invokes an evaluation of what is desirable in an immigrant. The assessment of worthiness in immigrants is based on dominant ideological values for gender, race, and class toward ensuring citizen subjects who will be a productive in the market economy and loyal to the state (Katz, 2001).

Whereas immigration law functions to regulate immigrants, social actors outside the state (e.g., domestic violence advocates) interpret the law in their advocacy work and thus potentially broaden or change the terms under

Table 1
U.S. Laws Affecting Battered Immigrants

Date	Popular Name	Legal Code
November 10, 1986	Immigration Marriage Fraud Amendment of 1986	Pub. L. No. 99-639, Title VII, § 701
November 29, 1990	Battered Spouse or Child Waiver in the Immigration Act of 1990	Pub. L. No. 101-649, Title VII, § 701
September 13, 1994	Violence Against Women Act, Title IV of the Violent Crime Control and Law Enforcement Act of 1994	Pub. L. No. 103-322
October 28, 2000	Victims of Trafficking and Violence Protection Act of 2000	Pub. L. No. 106-386, Div. B
January 5, 2006	Violence Against Women and Department of Justice Reauthorization Act of 2006	Pub. L. No. 109-162

which immigrants are recognized. Thus, when immigration lawyers and domestic violence advocates take up the legal discourse of the “battered immigrant” in their advocacy, they are, at once, inheriting the complex tensions and hierarchies within the existing discourse, while also participating in its potential transformation.

Background: Violence Against Women Legislation

The discourse of the battered immigrant first appeared in the form of the battered spouse waiver as part of the Immigration Act of 1990 (see Table 1). As stated earlier, provisions for battered immigrants have been expanded through iterations of the VAWA introduced in 1994 and reauthorized in 2000 and 2005.

In addition to other considerations, the battered spouse waiver amended immigration law for persons who could demonstrate that

the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse or child was battered by or was the subject of extreme cruelty perpetrated by his or her spouse or citizen or permanent resident parent and the alien was not at fault in failing to meet the requirements of paragraph (1) [referring to Section 216(c)(4) (8 U.S.C. 1186a(c)(4)).] [Immigration Act of 1990, 1990, § 40742 (a)]

This measure was designed to redress the impasse created by the Immigration and Marriage Fraud Amendment of 1986 (IMFA), which tied foreign nationals who entered the United States to join their U.S. citizen

spouse to a conditional resident status for a 2-year period. Conditional resident status was applied to foreign nationals who were married less than 2 years at the time of immigration. This temporary condition was assumed to pose no problem for spouses who married in good faith; a legal term that signifies the married couple did not marry for the sole purpose of obtaining legal residence in the United States. However, advocates argued that a conditional resident contending with domestic violence "may be forced to endure the abuse and remain trapped" by her abuser (Family Violence Prevention Fund, n.d.). This legal dependence created a situation in the relationship in which an abuser could use the dependent status as a mechanism of control, whereas the spouse who had conditional residence status in the United States feared that the loss of her immigration status would result in her deportation (Raj, Silverman, McCleary-Sills, & Liu, 2004; Salcido & Adelman, 2004).

The specific restrictions posed by the IMFA generated unprecedented collaboration between battered women's and immigrant rights' groups (Chen, 2000). The IMFA did more than retrench rights for immigrants and create a dangerous situation for battered immigrants. The passage and implementation of the IMFA also instigated a response from advocates to specifically address the problems created under IMFA. Such response to the IMFA resulted in two pieces of legislation (the battered spouse waiver and Subtitle G of the VAWA; see Table 1), the organization and mobilization of coalitions of domestic violence advocates and immigration lawyers, such as the National Network to End Violence Against Immigrant Women, and to bodies of scholarship (like this one) devoted to examining legal provisions for battered immigrants. Response to the IMFA also concretized the discourse of battered immigrant within public policy by specifically signifying the circumstances that resulted from its passage. In other words, the provisions for battered immigrants in both the battered spouse waiver and VAWA were specifically designed to redress the problems created by the IMFA—the 2-year conditional resident status applied to foreign nationals emigrating to the United States to join their U.S. citizen spouse.

