Intimate Partner
Violence and the Criminal
Justice System
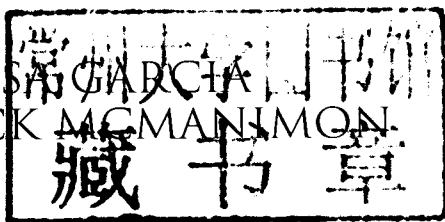
GENDERED
JUSTICE

Venessa Garcia and Patrick McManimon

GENDERED

JUSTICE

INTIMATE PARTNER VIOLENCE
AND THE CRIMINAL JUSTICE SYSTEM

VENESSA GARCIA
AND PATRICK McMANIMON

ISSUES IN CRIME & JUSTICE

Series Editor

Gregg Barak, Eastern Michigan University

As we embark upon the twentieth-first century, the meanings of crime continue to evolve and our approaches to justice are in flux. The contributions to this series focus their attention on crime and justice as well as on crime control and prevention in the context of a dynamically changing legal order. Across the series, there are books that consider the full range of crime and criminality and that engage a diverse set of topics related to the formal and informal workings of the administration of criminal justice. In an age of globalization, crime and criminality are no longer confined, if they ever were, to the boundaries of single nation-states. As a consequence, while many books in the series will address crime and justice in the United States, the scope of these books will accommodate a global perspective and they will consider such eminently global issues such as slavery, terrorism, or punishment. Books in the series are written to be used as supplements in standard undergraduate and graduate courses in criminology and criminal justice and related courses in sociology. Some of the standard courses in these areas include: introduction to criminal justice, introduction to law enforcement, introduction to corrections, juvenile justice, crime and delinquency, criminal law, white collar, corporate, and organized crime.

TITLES IN SERIES:

CONTENTS

CONTENTS

1

GENDERED JUSTICE

The Social Construction of Womanhood and Intimate Partner Violence

Intimate partner violence and sexual assault are the most common female-gendered victimizations to occur in any society. As official and self-report data have demonstrated, these crimes are most commonly male on female (Catalano, Smith, Snyder, & Rand, 2009; Federal Bureau of Investigation, 2008) and can involve physical and sexual violence, as well as financial and psychological abuse. While intimate partner violence undoubtedly involves a prior victim/offender relationship, sexual assault may often involve a stranger attack. However, we have long learned that violence against women, including sexual assault and intimate partner violence, is more likely to involve men who are known to them, either as acquaintances, family, or current or former intimate partners.

National facts about intimate partner violence reveal that 4.3 per 1,000 females age twelve or older are victimized, over five times more than males (Catalano, et al., 2009). Additionally, 99 percent of all cases are committed by male offenders. Further, black females are more likely to be victims of intimate partner violence than white females and are twice as likely to be victims of intimate partner violence homicide. The nature of the intimate relationship is also not as dramatic a determinant of the violence. For example, spouses or ex-spouses were the perpetrators in 24 percent of female homicide victimizations; however, boyfriends or girlfriends were the perpetra-

tors in 21 percent of female homicide victimizations. Interestingly, our social constructs paint a picture of the white, older female victim as a middle-income earner, a good mother, and an individual who has done all in her power to please her abuser and to secure protection via the criminal justice system.

Yet, for all of her efforts to stop the violence, social constructs tend to trump social status and make it nearly impossible to achieve victim status. First, it is important to note that our social constructs demand that victims of intimate partner violence experience extreme violence to be truly recognized as innocent. Second, though sexual assault is frequently involved (Belknap, 2007), victims of intimate partner violence who claim to have been raped by their abusers are often accused of lying in order to get even. Third, intimate partner violence victims are guilty (i.e., victim blaming) until proven innocent. Intimate partner violence victims are required to explain why the violence against them has occurred and why they did not stop it. While females who possess master statuses are more likely to be awarded the victim role, social constructs of the violence itself trump their master statuses.

