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HONOR AS PROPERTY

JOHANNA BOND*

Abstract

This Article is the first to use a property lens to explore the social construction of honor within legal systems around the world. The Article makes the claim that the law in many countries has implicitly treated honor as a form of property and has made legal and social allowances for men who seek to reclaim honor property through violence. The Article expands the boundaries of the existing scholarship concerning honor-related violence by exploring the intersections between social constructions of honor and social constructions of property. Using a property lens to analyze the relationship between honor, patriarchal control, and law provides a deeper understanding of the motivations for this form of gender-based violence. The Article also assesses the implications of this new theoretical model and concludes that honor must be reframed to position women as potential holders of honor property and to disassociate honor from the social regulation of women's sexuality.

INTRODUCTION

Throughout the world, honor operates as a form of social currency.¹ It is a highly valued and zealously protected asset.² Although not alienable, honor functions informally

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1 PIERRE BOURDIEU, *MASCULINE DOMINATION* 45 (2001) (“When . . . the acquisition of symbolic capital and social capital is more or less the only possible form of accumulation, women are assets which must be protected from offence and suspicion and which, when invested in exchanges, can produce alliances, in other words social capital, and prestigious allies, in other words symbolic capital. To the extent that the value of these alliances, and therefore the symbolic profit they can yield, partly depends on the symbolic value of the women available for exchange, that is to say, on their reputation and especially their chastity—constituted as a fetishised measure of masculine reputation, and therefore of the symbolic capital of the whole lineage—the honour of the brothers or fathers, which induces a vigilance as attentive, and even paranoid, as that of the husbands, is a form of enlightened self-interest.”).

2 See Suzanne Ruggi, *Commodifying Honor in Female Sexuality: Honor Killings in Palestine*, 206 MIDDLE E. REP. 12, 12, 13 (1998) (“[A] woman’s ‘ard (honor) is a commodity which must be guarded by a network of family and community members.”).

as a form of property.³ Honor exists in some form within most communities and often operates to constrain women's behavior.⁴ Although a common misperception links honor primarily with cultures in the Middle East, honor functions in similarly gendered ways around the world.⁵

This Article makes the claim that the law in many countries has implicitly treated honor as a form of property and has made legal and social allowances for men who seek to reclaim honor property through violence. Within communities in which honor is highly valued, honor property is held collectively by a family and controlled largely by male members of the family.⁶ The value of honor property depends primarily on the degree to which female members of the family conform their behavior, sexual and otherwise, to social expectations.⁷ Although women are not typically seen as holders of honor property, women play a significant role in determining its value to the family as a whole.⁸ Notably,

3 In her influential article, *Market-Inalienability*, Margaret Jane Radin "develop[ed] a theory of market-inalienability, [through which she argues] that inalienabilities should not always be conceived of as anomalies, regardless of whether they attach to things traditionally thought of as property." Margaret Jane Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849, 1851 (1987).

4 Lynn Welchman & Sara Hossain, "Honour," *Rights and Wrongs*, in "HONOUR" CRIMES, PARADIGMS, AND VIOLENCE AGAINST WOMEN 1, 7 (Lynn Welchman & Sara Hossain eds., 2005) ("In many societies, the ideal of masculinity is underpinned by a notion of 'honour'—of an individual man, or a family or a community—and is fundamentally connected to policing female behaviour and sexuality. Honour is generally seen as residing in the bodies of women. Frameworks of 'honour,' and its corollary 'shame,' operate to control, direct, and regulate women's sexuality and freedom of movement by male members of the family.").

5 See Joseph A. Vandello & Dov Cohen, *Male Honor and Female Fidelity: Implicit Cultural Scripts that Perpetuate Domestic Violence*, 84 J. PERSONALITY & SOC. PSYCHOL. 997, 997 (2003) ("Cultures around the world vary in the importance attached to the construct of honor. In one sense, the definition of honor is consistent across cultures. Almost all cultures place value on honor defined as virtuous behavior. . . .").

6 YUSUF MANSUR, MUSA M. SHTEIWI & NERMEEN MURAD, *THE ECONOMIC UNDERPINNINGS OF HONOR CRIMES IN JORDAN* 16 (2009), http://mathlouma.com/sites/default/files/study_en_0.pdf ("In the event that a woman is perceived to have acted against the traditional ethical code, it is the patrilineal family, not the woman, on whom 'honor' is lost.").

7 Sharon K. Araji, *Crimes of Honor and Shame: Violence Against Women in Non-Western and Western Societies*, 8 RED FEATHER J. POSTMODERN CRIMINOLOGY (2000), <http://critcrim.org/redfeather/journal-pomocrim/vol-8-shaming/araji.html> ("Women in traditional societies do not have a claim to honor as individuals, separate from their roles within a family, clan or tribal unit. Their actions as individuals, particularly through actual or perceived sexual misconduct, can only bring dishonor to others. However, it is not only sexual misconduct, but any misbehavior on the part of the female members that can bring shame and dishonor to the male members or a whole community, lineage or family.").

8 Hannah Irfan, *Honour Related Violence Against Women in Pakistan*, prepared for World Justice Forum, Vienna, July 2-5, 2008, at 1 ("Honour of the male members of the family is understood to reside in the bodies of the women of the family."); Rachel A. Ruane, Comment, *Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan*, 14 EMORY INT'L L. REV. 1523, 1530 (2000) ("According to tribal custom, a woman is the repository for her family's honor.").

the claim here is not that women are, themselves, a form of property. Women are agents who make decisions about their own sexuality, and those decisions either inflate, preserve, or decrease the value of familial honor property.

Because the value of honor property fluctuates based on women's behavior, other family members, often males, seek to aggressively monitor and control the behavior of the women in the family.⁹ In its most extreme form, control over women's behavior manifests in honor-related violence, including murder.¹⁰ In some countries, the law perpetuates this implicit understanding of honor as property by reducing penalties for those who commit crimes in an effort to reclaim honor.¹¹

I realize that it is problematic to discuss "the law" or "legal systems" without exploring the myriad differences between legal systems and the differences in resources and power within and among countries. The purpose of this Article, however, is not to explore deeply the legal system of any particular country. Rather, the Article establishes a general architecture that reflects the ways in which honor operates as a gendered source of property in many different countries and in many different legal systems.

Drawing on the rich scholarship that has illuminated examples of honor-based violence, primarily in the Middle East, I provide here a new, property-based lens through which to explore honor as a common social regulatory device, one that operates not only in the "East" but around the world. The Article also draws on examples from the United States and other countries in the global North. These northern examples of honor as a regulator of women's sexuality help to establish the global architecture of honor. The examples counter the Orientalist tendency to recognize honor as a constraint on women only in the global South.¹² I hope that this Article will provide a new, property-based theoretical lens with which to explore the notion of honor in a number of different regions and socio-legal systems.

9 Hannana Siddiqui, "There Is No 'Honour' in Domestic Violence, Only Shame!" *Women's Struggles Against "Honour" Crimes in the UK*, in "HONOUR" CRIMES, PARADIGMS, AND VIOLENCE AGAINST WOMEN, *supra* note 4, at 263, 264 ("[H]onor' . . . is essentially a tool to police and control a woman's behavior. Transgression results in her 'punishment,' often in the form of social ostracism, harassment and even acts of violence.").

10 *Id.*

11 See *infra* notes 107–54 and accompanying text.

12 RATNA KAPUR, *EROTIC JUSTICE: LAW AND THE NEW POLITICS OF POSTCOLONIALISM* 114 (2005) ("I examine how victimisation rhetoric has reinforced an imperialist response towards women in the developing world whereby the third world subject is represented as the real, or most authentic, victim subject.").