In producing the discourse of the battered immigrant, the law offers three major forms of relief: (a) the battered spouse waiver (also referred to as the I-751 waiver); (b) VAWA self-petition; and (c) VAWA cancellation of removal (the latter two are also commonly referred to as VAWA relief). The evidentiary requirements to prove one's eligibility for each form of relief serve as the testing ground for who can be recognized by the state and gain the protection of the state as a battered immigrant. There are numerous groups of people who emigrate to the United States and are living with or

trying to escape an abusive partner who are either not covered under VAWA or unable to produce adequate evidence to qualify for immigration relief.

Findings

Regulating Battered Immigrants

Adjusting one’s status to legal permanent resident as a battered immigrant requires a 2-step process: (a) proving eligibility to be a battered immigrant and (b) proving eligibility to adjust one’s status to legal permanent resident. Implementation of provisions for battered immigrants relies on regulations issued by the Attorney General via the Department of Homeland Security (Immigration Act of 1990, 1990, § 40742 (a); Violence Against Women Act of 1994, 1994). The regulations for battered immigrants establish eligibility requirements for the battered spouse waiver, VAWA self-petition, and VAWA cancellation of removal. Battered immigrants who successfully demonstrate eligibility for one of these provisions must then prove they are eligible to adjust their status to legal permanent resident. Eligibility requirements to apply for the battered spouse waiver, VAWA self-petition, and VAWA cancellation for removal are listed in Tables 2 and 3.

Lawyers who were interviewed in this study shared that their advocacy strategies differed for VAWA cancellation of removal versus the VAWA self-petition. VAWA cancellation of removal is considered a defensive application because it is submitted for those who have been issued a notice to appear in immigration court or for those who are physically in the custody of immigration. Defensive applicants appear before an immigration judge and may have to take extra steps to prove good moral character when demonstrating eligibility to adjust their status to legal permanent resident. In contrast, the VAWA self-petition is an affirmative application that only involves paper advocacy and does not require appearing in an immigration court. Self-petitions are sent to the Citizenship and Immigration Services Vermont Service Center where the staff are specifically trained to process VAWA self-petitions.

Analysis of the requirements to prove eligibility for VAWA self-petition and VAWA cancellation of removal provides one illustration of the production of the battered immigrant. The text reproduced in Tables 2 and 3 represents an interpretation of the law from Womenslaw.org, an organization that states its mission “is to provide easy-to-understand legal information to women living with or escaping domestic violence” (Womenslaw.org,

Table 2
Eligibility Requirements for the Battered Spouse Waiver

Battered Spouse Waiver
1. You entered the marriage in good faith, but your spouse subsequently died.
2. You entered the marriage in good faith, but your marriage was later terminated due to divorce or annulment.
3. You entered the marriage in good faith and have remained married, but have been battered or subjected to extreme cruelty.
4. Termination of your status and removal would result in extreme hardship.

Source: Taken from the official *I-751, Petition to Remove Conditions on Residence* (U.S. Department of Homeland Security, 2005). Available online at <http://www.uscis.gov/files/form/I-751.pdf>

Table 3
Eligibility Requirements for VAWA Relief

VAWA Self-Petition	VAWA Cancellation of Removal
1. Relationship with the U.S. citizen or legal permanent resident 2. Battery or extreme cruelty 3. Good faith marriage 4. Good moral character	1. Qualifying relationship with U.S. citizen or legal permanent resident 2. Battery or extreme cruelty by the abuser 3. Good faith marriage 4. Good moral character 5. Leaving the United States would subject you or your child to extreme hardship 6. Three years continuous physical presence in the United States prior to application

Source: Adapted from <http://www.womenslaw.org/immigrants.htm>, retrieved September 3, 2007.

Note: VAWA = violence against women act.

2006). Unlike the text of public law, which is intended for professional legal and Congressional audiences, the text from this advocacy organization attempts to transcend the knowledge-power barrier of legal discourse by framing the legal code in “easy-to-understand” language.

