

# LAVENDER BRUISES: INTRA- LESBIAN VIOLENCE, LAW AND LESBIAN LEGAL THEORY

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*I try to move away but between her body and the wall there is nowhere to go, then I feel her hand on my throat, her weight rolling onto me, pinning me beneath the softness of her breasts, the taut line of her belly. As I struggle, she traces the arch of my collarbone with the tips of her fingers. . . .*

*Had I been dreaming? From the corner of my eye I can see my symmetrically bruised shoulders.<sup>1</sup>*

*"You don't have to be beaten to be loved," the therapist said  
I held the cool shock of those words  
against the purple bruise of still wanting you<sup>2</sup>*

*And if the counselor or the officer asks what happened next, what can she say?*

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1. Adams, *A Figure of Speech*, in *DYKEVERSIONS: LESBIAN SHORT FICTION* 73, 75 (Lesbian Writing & Publishing Collective eds. 1986).

2. CHRYSOTOS, *What Did He Hit You With? The Doctor Said*, in *NOT VANISHING* (1989).

*My lover — she beats me. And then we make love. The same fingers that leave a bruise on my throat feel so fine when they stroke my neck.*<sup>3</sup>

## I. INTRODUCTION

Intra-lesbian violence is not a new phenomenon, although the legal reaction it has provoked has at times penalized lesbian sexuality rather than violence. A 1721 German trial transcript, for example, documents intra-lesbian violence: the “two women did not get along. Because the codefendant complained that she did not earn anything, the defendant beat her frequently.”<sup>4</sup> However, it was not the violent expressions that prompted judicial intervention, but the sexual ones. The women were on trial for the crime of lesbianism. Found guilty, the defendant Catharina Linck was sentenced to death. The codefendant Catharina Mühlhahn received the lesser sentence of three years in the penitentiary and then banishment, not because she was the victim of physical abuse, but because she was “simple-minded.”<sup>5</sup> The violence between the women was superfluous from the legal perspective: what was criminalized was sexuality.

This Article seeks to elucidate the confusion between sexuality and violence that confounds legal treatments of intra-lesbian violence. This confusion is both explicitly and implicitly revealed in judicial decisions and legislative enactments. A distinct but intertwined task of this Article is to situate intra-lesbian violence within the development of a lesbian legal theory. It is intra-lesbian violence that makes equally untenable either a separatist lesbian legal theory (eschewing all reference to a patriarchal legal system) or an assimilationist lesbian legal theory (advocating lesbianism as an irrelevant factor in legal determinations).

Before broaching legal discourse or the development of a lesbian legal theory relating to that discourse, it is necessary to

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3. R. ROBSON, *Growing Avocados*, in *EYE OF A HURRICANE* 11, 16 (1989).

4. *A Lesbian Execution in Germany, 1721: The Trial Records*, 6 *J. HOMOSEXUALITY* 27, 32 (1980/81) (translated by Brigitte Eriksson).

5. *Id.* at 40.

clarify certain terms. While lesbians are often defined with exclusive reference to their sexuality,<sup>6</sup> lesbians — like other humans — cannot so easily be demarcated. As I am using the term “lesbian,” it denotes a woman who primarily directs her attentions, intimate or otherwise, to other women.<sup>7</sup> Lesbianism is the theoretical grounding for such attentions. Lesbian theory is not limited to sexual orientation; thus it is not co-extensive with gay rights ideologies. Similarly, lesbian theory is not limited to gender; thus it is not co-extensive with feminism. Lesbian theory, as it is being generated by lesbians in works of philosophy, literature, art and experimental forms, is a discrete body of discourse relating to lesbian life.<sup>8</sup> The development of lesbian theory in relation to law is emerging. This Article is an attempt to begin to develop a lesbian legal theory relating to intra-lesbian violence.

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6. For example, Webster's Dictionary defines the noun “Lesbian” as “a woman homosexual.” WEBSTER'S DICTIONARY 567 (3d ed. 1988).

7. This definition is based upon Marilyn Frye's work in *THE POLITICS OF REALITY* (1983). Frye discusses dictionary definitions of the term “lesbian,” concluding that the term itself is a “quadri-fold evasion, a laminated euphemism”:

To name us, one goes by reference to the island of Lesbos, which in turn is an indirect reference to the poet Sappho (who used to live there, they say), which in turn is an indirect reference to what fragments of her poetry have survived a few millennia of patriarchy, and this in turn (if we have not lost you by now) is a prophylactic avoidance of direct mention of the sort of creature who would write such poems or to whom such poems would be written . . . assuming you happen to know what is in those poems written in a dialect of Greek over two thousand five hundred years ago on a small island somewhere in the wine dark Aegean Sea.”

*Id.* at 160 (ellipsis in original). Instead, Frye posits a more ontological and epistemological definition:

Heterosexuality for women is not simply a matter of sexual preference, any more than lesbianism is. It is a matter of the orientation of attention, as is lesbianism, in a metaphysical context controlled by neither heterosexual nor lesbian women. Attention is a kind of passion. When one's attention is on something, one is present in a particular way with respect to that thing. The presence is, among other things, an element of erotic presence. The orientation of one's attention is also what fixes and directs application of one's physical and emotional work.

*Id.* at 171-72.

8. Lesbian theorists include Nicole Brossard, Sarah Hoagland, Marilyn Frye, Audre Lorde, Joan Nestle, Adrienne Rich, Joyce Trebilcock, Monique Wittig, among others.

Intra-lesbian violence primarily involves physical and emotional violences between lesbians, although it also encompasses expressions of lesbian sexuality between women who may not identify themselves as lesbians<sup>9</sup> as well as violence between women whose lesbianism is at issue.<sup>10</sup> Intra-lesbian violence may consist of three types of possible relationships between the lesbians. The first type of relationship, a "non-relationship" of strangers, is apparently a very rare form of violence between lesbians.<sup>11</sup> The second type of possible relationship is that of acquaintances or friends within the lesbian community.<sup>12</sup> The third type of relationship is that of lovers, and in this form of intra-lesbian violence the dynamics often parallel the patterns of domestic violence that have been so well documented in heterosexual relationships.<sup>13</sup> The latter two types of relationships, of course, are not mutually exclusive, for the boundaries between "friend" and "lover" may be fluid among lesbians.<sup>14</sup> Another example of intra-lesbian violence that straddles the latter two categories is violence revolving around a love triangle.<sup>15</sup> In a recent situation, a woman murdered her former lover who ended the

9. See, e.g., *infra* note 11.

10. See, e.g., *infra* notes 22 & 23 and accompanying text.

11. The only reported case I have been able to locate is *Commonwealth v. Whitehead*, 379 Mass. 640, 400 N.E.2d 821 (1980). In *Whitehead*, the victim, who is not identified as a lesbian or heterosexual, was raped and beaten by four persons: two men and two lesbians who were lovers. The lesbian defendants did not previously know the victim, but were introduced at a lounge by one of the men. The five persons drove away from the lounge and a series of sexual attacks occurred inside the car by both the men and the lesbian defendants. Afterwards, one of the men stabbed the victim, the men kicked her numerous times, and left her for dead in a cemetery. The victim survived and testified at trial.