Notions of honor serve as barometers of familial worth.¹³ Honor is frequently gendered. Communities value women, at least in part, for the honor they bring to their families and punish women for the shame that they bring to their families for alleged transgressions of social and sexual norms.¹⁴ Although expectations for women's behavior vary somewhat from country to country, honor is a common theme, requiring women to adhere strictly to social norms.¹⁵ The social pressure to conform to norms of chastity and virginity is strong, and many families police the behavior of unmarried daughters and sisters to ensure compliance with these social dictates.¹⁶ Failure to conform to social expectations, or the perception that a woman has failed to conform, may result in coercion or violence perpetrated by the woman's natal family, ranging from bullying to murder.¹⁷ Penal codes in a number of countries tolerate or justify these acts of violence as a reflection of a deeply

13 See Mazna Hussain, Comment, "Take My Riches, Give Me Justice": A Contextual Analysis of Pakistan's Honor Crimes Legislation, 29 HARV. J.L. & GENDER 223, 227 (2006) ("Rather than possessing honor herself, a woman is a symbolic vessel of male honor, therefore all of her actions are considered to reflect upon her male family members.").

14 John Alan Cohan, *Honor Killings and the Cultural Defense*, 40 CAL. W. INT'L L.J. 177, 187 (2010) ("The honor of the village group lies with the modesty of its women and the readiness of its men to protect this modesty.").

15 See Diane Baxter, *Honor Thy Sister: Selfhood, Gender, and Agency in Palestinian Culture*, 80 ANTHROPOLOGICAL Q. 737, 741 (2007) ("Generally, honor has been represented as a reward which men bestow on other men based, in large part, on their women following a particular sexual code. Women's comportment, then, provides a fundamental axis of evaluation."); Noor Akbar Khalil & Mashhood Ahmed Sheikh, *Political Manipulation in Human Rights Violations: A Case of Honor Killings in Balochistan, Pakistan*, 2 PAKISTANIAAT: J. PAKISTAN STUD. 36, 38 (2010) ("For women it is obligatory to follow a peculiar code of conduct in and outside home and refrain from certain behaviors, as its considered to bring 'Shame' and 'dishonor' to the family, which in most cases results in the death of the . . . woman.") (errors in original).

16 See RABIA ALI, THE DARK SIDE OF "HONOUR" 23 (Farida Shaheed & Nabila Malick eds., 2001) ("Inflicting death upon the woman is no longer only a prerogative of the husband or the father. Any male in the family—brother, son, uncle, nephew—considers himself within his rights to end her life if he believes that she has violated the conditions of her existence."); Mark Drumbl, *Rights, Culture, and Crime: The Role of Rule of Law for the Women of Afghanistan*, 42 COLUM. J. TRANSNAT'L L. 349, 357 (2004) ("[T]he criminalization of breaches of sharply circumscribed gender roles and widespread physical attacks on those who breach these roles persists in post-Taliban Afghanistan."); Fadia Faqir, *Intrafamily Femicide in Defense of Honor: The Case of Jordan*, 22 THIRD WORLD Q. 65, 70 (2001) ("Significantly women also police each other through the spreading of rumours.").

17 See HUMAN RIGHTS WATCH, HONORING THE KILLERS: JUSTICE DENIED FOR "HONOR" CRIMES IN JORDAN 1 (2004) [hereinafter HUMAN RIGHTS WATCH, HONORING THE KILLERS] ("In Jordan, a woman's life is at risk if she engages in 'immoral or shameful' acts Male relatives may beat, shoot, stab, or otherwise physically harm an accused woman, with the approval of both her family members and large sections of the general population."); Stephanie Palo, *A Charade of Change: Qisas and Diyat Ordinance Allows Honor Killings to Go Unpunished in Pakistan*, 15 U.C. DAVIS J. INT'L L. & POL'Y 93, 98 (2008), quoted in Cohan, *supra* note 14, at 187 ("[W]hen honor is supposedly betrayed or lost, disciplining, or even killing, the woman at fault may restore honor that has been damaged by a woman's immoral or unchaste actions.").

entrenched commitment to honor.¹⁸

In Jordan, for example, one family spent six years looking for their daughter, Basma, who had run away with another man and had been divorced by her husband.¹⁹ Within the Jordanian town of Rusayfeh, community members who felt that the family needed to cleanse its honor openly castigated her family.²⁰ The family's eight other daughters were considered unmarriageable.²¹ Basma's sixteen-year-old brother, who was only ten years old when she left, murdered his sister after boys in the community insulted him, questioning his masculinity.²² After the murder, one of Basma's sisters remarked, "Now we can walk with our heads held high."²³

In the United States, since 1993, over 2.5 million adolescents have taken a "virginity pledge" in response to a social movement sponsored by the Southern Baptist Church.²⁴ Through the pledge, American adolescents promise to remain virgins until they marry. Researchers have found that the pledge is most effective when it is an important marker of identity.²⁵ In other words, when teens are able to define themselves against a perceived immoral or dishonorable other, pledges can be effective.²⁶ Pledges sometimes function as regulatory devices in much the same way that coercive messages of honor function to

18 See Catherine Warrick, *The Vanishing Victim: Criminal Law and Gender in Jordan*, 39 LAW & SOC'Y REV. 315, 326 (2005) ("The Jordanian, Egyptian, Syrian, and Lebanese penal codes provide reductions or elimination of penalty for murders committed for reasons of honor. The statutes generally specify that the victim is female, that the perpetrator is a male relative of a certain degree (usually brother, father, or husband), and the circumstances of the victim's behavior that justify the crime (catching a wife in the act of adultery, for example).").

19 Faqir, *supra* note 16, at 72.

20 *Id.*

21 Douglas Jehl, *Arab Honor's Price: A Woman's Blood*, N.Y. TIMES, June 20, 1999, <http://www.nytimes.com/1999/06/20/world/for-shame-a-special-report-arab-honor-s-price-a-woman-s-blood.html?pagewanted=all&src=pm>.

22 *Id.*

23 *Id.*

24 Peter S. Bearman & Hannah Brückner, *Promising the Future: Virginity Pledges and First Intercourse*, 106 AM. J. SOC. 859, 859–60 (2001).

25 *Id.* at 870.

26 *Id.* ("The pledge movement, in this sense, is an identity movement—that is, a movement that provides a frame for self-understanding (and consequently action in pursuit of that understanding) effective only in the context of, and interaction with, similar others who constitute a self-conscious community differentiated from others.").

constrain women's sexuality.

Violent efforts to enforce virginity or honor²⁷ are a form of gender-based violence designed to regulate women's sexual behavior and enforce rigid social codes.²⁸ The degree to which the community perceives individual women as chaste and virtuous often has a very real economic impact on their families. The families of women who have been accused of dishonorable conduct may be ostracized, economically penalized in the market, or unable to arrange for marriages of other daughters and sisters—all of which has an economic cost to families.²⁹

This Article posits that honor itself is a type of property.³⁰ Honor is a form of property which, although generated and lost largely through women's behavior, is held collectively by the family and controlled largely by male members of the family.³¹ When men lose honor property through the actions of women in their families, I argue that legal systems make allowances for familial efforts to reclaim honor property through acts of violence perpetrated against the offending female family member.³² The law facilitates this understanding of honor as property and maintains incentives for families to reclaim honor property through violence directed at female family members.³³

Part I of this Article explores the meaning of honor, drawing on similarities across legal systems. Although the specifics of honor-related violence vary to some extent by country,

27 The use of the term "honor crimes" or "honor killings" has been controversial, with some activists preferring the term "so-called crimes of honor" as a critique of the justification of these crimes. See Irfan, *supra* note 8, at 4 ("Rights activists and feminists are opposed to the use of the term 'honour' in conjunction with criminal acts that target women particularly, especially in the context of 'honour killings,' as this implies an acceptance of the notion that women embody the honour of males and thus promotes a concept of honour that endorses or indeed requires violence against women and at the least suppression of their rights, for it to remain unharmed and intact.").

28 See Siddiqui, *supra* note 9 ("'[H]onor' . . . is essentially a tool to police and control a woman's behavior. Transgression results in her 'punishment,' often in the form of social ostracism, harassment and even acts of violence.").

29 See MANSUR ET AL., *supra* note 6, at 33 ("A dishonored female—and consequently—family would be less able to conduct its usual activities with the usual ease. Other siblings may not be able to marry because they are 'shamed.' The head of household may not be able to find work as a 'dishonored' man.").