Historical practices have allowed for the husband to chastise his wife and to expect, even force, conjugal relations. These traditional views place the blame on the wife for stepping out of place. Unfortunately, these historical gender ideologies still influence current gender ideologies. So, when we ask, "Why does she stay?" we place the blame on the victim. Current research finds that social constructs still hold women responsible for the dynamics within intimate relationships (Hust, Brown, & L'Engle, 2008).

Social constructions have created an *ideal victim* of intimate partner violence. In addition to requiring victims of intimate partner violence to express no blame, they must also display attempts to stop the violence. Intimate partner violence victims must be good women, passive women; however, they must also demonstrate a level of resistance, lest they be accused of liking the violence. Resisting the violence is necessary to show lack of consent, yet too much resistance reveals the victim to be aggressive, thereby redefining the crime as *mutual combat* (Grady, 2002; Straus, 1990; Straus & Gelles,

1986). Hence, the social construction of intimate partner violence creates paradoxes that make it difficult for victims to obtain help. The good woman is the deserving victim (i.e., deserving of justice and help). Good women are passive, yet intimate partner violence victims must resist. The good woman stands by her man for better or worse but must simultaneously try to escape the violence. However, if she stays with her man out of devotion or dependency, as is the expectation of the good woman, then she likes being abused.

INTIMATE PARTNER VIOLENCE: A HISTORICAL PERSPECTIVE

Imagine you are a man or woman living in the United States of America of the 1780s. What does your life look like? As a man, what are your gender role expectations, what responsibilities do you have toward your family, and do you have the right to physically chastise your wife? As a woman, what are your gender role expectations and your familial responsibilities, and do you have the right to sue for physical violence perpetrated by your spouse? The legal history of the United States is premised in English common law. Some have claimed that in 1780s England Judge Sir Francis Buller stated that a husband can physically discipline his wife, even with a weapon; however, if he uses a stick, it cannot be thicker than his thumb. This became known as the *rule of thumb*. Many claim, however, that there is no written reference to this statement in English common law. Unfortunately, the English idea or social construct of the husband's rights was adopted into United States legal practice, thus shaping the approach to intimate partner violence within this country.

Now imagine it is 1824, and you have been physically abused by your husband. You seek legal recourse in order to protect yourself from the violence. However, the court rules that a husband has the right to physically chastise his wife, though in moderation (Boston Public Health Commission, 2009, as cited in *Bradley v. State*, 1824). Again, while one would be hard-pressed to find written reference to Sir Francis Buller's rule of thumb, it is nonetheless officially ref-

erenced in U.S. court decision making. Intimate partner violence at the hands of your husband is officially sanctioned.

Traveling forward fifty years in U.S. progression, you once again attempt to gain legal protection against physical abuse by your spouse. Fortunately, at least in one state, the courts now officially give women protection from spousal abuse (*Fulgham v. State*, 1871). Unfortunately, the criminal justice system refuses to enforce this ruling, because social constructs of the husband's rights and the woman's place are culturally ingrained. Stepping back to see the larger picture of intimate partner violence in the United States, one can travel eight years forward in time and find that North Carolina has ruled that a husband cannot be held criminally responsible for assaulting his wife, unless the violence was cruel in nature or caused permanent damage (*State v. Oliver*, 1879), reinforcing the rule of thumb doctrine.

One hundred years later you are still being abused, and the criminal justice system still refuses to recognize the violence as a crime, even when courts rule otherwise. Not until the 1970s does change start to take hold of the country in terms of recognizing women as victims of a social problem. How is such violence allowed to persist in a nation where "all men are created equal" and where everyone has the "inalienable right to life, liberty and the pursuit of happiness"? The answer, not so simply stated, is because our culture is based on social constructions of gender that result in inequality and that drive the processes of every institution within the nation. As a result, the United States has developed a *gendered justice* in which men have more rights and recognized agency than do women.

In this book we examine intimate partner violence within the context of gendered justice. We approach this subject through the social constructionist framework. This chapter will lay out the framework of social constructionism; define various important concepts; and place social constructionism in the current historical, legal, political, and social context. This chapter will outline gendered justice as a reflection of the larger U.S. culture. The first part of the book will examine the scope of intimate partner violence, legal reform surrounding responses to intimate partner violence, cultural myths, and victim blaming. In the second part of the book, the re-

sponses of law enforcement, courts, corrections, and communities are examined. The book concludes with a chapter that examines the implications of social constructs of intimate partner violence.

