

THE CRIMINALIZATION OF EMOTIONAL ABUSE

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ABSTRACT

The current policy response to domestic violence in the United States is built upon a violent-incident model, focusing on isolated, physical instances of abuse. This model fails to address the gravity of emotional abuse, which occurs in long-term episodes of coercive control and infringement upon personal freedom. Domestic violence in familial relationships frequently occurs in the form of emotional abuse, producing long-standing consequences upon the victim's mental wellbeing and sense of autonomy. European nations, including France, Ireland, and the United Kingdom, have initiated global awareness of emotional abuse through furnishing criminal provisions and sizable punishments against perpetrators. The violent-incident model of abuse in the United States must be reformed to include a universal definition of emotional abuse, which acknowledges that such abuse transpires in recurring, long-term incidents of coercive control. In addition, the United States must address the state-by-state variation in domestic violence law, which produces an inconsistency in legal protections against all forms of domestic violence. This variability of protections across state borders is clearly exhibited in an analysis of domestic violence policy in South Carolina and California, which is illustrated in this paper. It is essential that the United States implements a similar approach to that of European nations by criminalizing emotional abuse as a crime against personal liberty, which affects an individual's autonomy, decision-making abilities, and mental wellbeing for a prolonged period.

INTRODUCTION

Emotional abuse stands as a prevalent issue of debate in modern society. In determining domestic violence, legal protections focus on visible representations of abuse within familial and intimate relationships. Part I of this paper discusses the European stance on domestic violence policy, as well as protections against emotional abuse. Part II discusses the United States' current stance on domestic violence, as well as analyzes the variability of domestic violence protections across state borders. Part III presents a case law comparison of South Carolina and California, which serves to emphasize the erratic nature of domestic violence sentencing across state borders. In part IV, two relevant court cases are analyzed to advance the discussion of domestic violence. Part V examines the limitations of a violent-incident model of abuse, which focuses on isolated occurrences of physical violence. In part VI, the creation of a universal definition of emotional abuse is discussed, which emphasizes the repetitive, long-term nature of emotional control. Part VII discusses the extent to which emotional abuse should be criminalized as a liberty crime, as well as analyzes sources of legal proof. This thesis advances the need for the criminalization of emotional abuse in the United States to ensure the mental wellbeing of children, adults, and the elderly of society.

EUROPEAN CRIMINALIZATION OF EMOTIONAL ABUSE

In 2010, France revolutionized the concept of domestic violence by including a criminal statute which directly prohibits emotional abuse. The French Parliament sanctioned Law 2010-769, which establishes protections against violence between spouses, effects of emotional abuse on children, and violence against women. In addition to these protections, the law includes

criminal provisions against emotional abuse within the family unit. The law states that it aims to protect individuals from repeated acts which “degrade one’s quality of life and cause a change in one’s physical or mental state of health.”¹ Not only do these criminal provisions clearly define emotional abuse, but they furnish sizeable punishments for perpetrators of such abuse. Repetitive acts of emotional abuse on an individual’s spouse, co-habitant, or partner results in a three-year prison sentence and a 45,000 euro fine.² If the emotional violence leads to disruption of an individual’s working capacity, the punishment increases to five years and a fine of 75,000 euros.³ These protections provide a clear means of defense for those suffering from emotional abuse within the family structure.

The French Parliament aimed to further protections against emotional abuse by requiring instruction on gender equality and domestic violence in educational settings. Law 2010-769 amended the Education Code of France and mandated that all schools provide instruction in the areas of gender equality, race discrimination, and domestic violence.⁴ By reforming the Education Code to include such instruction, the French Parliament intended to increase awareness of domestic violence issues at all educational levels.⁵ Law 2010-769 provides schools with the ability to call upon organizations who specialize in each topic of discussion.⁶ This

¹ Atwill, Nicole, and Nicole. “Global Legal Monitor.” *France: Law on Violence Against Women* | *Global Legal Monitor*, 20 Sept. 2010, www.loc.gov/law/foreign-news/article/france-law-on-violence-against-women/.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

supplies students with in-depth educational resources from professionals. By initiating reform of the Education Code, the French Parliament provided an opportunity for students to become informed of all forms of domestic violence which occur in the family structure. It is through these measures that the French Parliament brought international attention to the topic of emotional abuse and educated younger generations on recognizing and preventing such forms of abuse.

In 2019, the topic of domestic violence policy was once again brought to national attention in France due to alarming rates of gender-based violence. The story of Julia Douib, who marked the 30th French woman killed in 2019 at the hands of her abusive husband, re-initiated national concern for the gravity of domestic violence issues.⁷ President Emmanuel Macron introduced the term “femicide” to describe the severity of gender-based violence in France, which surpasses Britain, the Netherlands, Italy, and Spain in women killed each year.⁸ Prime Minister Edouard Philippe acknowledged the necessity for furthering provisions against domestic violence, and aims to establish education on gender-based violence, a domestic violence hotline, and highly trained police professionals.⁹ In addition to grave statistics on sexual and physical violence, women in France are repeatedly targets of what Mr. Philippe describes as

⁷ Fourquet, L. (2019, September 3). As Deaths Mount, France Tries to Get Serious About Domestic Violence. Retrieved from <https://www.nytimes.com/2019/09/03/world/europe/france-domestic-violence.html>.

⁸ *Id.*

⁹ *Id.*

psychological violence.¹⁰ This psychological violence impedes a woman’s ability to escape the hands of her abuser and seek an independent life.¹¹ President Emmanuel Macron’s introduction of the term “femicide” calls attention to the magnitude of gender-based violence, which often occurs in the form of emotional abuse. Luc Frémot, a former prosecutor, urges police and governmental officials to take women seriously for all claims of domestic violence, including that of psychological abuse.¹² Although France is viewed as a leader in the development of domestic violence policy, it is clear that the nation requires continued efforts to protect against gender-based violence and emotional abuse.