30 See discussion *infra* Part II.

31 *Id.*

32 See discussion *infra* Part III.

33 *Id.*

this section seeks to identify some commonalities and provide a general picture of the manifestation of honor-related violence within a handful of countries. The Article identifies a pattern in the ways that honor operates as a form of property. As such, the Article seeks to avoid “Orientalism’s binary juxtaposition of a ‘traditional’ East with a ‘modern’ West—the theoretical engine of colonialism—[which] was premised in part on perceptions of non-Western women as oppressed subjects.”³⁴ Without a deep exploration of honor in any particular country, the Article identifies common pathways through which honor, variable in form and potency, operates as a form of property. Part I also explores the relationship between honor and economics, including an exploration of financial incentives for a family to attempt to reclaim lost honor property at the expense of female family members.

Part II expands the boundaries of the existing scholarship concerning honor-related violence by exploring the intersections between social constructions of honor and social constructions of property. In this Article, my claim is that, within many communities, legal and social constructions treat honor as an intangible property right that is held largely by men, although it derives its value based on the extent to which women within the family conform to social expectations. Using a property lens to analyze the relationship between honor, patriarchal control, and law provides a deeper understanding of the motivations for this form of gender-based violence.³⁵ Property theory explains, but does not justify, leniency within many legal systems for perpetrators of honor-related violence. Because the law implicitly recognizes honor as a form of property that is possessed largely by men, legal systems make allowances for those men seeking to recover such property, despite the brutality of acts committed in the name of honor reclamation.

Notions of honor nest within core property principles. Honor operates in many of the same ways that more traditional forms of property operate to regulate behavior and incentives. Property principles regulate behavior in a number of ways. The principles reflect two primary social functions within a community. Property reflects and reinforces power relations and operates as a communicative device to reduce social conflict.³⁶ Part II offers a typology of property principles that delineates property concepts according to the primary functions of power and communication. The section also explores the extent

34 Leti Volpp, *Feminism Versus Multiculturalism*, 101 COLUM. L. REV. 1181, 1195 (2001).

35 This Article attempts to establish a new theoretical lens through which to view notions of honor. In doing so, it draws heavily on western notions of property to broadly construct a theoretical framework. I recognize that there will be theoretical points with less resonance in certain geographic areas. This Article is merely meant to sketch a theoretical jumping-off point for further analysis in subsequent work.

36 Carol M. Rose, *Possession as the Origin of Property*, 52 U. CHI. L. REV. 73, 81–82 (1985) [hereinafter Rose, *Possession*] (“Why, then, is it so important that property owners make and keep their communications clear? Economists have an answer: clear titles facilitate trade and minimize resource-wasting conflict.”).

to which property principles help to further our understanding of the ways in which honor operates to justify a particular form of violence against women.

For example, Lockean labor theory requires one to invest one's labor in the property in question in order to possess it.³⁷ In the honor context, owners of honor property go to great lengths, investing considerable labor, in preserving the value of honor property by seeking to control the social and sexual behavior of women within their families. I offer a critique of Lockean labor theory in this context, however, as it renders invisible women's own labor in increasing or preserving the value of honor property. The right to exclude others, an exertion of power, is another hallmark of property ownership.³⁸ In the context of honor, primarily male family members claim a right to exclude others from sexual access to their sisters or daughters in an effort to preserve the value of their honor property.

I explore how the relational aspects of property ownership map onto the relational aspects of honor. Recognizing the relational aspects of property allows one to conceive of possession as a communication to the world. Here, I draw heavily on Carol Rose's theory of communication as possession.³⁹ For communication to succeed in articulating a possessory claim, it has to be "a clear act."⁴⁰ In the context of honor, family members communicate possession of honor property by clearly and publicly policing women's behavior to ensure that it comports with social expectations. These policing behaviors are the "text" of the possessory communication. Clarity is necessary to reduce the conflict that stems from ambiguity of ownership.⁴¹ Owners of honor property clearly communicate their ownership and thus avoid fighting off all would-be suitors, preventing a decrease in the value of honor property.

Finally, Part III explores the implications of the law's treatment of honor as a form of property held largely by men. This Article asserts that the law's implicit treatment of honor as a form of male property explains why many penal codes offer reduced penalties

37 JOHN LOCKE, TREATISE OF CIVIL GOVERNMENT AND A LETTER CONCERNING TOLERATION 19 (Charles L. Sherman ed., 1937) (1689) ("Whatsoever [one] removes out of the state that nature hath provided, and left it in, he hath mixed his *labour* with, and joined to it something that is his own, and thereby makes it his *property*.") (emphasis in original).

38 Shyamkrishna Balganesh, *Demystifying the Right to Exclude: Of Property, Inviolability, and Automatic Injunctions*, 31 HARV. J.L. & PUB. POL'Y 593, 593 (2007) ("The right to exclude has long been considered a central component of property.").

39 See *infra* note 246 and accompanying text (exploring Rose's theory).

40 See *infra* note 247 and accompanying text.

41 See *supra* note 36.

for honor-related violence. The Article identifies the problems associated with treating honor as a form of male property and argues that reform is best accomplished through both criminal law reform and community redefinition of social norms. Part III argues that reform is necessary to ensure both that women become potential holders of honor property and that communities redefine honor in ways that reject honor-related violence. The precise parameters of an effective law reform agenda are outside the scope of this Article but remain ripe for further scholarly exploration.

Because eliminating the notion of honor is neither realistic nor necessarily desirable, advocates for reform must work with local communities to redefine honor. Communities must embrace alternative ways of measuring honor that do not rely on the degree to which women conform to social expectations. Practically speaking, efforts to eradicate honor-related violence must include targeted criminal law reform and community dialogue that uses a human rights framework to shift the discourse around honor to include women as potential honor property holders and as full citizens with rights to bodily integrity, sexual autonomy, and economic empowerment.

In other words, honor may continue to be a valued form of property, but that value should not be contingent upon women's strict adherence to norms of chastity and patriarchal deference. Through extensive community discourse facilitated by local human rights activists, communities may incrementally redefine honor as a form of reputational property that is accumulated and valued without reference to women's sexuality. Women should ultimately be able to accumulate this redefined honor property and enjoy the attendant social benefits.

I. Honor Defined

A. Honor as Virtue and Reputation

Honor is a variable, context-dependent concept.⁴² Although the precise meaning of honor fluctuates among communities,⁴³ the term often refers to either virtue or reputation.⁴⁴ Honor often has two related meanings: one internal, meaning the extent to which one considers oneself virtuous and worthy of respect, and one external, meaning the extent to

42 FRANK HENDERSON STEWART, HONOR 33 (1994).

43 See *id.* at 30–53 (discussing extensively the various meanings of the word “honor” and tracing the history of its use).

44 Vandello, *supra* note 5, at 998 (“In addition to the widely shared definition of honor as virtue, a second meaning of honor has to do with honor as status, precedence, and reputation . . .”).

which the community values one's moral worth.⁴⁵ With respect to virtue, a person may gain honor by acting in accordance with the community's definition of virtuous behavior.⁴⁶ With respect to status and reputation, a person's ability to gain honor depends on that person's power to secure deferential treatment within the community.⁴⁷ Some theorists categorize honor as horizontal (right to respect as an equal) or vertical (right to special respect as a superior).⁴⁸ Anthropologist Julian Pitt-Rivers suggests, "[h]onor is the value of a person in his own eyes, but also in the eyes of his society. It is his estimation of his own worth, his *claim* to pride, but it is also the acknowledgement of that claim, his excellence recognized by society, his *right* to pride."⁴⁹

In many contemporary communities in which honor plays an important role in defining identity, a family's status depends upon its reputation for honorable conduct, as measured by the extent to which women in the family engage in chaste, virginal behavior.⁵⁰ In the United States, this link between virginity and reputation has fueled the movement within the Southern Baptist Church to promote chastity pledges.⁵¹ In Turkey, there are different types of honor. One type of honor, *seref*, refers to "the glory derived from a man's own or one's male kin's accomplishments" ⁵² A second type of honor, *namus*, is specifically correlated with sexual chastity among one's female relatives.⁵³ In many communities,

45 STEWART, *supra* note 42, at 13.

46 See Julian Pitt-Rivers, *Honour and Social Status*, in HONOUR AND SHAME: THE VALUES OF MEDITERRANEAN SOCIETY 22–23 (J. Peristiany ed., 1966) (distinguishing honor as a sentiment and mode of conduct from honor as "a qualification for the Honours List").