12. For a fictional example, see D. ALLISON, *Violence Against Women Begins at Home*, in TRASH 141 (1988) (describing an incident in which two lesbians break into the apartment of another lesbian and "trash" everything, including her artwork, because the art is "pornographic").

13. Compare, e.g., R. DOBASH, *VIOLENCE AGAINST WIVES* (1979); D. MARTIN, *BATTERED WIVES* (1976); E. PIZZEY, *SCREAM QUIETLY OR THE NEIGHBORS WILL HEAR* (1974); S. STEINMETZ, *THE CYCLE OF VIOLENCE* (1977); L. WALKER, *THE BATTERED WOMAN* (1979); L. WALKER, *THE BATTERED WOMAN SYNDROME* (1984); with *NAMING THE VIOLENCE: SPEAKING OUT ABOUT LESBIAN BATTERING* (K. Lobel ed. 1986) [hereinafter *NAMING THE VIOLENCE*].

14. Lesbian theorist Sarah Hoagland concludes that "we have developed more complex relationships than the distinction between friend and lover acknowledges," S. HOAGLAND, *LESBIAN ETHICS* 173 (1988), and advocates that "we would do well to dissolve the rigid distinction between friend and lover," *id.* at 174.

15. Of course, not all lesbian "triangles" are violent and many lesbians have affirmatively attempted multiple love relationships. See, e.g., O. BROUMAS & J. MILLER, *BLACK HOLES, BLACK STOCKINGS* (1985) (poetry); G. STEIN, *Q.E.D.* (reissued 1978) (autobiographical fiction); M. MEIGS, *THE MEDUSA HEAD* (1983) (autobiography).

relationship and had found a new lover.<sup>16</sup> In a famous historical trial in the Netherlands, two lesbian lovers were convicted of conspiring and committing the murder of a former lover.<sup>17</sup> Whatever the type of intra-lesbian violence, however, such violence poses problems for the development of a lesbian legal theory. Intra-lesbian violence also proves problematic for the present legal system as it attempts to address the violence.

## II. INTRA-LESBIAN VIOLENCE AND THE LAW

The legal sanctions in cases of intra-lesbian violence have often been directed more at the "lesbian" sexual component than at the act(s) of violence. The punishment of sexuality may be explicit, as it was in the *Linck* case in which a lesbian was executed.<sup>18</sup> The punishment of sexuality may also be implicit, as it was in the Netherlands "love triangle scandal," in which the crime was sensationalized in a manner in which sexuality eclipsed murder. The legal response to such sensationalism was not increased prosecutions for murder, but increased prosecutions for lesbianism.<sup>19</sup>

In addition to sensationalizing, another legal response to intra-lesbian violence which implicitly privileges sexuality over violence is the insistence on the erasure of lesbianism. While this appears paradoxical, this strategy operates to insulate lesbianism from candid consideration as it relates or does not relate to the violence. Thus, the lesbianism may be denied<sup>20</sup> or it may be

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16. Relying on newspaper reports, one commentator describes the events thusly:

On Friday the 13th of this January [1989], Catharine Rouse, former manager of Madison's former feminist restaurant Lysistrata, took a gun purchased a few days before, drove to the house of her ex-lover, Joan, who had recently ended their relationship, and shot her three times, dead. She did not find Joan's new lover. She then drove home and shot herself, dead.

Card, *Defusing the Bomb: Lesbian Ethics and Horizontal Violence*, 3 LESBIAN ETHICS 91 (1989).

17. In this murder trial, two women were arrested and tried for murdering a third in 1792. R. DEKKER & L. VANDEPOL, *THE TRADITION OF FEMALE TRANSVESTISM IN EARLY MODERN EUROPE* 70 (1989).

18. See *supra* note 4.

19. R. DEKKER & L. VANDEPOL, *supra* note 17, at 70.

20. As scholar Rhonda Rivera notes, judges in opinions may never refer to homosexuality and cases involving homosexual issues may be unpublished more often than other cases. Rivera, *Our Straight-Laced Judges: The Legal Position of Homosexual Persons in the United States*, 30 HASTINGS L.J. 799, 805 (1979).

“hetero-relationized.”<sup>21</sup> In modern American cases in which judges refer to lesbianism, lesbianism is often an issue of the defendant’s “character.” For example, in a recent Florida appellate opinion, the court rejects the defendant’s claim that her lesbianism was improperly before the jury:

Wiley further contends on appeal that her character was impermissibly placed in issue when the State elicited the fact that she was a “bull dagger” — a lesbian that assumes the male role during intercourse. This contention is without merit. The record undeniably shows that the question of Wiley’s sexual preferences came into the trial as a part of her own confession. According to Wiley, the victim hurled this invective at her during the quarrel that occurred between them on that fateful evening. This accusation perhaps constitutes an explanation for the flailing received by the victim some moments later. The State’s only crime here was to try to explain to the jury exactly what a “bull dagger” is.<sup>22</sup>

Thus, the court conceptualizes the defendant’s lesbianism in a hetero-patriarchal manner (“male role”) and disparages it (“invective”) even while trivializing it (“the State’s only crime”). Interestingly, in *Wiley* the appellate court does not reveal the relationship between the defendant and the victim: they could have just met in the “local night spot” near where the incident occurred; they could have been casual acquaintances arguing; they could have been best friends; they could have been lovers. In an earlier Texas case in which the victim is the defendant’s putative lover although the defendant denies she is a lesbian, the appellate court is more straightforward about rejecting the defendant’s claim that evidence of her lesbian relation with the murder victim was prejudicial.<sup>23</sup> What is troublesome, however, is that during the Texas trial the “evidence” of the relationship

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21. This phrase is from Janice Raymond’s concept of the re-definition of women in “hetero-relational terms” to fit prevailing models of heterosexuality and patriarchy. See J. RAYMOND, *A PASSION FOR FRIENDS* 64-66 (1986).

22. *Wiley v. State*, 427 So. 2d 283, 285 (Fla. Dist. Ct. App. 1983).

23. *Perez v. State*, 491 S.W. 672, 675 (Tex. Crim. App. 1973) (“the relationship between the appellant and the deceased was clearly admissible” under the Texas Evidence Code, citing cases).

consisted in part of photographs and testimony that the defendant "dressed like a man; kept her hair cut like a man; wore men's clothing, including men's shoes."<sup>24</sup> The appellate court is comfortable in relying on heterosexual stereotypes to confirm the defendant's lesbianism, despite the defendant's denials.