On February 9, 2009, pop star Rihanna (21) was brutally beaten by pop star Chris Brown (19) (Leonard, 2009). For days, the news media released pictures of a bruised and battered Rihanna, who was brutalized by her much stronger fiancé. Rihanna was hospitalized and Chris Brown was arrested. Both the victim and offender were African American and would typically not warrant newsworthy status; however, since both were famous cultural icons, the story was covered by the media for weeks. Initial reactions were shock and disappointment, but after a period of time, it was revealed by the media that Chris Brown had physically assaulted Rihanna in the past. People started to ask why she had stayed in the relationship. In fact, a survey of Boston youth revealed that almost 50 percent of the two hundred youth surveyed believed that violence was normal in relationships (Boston Public Health Commission., 2009). Newspapers reported that most of the youth blamed Rihanna for the violence (Boston Public Health Commission, 2009 as cited in Leonard, 2009). Over time, Rihanna was scrutinized for allowing the violence to escalate and for eventually going back to Chris Brown. According to *Good Morning America*, Hollywood was shocked that she returned to Chris Brown (Barsky, 2009). By returning and putting herself back into a violent situation, Rihanna lost a bit of sympathy. And while Chris Brown made a televised public apology, the news media continued to refer to the case as "the alleged" beating, providing a hint that perhaps Rihanna was not as innocent as she claimed.

GENDERED JUSTICE

Gendered justice is a form of justice within most societies that is structured by a patriarchal organization of society. *Patriarchy* is the organization of a society in which power and dominance run down the male line of the family. This results in male dominance over women in the society. Patriarchal societies vary in degree of dominance. In any given society at any given time, males may have total power and control over women, or their dominance may only be slight, approaching an equalitarian society. In any case of patriarchal structure, gender inequality persists and women are oppressed.

Legal, political, and social discourse have examined the status and treatment of racial, religious, and age groups and have concluded that, historically, these groups have been discriminated against. Additionally, discourses on gender inequalities have recognized the inequality of women. However, what has been lacking within these discourses is the recognition of cultural influences and social constructs as the ideological foundations of each institution within our society. Hence, while the United States Declaration of Independence claims that "all men are created equal," in recognizing the existence of a gendered justice, we must necessarily deconstruct what our founding fathers meant by "men."

In their use of written and spoken English language, many today still opt for the universal "male" to represent all individuals. However, legal language and cultural constructs tell us that the founding fathers were in fact referring only to men, and not to women or children. In addition, they were referring only to males eighteen years of age or older who were white landowners. Hence, social constructs of those individuals who had the "inalienable right to life, liberty, and the pursuit of happiness" did not include women, children, or racial, ethnic, religious, or economic minorities. Legal reform that finally recognized these groups as part of the "universal male" (i.e., the *law on the books*—as it is written) came as a result of cultural change, or changing social constructs. However, research shows that the *law in action* (i.e., as it is practiced) still socially constructs the "universal male" as an adult male, white, middle to upper income, and of a Christian religion.

Understanding the fact that there is no universal male, how do we interpret discourse within our criminal justice system? We must examine our hegemonic ideologies. *Ideology* is "a body of ideas reflecting the social needs and aspirations of an individual group, class, or culture" (Pincus, 2008, p. 19), while *hegemonic ideologies* are those ideologies that dominate within a society. Furthermore, hegemonic ideologies are necessarily held by the dominant members of any given society. Within the United States the dominant groups are male, white, middle to upper income, adult, heterosexual, and Christian (but mostly Protestant). These ideologies map

out a society's ideas of work, family, culture, race, gender, and so on. Thus, in order to understand how and why a society functions the way it does, we must necessarily understand society's ideologies. As ideologies explain social behaviors and arrangements, we must examine race ideologies, income and work ideologies, age ideologies, religion ideologies and, most important to intimate partner violence, gender ideologies. As we see with the exclusion of so many groups with regard to equal rights throughout our history, it is also important to consider the *intersections* of these ideologies, as not all women are treated equally.