47 See RICHARD NISBETT & DOV COHEN, CULTURE OF HONOR: THE PSYCHOLOGY OF VIOLENCE IN THE SOUTH 4 (1996) ("Honor in this sense is not based on good character but on a man's strength and power to enforce his will on others.").

48 STEWART, *supra* note 42, at 48 ("Any right to respect as an equal is an instance of *horizontal honor* *Vertical honor* is the right to special respect enjoyed by those who are superior.") (emphasis in original).

49 Pitt-Rivers, *supra* note 46, at 22.

50 See Ruggi, *supra* note 2.

51 Bearman & Brückner, *supra* note 24, at 859–60.

52 Aysan Sev'er & Gokceciecek Yurdakul, *Culture of Honor, Culture of Change: A Feminist Analysis of Honor Killings in Rural Turkey*, 7 VIOLENCE AGAINST WOMEN 964, 972 (2001).

53 Clementine van Eck, *Honor Killings in the Netherlands*, in CULTURAL ANTHROPOLOGY: THE HUMAN CHALLENGE 236 (William A. Haviland, Harald E. L. Prins, Dana Walrath & Bunny McBride eds., 12th ed. 2007) ("For women and girls *namus* means chastity, while for men it means having chaste family members. A man is therefore dependent for his *namus* on the conduct of the womenfolk in his family.").

women are seen as “the repositories of family honor.”⁵⁴

In Italy, informal social codes encourage men to develop a reputation for brave or honorable conduct or to protect a reputation inherited at birth.⁵⁵ Women, in contrast, must defend their family’s honor through passive adherence to social rules requiring chastity.⁵⁶ Writing about India, Annie George observes:

Honor is thought to reside primarily, but not exclusively, in the bodies of women and is maintained through female chastity, virtue, and subdued body language, dress, and demeanor. Individual honor is usually subsumed to family and religious or caste community honor, which, typically, is maintained through restrictions on women’s movements, opportunities, and life choices.⁵⁷

Honor functions in similar, although by no means identical, ways in cultures associated with both the East and the West.⁵⁸ Although Orientalist constructions of honor suggest that it derives from eastern cultures, this elides the ways honor operates in the West.⁵⁹ Notions of honor and shame are intertwined with campaigns promoting virginity and chastity in the United States. Conceptions of honor are also embedded in the American criminal justice system’s “heat of passion” defense, which is often invoked in cases involving a cuckolded man who kills his wife or her paramour after discovering her infidelity.⁶⁰ As Lama Abu-Odeh suggests, both honor and passion are used to justify violence against women in legal systems around the world.⁶¹

54 HUMAN RIGHTS WATCH, CRIME OR CUSTOM? VIOLENCE AGAINST WOMEN IN PAKISTAN 43 (1999) [hereinafter HUMAN RIGHTS WATCH, CRIME OR CUSTOM?].

55 Maria Gabriella Bettiga-Boukerbout, “Crimes of Honour” in the Italian Penal Code: An Analysis of History and Reform, in “HONOUR” CRIMES, PARADIGMS, AND VIOLENCE AGAINST WOMEN, *supra* note 4, at 230, 231.

56 *Id.* at 230 (“Historically, Italian society has put a lot of pressure on women to conform to certain values.”).

57 Annie George, *Reinventing Honorable Masculinity: Discourses from a Working-Class Indian Community*, 9 MEN & MASCULINITIES 35, 37 (2006) (internal citation omitted).

58 Lama Abu-Odeh, *Comparatively Speaking: The “Honor” of the “East” and the “Passion” of the “West,”* 1997 UTAH L. REV. 287, 290 (1997) [hereinafter Abu-Odeh, *Comparatively Speaking*] (discussing honor, Abu-Odeh exposes “the fallacy of . . . the orientalist construction that the East is different from the West”).

59 *Id.*

60 *Id.*

61 *Id.* Abu-Odeh also notes important differences in the operation of honor and passion as legal constructs. Most notably, honor is used more often to justify violence against sisters, daughters, and mothers, while passion is used to justify violence against girlfriends, wives, former girlfriends, and former wives. *Id.* at 291.

Historically, in the United States, notions of honor and passion have combined with notions of race and class to define entitlement to honor property. In the early twentieth-century South, for example, honor was a racialized and gendered code that privileged the white, southern gentleman.⁶² During this period and continuing today, the perceived honor of the perpetrator or victim of criminal behavior affected the outcome of the case.⁶³ “The idea that a female victim who was not considered ‘respectable’ was in some way deserving of cruelty and death, reflected the South’s chivalric code and the continued equation of female sexual purity/marital fidelity and male honor, and conversely female sexual misconduct and male dishonor, notions not exclusive to southern society.”⁶⁴

In one example from mid-nineteenth-century America, Congressman Daniel Sickles killed his wife’s lover in broad daylight for “dishonor[ing]” his home; a jury acquitted him in 1859.⁶⁵ In another case, from 1901, Charles Armstrong of Jacksonville, Florida killed his wife after accusing her of infidelity. His acquittal was largely the result of damage to “Mrs. Armstrong’s reputation as a loyal wife.”⁶⁶ “In acquitting Armstrong on the grounds of temporary insanity, the message of the court was that adultery justified domestic violence if a white man’s honor was at stake.”⁶⁷ Writing about honor in the nineteenth century, Robert Ireland observed, “[t]he criminal justice system of nineteenth-century America, in response to the pressures of the Victorian sexual code, readily forgave males who avenged sexual dishonor in cases that usually involved husbands, brothers, or fathers who killed the men who had violated the honor of their wives, sisters, or daughters.”⁶⁸

Although many of the conclusions to be drawn from this portrayal of honor in Jordan or the United States, for example, are limited to those particular historical moments and geographic spaces, these and other examples help to sketch the rough parameters of honor as a cross-cultural regulatory device. It is possible to extrapolate from these specific contexts the ways in which honor generally operates as a form of property that privileges men in its operation. This Article does not offer an exhaustive case study detailing the ways in which

62 Vivien Miller, *Wife-Killers and Evil Temptresses: Gender, Pardons and Respectability in Florida, 1889-1914*, 75 FLA. HIST. Q. 44, 46 (1996).

63 *Id.*

64 *Id.* at 60.

65 Sarah Mark, *In 1859, Capital Was a Wild, Wild Washington*, WASH. POST, July 17, 2000, at A01.

66 Miller, *supra* note 62, at 56.

67 *Id.*

68 Robert M. Ireland, *Frenzied and Fallen Females: Women and Sexual Dishonor in the Nineteenth-Century United States*, 3 J. WOMEN’S HIST. 95, 97 (1992).

honor operates in a particular country or legal system. Such country studies already exist for a number of regions and countries.⁶⁹ Rather, the Article posits that honor operates as a form of property in vaguely similar, gendered ways around the world. The Article seeks to establish a theoretical lens that may be broadly used to explore manifestations of honor in specific cultural and geographic scenarios.