The judicial discourse relating to lesbian violence thus finds it relevant to denominate the male-identified lesbian, even absent a partner-relationship as in *Wiley*. Perhaps this denomination is a cipher for categorizing the defendant as the aggressor. It is not necessary for courts to engage in hetero-relational analogies to name the aggressor. For example, in a 1957 case involving a lesbian's murder of her partner's child, the court is rather circumspect in relating testimony of prior violent activity while avoiding heterosexism.<sup>25</sup> Nevertheless, most courts are at least implicitly heterosexist. In a 1985 case, the appellate court repeats trial testimony of prior violence, but also finds it relevant that the defendant "was physically larger than the decedent."<sup>26</sup> Even in a recent California case which might be considered a model, the appellate court's recitation of the facts is revealing: We learn that the defendant became involved with her lesbian lover after the defendant "left her husband because he had been beating her."<sup>27</sup> The relevance of the prior violent relationship is tangential at best, the defendant's defense was apparently based on diminished capacity due to alcohol intake on the day of the crime rather than abuse. We are left wondering why the appellate court found this fact relevant enough to include in its opinion.

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24. *Id.* at 673.

25. *People v. Steward*, 156 Cal. App. 177, 318 P.2d 806 (1957). The court noted as among the "salient facts":

The two women had many differences and on occasion appellant had struck Mrs. Hosford [the victim's mother]. Mr. James Auerbach, operator of a bar, had frequently seen appellant and Mrs. Hosford in his establishment. The pair argued constantly while in said bar and once in December, 1956, appellant resorted to physical violence against Mrs. Hosford. At that time, Mr. Auerbach heard appellant say: "I will kill the Lesbian son-of-a-bitch." Mr. Auerbach never saw Mrs. Hosford attack appellant and it was generally appellant who was the aggressor in the quarrels between the two.

*Id.* at 179, 318 P.2d at 808.

26. *People v. Huber*, 131 Ill. App. 3d 163, 165, 475 N.E.2d 599, 601 (1985).

27. *People v. Gibson*, 195 Cal. App. 3d 841, 843, 241 Cal. Rptr. 126, 127 (1987).

Determining the aggressor in a violent lesbian relationship becomes especially crucial when the defense to murder is self-defense. In *Crawford v. State*, the appellate court provides excerpts of the defendant's interrogation in which the law enforcement officers unceasingly reiterate disbelief that the defendant was beaten by her lover and that defendant was not the "aggressor."<sup>28</sup> The appellate court reversed, on the basis of the prejudicial nature of the trial admission of the law enforcement officer's statements during the interrogation, after categorizing the victim as the one who had assumed "the dominant role" in the lesbian relationship.<sup>29</sup> While the court's conclusion that the admission of the officer's statements during interrogation was prejudicial error seems a fair one, one wonders to what extent this conclusion is buoyed by the finding that the victim was the "dominant" one. The court does not relate any prior incidents of violence for its conclusion of "dominance." What I am suggesting is that "dominance" is a hetero-relational concept that may not be applicable to lesbian relationships; the operative consideration in murder trials in which self-defense is raised should be related to abuse rather than heterosexist notions of dominance that are based on stereotypical gender roles.

Not only does hetero-relationality impact upon legal responses to intra-lesbian violence, but homophobia does as well. In a very recent and unreported trial apparently involving the first use of the "battered woman syndrome" defense in a lesbian relationship,<sup>30</sup> Annette Green was convicted of the first degree murder of her lover Ivonne Julio by a Palm Beach County, Florida, jury. The trial judge allowed the "battered woman syndrome defense,"<sup>31</sup> construing it as a "battered person defense."<sup>32</sup>

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28. *Crawford v. State*, 285 Md. 431, 449, 404 A.2d 244, 253 (1979).

29. *Id.* at 451, 404 A.2d at 254.

30. For a discussion of the applicability of the battered women syndrome defense to lesbians, see Comment, *The Defending of Accused Homosexuals: Will Society Accept Their Use of the Battered Wife Defense?*, 4 GLENDALE L. REV. 208 (1982).

31. Actually, the battered woman syndrome is a psychological and sociological designation for battered women. See L. WALKER, *THE BATTERED WOMAN* (1979). It is relevant in a criminal prosecution for murder of the batterer to the defense of self-defense. See Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 WOMEN'S RTS. L. REP. 195 (1986).

See also Bunyak, *Battered Wives Who Kill: Civil Liability and the Admissibility of Battered Woman's Syndrome Testimony*, 4 LAW & INEQUALITY 603 (1986); Comment, *Evidence — The Battered Woman's Syndrome in Illinois: Admissibility of Expert Testimony*, 11 S. ILL. U.L.J. 137 (1986).

The prosecutor had argued that the defense was inappropriate, despite his admission that defendant Green had been "battered. She was shot at before by the victim. She had a broken nose, broken ribs."<sup>33</sup> Nevertheless, even with the complicated issues presented by the "battered person" defense before the jury, it took only two and one-half hours to return a guilty verdict. Green's defense attorney attributed this to homophobia, noting that it usually takes a jury much longer to deliberate, even in routine cases.<sup>34</sup> One jury member related an incident to the judge in which two venire members spoke in the women's restroom about their desire to be selected as jurors in order to "hang that lesbian bitch."<sup>35</sup> The court personnel also exhibited what the defense attorney termed homophobic conduct.<sup>36</sup> Further, the defense attorney attributes homophobia to the first degree murder charge, although the situation of battering and self-defense was a "classic murder-two case."<sup>37</sup>

After her conviction, Annette Green has appeared on television shows enduring homophobia and the hetero-relationizing of her relationship<sup>38</sup> in order to tell battered lesbians to "get help":

I want to tell them that to not be afraid to get help. To please go and get help. There's someone

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32. Telephone conversation with William Lasley, attorney for Annette Green (Nov. 13, 1989) [hereinafter Lasley conversation].

33. Assistant State Attorney Bob Johnson, *quoted in* GAY COMMUNITY NEWS, Sept. 17-23, 1989, at 1.

34. Lasley conversation, *supra* note 32.

35. *Id.*

36. *Id.* The incident that formed the basis for the attorney's conclusion that Green was harassed by female staff in the holding cell involved a communication between Green and the attorney. William Lasley, Green's defense attorney, requested Green to write a letter concerning aspects of the case. Green did so, but reported that a guard took the letter. Lasley complained to the judge about the letter's confiscation on the basis of attorney/client privilege. The staff denied knowledge of the letter. However, the letter later appeared in a plastic bag, soaking wet with the ink running off. When Lasley took the letter from the bag, a staff member stated that the letter had been in the holding cell's toilet. Lasley insists that Green would not put her own communication in the toilet; that she had no reason to do so.

37. *Id.*

38. *See, e.g., Geraldo: Battered Lesbians - Battered Lovers?* (television broadcast, Nov. 21, 1989) (transcript on file with author) [hereinafter *Geraldo* transcript]. The homophobia in such instances may be subtle. Thus, on the *Geraldo* show, he opines:

I'm going to take the Master of Ceremonies option of saying my own two cents. The battered woman defense is very controversial because it is invoked in cases, very often in these homicide cases, where someone has ended up dead. But if, in

out there that could help because, if they don't do that, one of them is going to be dead. Sooner or later, it's going to happen.<sup>39</sup>

Yet the legal help available to battered lesbians may be chimerical. In Florida, where Annette Green was surviving abuse before she killed her lover, Green was not within the statutory definitions of a victim of domestic abuse. Annette Green was not entitled to shelter or services from "domestic violence centers," partially funded by the state,<sup>40</sup> because domestic violence is defined as violence "by a person against the person's spouse."<sup>41</sup> Further, Annette Green was not entitled to avail herself of the judicial system to obtain an injunction for protection against domestic

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my opinion, in my humble, very subjective opinion, if you believe that a straight woman has the right to invoke this defense, then to say that it doesn't apply to a gay woman, I think, it's unfair.