When examining any issue within our gendered justice system, we must understand our current ideologies and how they are influenced by the historical context. As stated earlier, racial, economic, and religious minorities were not considered to be part of the "universal male," and they were defined and treated as noncitizens or second-class citizens.[1] Women, on the other hand, have historically been defined as being an extension of their fathers or husbands. While the previous groups tended to be excluded and mistreated according to race, class, and religion ideologies that proclaimed their inferiority, women were treated as second-class citizens in order to protect them from the dreads of society, and even from themselves. And since women were not considered rational enough to make these decisions, especially legislative decisions, the legal system was governed by males holding gender ideologies and using a male lens.

Early gender ideologies affirmed that women's place was within the realm of the family, where they were to be docile but where they managed the household under the rule of the husband. Women's domain was the home, or the *private sphere*, while men's domain was the workforce, or the *public sphere*. While legal, financial, and disciplinary decisions were made by the husband, the woman was responsible for childbearing and child rearing. In order to enable the maximum functioning of this gender structure, American justice treated men and women differently.

Early American legal language was *gender specific*, in that laws were written specifically proscribing or prescribing the rights and responsibilities or the treatment of a specific gender. For example,

early laws excluded women from various work industries, such as law enforcement and legal practice, from owning property or income, and from voting, and did not classify intimate partner violence as criminal assault. The legal system included mostly *gender-neutral laws*; that is, they were written without preferential treatment toward any specific gender. They were written to include both men and women. However, within a gendered justice system, the implementation of these laws was often gender specific, discriminating against women.

The gendered nature of justice is indisputable when examining American history. One can use the various examples of women's movements, which secured women's rights to vote, divorce, gain child custody, own property, work, and gain recognition as criminal victims of intimate partner violence, as evidence of a gender-specific justice. Many like to think that since activists succeeded in changing most gender-specific laws to gender-neutral laws, there is no more sexism in our society, especially not in our justice system. In other words, "the fight was won; now let's move on." However, this is far from the truth. Research has revealed that in the last several decades, gendered justice, which is based in gender ideologies, has become more egalitarian, yet patriarchy and sexism are still embedded in it today (Belknap, 2007; Garcia & Schweikert, 2010; Naffine, 1987). This persistence is revealed in the social construction of gender within our culture. This social construction drives our ideologies, which in turn drive our institutional functioning.

SOCIAL CONSTRUCTIONISM

Gendered justice is a reflection of culturally agreed–upon ideas of the roles of men and women in our society. These cultural ideas are known as social constructs and are defined in the social constructionism perspective. According to *social constructionism*, our reality, our society, and our culture are created in a continual process of interaction, *making*, and *doing* (Acker, 1992; Berger & Luckmann, 1966; Garcia & Schweikert, 2010; Grossberg, Wartella, & Whitney, 1998).

The social construction of reality is a process in which people give meaning to all interactions, behaviors, and conditions and claim them to be *essential* to reality (Garcia, 2008; Loseke, 1999; Surette, 1998).

Essentialism claims that statuses and situations are inherent in our reality. Thus, women make less money in the workforce because they are less capable by nature. Social constructionism, however, claims that through interaction we create the conditions of women in the workforce by socially constructing images of women as less capable, less competitive, and less rational. These constructs are then defined as essential, or inherent, in women. On the other hand, we socially construct images of men as more capable, more competitive, and more rational. The images we socially construct are generalized in order to gain a better understanding of the individuals who belong to the grouping under consideration. Thus, the images that are generalized to all men or all women are generalized and specifically applied to individuals in a given interaction.