Ireland’s Minister for Justice and Equality, Charlie Flanagan TD, furthered the discussion of protections against emotional abuse through enactment of the Domestic Violence Act of 2018. Minister Flanagan emphasized defense against instances of domestic violence as a target objective of the government and as a key component of the Second National Strategy on Domestic, Sexual, and Gender-based Violence.¹³ Minister Flanagan stated, “for too long, domestic violence has been seen primarily as physical abuse.”¹⁴ The Domestic Violence Act of 2018 includes increased protections for children, victims of forced marriage, and violent sexual offences.¹⁵ The Second National Strategy on Domestic, Sexual, and Gender-based Violence

¹⁰ Breeden, Aurelien. “France Announces New Measures to Tackle Domestic Violence.” *The New York Times*, The New York Times, 25 Nov. 2019, <www.nytimes.com/2019/11/25/world/europe/france-domestic-violence.html>.

¹¹ *Id.*

¹² *Id.*

¹³ “Minister Flanagan Brings Landmark Domestic Violence Act into Operation.” *The Department of Justice and Equality*, 2 Jan. 2018, www.justice.ie/en/JELR/Pages/PR19000001.

¹⁴ *Id.*

¹⁵ *Id.*

includes three key priorities: alteration of societal perceptions, advanced support for victims, and accountability for perpetrators of domestic violence.¹⁶ Within this strategy is a national awareness campaign urging an expansion of the definition of domestic violence. The campaign is centered around the question “what would you do?” and focuses on altering societal perceptions and attitudes towards domestic violence.¹⁷ Through the Second National Strategy and the Domestic Violence Act of 2018, Minister Flanagan pioneered a newfound understanding of domestic violence and the reach of its impact.

The Domestic Violence Act of 2018 served to expand the definition of domestic violence beyond physical maltreatment to include emotional abuse. In Section 39 (1) of the Domestic Violence Act of 2018, the concept of “coercive control” is detailed as a legal offense.¹⁸ Coercive control refers to an individual who demonstrates repeated instances of controlling behavior over a relevant person.¹⁹ Section 39 (1) defines a relevant individual as a spouse or civil partner of the person exhibiting the coercive behavior.²⁰ This coercive behavior must result in, or be reasonably assumed to cause, serious effects on the wellbeing of the relationship partner.²¹ Section 39 (1) emphasizes that such serious effects on the wellbeing of the relationship partner can include fear of ensuing violence, distress, and disruption of daily activities.²² If determined

¹⁶ *Supra* note 13.

¹⁷ *Id.*

¹⁸ Domestic Violence Act 2018. Government of Ireland. 8 May 2018, www.irishstatutebook.ie/eli/2018/act/6/enacted/en/html.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

guilty, the perpetrator is subjected to a class A fine or imprisonment for 12 months.²³ Section 39 of the Domestic Violence Act of 2018 effectively describes and includes instances of coercive control into the overarching definition of domestic violence.

In 2018, The United Kingdom Home Office furthered Minister Flanagan’s discussion by announcing a revision to the domestic violence law to include emotionally controlling behavior. This revision sought to accomplish four primary objectives including: increased awareness of domestic violence, assistance for victims, improved response to instances of domestic abuse, and a reform of the judicial process.²⁴ The revision to the domestic violence law demonstrated the complexity of domestic abuse within intimate relationships and the family unit. The United Kingdom Home Office urges that domestic abuse is correctly recognized and identified by victims and protection agencies.²⁵ While the definition of domestic abuse was once limited to acts of physical violence, the revision expanded this definition to include emotionally controlling and manipulative behavior.²⁶ The draft bill states, “the abuse can encompass, but is not limited to: psychological, physical, sexual, economic, and emotional forms of abuse.”²⁷ Acts of emotionally controlling behavior can include isolation of the victim, manipulation of the victim’s economic resources, and inhibition of the victim’s ability to perform everyday tasks.²⁸ The United Kingdom Home Office presented this extended definition for public input, resulting in

²³ *Supra* note 18.

²⁴ United Kingdom. Secretary of State for the Home Department. Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill. January 2019. Print.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 5.

²⁸ *Id.* at 5.

over 85% of UK citizens voting to include coercive behavior in the definition of domestic abuse.²⁹

The United Kingdom Home Office encouraged public participation throughout the duration of the consultation period. Over 3,200 individuals were effectively engaged in the process of developing a comprehensive definition of domestic violence.³⁰ By encouraging public participation, the United Kingdom Home Office motivated victims, nonprofit organizations, and professional organizations to actively engage in the revision to the domestic violence law.³¹ The draft bill also introduced the concept of “economic abuse” in addition to recognizing psychological violence.³² Economic abuse includes the taking of a victim’s financial resources or inhibition of the victim’s ability to procure financial capital.³³ The concept of economic abuse is strongly tied with that of emotional abuse. Economic abuse entails an act of manipulating a victim’s ability to perform everyday tasks, which may ultimately contribute to a degradation in psychological health and a loss in financial assets or gains. The impact of economic abuse is expected to outlast an abusive relationship, forcing the victim to reconstruct his or her life without sufficient financial standing.³⁴ The United Kingdom Home Office’s revision of the domestic violence law established a public forum for discussion, education, and support of those affected by all forms of domestic violence.

²⁹ *Supra* note 24, p. 6.

³⁰ *Id.* at 3.

³¹ *Id.* at 3.

³² *Id.* at 6.

³³ *Id.* at 6.

³⁴ *Id.* at 40.