*Id.* at 12. Yet earlier, Geraldo evinces homophobia by insisting on a hetero-relational pattern, despite a statement by a "lesbian battering expert" that such a pattern, even if it exists, is irrelevant to lesbian battering and intra-lesbian violence. In answering his question, Annette Green accepts Geraldo's hetero-relational paradigm:

GERALDO: All right. Now you say there isn't role playing going on. Very often, people outside of the community would look at a relationship, and there are women who seem more butch, more masculine than others. Is that not a common thing for a more masculine partner to be with one less so?

PROF. RENZETTI: No. I would say that's not a common thing, and I would say that whether or not that exists, is not necessarily related to whether or not there's battering. I'll give you an example of what I mean by that. Some of the women that I spoke with, in my study, indicated that they, as victims, were the physically smaller — no, I'm sorry — the physically larger partner. That their batterers were actually smaller than they were, and, in fact, that was one of the reasons that they were afraid to fight back, that they were afraid that they might hurt the person they loved.

GERALDO: Annette, in your relationship, was Yvonne [sic] bigger or smaller than you? Who ran the house, generally speaking? Were you sort of the mother and she, roughly, kind of like the father? Is that the way it was?

MS. GREEN: Yes. She was bigger than me. I worked. She stayed home most of the time. I used to clean, cook, do everything. I was the mother of the kids. I was like the wife. She was like the husband.

*Id.* at 7.

39. *Id.* at 12.

40. FLA. STAT. §§ 415.601-.606 (1989).

41. *Id.* § 415.602(3). The definition of spouse includes any person to whom one is or has been married. *Id.* § 415.602(5).

violence.<sup>42</sup> Such injunctions, often called protective orders or temporary restraining orders are available to victims of domestic abuse in order to prevent further abuse.<sup>43</sup> These civil orders have just recently become available in every state;<sup>44</sup> however, not every state extends protection to lesbians<sup>45</sup> in battering relationships. Florida, for example, defines "domestic violence" as limited to:

any assault, battery, or sexual battery by a person against the person's spouse or against any other person related by blood or marriage to the petitioner or respondent, who is or was residing in the same single dwelling unit.<sup>46</sup>

Thus, Annette Green, even if she had sought legal assistance, could not have obtained a temporary restraining order against intra-lesbian violence. Likewise, other states preclude lesbians as persons "unrelated by blood or marriage" from seeking protective orders, especially if there is no violence against any children in the household.<sup>47</sup> Lesbians may also be specifically excluded because of their shared gender.<sup>48</sup> However, in many states —

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42. *Id.* § 741 (1988).

43. For a discussion of the benefits and limitations of protection orders, see Finn, *Statutory Authority in the Use and Enforcement of Civil Protection Orders Against Domestic Abuse*, 23 *FAM. L.Q.* 43 (1989).

44. The last state to pass such a statute was Arkansas. The statute has been declared unconstitutional by a chancery judge and the issue is pending in the Arkansas Supreme Court, *Bates v. Bates*. Letter from Joan Pennington, Staff Attorney, National Center on Women and Family Law, Inc. (Jan. 17, 1990).

45. The applicability or non-applicability of such statutes is the same for gay men as for lesbians.

46. *FLA. STAT.* § 741.30 (1)(a) (1988).

47. *See, e.g., LA. REV. STAT. ANN.* § 46:2132(4) (West Supp. 1990) (defining protectable "family or household member" as "spouses, former spouses, parents and children, stepparents, step children, foster parents, foster children, and any person living in the same residence with the defendant as a spouse, whether married or not, if a minor child or children also live in the residence who are seeking protection"); *ME. REV. STAT. ANN.* tit. 15, § 321(1) (1989) (defining protectable "family or household members" as "spouses or former spouses, individuals presently or formerly living as spouses, natural parents of the same child or adult household members related by consanguinity or affinity," adding that "holding oneself out to be a spouse shall not be necessary to constitute 'living as spouses'"); *VA. CODE ANN.* § 16.1-228 (Supp. 1988) (extending protection to "spouse abuse" and defining it as "committed by a person against such person's spouse, notwithstanding that such persons are separated and living apart").

48. *See MO. REV. STAT.* § 455.010 (1)(5) (Supp. 1989) (defining protected household members as "spouses, former spouses, persons related by blood or marriage, persons of the opposite sex who are presently residing together or have resided together in the past and persons who have a child in common regardless of whether they have been married or resided together at any time" (emphasis added)).

often because of recent amendments — lesbians who cohabit, or who have cohabited, may apply for protective orders in cases of domestic violence.<sup>49</sup> For lesbians who have never lived together, judicial protection from an abusive relationship is much more rare.<sup>50</sup>

Even where legal assistance is statutorily available, applications for restraining orders may be denied by courts because of the parties' lesbianism. The courts may reason that the situation is one of "mutual combat." The term "mutual combat" indicates a situation where the parties are "really just fighting" rather than one in which abuse is occurring. Within the battering relationship, the concept of mutual combat may have some currency.<sup>51</sup> In the domestic violence movement itself, there is some controversy about the validity of the notion of "mutual combat"

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49. See, e.g., COLO. REV. STAT. § 14-4-101(2) (Supp. 1987) (domestic abuse defined as violence committed or threatened by an adult or emancipated minor against another adult or emancipated minor living "in the same domicile"); CONN. GEN. STAT. ANN. § 46b-38a(2) (West. Supp. 1990) (defining "family or household member" as including persons 16 years or older presently residing together or who have resided together); IDAHO CODE § 39-6303(2) (Supp. 1989) (defining "family or household member" as including "persons who reside or who have resided together"); MONT. CODE ANN. § 40-4-121 (1988) (substituting "family or household member" for "spouse" in 1985); N.Y. SOC. SERV. LAWS § 459-a (McKinney Supp. 1990) (defining "family or household members" as including "unrelated persons who are continually or at regular intervals living in the same household" or who have done so in the past); PA. CONS. STAT. tit. 35, § 10182 (1989) (amending the abuse act in 1988 to include "sexual or intimate partners"); WIS. STAT. ANN. § 813.12 (West. Supp. 1989) (expanding the definition of "domestic abuse" in 1985 to include acts by a "family member or household member").

But see MO. REV. STAT. § 455.010(5) (Supp. 1990), which did not substantially alter *id.* § 455.010(6) (protected household members as "spouses, persons related by blood or marriage, and other persons of the *opposite sex* jointly residing in the same dwelling unit" (emphasis added)); UTAH CODE ANN. § 30-6-1 (1989) (recently narrowed to include only "spouse," "living as spouse," "related by blood or marriage" or having "children in common" from previous 1985 amendment which included in the "spouse abuse act" "cohabitants").