Nevertheless, each of these statements, in corresponding to legal criteria, interpellates (Althusser, 1970) or, in other words, recruits immigrants to fulfill certain subject positions. I argue that this interpellation reinforces systems of control along ideological frames such that each statement functions as an ideological litmus test. Applicants for VAWA relief must prove worthiness to become a battered immigrant through providing evidence for each criterion. The following analysis will further examine the evidentiary standards for the battered spouse waiver and both forms of VAWA relief, through interrogating how the ideals of the family, gender, and nation are constructed within this production of the battered immigrant.

Good Faith in Heteropatriarchy

Proving a good faith marriage is one of many steps required for legal recognition as a battered immigrant. In this section, I analyze the evidentiary standards of a good faith marriage for the battered spouse waiver. However, before I discuss what evidence is required to demonstrate one's good faith, let me review how the United States defines legal marriage in immigration law.

Spousal immigration falls under the general category of family-based immigration. U.S. citizens may sponsor a fiancé or fiancée, a parent, a spouse, sons and daughters, brothers and sisters. LPRs are only permitted to sponsor a spouse, or sons and daughters (as long as the child is single or divorced). Both citizens and LPRs must be able to prove relationship to the foreign national to qualify for family-based immigration. To prove relationship with a spouse, immigration law accepts any marriage that is officially recognized where the marriage took place, with exceptions in accordance to U.S. policy.

Marriage, and more generally family, constitutes what Patricia Hill Collins (2000) calls “a fundamental principle of social organization” (p. 157). Who can be recognized as married under the Defense of Marriage Act of 1996 and immigration law produces and reinforces social hierarchies according to conventions of gender, sexuality, and nationality. Collins argues that in the United States, the ideal family consists of a heterosexual, two-parent household, where the male is the patriarch and breadwinner and the female parent is the caretaker and nurturer of the family. Both parents are positioned as responsible for their children. Families that diverge from this ideal—single-parent households, female-headed households, or same-sex couples, with or without children—have less social status and often less economic resources as compared to the idealized family (e.g., poverty rates are higher for female-headed households or single-parent households; same-sex couples do not have parental rights in many states in the United States, nor are they entitled to financial and social protections offered to heterosexual couples who are legally married).

Ideological constructions of a heteronormative nuclear family also determine who may enter the United States as a spouse, child, or parent. In her historical examination of U.S. immigration policy, Eithne Luibhéid (2002) illustrated how the state controls sexuality through institutionalized sexist and racist immigration policies. The production of the battered immigrant reinforces this construction by stipulating that only spouses who conform to the ideals of family deserve the protection from the state. Immigration law clearly excludes groups of people who are legally married somewhere, but whose marriage is not recognized by U.S. immigration law. However, even

immigrants whose marriage does qualify under immigration law must take steps to demonstrate the validity of their marriage and prove they entered the marriage in good faith, a process which disciplines immigrants to adhere to ideological conventions of gender and sexuality, in addition to cultural constructions of what constitutes a valid marriage.

The discourse of good faith recalls what led to the creation of the IMFA—fear of “sham” marriages—hence the need to curtail immigration to the United States through scrutinizing foreign nationals who might be using marriage to obtain a green card. Evidentiary standards to prove a good faith marriage rely on symbols of marriage as a significant life event, whereby two individuals enter into marital union. In applying for the battered spouse waiver, advocates and immigration lawyers work with their clients to submit sufficient evidence, including any information that would signify the applicant’s intent to enter into a bona fide marriage. Possible support documents to establish a good faith may include: evidence of comingling of funds, evidence of a common address, evidence of children born of the marriage, or other credible evidence including affidavits from friends or family (National Network to End Violence Against Immigrant Women, 2005).

In addition to providing either a marriage certificate or evidence of a common-law marriage, applicants are encouraged to submit symbols that their marriage was legitimate and not merely for immigration purposes. Applicants are encouraged to include both official and unofficial documents, including certificates of marriage or evidence of a common-law marriage, photographs of their wedding ceremony and wedding reception, or affidavits from friends and family. These additional materials are received as objective evidence by immigration officials that the stated relationship conformed to U.S. ideals of marriage. Submitting additional materials that serve as objective evidence of a good faith marriage is thus one step in producing immigrants who can adequately perform their gender and heterosexuality.

