Title: Privacy, Rights, and Wife-Beating: Understandings of Interpersonal Violence in Post-Revolution America
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The American Revolution, one of several revolutions to stem from the Enlightenment, brought profound changes to both the political and social organization of the former colonies and their citizens. At the intersection of these two changes lies the social and legal status of women and dependents, as well as the legal treatment of violence. In her paper “The American Revolution, Wife Beating, and the Emergent Value of Privacy,” Ruth H. Bloch argues that changes in both cultural and political (e.g. legal) definitions of privacy gave husbands more power to physically abuse and assault their wives. Bloch’s argument, however, fails to deal with the broader patriarchal norms that led to the devaluation of spousal abuse.

Contrary to Bloch’s implication, the expansion of privacy and the change in the treatment of interpersonal violence presented a positive step for the nascent nation. A discussion of the inconsistency of these legal understandings, the criminalization of assault, and patriarchal norms underlying both regimes of law for battered women shows that this reinterpretation of English common law resulted in fewer avenues of legal recourse for battered women. The changes can be attributed more to societal norms than the actual changes in law.

Social conventions about the right of privacy at the time of Bloch’s analysis, the years before the revolution, were not well established. The division that was emerging between the public and private sphere was incomplete at best.¹ Before the American Revolution, there was little importance placed upon sorting out these various (future) constitutional issues. The understanding that emerges in the wake of the Revolutionary war insists that familial privacy and bonds are not only desirable, but preferable to the claims of state intervention that previously prevailed.² Aside from this uncertainly in societal perceptions, there was, throughout the period

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² ibid
Bloch discusses, no certainty among British or American legal scholars over the status of any of these legal doctrines; even Bloch herself points out that the vaunted “constitutional right to privacy” has only been a viable legal doctrine for a few decades, having been brought to life by another US Supreme Court ruling.

The shifting ground of what authority a household head had on his dependents was evident in looking at colonial and pre-colonial legal documents. While historians previously considered there to be an established right to physically “chastise” a disobedient wife, English common law documents from the late 1600s onward clarified that the powers of men over their wives simply extended to “admonition and confinement”, but explicitly not beating. Another English legal doctrine seemed to exclude women from a list of dependents that could be beaten overall. These doctrines, however, were couched as a description of not the rights that women actively have as their own, but the rights that the law has decided to withhold from men, demonstrating the underlying social assumptions of the law. These underlying assumptions and their effect on the early American woman will be discussed later.

Even after the American Revolution, we saw this increasing formalization and criminalization of acts like assault and battery, but it did not extend to the realm of domestic crimes. One of the stranger things about Bloch’s argument, with regards to the expansion of the sphere of familial privacy, is that she uses a major outlier in the American jurisprudence to argue that the courts had expanded the rights of men to abuse their wives on a broader basis. The 1824 Bradley v. State Mississippi Supreme Court decision, a case prompted from Calvin Bradley’s

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3 Ibid, pg 226
4 Ibid, pg 230
5 Ibid, pg 230-1
6 Ibid, pg 230
7 Ibid, pg 242
appeal of a lower court decision sanctioning him for abusing his wife\textsuperscript{8}, crafted a sweeping legal protection for wife beating (as long as the woman ‘provoked’ him and the response was ‘reasonable’). This was a particularly unusual decision to highlight because it \textit{misquoted} the English legal precedents it used as a basis for this protection\textsuperscript{9}, and crafted an interpretation that was essentially ignored by other courts of similar or higher stature in the US court system.\textsuperscript{10} This ruling, used by Bloch as a major example of the courts sanctioning spousal abuse on the grounds of familial privacy, is actually more an example of how a still-ambiguous legal regime on spousal abuse came to be interpreted through a patriarchal lens not inherent to the law itself, as Bloch argues.

Another one of the major changes in the post-revolutionary era was the change in the treatment of assault and interpersonal violence. In the English colonial tradition, the legal system’s classification of the severity of violence essentially used the crown as a locus. Violence that was judged to affect the subject’s ability to serve the king, such as murder, was the only sort of violence that was deemed worthy of strong criminal prosecution.\textsuperscript{11} Regular assaults and violence generally were treated as crimes not worth prosecuting at the state level, so much as a civil matter between individuals.\textsuperscript{12} The placement of wife-beating inside of this framework, under the umbrella of crimes against the public (hence the justice-of-the-peace route of legal remedy), reflected an understanding that deemed this violence against women as worthy of greater attention than violence between “free” men\textsuperscript{13}, but only in a paternalistic sense.