In addition to generalizing, social constructs are also categorized and typified into groupings in order to simplify complex situations. Through interactions we internalize meaning, then act accordingly. According to Berger and Luckmann, the individual "simultaneously externalizes his *or her* own being into the social world and internalizes it as an objective reality" (1966, p. 129, italicized text added). So we internalize the categories and give meaning and value to these categorizations. It is important to understand that members of the categories do not have to be observed to be given meaning and value. The process of generalization via socialization can occur through hearsay or media exposure (Hust, et al., 2008; Kukkonen, 2008). One category becomes the basis for understanding a gender or a race or a class. This category becomes the standard for which behaviors, beliefs, and conditions are most preferable to society. This is the standard to which all different categories are held. If different categories do not equate with the standard, then they are seen as deviant. Over the course of time these standards become normal to society, or the norm.

Norms within our social constructs are significant to our interactions. Those social categories that become the standard for

a social group become the norm, while different groups become *other* (Rosenblum & Travis, 1996). Thus, for gender the norm is male, for race the norm is white, for class the norm is wealth, and for age the norm is adult. We also extend these constructs to religion, setting the norm within the United States as Christianity; to nationality, with American as the norm; and to sexuality, with heterosexual as the norm. Within this analysis of interpersonal violence, heterosexuality is a primary concern of society.[2] To be *othered* is to be defined as wrong or as deviant. Among some social groupings it is the affiliation with the category itself that makes the members deviant. For example, Black and Hispanic males tend to be viewed as deviant in criminal and economic institutions. Muslims are assumed to be terrorists, and youth tend to be defined as deviant, i.e., as criminals in training.

Social constructs become ingrained into culture through the process of socialization and are reinforced via daily interaction. As a result, the *making* of constructs requires the *doing* of constructs and thus allows for changes of these same constructs over time (Acker, 1992; Garcia & Schweikert, 2010; Grossberg, et al., 1998). *Doing* requires that people behave according to the expectations of their gender, race, class, and so forth. Feminist theory has claimed that men and women must *do gender* on a day-to-day basis or face rejection (Acker, 1992; Belknap, 2007; Garcia, 2003; Garcia & Schweikert, 2010; West & Fenstermaker, 1993). As a result, women and men must behave according to culturally prescribed gender roles. Gender roles are so fundamental to culture that prescriptions (i.e., behavior and beliefs one shall engage in) and proscriptions (i.e., behavior and beliefs one shall not engage in) are codified by our legal system. People who do not *do gender* are not considered to be good men or good women. They may face social ostracism or an increased severity of criminal punishment when in violation of a law (Keitner, 2002).

It would be simplistic to believe that all that is expected is to *do gender*. As discussed above, society prescribes behaviors and beliefs for other master statuses, as well. Master statuses are positions one holds that define who the person is. They are important to one's self-

identity and to how society defines a person. As a result, people must also *do race*, *do class*, and *do age*. Master statuses are also primary within our ideologies. Since any one person holds a master status in each of these social groups, we can then argue that we *do culture*.

The ideologies that drive our understandings of race, class, and age provide social constructs that place people within hierarchies, much like patriarchy does with gender. Unfortunately, the meanings we link to social constructs place the norm at the top of the hierarchy and the *other* below the norm, with some groups at the very bottom. Hierarchies are framed within systems of social difference and determine the distribution of power and resources. Those at the top of the hierarchy obtain and retain the most power and resources, while the *others* fight to possess what is left. These *others* become marginalized (the normative group being central) and are known as oppressed groups. However, people can possess more than one marginalized status. This is referred to as *multiple marginality*. For example, a female may be African-American, poor, and young. While a male represents the gendered norm, he may be a Hispanic immigrant. These social facts require that we examine how the intersections between master statuses (i.e., the multiple marginalities) and intimate partner violence affect these individuals.

Social Construction of Womanhood

Before we begin our discussion of intersections and intimate partner violence, we must examine the social construction of womanhood, whose formation began during the colonial era. Colonial America brought images of gender, work, and family, as well as common law, from Europe. Among the many constructs of gender was the ideology that a woman's place was with the family, while a man's place was to protect and financially provide for the family. This is referred to as the separate spheres ideology. This ideology places women in the private sphere (i.e., the home and family) and men in the public sphere (i.e., work and politics). In agricultural societies these duties were often fulfilled at home, with men taking the primary responsibility of interacting with the public sphere