Proving You Are a Good (Enough) Victim

From the start, the battered women’s movement relied on the criminal justice system to respond to domestic violence and hold abusers accountable. Reliance on the criminal justice system requires survivors to enter a new legal subjectivity where gender violence is reframed in legal terms. Legal subjectivity—becoming a victim of domestic violence—does more than entangle an individual—whether abuser or survivor—in a system of state protection and control, but also challenges gender concepts of masculinity and femininity that operate within the private spheres of family and community. Anthropologist

Sally Engle Merry (2003) posits that a contradiction emerges through this process. The legal subjectivity of victims or survivors of domestic violence offers women “a more autonomous subjectivity defined by rights” (p. 379), while simultaneously subjecting women to further control by the state.

Merry (2003) also suggests that women who fulfill the role of “good victim” are more likely to receive assistance from officials in the criminal justice system. In contrast, “bad” victims refer to women who do not follow through with their cases, who drop their case, or who fail to testify, and as such are less likely to take on the discourse of rights in accordance with the lingua franca of the legal system. Women with prior experience with legal subjectivity may include women with criminal records, women with poor economic status who have used welfare benefits, and women who, with their children, have dealt with Child Protective Services. These women, seen as “bad victims,” are the ones who are most cautious of the criminal justice system and less likely to be recognized as deserving protection from the state.

In the context of VAWA, applicants must demonstrate their good moral character to be eligible, or in legal terms, admissible as a legal permanent resident. The use of the notion of “good moral character” has had a long history in immigration law beyond VAWA as a means to restrict the immigration of prostitutes, criminals, and otherwise undesirable persons (Luibhéid, 2002; Mitchell, 1992). For VAWA applicants, proving good moral character converges with the performance of being a good enough victim. This is particularly important for applicants with prior criminal records. Grounds for inadmissibility may include nonviolent offenses such as using false documents to obtain public benefits, shoplifting, and entering the United States with false documents.

VAWA 2000 added exceptions for applicants who can demonstrate that their criminal conviction is related to their history of surviving abuse. Advocates and lawyers, who work with their clients in applying for the battered spouse waiver or VAWA relief, assist the applicant in writing a sworn statement or declaration in which the applicant describes her situation, the context in which she entered the United States, and her experience with domestic violence. The declaration is also a place for the applicant to address any ambiguous areas in her eligibility. For VAWA applicants with a criminal record, the declaration provides proof that the applicant is a good victim and has good moral character despite the arrest record.

The sample declaration below illustrates the discursive tools used to show good moral character for a woman who was arrested in the context of her abusive relationship with her husband. The text below is the first paragraph of eight total paragraphs in the sample declaration:

My name is _____. I am a survivor of domestic violence. Over the course of over six months, I suffered serious physical and psychological abuse at the hands of my U.S. citizen spouse, Joseph _____. Finally, on January 31, 1999, following one incident where my husband attacked me and threatened me with a knife, I called the police and my husband was arrested and charged with assault with a deadly weapon. Although initially I did not press charges (because at that time I still loved my husband and believed we could save our marriage) following a series of incidents where he had me arrested, stalked me and threatened me at work, I filed for a protective order on March 10, 1999. I received a Temporary Order that same day and a Final Order of Protection on March 22, 1999. On January 7, 2000, I filed a self-petition under the Violence Against Women Act. The self-petition was approved on June 8, 2000. (National Network to End Violence Against Immigrant Women, 2005, section 4.3)

This narrative is itself a performance in legal subjectivity where an applicant must take up the discourse of the legal system to be read (viewed by the state) as a compliant subject. As a sworn statement, the declaration is intended to represent the applicant's domestic violence and immigration situation in her own words. However, as a legal document the narrative must conform to the legal genre. Immigration lawyers and domestic violence advocates work with their clients to craft a narrative that conveys specifics of the individual's situation, while maintaining the expectations of the genre.