50. For an example of available protection, see CAL. CIV. PROC. CODE § 527.6 (West Supp. 1990) allowing temporary restraining orders to prevent harassment.

51. As battered lesbian advocate Barbara Hart explains:

because a battered lesbian may have used violence against her batterer and because the batterer is convinced that the victim is responsible for the batterer's abuse, it is not surprising that many battered lesbians are confused when first contacting battered women's advocates to break free of the violence and to establish lives outside of the control of the perpetrator. It is not surprising that they may view themselves as both a batterer and a victim.

Hart, *Lesbian Battering: An Examination*, in NAMING THE VIOLENCE, *supra* note 13, at 173, 186.

between lesbians. The majority view is that "mutual combat" is a myth, and a dangerous one.<sup>52</sup> Another view, proposed by battered women advocate Ginny NiCarthy<sup>53</sup> is that there are lesbians who are violent toward each other but do not ultimately succeed in controlling each other: two-way violence.<sup>54</sup> In the legal arena, the mutual combat concept may be more attractive in situations where hetero-relational factors are less evident. Many judges and legal officials have been educated in domestic violence issues in ways which emphasize the dominant/submissive patriarchal arrangement based on objective criteria such as gender. When such factors are absent, judges may be more likely to feel inadequate to determine against whom the restraining order should issue. In the face of such inadequacy, such judges may either deny the restraining order or issue a mutual restraining order.

The denying of a restraining order has obvious import: the violence is legally sanctioned. The issuing of a mutual restraining order may have a less obvious significance. To be "restrained" from doing some act one has never done and apparently has no desire to do, appears insignificant. Yet this very irrelevance conveys the message of its relevance. A mutual restraining order apportions responsibility for the violence between the parties. Despite the civil nature of the order, it serves as an adjudication that "fighting" rather than abuse is occurring.

In addition to its rhetoric, the mutual restraining order has practical legal effects. In future instances of violence, the mutual restraining order sets a precedent, almost a "law of the case," determining that the violence between the parties is mutual.

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52. See, e.g., *id.* at 173.

For a critique of the concept of mutual combat between gay men, see Kingston, *The Truth Behind Mutual Combat*, *COMING UP!*, Dec. 1987, at 12.

53. NiCarthy is best known for her self-help books directed toward abused women: G. NiCarthy, *GETTING FREE: A HANDBOOK FOR WOMEN IN ABUSIVE RELATIONSHIPS* (1982); G. NiCarthy, *THE ONES WHO GOT AWAY: WOMEN WHO LEFT ABUSIVE PARTNERS* (1987); G. NiCarthy, K. Merriam & S. Coffman, *TALKING IT OUT: A GUIDE TO GROUPS FOR ABUSED WOMEN* (1984).

54. NiCarthy, *Lesbian Battering, Political Principles and Therapeutic Methods*: Feminist Therapy Conference (May 1987) (unpublished manuscript) (on file with author).

Battered women's advocates in many states have lobbied legislatures for more stringent penalties against batterers. These penalties, in order to be effective, are necessarily not limited to batterers who are convicted of crimes. If a batterer violates a civil restraining order, this may constitute a crime.<sup>55</sup> Thus, a battered lesbian who pushes her batterer in an attempt to escape through a door violates a mutual restraining order as much as the battering lesbian who barred the door. Both women may be guilty of a crime. However, even in the absence of violations of a restraining order resulting in a criminal conviction, penalties are applied to persons against whom restraining orders have been issued. In some states, a finding of "domestic violence," including findings based upon the issuance of temporary restraining orders, may disqualify one from state employment, or from employment with mental health facilities, alcohol treatment facilities, drug treatment facilities, nursing homes, or child care facilities, or from working with the developmentally disabled, working with youth services or providing foster care.<sup>56</sup> Thus, a mutual restraining order might impact upon one's livelihood. While it might be argued that a mutual restraining order does not fit the definition of "domestic violence," the disqualification occurs as an "employment screening," in which the opportunity to advance arguments is rare.

In addition to the problems for a battered lesbian seeking help from the legal community, battered lesbians may have difficulty obtaining assistance from the lesbian community. Annette

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55. According to a recent survey of domestic violence statutes (which does not include the newly enacted statutes in New Mexico and Arkansas):

Violation of a protection order constitutes civil contempt in thirty-one states, criminal contempt in twenty states and the District of Columbia, and civil and criminal contempt in eleven states. Twenty nine states make the violation of a protection order a misdemeanor offense.

Finn, *supra* note 43, at 55.

56. See, e.g., FLA. STAT. § 110.1127 (1988) (state employment); *id.* § 393.0655 (care-takers for persons with developmental disabilities); *id.* § 394.457 (employment in a mental health facility); *id.* § 396.0425 (employment with an alcohol treatment facility); *id.* § 397.0715 (employment with a drug treatment facility); *id.* § 400.497 (employment with a home health agency); *id.* § 402.305 (employment with a child care facility); *id.* § 409.175 (providing foster care); *id.* § 959.06 (employment with youth services); 1989 Fla. Laws 535 (employment at the Florida School for the Deaf and Blind).

Additionally, a nurse may be disciplined by the state department of professional regulation for committing an "act which constitutes domestic violence as defined in s. 741.30." FLA. STAT. § 464.018 (7)(e) (1988).

Green's defense attorney complained of lack of support from the lesbian and gay community, describing the communities' "parochial attitude" that there is enough homophobia without publicizing lesbian violence.<sup>57</sup> Yet the silence about intra-lesbian violence, both intimate and nonintimate, is founded on an acute — and very real — awareness of societal homophobia.<sup>58</sup> Internalized homophobia also impacts upon the reactions of individuals within the lesbian community, often in complex and contradictory ways. For example, internalized homophobia may lead one to become rigidly defensive about one's lesbianism and thus susceptible to denying intra-lesbian violence even when witnessed or experienced.<sup>59</sup> Perhaps related to homophobia, but also importantly related to lesbianism as a theory, are premises that lesbian relationships, lover and otherwise, are definitional,<sup>60</sup> the grounding of lesbian community,<sup>61</sup> potentially mutual and thus "decolonized,"<sup>62</sup> and not "irretrievably tied up with dominance and submission as norms of behavior."<sup>63</sup> Such premises are importantly threatened by the specter of intra-lesbian violence.

### III. DEVELOPING A LESBIAN LEGAL THEORY OF INTRA-LESBIAN VIOLENCE

Intra-lesbian violence in all forms presents a complex and vital issue for resolution by any attempts to articulate a lesbian legal theory. Lesbian legal theory could, of course, embrace either of two extremes: eschewing the "patriarchal" legal system altogether; or embracing the legal system as if lesbianism was

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57. Lasley conversation, *supra* note 32. See also *Geraldo* transcript, *supra* note 38, at 11.