U.S. DOMESTIC VIOLENCE POLICY: SOUTH CAROLINA & CALIFORNIA

The United States Congress initiated federal policy against domestic violence in 1994 through the Violence Against Women Act or VAWA.³⁵ This act represented the first U.S. federal attempt at combatting domestic violence within intimate relationships and the familial unit.³⁶ The VAWA required that “states provide full faith and credit to orders issued by sister states” regarding domestic violence policy.³⁷ In addition, the VAWA served to federally criminalize “interstate domestic violence.”³⁸ The VAWA recognized that domestic violence affects individuals of all ethnic, racial, and socioeconomic levels.³⁹ The VAWA successfully provided a comprehensive definition of domestic violence, which includes instances of emotional and verbal abuse, as well as coercive control in intimate relationships.⁴⁰ The definition of domestic violence found in the VAWA is as follows:

“Domestic violence is a pattern of abusive behavior in a relationship that is used by one partner to maintain power and control over another current or former intimate partner.

³⁵ “Federal Domestic Violence Laws.” *The United States Department of Justice*, 6 Dec. 2017, www.justice.gov/usao-wdtn/victim-witness-program/federal-domestic-violence-laws.

³⁶ “Violence Against Women Act.” *NNEDV*, nnedv.org/content/violence-against-women-act/.

³⁷ Dalton, Clare, and Elizabeth Schneider. *Battered Women and the Law*. Foundation Press, 2001. P, 693.

³⁸ *Supra* note 36.

³⁹ *Id.*

⁴⁰ *Id.*

Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person.”⁴¹

The VAWA strove to establish all forms of domestic violence as national crimes, and provide federal provisions to aid effective policy development across state borders.⁴²

The key issue plaguing the development of policy against domestic violence in the United States is the lack of a universal definition. Each state is provided autonomy in deciding how to address incidents of domestic violence.⁴³ This provides an opportunity for each state to independently interpret the federal definition of domestic violence found within the VAWA.⁴⁴ This freedom of interpretation creates vast differences in policy across state borders, and contributes to the difficulty of establishing protections against emotional abuse. For example, in Michigan, “46 percent of child abuse victims in 2013 suffered from emotional abuse.”⁴⁵ However, in 2013, only 1 percent of child abuse victims suffered from emotional abuse in Illinois.⁴⁶ These statistics reveal the drastic differences in policy and recognition of emotional abuse that exist between states. This state-by-state variation in domestic violence law creates an inconsistency in protection for United States citizens. In order to establish clear defenses against

⁴¹ Violence Against Women Act, 42 U.S.C. §701.

⁴² United States. Cong. Senate. *Violence Against Women Reauthorization Act of 2019*. 1st sess. Washington. Web. 3 Dec. 2019.

⁴³ Kelly, John, et al. “Emotional Abuse is Inadequately Defined and Measured.” *The Chronicle of Social Change*, 16 June 2015. <chronicleofsocialchange.org/featured/emotional-abuse-is-inadequately-defined-and-measured/10864>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

emotional abuse, it is imperative that a universal definition and policy is implemented throughout each state.

The vast differences in domestic violence policy that exist within the United States are clearly exhibited in a comparison of California and South Carolina. California is commonly referred to as a “model” state for the prevention of domestic violence. California has repeatedly taken a strict stance against all forms of domestic violence, providing clear protections for its residents. By contrast, South Carolina is a state plagued by substantial instances of domestic violence over the course of the past decade. South Carolina is known for lacking a clear direction and stance on the issue of domestic violence.⁴⁷ A comparison of these two states provides an opportunity to analyze the challenges associated with a lack of a universal definition on domestic violence, specifically emotional abuse.

The state of California presents a strict stance against domestic violence, including policies which regulate the possession and sale of firearms.⁴⁸ California domestic violence law provides an inclusive definition of domestic violence, and steps beyond that of physical abuse within intimate relationships. California law defines domestic violence as “abuse or threats of abuse when the person being abused and the abuser are or have been in an intimate relationship.”⁴⁹ This abuse within intimate relationships can include both verbal and emotional

⁴⁷ “Domestic Violence.” *South Carolina Coalition Against Domestic Violence and Sexual Assault*, www.sccadvasa.org/domestic-violence/.

⁴⁸ De Santis, Marie. “California Passes Tough New Domestic Violence Laws.” *California Passes Tough New Domestic Violence Laws*, 2001, www.purpleberets.org/violence_new_law.html.

⁴⁹ California Courts: The Judicial Branch of California. *Domestic Violence*. California, 2019.

abuse, sexual assault, harassment, stalking, or interrupting an individual's peace.⁵⁰ This definition echoes those of European nations by including protections against instances of psychological, verbal, and emotional abuse. California state laws emphasize protective and restraining orders as effective means of combatting domestic violence.⁵¹ The state of California delivers a variety of domestic violence restraining orders including, Emergency Protective Order (EPO), Temporary Restraining Order (TRO), Permanent Restraining Order, and a Criminal Protective Order.⁵² Depending on the duration and degree of trauma, restraining orders provide protection against domestic violence for a period of up to 3 years.

The California Penal Code enforces criminal penalties for domestic violence within intimate relationships. Sections 240 to 248 of California's Penal Code include the penalties of imprisonment for up to one year and a fine not exceeding \$2,000 for conviction of battery.⁵³ Under Section 273 of the California Penal Code, a felony conviction results in a fine of \$6,000 and one year in county jail or up to four years in a California state prison.⁵⁴ These criminal punishments serve as a deterrent and protection against instances of domestic violence, including that of emotional abuse. In January of 2000, California state legislators implemented a gun removal law requiring responders to domestic violence cases to confiscate firearms at the

⁵⁰ *Supra* note 49.