The narrative begins with an opening statement of the applicant's identity as a survivor of domestic violence and specific forms of abuse. Lines 2 to 6 indicate that the abuse escalated to the point where the applicant turned to the state—in this case called the police—for protection. Using the criminal justice system signifies the seriousness of the abuse, the degree to which the applicant feared her husband, and her willingness to perform along expected lines. Talking about her use of the criminal justice system also marks the VAWA applicant as a good victim. The official response discussed in lines 9 to 13—through the series of protection orders—further validates her claim as a survivor of domestic violence. The remaining seven paragraphs of the declaration are devoted solely to justifying the applicant's arrest. Paragraph eight, reproduced below, illustrates how the text positions the applicant's arrest in the context of a cycle of escalating violence from her abusive husband:

I know that I made a grave mistake on February 7, 1999. I am sorry for what I did. But it must be understood in the context of the six months of physical and psychological abuse to which my husband had subjected me. My VAWA self-petition describes in greater detail the extent of the abuse I suffered. I only wish to highlight some of the worst incidents, so that you can better understand

why I acted as I did. As a survivor of domestic violence, I know now that how I acted (no matter how misguided I may have been) and how my husband retaliated is not unusual—that when immigrant victims of domestic violence fight back or stand up for their rights, their abusers will often call the police or turn them in to the INS. I am very grateful to be able to benefit from the laws like VAWA that protect women in my circumstances. I would ask that you grant my application for a waiver, approve my application for adjustment to lawful permanent residence, and allow me to continue to give something back to this community that I have come to love. (National Network to End Violence Against Immigrant Women, 2005, section 4.3)

There are several features of this narrative that produce a desirable immigrant. In signifying her arrest as “misguided,” the declaration indicates that the applicant knows right from wrong and assumes responsibility for her misjudgment. Talking about how the applicant is “grateful to be able to benefit from the laws like VAWA” further positions the applicant as law-abiding, mindful of her subject position, and thus not unworthy to be a citizen. The text also draws on discourses in the domestic violence advocacy to contextualize the use of violence by an individual who claims victimhood. In talking about the arrest in the language of the cycle of violence, the applicant references the research- and practice-based knowledge of women’s use of violence in a relationship. Research has demonstrated that although women are seldom batterers in heterosexual relationships, they may use violence against their partners (Dasgupta, 1998, 2002; Miller & Meloy, 2006). Referencing professional discourse serves to legitimate the claims made by the applicant in the declaration, while positioning the applicant’s arrest as normative in the context of an immigrant suffering from abuse. Finally, stating that the applicant wishes “to give something back to this community” assures immigration officials that this immigrant will not be a drain on the resources of the state, but wishes to fulfill the subject position of a productive citizen. The declaration ends with expressions of gratitude to signify indebtedness and servitude, while reinforcing the state’s superiority over the applicant.

VAWA as “a Bright Spot in an Otherwise Bleak Landscape”

The discourse of battered immigrant in VAWA and related provisions was assessed in relation to the bleak landscape of immigration law as indicated in this lawyer’s statement below:

In general, the domestic violence provisions of the immigration laws are good. That said, there are huge groups; there are several groups and in each group huge numbers of people that are just not covered. They are essentially

ignored by the domestic violence provisions. But vis-à-vis the other provisions of our immigration laws, the domestic violence provisions—I mean I realize now, practicing general immigration law that whoa! I had it good [when I was working on VAWA application]. And it sounds funny to say, because I remember [working on VAWA cases] and encountering so many people that just suffered horrendous domestic violence but completely fell through the cracks in terms of not being covered by VAWA or any other domestic violence related provisions. But our immigration laws just are real crummy and so I think the domestic violence provisions are a real bright spot in an otherwise bleak landscape. (Immigration lawyer interview, December 8, 2004)

These comments eloquently articulate the frustrations expressed by immigration lawyers regarding the faults and inadequacies of current immigration law. Lawyers in this study also felt powerless when working with people who have “suffered horrendous domestic violence” and yet “fell through the cracks” because they are not “covered” by existing domestic violence provisions in immigration law.