\textsuperscript{8} Ibid, pg 245
\textsuperscript{9} Ibid
\textsuperscript{10} Ibid, pg 246
\textsuperscript{11} Ibid, pg 237
\textsuperscript{12} Ibid 235
\textsuperscript{13} Ibid, 237
After the Revolutionary war, the paradigm shifted to favor the protection of individuals from other individuals. Types of assault and battery were placed on a hierarchy of severity, and were prosecuted as criminal matters.\textsuperscript{14} The expansion of the individual’s set of rights and protections under the law was cemented by the post-revolution expansion of the right to self-defense. However, this expansion in the state’s role of prosecuting violent assaults, ironically, came along with a removal of the political significance of the act. No longer did acts of violence warrant state involvement because citizens encroached on the public realm, but because the public realm should concern itself with the rights of the individuals in it. This postwar shift in rights was driven, Bloch argues, by an expansion of the rights available to white men in terms of the protection they were afforded by and could expect from the government.\textsuperscript{15} However, the fact that this expansion in rights came at the expense of women and others who filled a “dependent” role in society is due less to the laws themselves and more due to the preexisting societal framework that these laws were applied to. The increased importance of privacy and of the rights of the individual did not need to lead to implicit (and explicit) protections of spousal abuse. The fact that it did can be traced to the patriarchal norms that existed even under the previous, “public disturbance” regime of dealing with wife-beating.

To see this underlying patriarchal framework in action, we only need look at the Abigail Adams passage that Bloch uses at the beginning of the passage. As Bloch points out, Adams, while pleading against handing wide legal powers to men, does “accept their monopoly of political rights.”\textsuperscript{16} What this reveals is that even prominent women of the time understood themselves not as beings entitled to fully equal rights under their government, but simply the

\textsuperscript{14} Ibid, 243
\textsuperscript{15} Ibid, 244
\textsuperscript{16} Ibid, pg 228
bare protection against the worst excesses of a patriarchal order that they otherwise were willing to accept. The pre-revolutionary regime, despite providing a system that was easily accessible to women in good standing with the rest of the community, was not one that actually respected or understood women as autonomous equals to men under the law. For example, by classifying violence against women as a civil offense against “the peace”, even if it actually occurred inside of the home, what the law was really doing was setting aside the woman as a being too fragile to be afforded a full complement of political and natural rights, one that should be regarded as the protected property of the larger community. Similarly, even in the Puritan tradition, where the law provided for surprisingly robust anti-wife beating legislation\(^\text{17}\), this was not a function of some particularly enlightened view of female autonomy and equality, but rather it was simply because the state, on an even stronger scale than in mainstream English common law, saw it fit to interfere in the private affairs of its citizens to maintain standards of general propriety.

Aside from those dubious assumptions, the civil legal regime placed upon battered women, there was no guarantee of one’s case actually being given consideration without the support of other members of the community.\(^\text{18}\) While this is a dynamic that certainly exists in this day and age with crimes against women, at the point where access to the legal framework is virtually useless without having a man or several other women to “vouch” for oneself against the abusive husband, it is clearly reflective of an overarching patriarchal norm.

This distinction matters to Bloch’s argument because she is claiming that it was the expansion of individualistic privacy rights and the transfer of spousal violence from a civil to criminal offense \textit{inanof} itself that caused the increased protections for abusive men. In reality,

\(^{17}\) Ibid, 232
\(^{18}\) Ibid, 234
the legal options to battered women were whittled down in this transition because the criminal
realm had hard, formal standards of abuse, while the informal ‘justice of the peace’ system did
not. Because of the preexisting and generally unchanged perception of women, the formal
standard of proof for proving assault was set astronomically high, as the people who crafted that
legal framework generally gave the husband the benefit of the doubt. That this benefit of the
doubt was given has to do with Bloch’s emphasis on familial privacy, yes, but underlying even
that very interpretation of “privacy” is a worldview that emphasizes the rationality and the
primacy of the white male above all other members of society.

The expansion of privacy norms that occurred after the American Revolution, especially with
regards to the family unit, according to Ruth H. Bloch’s *The American Revolution, Wife Beating,
and the Emergent Value of Privacy*, led to increased legal protections for spousal abusers. While
true in a narrow sense, as a discussion of the inconsistency of privacy norms, the adjusted legal
treatment of assault, and the patriarchal assumptions that underlied both systems of spousal
abuse legislation demonstrates, Bloch’s argument ignores the other factors that led to the
apparatus of liberal rights protecting abusers of rights.
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