58. Benowitz, *How Homophobia Affects Lesbians' Response To Violence in Lesbian Relationships*, in *NAMING THE VIOLENCE*, *supra* note 13, at 198, 200.

59. *Id.*

60. "Our relationships are what define us as lesbians to the world and to each other." D.M. CLUNIS & G.D. GREEN, *LESBIAN COUPLES* 3 (1988).

61. N. HART, *SPIRITED LESBIANS: LESBIAN DESIRE AS SOCIAL ACTION* 128-29 (1989).

62. Clarke, *Lesbianism: An Act of Resistance*, in *THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR* (C. Moraga & G. Anzaldúa eds. 1981).

63. S. HOAGLAND, *supra* note 14, at 68.

irrelevant. The first alternative is based upon the politics of lesbian separatism<sup>64</sup> and upon the realistic suspicion of a disenfranchised group.<sup>65</sup> The second alternative is based upon the politics of the domestic violence movement which has stressed that the "legal response to family violence must be guided primarily by the nature of the abusive act, not the relationship between the victim and the abuser."<sup>66</sup>

Both of these extremes are unsatisfactory, yet the tension between these extremes appears again and again in lesbian discourse about intra-lesbian violence. In a fictional example, the lesbian characters discuss the relative merits of using the legal system as opposed to a lesbian arbitration to redress the trashing of the victim's apartment by two lesbians whose acts were

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64. See generally, *FOR LESBIANS ONLY: A SEPARATIST ANTHOLOGY* (S. Hoagland & J. Penelope eds. 1988).

65. Lesbians, of course, may have bases that combine with their sexual orientation for having well grounded suspicions of the legal system.

For example, Evelyn White, in *CHAIN CHAIN CHANGE: FOR BLACK WOMEN DEALING WITH PHYSICAL AND EMOTIONAL ABUSE* (1985), describes the racist traditions of the legal system, but concludes that a black woman who chooses to use the legal system is not a "traitor" to her race. *Id.* at 46-53. Similarly, an "undocumented" woman may be subject to deportation should her existence become known to legal authorities. See generally, M. ZAMBRANO, *MEJOR SOLO QUE ACOMANADA: FOR THE LATINA IN AN ABUSIVE RELATIONSHIP* 214-19 (1985); *DOMESTIC VIOLENCE AND THE RIGHTS OF IMMIGRANTS AND REFUGEES* (1986).

For all lesbians, the suspicion of the legal system may be based upon the law's criminalization of the woman. In many states, lesbian sexual acts may be criminalized. See generally, *Bowers v. Hardwick*, 478 U.S. 186, 193 (1986) ("24 states and the District of Columbia continue to provide criminal penalties for sodomy performed in private and between consenting adults"); Comment, *Survey on the Constitutional Right to Privacy in the Context of Homosexual Activity*, 40 U. MIAMI L. REV. 521, 524 n.9 (1986) (listing sodomy statutes).

66. U.S. ATTORNEY GENERAL'S TASK FORCE ON FAMILY VIOLENCE, *FINAL REPORT* 4 (Sept. 1984). This sentiment is echoed in texts directed at abused women:

If you were injured by a stranger, you would probably phone the police, report it and find out your legal options. Taking such action would make you feel more powerful and could possibly deter the stranger from assaulting someone else. You can look at the situation between you and an abusive partner in the same light. The laws that give you legal protection against a violent stranger also apply to the man who is abusing you . . . They are laws against crime.

E. WHITE, *supra* note 65, at 47.

Remember, any attack like this is against the law. If your partner ever hit a stranger he or she would waste no time calling the police. You too are entitled to safety and police protection. It is a right, not a privilege.

M. ZAMBRANO, *supra* note 65, at 169.

motivated by politics.<sup>67</sup> In another example, a battered lesbian relates:

The response of the local lesbian community to the arrest of my former lover was demoralizing. Lesbians were upset — even angry — that I had called the police. “I can see turning in a batterer and calling the cops,” said one woman. “But a lover? What does that say about your ability to be intimate with anyone?” . . . Several women put a lot of pressure on me to drop the charges. They said things like: “Oh, come on. Haven’t you ever hit a lover? It wasn’t all that bad.” “You’re dragging your lover’s name through the mud. It was in the newspapers.” “Do you realize that the state could take away her children because of what you have done?” They suggested setting up a meeting between my former lover and me. They volunteered to mediate so we could reach an “agreement.”

I can think of few crueller demands on a woman who has been attacked than to insist she sit down with her attacker and talk things out. I would guess that none of the lesbians who wanted me to do that would consider demanding such a thing from a straight woman who had just been attacked by her boyfriend. . . . The lowest blow came when a friend called me the day before a pre-trial hearing. “You should drop the charges,” she said. “We in the lesbian community can take care of our own.” “But what about me? Who’s going to guarantee my safety and see that my house doesn’t get trashed?” She had no response.<sup>68</sup>

In this instance, the battered lesbian went to court and related her story, but the “story” was partial. The defendant’s lawyer “covered up the relationship” stating that the lesbian lovers were “just two good friends” and the battered lesbian

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67. D. ALLISON, *supra* note 12.

68. Dietrich, *Nothing Is The Same Anymore*, in *NAMING THE VIOLENCE*, *supra* note 13, at 155, 159-60.

“did not say we had been lovers.”<sup>69</sup> In addition to erasure of lesbian existence, another cost of resort to legal adjudication could be hetero-relationizing (and thus also erasing) lesbian existence. In yet another instance, the battering lesbian availed herself of the judicial procedure to contest the restraining order, resulting in the order being made mutual, and thus confirming unarticulated suspicions of the legal system. As the battered lesbian explains:

I found virtually no support within the lesbian community. Of the many people who supported her [the batterer] those years, I know of only one woman who actually confronted her on her violent behavior against me or herself. In fact it was through the help of friends that she brought me to court, seeking to revoke the restraining order I had obtained against her. Why didn't one of those friends simply tell her I had every right to a restraining order? Given her violence against me, the order obviously could not be revoked, no matter how justified she felt in her actions. The courtroom exposure of our abusive relationship was a horrendous and humiliating experience. Clearly not knowing what to do, the judge made an absurd, inappropriate and insulting ruling to make the restraining order mutual.<sup>70</sup>

Because we are only beginning our attempts to formulate a lesbian legal theory, the problem of intra-lesbian violence has not been addressed. Domestic violence in feminist legal theory is not necessarily applicable to lesbian legal theory because feminist legal theory is often based upon heterosexist assumptions. If lesbianism is mentioned at all,<sup>71</sup> it is distorted. For example, feminist theorist Catharine MacKinnon explicitly connects domestic violence to heterosexual activity and heterosexualized (and sadomasochistic) lesbianism:

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69. *Id.* at 161-62.

70. Corimer, *Coming Full Circle*, in *NAMING THE VIOLENCE*, *supra* note 13, at 124, 127-28.

71. Several recent books about “domestic” or “intimate” violence fail to address intra-lesbian violence. *See, e.g.*, J. BLACKMUN, *INTIMATE VIOLENCE: A STUDY OF INJUSTICE* (1989); M. HIRSCH, *WOMEN AND VIOLENCE* (1981); M. ROY, *THE ABUSIVE PARTNER: AN ANALYSIS OF DOMESTIC BATTERING* (1982).