B. Honor-Related Violence

As noted above, legal systems may attempt to justify honor-related violence in terms of honor, passion, or both. The law reflects and reinforces deeply held notions of honor and reputation within the community. Describing seventeenth-century England, one commentator notes, “Above all else, men from whatever social status were only held worthy of honour if they could demonstrate control over their wives, children and servants.”⁷⁰

It is useful to envision a continuum of honor-related violence, with violence that is explicitly linked to honor at one end. The other end of the continuum, however, also includes violence that is allegedly provoked by women’s failure to conform to gender stereotypes and transgression of sexual boundaries. In other words, it includes behavior that may implicitly dishonor and, in so doing, provoke violence. Describing clinical work with abusive men in the United States, Donna Coker writes, “In addition to verbal aggression, abusive men claim to be provoked by their perception of the woman’s inadequacy as a home-maker/cook, by her ‘failure’ to respond sexually or to behave in a deferential manner (e.g., ‘not knowing when to be quiet’), or because they believe her to be—or believe she

69 See, e.g., Pratiksha Baxi, Shirin M. Rai & Shaheen Sardar Ali, *Legacies of Common Law: “Crimes of Honour” in India and Pakistan*, 27 *THIRD WORLD Q.* 1239 (2006) (juxtaposing the traditional and modern view of honor crimes through a comparison of the state response to honor crimes via police action and the view of the court system in India and Pakistan); Anahid Devartanian Kulwicki, *The Practice of Honor Crimes: A Glimpse of Domestic Violence in the Arab World*, 23 *ISSUES IN MENTAL HEALTH NURSING* 77 (2002) (using Jordan as a case study to discuss honor crimes in patrilineal societies in the Arab world); Laura Sue Nelson, *The Defense of Honor: Is It Still Honored in Brazil?*, 11 *WIS. INT’L L.J.* 531 (1993) (using a landmark case as a reference point to argue that strides in the women’s movement are often illusory or have unintended consequences, rendering honor crimes a persistent occurrence in Brazilian society); Constantina Safilios-Rothschild, “Honour” Crimes in Contemporary Greece, 20 *BRIT. J. SOC.* 205, 206 (1969) (using a survey of honor crimes in 1960s Greece to discuss how modernization has shifted what constitutes “honor” and how society views and punishes crimes associated with maintenance of this honor).

70 Elizabeth Foyster, *Male Honour, Social Control and Wife Beating in Late Stuart England*, 6 *TRANSACTIONS ROYAL HIST. SOC’Y* 215, 215 (1996); see also Lisa R. Pruitt, “On the Chastity of Women All Property in the World Depends”: *Injury from Sexual Slander in the Nineteenth Century*, 78 *IND. L.J.* 965 (2003). Pruitt describes cases involving female plaintiffs who alleged sexual slander in nineteenth-century America. She notes, “These women’s sexual behavior was not only commodified, it was elevated to a status of the utmost importance, with courts often expressly recognizing their husbands and fathers as its proprietors, the true parties in interest in these matters.” *Id.* at 973.

*desires to be—sexually unfaithful.*⁷¹ I do not argue that every domestic homicide is an honor crime or that every invocation of the heat of passion defense implicates honor. Some cases, however, in which provocation is raised as a defense—both in the East and in the West—involve violence that was implicitly or explicitly motivated by a loss of honor. These cases may be included on a continuum of honor-related crimes against women.

Honor is similarly gendered throughout the world. A Jordanian man, who was jailed for six months after killing his sister after she had been raped, said, “I would rather die than lose my honour Our whole life is founded on honour. If we lose it, we have no life, we become swine We’re no better than animals.”⁷² Lama Abu-Odeh describes a “paradigmatic example” of an honor killing as “the killing of a woman by her father or brother for engaging in, or being suspected of engaging in, sexual practices before or outside of marriage.”⁷³

Approximately 5000 honor killings are committed each year around the globe,⁷⁴ although it is impossible to know the precise number of honor crimes, as their incidence is often unreported.⁷⁵ This estimate is based on a narrow definition of honor-related violence and does not include many acts of violence on the continuum of honor-related violence described above. According to one estimate, honor crimes “account for 70 percent of murder cases involving Palestinian women.”⁷⁶ Honor crimes, narrowly defined as those in which honor is explicitly implicated, occur in many countries, including Brazil, Denmark, Egypt, Iraq, Israel and the occupied territories, Jordan, Kuwait, Lebanon, Morocco, the

71 Donna K. Coker, *Heat of Passion and Wife Killing: Men Who Batter/Men Who Kill*, 2 S. CAL. REV. L. & WOMEN’S STUD. 71, 97 (1992–93).

72 International Campaign Against Honour Killing, *Honour*, <http://www.stophonourkillings.com/?q=node/3783> (last visited Mar. 31, 2012) (quoting Sirhan, age 35, interviewed in ABC documentary *The Lost Honor of Sirhan* after serving a six month sentence in Jordan for killing his sister who had fallen victim to rape, 2003).

73 Lama Abu-Odeh, *Critical Directions in Comparative Family Law: Honor Killings and the Construction of Gender in Arab Societies*, 58 AM. J. COMP. L. 911, 911 (2010) [hereinafter Abu-Odeh, *Honor Killings*]; see also Leylâ Pervizat, *In the Name of Honor*, HUM. RTS. DIALOGUE (2003) at 31 (“When her name is out as a transgressor, her male relatives cannot walk in the village with heads high. To reclaim their manhood in the eyes of other men, they cleanse their honor by stabbing or sometimes stoning her.”).

74 United Nations Population Fund, *Ending Violence Against Women and Girls*, in STATE OF WORLD POPULATION 2000 (2000), <http://www.unfpa.org/swp/2000/english/ch03.html>.

75 See Sohail Akbar Warraich, “*Honour Killings*” and the Law in Pakistan, in “HONOUR” CRIMES, PARADIGMS, AND VIOLENCE AGAINST WOMEN, *supra* note 4, at 80; Warrick, *supra* note 18, at 325 (“Many observers, including the police, doubt the accuracy of these numbers and believe that the actual rate of honor killings [in Jordan] is much higher.”).

76 Bruce Dunne, *Power and Sexuality in the Middle East*, 206 MIDDLE E. REP. 8, 11 (1998) (citing Ruggi, *supra* note 2).

Netherlands, Pakistan, Qatar, Sweden, Syria, Turkey, and Yemen.⁷⁷ Honor crimes, broadly defined as a continuum including some cases in which provocation is raised as a defense and honor is an implicit motivator, occur in most if not all countries. Honor killings are the most serious form of honor crime, but family members may also subject victims to “long-term low-level physical abuse and bullying as a punishment for ‘bringing dishonor on the family.’”⁷⁸

Honor killings occur in many different religious communities, including “Muslims, Christians, Jews, Yezidis, Druze, Sikhs, Hindus, and non-believers.”⁷⁹ Honor crimes existed before the establishment of all of the major religions, including Islam.⁸⁰ Although some honor crimes are committed in Islamic states, many commentators argue that the Qur’an forbids honor killings.⁸¹ Despite the widely held misperception that Islam sanctions honor killings, “[m]urder is not prescribed to cleanse honor in any major interpretation of Sharia (or Islamic law), including in the Quran or *hadith* (sayings and traditions of the Prophet).”⁸² In fact, the legal provisions in many countries that excuse or offer reduced penalties for honor crimes⁸³ stem not from Shari’a law but from the Napoleonic code and the colonial era.⁸⁴

77 Radhika Coomaraswamy, *Violence Against Women and “Crimes of Honour,”* in “HONOUR”: CRIMES, PARADIGMS, AND VIOLENCE AGAINST WOMEN, *supra* note 4, at xi, xii.

78 International Campaign Against Honour Killing, *supra* note 72.

79 Rochelle L. Terman, *To Specify or Single Out: Should We Use the Term “Honor Killing”?*, 7 MUSLIM WORLD J. HUM. RTS. 1, 10 (2010).

80 Cohan, *supra* note 14, at 196 (“Honor killings predate all modern religions, and originated among ancient desert tribes.”); Hussain, *supra* note 13, at 235 (“Derivations of honor crimes existed even before the advent of Islam, and the concept of honor certainly was a part of the legal history of Western countries before its institutionalization in Muslim countries.”).

81 Shira T. Shapiro, *She Can Do No Wrong: Recent Failures in America’s Immigration Courts to Provide Women Asylum from “Honor Crimes” Abroad*, 18 AM. U. J. GENDER & SOC. POL’Y & L. 293, 299 (2010) (“[T]he Koran, the central religious text of Islam, forbids honor killings.”).

82 Terman, *supra* note 79, at 10. Lama Abu-Odeh describes the disagreement about whether Islamic law supports honor-related violence as follows: “The Islamist legislature sitting in the shadow (the ‘official’ religious intelligentsia)—waiting to take over the state—addressing the issue of honor killings, finds itself producing differing opinions as to whether they are Islamic or not.” Abu-Odeh, *Honor Killings*, *supra* note 73, at 951.

83 Terman, *supra* note 79, at 10. (noting that “in many other countries, national legislation legitimizes honor killing, or the killing of women by their relatives for sexual deviance”).