Immigration lawyers in this study often referred to women who were not able to apply for immigration relief through VAWA as “falling through the cracks.” The use of this euphemism, whether or not intentional, provides insight into how lawyers centered their discourse on available legal options. The text below, taken from the Web site for the Immigrant Program of Legal Momentum, provides another example of how lawyers talk about underserved groups of immigrants:

Legal Momentum recently launched the Immigrant Women Program (IWP) that strives to protect and expand the rights of immigrant women and their children. . . . The program pursues policies on a broad scale to protect immigrant women who, as victims of domestic violence, “fall between the cracks” of both our legal safeguards and our welfare support systems. . . . The ultimate agenda of the program is to address from a women’s rights perspective the larger complex of social and legal challenges faced by women who emigrate to the United States. (Legal Momentum, 2006)

Staff members at Legal Momentum have been major players in generating legislation for battered immigrants. In focusing attention on what is available, advocates positioned those not served by VAWA on the fringes of their own advocacy work. Statements such as “falling through the cracks” seem inconsistent with the relatively small numbers of immigrants who can claim to be battered immigrants under the law. In this study, lawyers and advocates with whom I spoke had fewer advocacy options for women who

were not eligible for legal options. Although it is possible that the structure of my interview questions encouraged advocates to focus on what they could functionally do for their clients, it is also likely that the institutionalization of the women’s movement and the battered women’s movement in particular pushes advocacy work into the mainstream and away from more radical social change work.

Participants’ framing of VAWA in this study suggests the legislation is improving with each renewal. And yet the intent of the law remains to “cover” only a narrow group of immigrants. There are certainly groups within the target of the law who “fall through the cracks.” However, the advocates in this study used this phrase to signify many groups who are not even intended to be covered under VAWA, nor are likely to be covered by VAWA without serious changes in the intent of the law (e.g., offering a path to citizenship for new groups of nonimmigrant aliens). Considering the anti-immigrant political climate and public opinion, some advocates were wary to critique current policy for fear that things could turn worse for their immigrant clients. One advocate noted her measured skepticism in the following passage:

So part of me is really glad that the law exists even in the form that it’s in. And then part of me is so afraid that they’re going to take it away—just leave it, just let it be! Keep it safe as it is because I don’t want somebody taking it away, which is also a really destructive thing to be thinking that way.
(Advocate interview, November 16, 2004)

Pessimism regarding the retrenchment of immigrant rights and social services has grown in the past 5 years even with VAWA reauthorization in 2000 and 2006. While each reauthorization of VAWA offers hope for more resources and strategies to combat violence against women, the current climate of reducing welfare spending, cutting social services, and increasing surveillance of immigrants is a harbinger of the future amongst advocates who are prepared for things to get worse.

Discussion

This analysis focused on the ideological investments produced through immigration provisions for battered immigrants. In passing provisions for battered immigrants, Congress recognized the potential dangers faced by immigrants who were trapped by abusive spouses. However, the requirements needed to gain successful application for the battered spouse waiver, the

VAWA self-petition, and VAWA cancellation of removal, although intended to help survivors of domestic violence, perpetuate disciplinary practices of the state toward producing compliant and productive citizen subjects.

Battered immigrants who seek refuge from the state are disciplined with the promise of freedom. The promise of freedom alludes to Power's (2005) argument that liberal democratic societies have always relied on the "unfreedom" of some, in the form of slavery, indentured servitude, class oppression, etc., to secure the economic and social mobility of those privileged to enjoy the rights protected by the state. Battered immigrants are often trapped by regulatory state policies, as well as by their abusive partners. The search for legal residency as a promise of freedom is thus compelling because it would seemingly offer a space for survivors to address the turmoil in their lives while working toward a life free from the control and reach of a batterer.

This research also calls attention to the problems facing immigrants who are deemed ineligible for public benefits, even in times of crisis related to domestic violence. Many groups of immigrants remain cut off from the panacea of social and health services that are deemed critical for survivors of domestic violence who suffer economic hardship, physical abuse, and psychological abuse associated with domestic violence. Even those who successfully adjust their status to legal permanent resident must endure the 5-year bar before being eligible for most federally funded benefits. Freedom from the fear of deportation does not free victims from the potential threat of their abuser in determining their well-being as they seek safety from abuse. Thus, as immigration and domestic violence advocates work for more support for battered immigrants through the VAWA, efforts to improve the safety net for all immigrants would ensure a basic minimum standard of support and humanity.

Notes

1. This project received approval from the Institutional Review Board of the University of Washington for research with human subjects.

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