Marital rape and battery of wives have been separated by law. A feminist analysis suggests that assault by a man's fist is not so different from assault by his penis, not because both are violent, but because both are sexual. Battery is often precipitated by women's noncompliance with gender requirements. Nearly all incidents occur in the home, most in the kitchen or bedroom. Most murdered women are killed by their husbands or boyfriends, usually in the bedroom. The battery cycle accords with the rhythms of heterosexual sex. The rhythm of lesbian sadomasochism is the same. Perhaps violent interchanges, especially between genders, make sense in sexual terms.<sup>72</sup>

The extent that lesbian sadomasochism is or is not violent is beyond the scope of this article,<sup>73</sup> yet the simplistic equation of lesbian sadomasochism with heterosexual domestic violence does not elucidate the issues involved in intra-lesbian violence. Many lesbians in the battered women's movement whose work included daily confrontations with heterosexual battering theorized that domestic abuse could be attributed to disparities in gender.<sup>74</sup> Yet, it soon became obvious that inextricably linking

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72. C. MACKINNON, *TOWARDS A FEMINIST THEORY OF THE STATE* 178 (1989).

73. See Robson, *Lifting Belly: Privacy, Sexuality & Lesbianism*, 13 *WOMEN'S RTS. L. REP.* (1990) (forthcoming) (discussing lesbian sadomasochism within the context of lesbian sexuality and privacy).

74. For example, Del Martin, author of *BATTERED WIVES* (1976) and co-author of *LESBIAN/WOMAN* (1974), testified before the United States Commission on Civil Rights that "wife beating" could be attributed to the historical emergence of "monogamous pairing relationships," resulting in a "father right" which brought about "the complete subjugation of one sex by the other." U.S. COMM'N ON CIVIL RIGHTS, *BATTERED WOMEN: ISSUES OF PUBLIC POLICY* 5 (1978). Martin continues:

Battered women are often perceived as somehow provoking their husbands to violence in order to fulfill a basic masochistic need. Such theories evolve from the patriarchal structure of our society in which the dominant group (men) define acceptable roles for subordinates (women).

Women have been socialized to believe that their greatest achievement in life is marriage and motherhood and that failure of the marriage is the wife's personal failure.

*Id.* at 11. In order to "alter this collision course between men and women," *id.* at 14, Del Martin advocated that

creating a balance of power — both economic and social — between marital partners could be the means of preventing one sex from taking advantage of the other and preventing the violence this imbalance provokes.

intimate violence with sexuality is problematic for lesbian legal theory. For, if lesbian legal theory were to adopt such a view, it would hetero-relationize itself in the same manner in which the legal system often hetero-relationizes lesbian relationships. To sanction MacKinnon's view would be to make relevant an inquiry into "who is the man" in order to determine the identity of the batterer. Obviously, lesbian legal theory cannot countenance such a result.

Intimate intra-lesbian violence threatens the very gendered foundations of explanations for domestic violence. To name the batterer as "male-identified" does not solve the problem. Lesbian therapists have been engaged in much work involving intra-lesbian violence, and these insights are certainly useful for the development of a lesbian legal theory.<sup>75</sup> Likewise, some sociological work is beginning in the area of intra-lesbian violence.<sup>76</sup> Nevertheless, neither psychology nor sociology can produce the political grounding necessary for a lesbian legal theory of intra-lesbian violence: what is necessary are multi-disciplinary and complex approaches.<sup>77</sup>

Perhaps also useful is the work that is beginning in lesbian moral philosophy on intra-lesbian violence. In the recent work *Lesbian Ethics*, Sarah Hoagland addresses intra-lesbian violence, but her focus is on its prevention:

such actions did not come from nowhere, "out of the blue." A series of events took place, a series of actions; and finally one act or series of acts crossed a limit. When our interactions cross a limit, it is because there has been increasing and compounded failure in our relationships up to

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*Id.* at 17.

75. See generally NAMING THE VIOLENCE, *supra* note 13 (containing many psychological articles).

76. See Renzetti, *Violence in Lesbian Relationships: A Preliminary Analysis of Causal Factors*, 3 J. INTERPERSONAL VIOLENCE 381 (1988).

77. Barbara Hart's brief piece, *Lesbian Battering: An Examination*, *supra* note 51, remains an isolated classic in this regard. However, while Hart's piece is notable for its refusal to be simplistic, its purpose is primarily descriptive. Although Hart is an attorney, the article does not address legal issues.

that time. And the function of the ethics I am attempting to outline concerns our interactions *before* they reach that point.<sup>78</sup>

Concerning extended harassment, in a situation in which the relationship has ended, Hoagland provides no solution even as she specifically rejects legal recourse:

Ultimately, any words I have here are inadequate. This is a crisis, and lesbians in crisis have to use all our wit, ingenuity, skill, and resources to get through it. But there is a difference between making choices in crisis and reaching for community social justice.

The problem with crises is that they interrupt all else that we're doing and rivet us on someone else's agenda which we didn't agree to, often one we wanted to ignore. However, a system of punishment . . . structures our agendas too. . . .

If, instead, we attend the crisis, asking for help from friends, doing whatever is necessary to take care of ourselves, and go through the time it takes to dissolve it (sometimes years, if one can't let go), as has been happening, we may begin gaining understanding of ways to keep similar situations from reaching crises in the future.<sup>79</sup>

The rejection of concepts such as "social justice" and legalism is consonant with Hoagland's lesbian separatist politics, yet "doing whatever is necessary to take care of ourselves" does seem to allow legal intervention as a potential. What I find more problematic from a lesbian legal theory perspective, however, is the emphasis on structuring future actions to prevent "similar situations from reaching crises." While Hoagland is very explicit about rejecting the concept of "blame,"<sup>80</sup> such an emphasis does seem to me to intensify the tendency to blame the victim, who had she been more "understanding" could have prevented the crises.

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78. S. HOAGLAND, *supra* note 14, at 266.

79. *Id.* at 270.

80. *Id.* at 217-21.

Another critique of Hoagland's work from an intra-lesbian violence perspective is from Claudia Card.<sup>81</sup> Card notes that Hoagland's conceptualization of "attending" can encompass a hostile attending by batterers who monitor another's actions: "Those who batter focus inordinately, in ludicrous detail, on those who they batter. Monitoring, more than acute battering incidents, is their great source of control."<sup>82</sup> Card does not explicitly address the role of law, but she seems to eschew legal intervention. For example, she states:

Let us see how an ethic of attending might respond effectively and well to horizontal violence among lesbians. . . . Counselling withdrawal of the battered is unhelpful when batterers pursue or when battering disables lesbians from withdrawing. Withdrawal of *outsiders* from batterers can facilitate battering. For, battery of intimates is often a highly private affair; some who would not dream of violence in the presence of outsiders will do incredible things to intimates in private. Attendance of *outsiders* can disempower batterers, an exploitable strategy. We may need emergency outside attendance in relationship crises to interrupt scripts, disengage, intimidate without ulterior threats, thereby controlling — i.e., checking — without punishments and without domination.<sup>83</sup>

The nonpunishing, nondominating "outsider" is probably not a patriarchal legal authority. Yet Card's treatment of intra-lesbian violence does implicate some sort of theory that might allow an external force — a community or a public — to prevent and censor violence. The nature of this public is unspecified, but both Card and Hoagland conceptualize a lesbian community in which the lesbian violence occurs.