84 *Id.* at 10.

The victims of honor crimes are often young, unmarried women—daughters or sisters.⁸⁵ In these cases, efforts to control women's sexuality are designed to protect virginity, whereas honor-related violence directed at married women is designed to protect chastity.⁸⁶ Perpetrators often commit honor crimes in response to rumors or mere suspicion of a woman's sexual transgressions.⁸⁷ Families may also commit honor-related violence against a female family member who has been raped and who is therefore seen as bringing shame to her family.⁸⁸

In some countries, such as Pakistan, honor crimes were historically reserved for couples who were caught in the act of adultery.⁸⁹ In Sindh, a province of Pakistan, for example, the alleged adulteress is labeled "*kari*," literally translated as "black woman," and her supposed lover "*karo*," "black man."⁹⁰ If the adultery is discovered or merely alleged, often the woman's family will kill both the female family member and the man, "with the complicity of the community."⁹¹ More recently in Pakistan, as in other countries, the type of behavior that might trigger an honor crime has expanded to include women's

85 TAHIRA S. KHAN, *BEYOND HONOUR: A HISTORICAL MATERIALIST EXPLANATION OF HONOUR RELATED VIOLENCE* 42 (2006).

86 Cohan, *supra* note 14, at 186 ("As the embodiment of her family's honor, women must guard their virginity and chastity—after all, 'a man's honor lies between the legs of a woman.' By engaging in a freely chosen illicit sexual relationship, a woman undermines the ownership rights of others to her body and challenges traditional social order." (quoting Ruane, *supra* note 8, at 1531)).

87 Shapiro, *supra* note 81, at 298–99 ("In 2007, the U.S. State Department reported that twenty-five percent of honor crime victims in Jordan were killed after a mere 'suspicion' of involvement in an illicit relationship and only fifteen percent were murdered after the family proved any relationship occurred.").

88 Yotam Feldner, *Honor Murders: Why the Perps Get Off Easy*, 7 MIDDLE E. Q., 41, 41 (2000) (relating the story of Kifaya Husayn, who was murdered by her brother to "cleanse [his] honor" because she had been raped by another of her brothers); Stephanie Eileen Nanes, *Fighting Honor Crimes: Evidence of Civil Society in Jordan*, 57 MIDDLE E. J. 112, 118 (2003) ("Studies have shown that these killings can also be a result of . . . the 'cleansing' of a girl who has been raped, sometimes by a family member."); *Raped Girl Killed over Family 'Honour'*, COURIER MAIL (Aug. 10, 2011, 1:30 AM), <http://www.couriermail.com.au/news/breaking-news/raped-girl-killed-over-family-honour/story-e6freo06-1225760438285> (reporting the arrest and charging of a man who confessed to shooting his niece eight times after she had been raped so that he could "cleanse his family's honour").

89 Warraich, *supra* note 75, at 79 ("Traditionally, 'honour killings' were committed or claimed to be committed upon discovering a woman family member indulging in extramarital sex.").

90 AMNESTY INT'L, *PAKISTAN: HONOUR KILLINGS OF GIRLS AND WOMEN* 3 (1999) [hereinafter AMNESTY INT'L, PAKISTAN].

91 *Id.* at 5 (underscoring the notion of honor as property, in cases where the *kari* is killed but the *karo* escapes, the *karo*, in order to preserve his life, is required to compensate the affected man for his lost honor).

“expressions of autonomy by, for example, exercising choice in marriage or a decision to seek divorce.”⁹²

Some women resist the strict social codes imposed on them by their families.⁹³ They may engage in subtle or overt resistance. Some refuse the marriage arranged for them by their families;⁹⁴ others resist stereotypical gender roles by engaging in premarital sexual contact or insisting on a formal education.⁹⁵ Still others are simply falsely accused of transgressing these social barriers.⁹⁶

Women’s resistance to these social and familial expectations is a powerful example of women’s agency. Describing the centrality of agency in our understanding of the multi-dimensional subject, Ratna Kapur observes, “[f]oregrounding the resistance of the peripheral subject scatters hegemonic understandings of culture and gender that are reproduced at the international and domestic levels.”⁹⁷ Women’s agency comes in many forms. It includes both subtle and exaggerated acts of resistance by women who feel constrained in their expressions of sexuality. It also includes women who exercise agency by imposing on other women strict social codes that constrain sexuality. In this sense, women are acting to preserve the value of honor property for the perceived benefit of the family as a whole.⁹⁸ The boundary-enforcing behaviors of these female family members are no less an exercise of agency than the acts of resistance from those who seek to challenge social norms.

Although many family members may participate in the planning or decision to commit an honor crime, those who carry out the violence are often young males within the family.⁹⁹

92 Warraich, *supra* note 75, at 79.

93 Sev’er & Yurdakul, *supra* note 52, at 981–84 (providing several anecdotes of honor crime victims in Turkey whose indiscretions range from going to a movie in the middle of the day to running away from home to marry a man of her choice).

94 AMNESTY INT’L, PAKISTAN, *supra* note 90, at 6 (“Expressing a desire to choose a spouse and marrying a partner of one’s choice are seen as major acts of defiance . . .”); Sev’er & Yurdakul, *supra* note 52, at 981 (recounting the story of Gonul Arslan who was strangled until presumed dead by a male family member after refusing to marry her cousin).

95 ANDREA PARROT & NINA CUMMINGS, FORSAKEN FEMALES: THE GLOBAL BRUTALIZATION OF WOMEN 174 (2006) (“Women bring shame upon the family for . . . wanting to be educated . . . having premarital sex . . .”).

96 Nanes, *supra* note 88, at 118 (noting that in Jordan, autopsies have revealed that the overwhelming majority of victims of honor killings that were accused of sexual impropriety were, in fact, virgins).

97 KAPUR, *supra* note 12, at 133.

98 Although outside the scope of this particular inquiry, the notion that the collective good trumps the individual good in the context of family honor is ripe for further exploration.

99 Warrick, *supra* note 18, at 324–25.

This allows perpetrators to take advantage of common legal provisions that treat youth as a mitigating factor in punishment.¹⁰⁰ Women within the family also often help to police gender norms related to sexuality and support the use of violence against other female family members.¹⁰¹

In some countries, the state imprisons potential female victims, purportedly for their own safety and protection.¹⁰² Although the state is taking concerted action to protect potential victims, the actions are overbroad and misguided. Imprisoning women may indeed prevent an honor crime from occurring, but it subjects women to a host of human rights abuses related to custody and detention and punishes potential victims rather than perpetrators.¹⁰³

C. The Legal System Response

In many countries, a local, informal decision-making process accompanies the formal legal system.¹⁰⁴ This informal adjudication sometimes takes the form of local councils or

100 Christine Schirmacher, *Honour Killings and Emancipation—Gender Roles in Immigrant Culture Against the Backdrop of a Middle East Understanding of “Honour” and “Shame,”* (Jan. 19, 2006), available at http://www.islaminstitut.de/uploads/media/Honour_killings-Emancipation.pdf (last visited June 28, 2012) (“Often a family will get a very young male family member to carry out the deed, so that if the case ever comes before a court the penalty will be a mild one.”).

101 Sev’er & Yurdakul, *supra* note 52, at 973 (“Women are also expected to protect the namus [honor] of other women and girls related to them, for example, their daughters and granddaughters.”).

102 PARROT & CUMMINGS, *supra* note 95, at 177 (“More than twenty-five percent of the women incarcerated in Amman’s women’s prison are there to seek protection from being killed for honor”); HUMAN RIGHTS WATCH, HONORING THE KILLERS, *supra* note 17, at 8 (discussing interviews with women in Jordan who “were incarcerated in Amman’s Jweideh Women’s Correctional and Rehabilitation Centre, the only refuge available to them” and noting that “[v]ictims of ‘honor’ crimes also include women—as many as forty at a given time and sometimes far more according to some sources—who are incarcerated for their own protection.”).

103 ALI, *supra* note 16, at 36 (“Where harassment, torture and illegal incarceration are the routine instruments of law enforcement, even seeking the aid or protection of the police can put an ordinary citizen’s dignity, sanity and health in grave peril.”).