⁵¹ Domestic Violence, Cal. Penal Code § 240-248, 270-273

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

scene.⁵⁵ Confiscated firearms would remain in the custody of law enforcement officials if return of such weapons could jeopardize the safety of the victim.⁵⁶

California's Penal Code, firearm restrictions, and comprehensive definition of domestic violence parallel those restrictions found in nations such as France, the United Kingdom, and Ireland. Although California is considered a model state for domestic violence law, its criminal penalties are far less severe in comparison to those of European nations. In comparison to France, California lacks targeted provision of educational resources on domestic violence to younger generations. Addition of such education aimed towards younger generations would provide a powerful component to California's stand against domestic violence.

South Carolina has suffered a troubling history with cases of domestic violence and establishing secure protections against abuse within intimate relationships. South Carolina continually falls within the top ten states for domestic violence cases, specifically violence against women.⁵⁷ The rate of women killed by men surpasses twice the national average, presenting a clear illustration of South Carolina's struggle.⁵⁸ Each year, the Violence Policy Center analyzes each state and provides a detailed ranking of female homicide rates.⁵⁹ In 2000,

⁵⁵ Berhost, Kristian. "California Is A Model State For Domestic Violence Prevention And Gun Laws." *Family Justice Center Alliance California Is A Model State For Domestic Violence Prevention And Gun Laws Comments*, 6 Mar. 2017, www.familyjusticecenter.org/california-model-state-domestic-violence-prevention-gun-laws/.

⁵⁶ *Id.*

⁵⁷ *Supra* note 47.

⁵⁸ *Id.*

⁵⁹ "VIOLENCE POLICY CENTER RELEASES WHEN MEN MURDER WOMEN: AN ANALYSIS OF 1998 HOMICIDE DATA." *Violence Policy Center*, 14 Aug. 2015, vpc.org/press/press-release-archive/violence-policy-center-releases-when-men-murder-women-an-analysis-of-1998-homicide-data/.

The Violence Policy Center ranked South Carolina as number one in women murdered by men.⁶⁰ In between 2000 and 2014, little improvements in protections against domestic violence were implemented in the state of South Carolina. This lack of advancement was seen in the 2014 Violence Policy Center's ranking in which South Carolina was once again ranked highest for rates of women killed by men.⁶¹ Although not directly tied with emotional abuse, these rankings provide powerful evidence of South Carolina's violent struggle with all forms of domestic violence. The Violence Policy Center provides clear data concerning South Carolina's ranking as a state plagued with domestic violence issues, specifically those concerning men and women in intimate relationships. South Carolina's grave ranking for the past two decades in the top ten highest instances of domestic violence proves that domestic violence policy varies greatly on a state-by-state basis. It is apparent that individuals within the United States are provided with conflicting protections simply by crossing state borders.

The Charleston Post and Courier propelled South Carolina's domestic violence concerns into the national arena through an article series entitled *Till Death Do Us Part*. This series, beginning in April 2015, brought national attention to the cycle of domestic violence rapidly occurring in intimate relationships throughout South Carolina. The article series specifically highlights the rates of violence against women, providing detailed statistics: "More than three times as many women have died here at the hands of current or former lovers than the number of

⁶⁰ *Supra* note 59.

⁶¹ "Facts and Stats About Domestic Violence." *Domestic Abuse Center*, www.domesticabusecenter.net/about-domestic-violenceipv/.

Palmetto State soldiers killed in the Iraq and Afghanistan wars combined.”⁶² The Charleston Post and Courier’s article series connected personal stories to South Carolina’s pervasive domestic violence issues. This personal connection established national concern for instances of emotional, psychological, and physical abuse within intimate relationships in South Carolina. South Carolina is in desperate need of a radical change in policy surrounding domestic violence and creation of a definition which includes emotional abuse.

In response to the rise in national attention, South Carolina initiated reform through a domestic violence law in 2015. After nearly a decade of consistently ranking in the top ten states for domestic violence, it was time that South Carolina implemented change. Governor Nikki Haley signed the 2015 law to ban offenders from gun ownership and expand penalties for repeat offenders of domestic violence.⁶³ The law targets repeated offenders by initiating a lifetime ban of gun ownership, and three to ten year bans for severe offenders.⁶⁴ The 2015 law also reformed the 1976 Code definition of domestic violence to include victims who suffer from emotional abuse. Although the 2015 law targeted the gun ownership of repeat offenders, it failed to provide a comprehensive definition of domestic violence. The 2015 law did reform the 1976 Code to include victims suffering from emotional abuse in the definition.⁶⁵ However, the 2015 law lacks

⁶² Pardue, Doug, et al. “Till Death Do Us Part.” *The Post and Courier*, <www.postandcourier.com/app/till-death/partone.html>.

⁶³ Collins, Jeffrey. “Haley Signs New Domestic Violence Law.” *USA Today*, Gannett Satellite Information Network, 4 June 2015, www.usatoday.com/story/news/politics/2015/06/04/new-south-carolina-domestic-violence-law/28468829/.

⁶⁴ *Id.*

⁶⁵ H.3433.2015-2016, South Carolina General Assembly, 121st Session. https://www.scstatehouse.gov/sess121_2015-2016/bills/3433.htm

the comprehensive language utilized in European definitions of domestic violence. Unlike European Nations, South Carolina's 2015 law fails to provide direct punishments for cases of intimate emotional abuse. With a heavy focus on physical abuse and removal of gun ownership, South Carolina neglects to directly tackle the issue of emotional abuse and provide punishments such as those seen in France.

