BARELY LEGAL: A Human Rights Approach to Domestic Violence

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Correction appended

Freedom from domestic violence is a human right that all people are entitled to. Although domestic violence is typically viewed as a private matter, international standards reevaluate domestic violence as a violation of fundamental human rights that governments and the public at large have a responsibility to address. The United States and communities across the country need to follow suit.

Watching the NFL try to address domestic violence has been nothing short of a train wreck. Earlier this year, running back Ray Rice was suspended for two games for knocking out his fiancée in an elevator. There was no public outcry. After all, this was only domestic violence, not something serious like marijuana or steroid use. It was only after the video was released of Rice punching his fiancée in the face so hard that she fell to the floor unconscious that the media and public became outraged. While it became brutally clear that the NFL didn’t take domestic violence seriously, what also became clear is that the public failed equally in this regard. The video of Ray Rice showed the brutal ugliness of domestic violence that was so easy to sweep away before. Neither the NFL nor the public should have needed to see that video to be outraged. Were we expecting a video of a women getting knocked out by an NFL player to look differently? Less violent?

By disconnecting domestic violence from the cruel reality, we are doing a disservice to survivors. In Tompkins County alone, approximately 150 domestic violence cases are reported per year, yet many survivors often don’t report the abuse to the police for fear that their claims won’t be taken seriously or that they will be harmed further. According to the Department of Justice, only about half of all domestic violence crimes are prosecuted to conviction, and less than one fifth of those result in a felony conviction. And survivors of domestic abuse are not the only ones harmed: The National Coalition Against Domestic Violence reports that children who grow up in homes with domestic abuse are more likely to abuse or be abused in the future.

The importance of a human rights approach to the issue of domestic violence is illustrated by the case of Jessica Lenahan. On June 22, 1999, in Castle Rock, Colorado, Lenahan’s abusive ex-husband took their three daughters without permission, in violation of a restraining order. Throughout the night, Lenahan called the police multiple times, provided them a copy of the order, gave them information about where her husband and children were, and even went to the police station to beg for help, but the police did nothing to find her children. That night, Lenahan’s ex-husband went to the police station and opened fire on police officers. After the gunfight ended, the officers discovered the dead bodies of the three children in Lenahan’s ex-husband’s truck. Even though Lenahan had done everything possible to persuade the police to enforce the restraining order, the police made no effort to find her children and bring them home.

Lenahan’s situation is indicative of a systemic problem across the country. Local authorities need to understand the gravity of domestic violence and be prepared to effectively prevent and respond to it. If the police had the proper training, knowledge, and experience, the situation could have ended much differently. Perhaps the police would have responded immediately to Lenahan’s first call and those three little girls would still be alive today.

Lenahan sued the town of Castle Rock for failing to enforce the restraining order against her ex-husband, arguing that their inaction violated her due process rights. Although the actions of the police were clearly inadequate and led to the deaths of her three children, the Supreme Court ruled that there was no violation of Lenahan’s constitutional rights.

Following this ruling, Jessica Lenahan brought her case to the Inter-American Commission on Human Rights, a regional human rights tribunal. Unlike the Supreme Court, the IACHR found that the United States’ failure to protect Lenahan and her daughters from domestic violence violated their human rights.

Framing freedom from domestic violence as a human rights issue shows how important it is for governments to protect individuals from so-called “private” acts of violence. It also recognizes that domestic violence is a societal problem that requires a societal solution, the first important step in moving this issue from the private sphere. The human rights framework empowers survivors, as it recognizes that they are not only victims with needs but also individuals with rights to which they are entitled.

Twelve communities across the country, including Boston and Albany, have passed resolutions declaring freedom from domestic violence a fundamental human right. Cornell Law School’s Global Gender Justice Clinic, together with the Advocacy Center, is seeking the passage of a similar resolution for in
Tompkins County. The purpose is simple: increase public understanding of domestic violence, provide better services to survivors, give law enforcement new tools to support their efforts and ensure that the County’s response to domestic violence takes into account survivors’ voices and needs. Tompkins County has the opportunity to become a regional leader in a national movement by recognizing freedom from domestic violence as a human right.

Correction: A previous version of this article stated that police had found that Lenahan’s ex-husband had killed their three children, when in fact the officers had discovered the bodies of the victims in the back of Lenahan’s ex-husband’s truck.

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