104 Reem Abu Hassan & Lynn Welchman, *Changing the Rules? Developments on “Crimes of Honour” in Jordan, in “HONOUR”: CRIMES, PARADIGMS, AND VIOLENCE AGAINST WOMEN*, *supra* note 4, at 199, 199 (noting that bodies of law relevant to honor crimes include: “the rules of legal texts, the rules of judicial interpretation in the courts, and the unwritten rules in different communities and sections of our society that have equal if not greater impact on the lives and freedoms of women and girls”).

groups of community elders who preside over family disputes or other localized conflicts.¹⁰⁵ Research and anecdotal evidence in some countries suggests that these local councils may encourage honor-related violence or other extralegal, violent methods of conflict resolution.¹⁰⁶ As I argue in Part III of this Article, campaigns to eradicate honor-related violence will need to reform the formal legal provisions that tacitly endorse honor crimes and also use a human rights framework to raise awareness and change patriarchal attitudes among these local councils. This section, however, addresses the formal legal system's response to honor-related violence.

The penal codes of Jordan, Egypt, Syria, and Lebanon, among others, allow for a reduction or elimination of penalties in cases involving honor killings.¹⁰⁷ "From dowry deaths in India to the 'legitimate defense of honor' in Brazil, many legal systems have found formal or informal ways to excuse or mitigate the penalties for wife-killing."¹⁰⁸ Article 22 of Ecuador's penal code removes from criminal liability altogether a person who, in the "legitimate defense of the marital honor and self morality," commits a violent act against their spouse or "correspondent lover," including murder, if the person catches their spouse *in flagrante*.¹⁰⁹ Turkey legally distinguishes between manslaughter and "infanticide for family honor," with the penalty for the former set at twenty-four to thirty years and that of

105 In Pakistan, for example, where the population is mostly rural, with a minority populating the urban areas, "the tribal councils are the first, and often final, authoritative decision-makers. Such councils, which are feudal vestiges, are composed only of men, particularly those who already wield financial or inherited power within the tribes." Hussain, *supra* note 13, at 233. And in India, tribal councils called "*khap panchayats*" often decide the fates of women accused of violating social norms, frequently sanctioning honor killings. See Nilanjana S. Roy, *A Challenge to Doing Gender Justice by Violence*, N.Y. TIMES, May 17, 2011, <http://www.nytimes.com/2011/05/18/world/asia/18iht-letter18.html?pagewanted=all#>; see also Baxi et al., *supra* note 69, at 1243 ("Revenge rapes, burning down of homes of those judged to be transgressors of caste boundaries, lynchings and beatings are all employed by these *panchayats* as means of disciplining the communal body.").

106 See *infra* notes 294–97 and accompanying text.

107 Warrick, *supra* note 18, at 326. These provisions are found in "Article 340 of the Jordanian Penal Code, Article 237 of the Egyptian Penal Code, Article 548 of the Syrian code (1949), and Article 562 of the Lebanese code (1943, amended 1999)." *Id.* at 326 n.29.

108 *Id.* at 323.

109 Silvia Pimentel, Valéria Pandjarian & Juliana Belloque, *The "Legitimate Defense of Honor," Or Murder with Impunity? A Critical Study of the Legislation and Case Law in Latin America*, in "HONOUR" CRIMES, PARADIGMS, AND VIOLENCE AGAINST WOMEN, *supra* note 4, at 245, 247 ("[A]rticle 22 of the Penal Code is still in force establishing that in the "legitimate defense of the marital honor and self morality" there is no offense at all when one of the spouses kills, hurts, or strikes the other, or the "correspondent lover" at the moment of the surprise of the flagrant adultery.").

the latter at just four to eight years.¹¹⁰

Some countries have “heat of passion” provisions rather than provisions that explicitly address the loss of honor. In the Mexican state of Oaxaca, Article 293 of the penal code provides “inferior punishment to individuals who kill their spouses under the argument of meeting him/her in sexual intercourse or close to its consummation.”¹¹¹ As of 1991, Brazilian law still contained vestiges of the Portuguese colonial law that allowed a man, but not a woman, to kill his wife and her lover if he caught them in an adulterous act.¹¹² Although the law has formally eliminated the defense of honor, “social norms allow that a man can legitimately kill his allegedly adulterous wife on the grounds of honor, and this attitude has acquired the force of law through repeated judicial sanction.”¹¹³ One international human rights organization expressed concern that courts accept “heat of passion” or “violent emotion” defenses even in murder cases that indicate that a husband killed his wife after substantial premeditation for honor-related transgressions.¹¹⁴

Still other jurisdictions have a combination of provisions that address honor-related violence and “heat of passion” violence.¹¹⁵ These “heat of passion” provisions often complement the specific honor provisions of the penal code.¹¹⁶ This combination of provisions reflects two concepts, both identified with different historical roots. The

110 Dicle Kogacioglu, *The Tradition Effect: Framing Honor Crimes in Turkey*, 15 DIFFERENCES: J. FEMINIST CULTURAL STUDS. 118, 123 (2004) (“In today’s criminal code, concerns about family honor are, in fact, deemed so important that they can be shown to be a mitigating condition even of infanticide or the abandonment of a child. ‘Infanticide for family honor,’ the legal term for a crime differentiated from manslaughter, draws a sentence of only four to eight years instead of the twenty-four to thirty years for ‘regular’ manslaughter (Article 453).”).

111 Silvia Pimentel et al., *supra* note 109, at 250–51 (quoting Reyes Terán, director of the Women’s Institute of Oaxaca) (“In the Penal Code of the State of Oaxaca in Mexico, article 293 refers to the homicide for honor. According to Reyes Terán, ‘the homicide for honor, known in the other states as homicide in the heat of passion, guarantees an inferior punishment to individuals who kill their spouses under the argument of meeting him/her ‘in sexual intercourse or close to its consummation.’”) (quotation marks omitted).

112 HUMAN RIGHTS WATCH, CRIMINAL INJUSTICE: VIOLENCE AGAINST WOMEN IN BRAZIL 18 (1991).

113 *Id.* at 22.

114 *Id.* at 27.

115 See Ferris K. Nesheiwat, *Honor Crimes in Jordan: Their Treatment Under Islamic and Jordanian Criminal Laws*, 23 PENN ST. INT’L L. REV. 251, 276–80 (2004) (discussing Jordan’s use of both a “heat of passion” statute and a provision covering general honor crimes).

116 See *id.* (“In 1964, however, the JCC reversed its position and held the applicability of Article 98 to Honor Crimes, arguing it complements Article 340. The JCC held that if the high standard required by Article 340 is not established the court can look to Article 98 for mitigating factors and reduction of punishment.”).

combination integrates the “heat of passion” concepts, which are more closely identified with the West, and the “honor” provisions, which are commonly perceived as associated with the East.¹¹⁷ Lama Abu-Odeh argues that American and Arab legal systems embody both honor and passion and exhibit some tension between the two concepts.¹¹⁸ Building on Abu-Odeh’s important insight regarding the inter-relatedness of honor and passion, this Article rejects the notion that the concepts of honor and passion operate in disconnected and distinct ways in the East and the West.

Although these “heat of passion” provisions theoretically require a close temporal connection between the discovery of the precipitating event and the violent act, some courts have applied them in circumstances involving premeditated honor crimes.¹¹⁹ A closer examination of Jordanian law provides an illustration. Until 2001, when the Jordanian government amended the provision to allow women to benefit from the mitigating provision as well,¹²⁰ Article 340 of the Jordanian Penal Code stated, “He who surprises his wife, or one of his female relatives committing adultery with somebody and kills, wounds, or injures one or both of them shall be exempt from penalty.”¹²¹ This provision derives from the 1858 Ottoman Penal Code and the French Penal Code of 1810.¹²² Article 340 exempts from punishment those who act to reclaim the family’s honor by committing violence against the offending spouse and her partner.¹²³ Despite its clear codification of honor and

117 Abu-Odeh, *Comparatively Speaking*, *supra* note 58, at 289.

118 *Id.* at 292 (“Interestingly, it will turn out that that honor of one (the American) is the passion of the other (the Arab), while the passion of one (the American) echoes the norms of honor of the other (the Arab).”).