An analysis of domestic violence policy within the United States requires an examination of the cultural and religious implications found within each state. It is undeniable that religious doctrines and consequential cultural norms play a critical role in the development and enforcement of domestic violence policy. The states of South Carolina and California are drastically different in not only population density, but in the density and diversity of religious beliefs. The state of South Carolina is designated as a highly religious state, with 70% of the adult population classified as part of the Christian faith.⁶⁶ With a population of around 5 million, this statistic entails that 3.5 million individuals in South Carolina are self-identified as "highly religious."⁶⁷ The state of California, with a population of 39.5 million, is composed of 32% Protestants.⁶⁸ This means that around 12 million of California citizens identify as religious, particularly of the Protestant faith. Although South Carolina and California differ greatly in population size, it is clear that the Christian faith dominates a large sector of the population of South Carolina. This statistic undoubtedly reveals the impact of Christianity, and its doctrines, in

⁶⁶ Adults in South Carolina - Religion in America: U.S. Religious Data, Demographics and Statistics. (2015, May 11). Retrieved April 13, 2020, from <https://www.pewforum.org/religious-landscape-study/state/south-carolina/>

⁶⁷ *Id.*

⁶⁸ *Id.*

all aspects of the political society in South Carolina, particularly in the policy regarding domestic violence.

Religion serves as both a resource and barricade to the development of domestic violence policy, as well as the ability of an individual to publicly share their experiences with intimate violence. Perhaps the highly religious nature which dominates the population of South Carolina is a barrier to the development of effective policy against domestic violence. The Faith Trust Institute identified that misapprehending the doctrines found within the bible can lead to “guilt, self-blame, and suffering among victims.”⁶⁹ This misinterpretation may lead a vast majority of those individuals who suffer from intimate violence to rationalize their abuse, and refrain from seeking legal remedy. However, Ireland is considered a highly religious nation with a population predominately associated with the Catholic Church. Ireland provides proof that religious doctrine does not determine the course of action in the development of protective measures against domestic violence. By furthering the discussion surrounding domestic violence, Charlie Flanagan revealed that domestic violence policy is not hindered by the religious nature of a state. Therefore, it is apparent that the highly religious nature of South Carolina is not a key barrier to the state’s success.

CASE LAW COMPARISON

A comparison of case law in South Carolina and California represents the notable differences in the way each state rules in domestic violence cases. A clear example of South

⁶⁹ Fortune, Marie M, et al. “A Commentary on Religion and Domestic Violence.” *Faith Trust Institute*, 2010, www.faithtrustinstitute.org/resources/articles/Commentary.pdf.

Carolina's lenient domestic violence policy is found in the case of David Mark Reagan. In 2015, Charleston County connected Reagan to the death of his girlfriend, Kathy Hawkins, charging Reagan with murder and first-degree criminal sexual conduct.⁷⁰ Reagan later pled guilty for the lesser charge of voluntary manslaughter in a Charleston County court.⁷¹ Reagan's attorney, Luke Malloy, argued that Reagan's judgment was impaired due to suffering from bipolar disorder and alcoholism.⁷² Malloy asserted that outside of struggling from these afflictions, Reagan was a well-loved man in the community, and therefore, deserved a lesser charge on account of Kathy's death.⁷³ However, Reagan had a history of domestic violence and arrests, involving physical violence against previous girlfriends.⁷⁴ The court sentenced Reagan to 25 years in prison, and required that Reagan would serve at least 21 ¼ years of his sentence.⁷⁵ This case exemplifies the lack of protection for domestic violence victims, specifically those involving gender-based violence, in South Carolina. Although Kathy Hawkins lost her life at the hands of David Reagan, South Carolina's ruling would provide Reagan the opportunity to exit prison around the age of 78.

A similar domestic violence case occurred in California in 2019 involving Alberto I. Gonzalez-Peñaloza. In 2017, Alberto plead guilty to his involvement in a domestic violence

⁷⁰ Elmore, C. (2016, November 2). W. Ashley man sentenced to 25 years in strangling death of his girlfriend. Retrieved April 15, 2020, from https://www.postandcourier.com/archives/w-ashley-man-sentenced-to-years-in-strangling-death-of/article_7d512c5e-41b6-592c-a01a-e906f3ead2a3.html

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

attack on two female victims.⁷⁶ In 2019, Alberto pleaded guilty to two counts of attempted premediated murder, involving both a firearm and knife.⁷⁷ The Honorable Judge Jacqueline Duffy sentenced Alberto to two consecutive life sentences in prison, without eligibility for parole until 22 years have been served.⁷⁸ Judge Jacqueline Duffy issued this sentence in light of the devastating emotional, psychological, and physical damage that Alberto inflicted upon his female victims.⁷⁹ David Reagan was found guilty of murdering Kathy Hawkins in South Carolina and received a similar sentence to Alberto, who was found guilty of premediated murder. A comparison of these cases clearly illustrates the erratic and discretionary nature of domestic violence sentencing across state borders.