Presupposing an ideal lesbian community does not usually include the fantasy of a lesbian "police force" to enforce the authority of the community's "philosophical discourse."<sup>84</sup> Instead, the lesbian community may exercise its "police power" in the

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81. Card, *supra* note 16.

82. *Id.* at 96.

83. *Id.* at 97-98.

84. *Cf.*

form of ostracism. Although ethicist Hoagland specifically rejects the concept of ostracism,<sup>85</sup> as attorney Barbara Hart conceptualizes it, the issue is one of "safe space."<sup>86</sup> Hart contends that the community and the battered women's movement take responsibility for providing a safe space for battered women by excluding all "lesbians who have battered and who have not been accountable to the person battered and to their community of friends."<sup>87</sup> While it is unclear whether Hart is defining community with reference to the "battered women's community" or the "lesbian community," what is intensely interesting is the insistence on accountability not only to the woman battered but also to "their community of friends." For batterers who have been "accountable," the exclusion is less automatic but is exercised at the option of the battered lesbian.

While the concept of community responsibility is a vital one, the existence or not of a lesbian community and the degree of intimacy experienced within that community by lesbians involved with violence, seem to me to be crucial variables in the expression of any lesbian legal theory that addresses intra-lesbian violence. Even if one were to adopt the extreme that resort to patriarchal legal mechanisms is unacceptable in situations of intra-lesbian disputes because lesbians "can take care of our own,"<sup>88</sup> such a position is nonsensical if there are no available lesbians to accomplish the taking care. Many lesbians do not live within lesbian communities. Even battered lesbians who live within lesbian communities, even small lesbian communities, may be isolated. Any reference to lesbian community within lesbian legal theory to solve battering situations must be cognizant

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If the authority of philosophical discourse depends upon the persuasive force of its reasoning, the authority of law rests ultimately upon the power of the state. I vividly remember Robert Coover at a conference remarking on the question of why legal scholars pondered so carefully the words of then-Chief Justice Burger. It was not, said Coover, because the Chief Justice was so deep a thinker or so talented a writer, but because his judgments were enforced by the United States Army. His words were written, so to speak, in blood.

Post, *Tradition, the Self, and Substantive Due Process: A Comment on Michael Sandel*, 77 CALIF. L. REV. 553, 559-60 (1989).

85. S. HOAGLAND, *supra* note 14, at 267-72.

86. Hart, *supra* note 51, at 95.

87. *Id.* at 95-96.

88. See *supra* note 68 and accompanying text.

of the tendency of the batterer to isolate her lover, and must also acknowledge the segregation that the violence itself causes.<sup>89</sup> Thus, lesbian legal theory cannot assume the existence of a lesbian community.

Lesbian legal theory cannot assume the character of lesbian community, even presupposing that one exists. For although much lesbian discourse posits politically sensitive groups of lesbians, for many other lesbian communities, this is simply not the case. Further, there is no guarantee that individuals within such communities will act according to their pronounced politics. Even given the variability in available lesbian communities, I think it is nevertheless possible to attempt some principles that might guide the development of lesbian legal theory in the area of intra-lesbian violence. These principles are derived from reading much experiential material on intra-lesbian violence as well as speaking with many lesbians who have experienced intra-lesbian violence and with many lesbians who devote their considerable energies to working, in legal and nonlegal capacities, on the issue of intra-lesbian violence.

A necessary foundation for lesbian legal theory in the area of intra-lesbian violence, especially as it confronts the extant legal system, is an insistence on recognition. Recognition for lesbians and lesbianism in the law is paradoxical: it demands both relevance and irrelevance.<sup>90</sup> Recognition is that which does not privilege sexuality over violence by punishing sexuality, by erasing sexuality, or by distorting sexuality.

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89. Hammond, *Lesbian Victims and the Reluctance to Identify Abuse*, in NAMING THE VIOLENCE, *supra* note 13, at 190, 192.

90. This dual theoretical demand is not unlike the dual personal demand lesbians often insist on. Writing about shelter space for battered lesbians, one woman remarks:

I am reminded of a statement I once read by a lesbian to a heterosexual friend. She said, "If you want to be my friend, you must do two things. First, forget I am a lesbian. And second, never forget I am a lesbian."

Geraci, *Making Shelters Safe for Lesbians*, in NAMING THE VIOLENCE, *supra* note 13, at 77-78.

The demand, of course, is in many cases more than dual. As Black lesbian poet Pat Parker writes in her poem, *For the white person who wants to know how to be my friend*: "The first thing you do is forget that i'm Black / Second, you must never forget that i'm Black." P. PARKER, MOVEMENT IN BLACK (1990).

Thus, lesbianism must be recognized by including intimate lesbian violence in legal discourse and enactments relating to domestic violence. Statutes that deny lesbians the ability to obtain judicial protective orders on the same basis as married persons, related persons, or heterosexuals are discriminatory and limiting. Further, the judicial enforcement of such statutes should preclude mutual restraining orders except in those instances in which "fighting" truly occurs. The evidentiary standard should not be different in cases involving two persons of a shared gender from cases involving persons of different genders. To do otherwise is not only to erase lesbian sexuality, but also to punish the expression of that sexuality by deeming it sufficient to deserve violence.

Lesbianism must also be recognized as lesbianism. Hetero-relationism disguises intra-lesbian violence in ill-fitting hetero-osexist apparel. Lesbian relationships are not synonymous with heterosexual relationships. This is not to say that lesbian relationships, whether violent or not, are completely dissimilar from all other relationships. Violence occurs in heterosexual, gay and lesbian relationships, and in many ways this violence may be remarkably similar. Nevertheless, attempting to adapt lesbian relationships to heterosexual ones brutalizes and erases lesbian existence. It also distorts, provokes, maintains and justifies intra-lesbian violence.

Intra-lesbian violence presents one of the most important issues for a lesbian legal theory to confront. Intra-lesbian violence makes impossible a separatist lesbian jurisprudence that eschews all involvement with the extant legal system. Intra-lesbian violence also makes impossible an assimilationist position that lesbians should participate in the legal system as if they were not lesbians. Intimate intra-lesbian violence exhibits the incompleteness of both the extant legal system and feminist attempts to reform that system. As we begin to confront these issues, we come closer to not only acknowledging the problem but attempting to use the law and legal theory for the benefit of all lesbians, including lesbian victims and lesbian defendants. Meanwhile, lesbians are being beaten, punched, kicked, strangled, terrorized and murdered — by other lesbians.