RELEVANT COURT CASES

The inadequacy of domestic violence policy within the United States is clearly illustrated in the case of *Castle Rock v. Gonzales*. This case involved Jessica Gonzales, who issued a restraining order against her ex-husband in the town of Castle Rock, Colorado. This restraining order prohibited the ex-husband's ability to see both Jessica and their three daughters. A month after the restraining order was filed, Gonzales's ex-husband violated the terms of the agreement

⁷⁶ 28-year-old sentenced to two life terms for domestic violence attempted murder. (2019, May). Retrieved April 15, 2020, from <https://www.slocounty.ca.gov/Departments/District-Attorney/Latest-News/2019/May/28-year-old-sentenced-to-two-life-terms-for-domest.aspx>

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

by abducting their three children, and later murdering them.⁸⁰ Jessica Gonzales filed a complaint in the federal District Court alleging that the police of Castle Rock infringed upon her rights found within the Due Process Clause.⁸¹ The Castle Rock police failed to adequately enforce the restraining order, and consequently failed to protect Jessica and her children under the terms of the agreement.⁸² The Supreme Court held that Jessica Gonzales' rights were not violated under the Due Process Clause as she lacked a property interest in the enforcement of the restraining order.⁸³ This case clearly represents the gravity of domestic violence within familial relationships. It also shows a clear representation of the failure of state governments to develop effective measures against all forms of domestic violence. This case also illustrates that police enforcement of domestic violence orders of protection is fallible. Due to the variability of domestic violence policy across state borders, it is plausible that Jessica would have received better protection in a different state. This further proves the necessity of creating a universal definition of domestic violence across every state border. Although a restraining order was installed, failure of the state to act in protection of that order reveals that the United States requires the development of strict, enforceable policies against domestic violence.

The impact of coercive control is exhibited in the case of Sally Challen, who murdered her husband, Richard, in August of 2010.⁸⁴ For the duration of 31 years of marriage, Sally

⁸⁰ Castle Rock v. Gonzales. 545 U.S. 748. (2005).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ "Sally Challen Campaign." *Justice for Women*, www.justiceforwomen.org.uk/sally-challen-appeal.

suffered coercive control and emotional abuse at the hands of her husband.⁸⁵ Throughout the marriage, Richard frequently enforced strict restrictions on Sally's actions, prohibited her from socializing with others without his presence, and publicly belittled her.⁸⁶ Her sons testified about Richard's constant public humiliation and criticism of Sally. In addition to public humiliation, Richard exerted full control over the family's finances, which prevented Sally from obtaining any degree of financial independence and freedom. After years of emotional abuse, Sally attempted to file for divorce and end the abusive marriage. However, after enduring emotional abuse and humiliation for countless years, Sally felt helpless and entirely emotionally dependent on Richard.⁸⁷ Sally's later brutal murder of her husband was the result of 31 years of repetitive criticism, humiliation, financial control, and verbal abuse.⁸⁸ The Court of Appeals in 2012 ignored the repetitive psychological tactics employed by Richard and found Sally guilty of murder.⁸⁹ The Court of Appeals sentenced Sally to life in prison.⁹⁰ However, after nearly a decade in prison, Sally was allowed a retrial, and was given a nine year and four month sentence with a conviction of manslaughter.⁹¹ Sally Challen's case details the gravity of emotional abuse and the necessity of its characterization as a liberty crime.

⁸⁵ *Supra* note 84.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Bettinson, V. (2019). Aligning Partial Defenses to Murder with the Offence of Coercive or Controlling Behaviour. *The Journal of Criminal Law*, 83(1), 71–86. doi: 10.1177/0022018318814362

⁹⁰ *Id.*

⁹¹ *Id.*

LIMITATIONS OF A VIOLENT-INCIDENT MODEL OF ABUSE

The current approach to domestic violence policy focuses on a violent-incident model of abuse. This approach views familial abuse in terms of separate, physically violent occurrences.⁹² Although this approach is successful in terms of targeting violent perpetrators, it fails to recognize that familial abuse does not occur in isolated instances, but in an accumulation of both emotional control and physical violence.⁹³ The violent-incident model of abuse is especially harmful to battered women for it fails to recognize long-term systems of abuse and provide legal remedy for an accumulation of offenses. The key limitations of the violent-incident model include: a focus on isolated instances, designation of severity, and instilment of fear and a feeling of subordination in victims of domestic violence.

A primary limitation of the violent-incident model lies in the focus on isolated instances of abuse. Nearly half of reported abuse is labeled as “serial abuse,” which does not occur in isolated instances, but in violent acts at least once a week.⁹⁴ A focus on isolated occasions of abuse also neglects the fact that women in abusive relationships experience abuse which is “ongoing” and occurs throughout the course of the abusive relationship.⁹⁵ This means that women are abused hundreds of times before seeking police involvement.⁹⁶ The average length of an abusive relationship is 5.5 to 7.3 years, which demonstrates the longevity of abuse and

⁹² Evan Stark (2012) Looking Beyond Domestic Violence: Policing Coercive Control, *Journal of Police Crisis Negotiations*, 12:2, 199-217, DOI: 10.1080/15332586.2012.725016.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

emotional control.⁹⁷ By focusing on isolated instances of abuse, the violent-incident model fails to recognize the long-term nature and impact of domestic violence.

A second key issue facing the violent-incident model is the way in which the system designates weight to injury. The violent-incident model assigns extra weight to abusive relationships which result in grave injuries. This model designates pushing, shoving, grabbing, etc. as “minor” acts of violence, which are then given a lower weight in the model.⁹⁸ These “minor” acts of violence are typically those experienced on a daily basis while in an abusive relationship.⁹⁹ Around 95 to 99 percent of injuries reported to police by battered women involve these “minor” acts of violence, which amount to grave long-term physical and emotional impacts.¹⁰⁰ It is through these daily acts of violence that women are made to feel inferior and incapable of seeking aid. The violent-incident model’s designation of weight to injury specifically places women at a disadvantage in the legal system when seeking aid for an abusive relationship.

The third principal limitation of the violent-incident model is the failure to provide security to victims of domestic violence seeking outside aid. Nearly 60 to 80 percent of victims who seek outside support are faced with fear tactics, subordination, and threats of assault.¹⁰¹ This contributes further to a victim’s feelings of insecurity and entrapment in an abusive relationship.¹⁰² These outside sources of intimidation and threats of assault are often mistaken as

⁹⁷ *Supra* note 92.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

a victim's "dependent personality" which prevents him or her from leaving the abuser.¹⁰³ The current system and focus on a violent-incident model limits a victim's ability to seek outside sources of assistance and support.

In order to effect change for victims of domestic violence, the violent-incident model must be amended to include long-term instances of emotional control. This new model must emphasize that abuse does not occur in isolated instances, but in longstanding encroachment on individual freedom and decision-making. This new model must first begin with a clear, universal definition of emotional abuse. Although the violent-incident model has been successful in holding abusers accountable for isolated instances, it must be reformed to tackle the repetitive, controlling nature of emotional abuse.

CREATION OF A UNIVERSAL DEFINITION

The consequences of emotional abuse have been proven to inflict devastating, lifelong effects on an individual. A study published in the *Journal of Aggression, Maltreatment, & Trauma*, revealed that emotional abuse "might, in fact, be the most pervasive and damaging type of abuse."¹⁰⁴ Although a considerable amount of research focuses on the impacts of physical and sexual abuse, strides in emotional abuse research have only recently developed in the past decade.¹⁰⁵ Shelley A. Riggs' study on childhood emotional abuse utilized the attachment theory

¹⁰³ *Id.*

¹⁰⁴ Shelley A. Riggs (2010) Childhood Emotional Abuse and the Attachment System Across the Life Cycle: What Theory and Research Tell Us, *Journal of Aggression, Maltreatment & Trauma*, 19:1, 5-51, DOI: [10.1080/10926770903475968](https://doi.org/10.1080/10926770903475968)

¹⁰⁵ *Id.*

to provide a framework of understanding the lifelong impacts of emotional abuse on secure attachment formation and adult relationships.¹⁰⁶ Adult functioning is considerably impacted by emotional abuse, leading to low self-esteem, aggression, depression, and suicidal thoughts.¹⁰⁷ Through the attachment theory, the effects of emotional abuse are shown to impact interpersonal skills, intimacy in adulthood, and the development of poor coping strategies.¹⁰⁸ Although not visible to the naked eye, the effects of emotional abuse within the family unit form profound impacts on adult relationships and skills necessary to navigate everyday life.

Current definitions of emotional abuse lack concreteness, focus only on examples, and emphasize the outcomes of emotional abuse, rather than defining the overall abuse itself.¹⁰⁹ In order for a definition of emotional abuse to be universally applicable, it must step beyond simply addressing isolated instances and assumed features of emotional abuse. A clear definition of emotional abuse must include both social and cultural contexts.¹¹⁰ O'Hagan clarifies the necessity of cultural context, "Behavior is considered psychologically abusive when it conveys a culture-specific message of rejection..."¹¹¹ The difficulty of creating a definition is further exacerbated by the fact that abusive behaviors and patterns differ between cultures and societies. What is considered abusive in one country may be considered a key aspect of cultural growth in another.

¹⁰⁶ *Supra* note 104.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ O'Hagan, Kieran P. "Emotional and Psychological Abuse: Problems of Definition." *Child Abuse & Neglect*, U.S. National Library of Medicine, Apr. 1995, www.ncbi.nlm.nih.gov/pubmed/7606523.

¹¹⁰ *Id.*

¹¹¹ *Id.*

A universal definition of emotional abuse must focus on the repetitive and recurring nature of emotional control in intimate and familial relationships. Emotional abuse results from a repetitive system of inappropriate reactions, which creates a coping mechanism in the victim of emotional suppression and anxiety.¹¹² For the purposes of this paper, I will reinvent O'Hagan's definition of emotional abuse in childhood in an applicable manner to adult intimate and familial relationships. A universal definition of emotional abuse should include the following:

“Emotional abuse is the sustained, repetitive, inappropriate emotional responses to a partner which negatively impacts an individual's sense of autonomy and freedom.”¹¹³ A key aspect of emotional abuse within adult familial and intimate relationships is its recurring, long-term, and sustained nature. The effects of emotional abuse are not created in isolated instances, but in frequent instances of emotional suppression and inappropriate responses.¹¹⁴ Therefore, an appropriate universal definition of emotional abuse is one that recognizes repetitiveness and focuses on the consequential suppression of emotions.

TO WHAT EXTENT SHOULD EMOTIONAL ABUSE BE CRIMINALIZED?

A clear, substantive definition of emotional abuse, such as that provided by O'Hagan, establishes the framework for the criminalization of emotional abuse in a legal context. The remaining difficulty lies in determining how and to what extent emotional abuse should be criminalized. Policymakers are primarily concerned with the difficulty of legally proving

¹¹² *Supra* note 109.

¹¹³ *Id.*

¹¹⁴ *Id.*

emotional abuse, prosecuting such abuse in court, and controlling the degree to which emotional abuse can be criminalized. It is also challenging to determine how emotional abuse should be criminally labeled and what degree of punishment should be given to perpetrators. Though these are arduous tasks to resolve, emotional abuse can no longer be ignored in domestic violence policy. It is critical to enact change and provide victims of emotional abuse with the legal remedy and policy action they deserve.

In the *International Journal for Crime, Justice, and Social Democracy*, Sandra Walklate proposes that emotional abuse should be criminally labeled as a liberty crime, which affects an individual's mental wellbeing, social freedom, and personal growth opportunities.¹¹⁵ While assault and intimate partner violence is generally viewed in terms of isolated instances, a liberty crime is one that affects an individual's freedom for an extended period of time.¹¹⁶ Unlike physical forms of abuse, emotional abuse is prolonged across familial relationships and cannot be criminally prosecuted in terms of separate events.¹¹⁷ Viewing emotional abuse as a liberty crime, encourages criminal justice professionals to take a comprehensive, rather than isolated, view of familial relationships. A liberty crime incites criminal justice professionals to recognize the cumulative effects of emotional abuse which occur on an everyday basis. Walklate details the benefits of viewing emotional abuse as a liberty crime within the court system:

“These potentialities range from the use of coercive control in expert testimony in court

¹¹⁵ Walklate, Sandra. “The Criminalisation of Coercive Control: The Power of Law?” *The International Journal for Crime, Justice, and Social Democracy*, 2019.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

proceedings to its use as a specific defense for action taken, particularly in cases of homicide, as a constituent element of specific offences, and as a specific criminal offense in its own right.”¹¹⁸

The labelling of emotional abuse as a liberty crime in the criminal justice system provides a means for stepping beyond the traditional focus on the violent-incident model. A liberty crime further encourages the legal protection of individual freedom from intimate partner violence and establishment of emotional abuse as a sustained and repetitive form of manipulation.

A primary concern in the criminalization of emotional abuse is the provision of proof and evidence in order to obtain legal remedy. In response to this challenge, I offer the United Kingdom Home Office’s Statutory Guidance Framework for Controlling or Coercive Behavior in an Intimate or Family Relationship as a powerful guiding tool for the development of policy against emotional abuse in the United States. The statutory guidance framework, developed in December of 2015, not only establishes emotional abuse as a recurring form of coercion, but also acts as a powerful resource for law enforcement officials and provides potential sources of evidence to be utilized in court. The statutory guidance framework begins by outlining the development of emotional abuse within intimate relationships. The framework requires that the victim of emotional abuse must:

¹¹⁸ *Supra* note 115.

“Fear that violence will be used against them on at least two occasions,” OR “they have been caused serious alarm or distress which has a substantial adverse effect on the victim’s usual day-to-day activities.”¹¹⁹

The statutory framework also proposes that the perpetrator must possess knowledge of the emotional coercion, or that the perpetrator should simply “ought to know.”¹²⁰ The framework also mandates that the victim and perpetrator must be personally connected in some manner, which could include being in an intimate relationship, residing together, or being in a previous relationship. Although this statutory framework may appear lackluster and simple in nature, it is necessary to have a clear understanding of what restrictions should be made regarding the criminalization of emotional abuse.

The United Kingdom Home Office’s Statutory Guidance Framework provides a detailed list of forms of evidence, as well as types of emotionally controlling behavior that should be provided legal remedy. Although not an exhaustive list, the framework’s guidance eradicates the primary concern among policymakers of lacking evidence. This list includes copies of emails, phone records, text messages, coercion through social media platforms, video footage, voice recordings, medical records, witness testimony, bank records, etc. In addition to these, testimony from neighbors and other close family and friends could aid in the establishment of emotional abuse. Furthermore, the Statutory Guidance Framework outlines types of behavior that fall beneath emotional abuse. These behaviors can include time monitoring, monitoring online and

¹¹⁹ *United Kingdom Home Office (2015). Controlling or Coercive Behavior in an Intimate or Family Relationship: Statutory Guidance Framework. United Kingdom.*

¹²⁰ *Id.*

social media communication, isolating a victim, eliminating access to financial and medical resources, threats to publicize private information, etc. The Statutory Guidance Framework's list of behaviors and forms of evidence provides a powerful starting point for criminalizing emotional abuse. Although emotional abuse increases the difficulty of establishing proof, there are nonetheless sufficient examples of evidence that may be utilized in the legal context.

CONCLUSION

European nations revolutionized the concept of domestic violence, beginning with France, which established criminal statutes directly prohibiting emotional abuse in 2010. Following France, Ireland furthered these protections by initiating a conversation around coercive control and increasing protections from perpetrators of emotional abuse. The current perspective on domestic violence in the United States focuses on a violent-incident model of abuse, which views domestic violence in terms of isolated instances involving physical harm. Unlike the European model, the United States violent-incident model neglects to recognize long-term systems of abuse, which directly impact a victim's liberty to act autonomously from their abuser. It is necessary that the violent-incident model is altered to provide protections for those individuals suffering from longstanding, repetitive occurrences of emotional control.

In order to follow the models found in European nations, the United States must take steps to develop a new national approach to defining and protecting victims from all forms of domestic violence. This new model must emphasize that emotional abuse does not occur in isolated instances, but in long-term encroachment upon an individual's freedom. This model relies on establishing a universal definition of emotional abuse as a repetitive system of

inappropriate emotional reactions. Emotional abuse should be characterized as a liberty crime, which impacts an individual's mental wellbeing, social freedom, and personal growth opportunities over an extended period. Criminal justice professionals must take a comprehensive approach to domestic violence and be sensitive to the accumulation of abuse, which occurs over time in familial and intimate relationships.

Critiques of including emotional abuse as a form of domestic violence argue that there is a lack concrete evidence. Since emotional abuse lacks the scars of physical harm, critiques argue that such forms of abuse would be challenging to prove in the courtroom. However, the United Kingdom Home Office's Statutory Guidance Framework provides copious amounts of evidence that can be utilized in a legal setting to prove emotional abuse. These forms of evidence include emails, phone records, text messages, coercion through social media, among others.

It is time for the United States to create a comprehensive universal definition of domestic violence, which includes emotional abuse, to ensure equal protections across state borders. As evidence in the case of *Castle Rock v. Gonzales*, the current freedom for states to interpret federal domestic violence policy provides opportunity for lenient stances. Although emotional abuse lacks the scars of physical harm, its limitations on a victim's freedom produce longstanding, detrimental effects. The United States must mirror the approach of European nations and criminalize emotional abuse as a liberty crime, which encourages a comprehensive approach to domestic violence and acknowledges that violence can occur in unseen forms of freedom limitation and emotional control.

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