119 Hussain, *supra* note 13, at 232 (citing Kathryn Christine Arnold, Comment, *Are the Perpetrators of Honor Crimes Getting Away with Murder?: Article 340 of the Jordanian Penal Code Analyzed Under the Convention of the Elimination of All Forms of Discrimination Against Women*, 16 AM. U. INT’L L. REV. 1343, 1368 (2001)).

120 For a complete description of the law reform process, see Warrick, *supra* note 18, at 328–36.

121 Nesheiwat, *supra* note 115, at 273.

122 Abu-Odeh, *Honor Killings*, *supra* note 73, at 914 (“Article 340 was its historical origin in two legal sources that are surprisingly harmonious when it comes to the issue of ‘honor killings.’ They are the Ottoman Penal Code of 1858 and the French Penal Code of 1810.”) Abu-Odeh notes that the “provision of the French Penal Code was not abolished until 1975.” *Id.* at 915.

123 PARROT & CUMMINGS, *supra* note 95, at 180 (“Jordanian Law considers murder a legitimate act of defense when the act of killing another or harming another was committed as an act of his life, his honor, or somebody else’s life or honor.”).

passion concepts, Article 340 is rarely used as a defense for honor crimes.¹²⁴ Because it requires surprise, it is inapplicable to many premeditated honor crimes.¹²⁵ Furthermore, women are rarely caught in the act of adultery; “[i]n practice, women and girls are usually killed well after whatever act they are believed to have committed”¹²⁶ Despite its infrequent use—and even more infrequent success—Article 340 is the “basis of the social understanding of the law’s role” in crimes of honor; “[i]t is widely understood that the behavior encompassed by the statute’s description would discredit the honor of a woman’s (male) relatives, and that the law is meant to account for the natural response to such a provocation.”¹²⁷

In contrast, Article 98 of the Jordanian Penal Code is often invoked as a defense to honor crimes.¹²⁸ Article 98 states: “He who commits a crime in a fit of fury caused by an unrightful and dangerous act on the part of the victim, benefits from a reduction of penalty.”¹²⁹ Article 98 more closely resembles the Western “heat of passion” defense than Article 340.¹³⁰ Notably, courts may reduce punishments handed down under Article 98 to just six months if the victim’s family agrees not to press charges.¹³¹ Because of the intra-familial nature of honor-related violence, families often waive the criminal charges against the perpetrators.¹³² Thus, perpetrators frequently serve six-month sentences following the waiver of charges; in fact, perpetrators who have admitted to murder sometimes walk out

124 Nanes, *supra* note 88, at 118 (“Yet, Article 340 has been applied only once in the 35 years that it has been part of Jordanian law.”).

125 ALAN GEORGE, JORDAN: LIVING IN THE CROSSFIRE 199 (2005) (“In practice, Article 340 has rarely been invoked, if only because it is rare for a woman to be discovered *in flagrante*.”).

126 Warrick, *supra* note 18, at 327.

127 *Id.* at 326.

128 GEORGE, *supra* note 125 (“The usual defence in honour crime cases has been Article 98 of the Penal Code”).

129 Abu-Odeh, *Honor Killings*, *supra* note 73, at 924.

130 Nanes, *supra* note 88, at 118.

131 HUMAN RIGHTS WATCH, HONORING THE KILLERS, *supra* note 17, at 2 (“Under article 98 of the penal code, this can be reduced to six months if the victim’s family waives charges against the perpetrator.”).

132 *Id.*

of the courtroom, having served six or more months prior to the hearing.¹³³ In Jordan, the average sentence served for an honor killing is just seven-and-a-half months.¹³⁴

Historically, the Jordanian Court of Cassation (“JCC”) had interpreted the scope of “wrongful and dangerous act” on the part of the victim quite narrowly.¹³⁵ Under this narrower interpretation, “the court held a woman’s dishonorable action, or even her illegitimate pregnancy did not amount to a case of wrongful and dangerous act against the male.”¹³⁶ The JCC, however, changed course in 1964 and interpreted Article 98’s “wrongful and dangerous act” language to include a broad range of behavior on the part of the victim to justify a reduction in penalties, including anything from “the victim’s illegitimate pregnancy to walking alone at night.”¹³⁷

The courts have been inconsistent in their interpretation of the scope of Article 98.¹³⁸ In one case, the JCC determined that two days was an insufficient cooling-down period and issued a reduced penalty under Article 98 in a case in which a man murdered his sister two

133 *Id.* (“Indeed, it is common for killers, having freely admitted their crime and served six or more months awaiting trial, to leave the courtroom as free men immediately after being found guilty.”).

For example, a thirty-year-old man identified as Ziad H. who had murdered his divorced sister for being absent from the family home for one week told authorities, “people started talking about us, so I decided to kill her.” A pathologist’s report indicated that his sister, whom he stabbed thirty times, had not been involved in sexual activity. The father of the victim, who was also the father of the defendant, dropped charges. In January 2003, the murderer was sentenced to six months for the “honor” crime due to the mitigation granted under article 98. Having served the time while awaiting trial, he was freed.

Id. at 19.

134 PINAR İLKKARACAN, DECONSTRUCTING SEXUALITY IN THE MIDDLE EAST: CHALLENGES AND DISCOURSES 23 (2008) (concluding, based on research from 1998 and 2000, that the “average sentence served in Jordan is seven-and-a-half months for an honor killing”).

135 Nesheiwat, *supra* note 115, at 276 (“Prior to 1964, the Jordanian Court of Cassation (“JCC”) held that nothing less than a minor case of self-defense could be construed as ‘wrongful and dangerous act’ on the part of the victim to justify the application of Article 98. Historically, the court held a woman’s dishonorable action, or even her illegitimate pregnancy did not amount to a case of wrongful and dangerous act against the male.”).

136 *Id.*

137 *Id.*

138 Lama Abu-Odeh, *Crimes of Honour and the Construction of Gender in Arab Societies*, in FEMINISM & ISLAM: LEGAL & LITERARY PERSP. 141, 161 (1996).

days after discovering that she had allegedly committed adultery.¹³⁹ Although there is some inconsistency in the court's interpretation of Article 98, the JCC has interpreted Article 98 to include even honor crimes committed with premeditation.¹⁴⁰

Similar provisions exist in Pakistan's legal code. "Pakistan's crime of passion clause of 'grave and sudden provocation' was inherited from [the] British penal code, and although the Pakistani clause was omitted in 1990, Pakistani courts have gradually reintroduced the mitigating provision in their interpretations of the law to grant convicted defendants more lenient sentences."¹⁴¹ It is not even always necessary that the perpetrator claim "grave and sudden provocation."¹⁴² Despite failing to plead sudden provocation, a court accepted mitigating circumstances in the case of Muhammad Younis, who killed his wife, claiming he had caught her with another man.¹⁴³ Although the evidence weighed against the defendant, the court nevertheless stated, "The appellant had two children from his deceased wife and when he took the extreme step of taking her life giving her repeated knife blows on different parts of her body, she must have done something unusual to enrage him to that extent."¹⁴⁴

In many cases, the perpetrators of honor crimes specifically plan their crimes to take advantage of the judicial system's mitigation clauses. Frequently, the victim's family, when plotting an honor killing, will select as perpetrator a family member who is able to

139 HUMAN RIGHTS WATCH, *HONORING THE KILLERS*, *supra* note 17, at 19–20 ("In another reported case, a man heard his sister referred to as a 'slut' and confronted her. She told him to 'mind his own business.' He went to bed, awoke the next morning and strangled her with a phone cord. The High Criminal Court ruled: 'It does not matter that the defendant killed his sister hours after [learning of her supposed act]. He was still under the influence of extreme anger, which caused him to lose his ability to think clearly because of the unlawful act committed by his sister.'"). Though the woman had been impregnated by a rapist, the Court stated that "The victim's actions were an unlawful and dangerous act that brought disgrace and shame to her family." *Amman "Honor Killer" Gets One Year*, BBC NEWS (June 1, 2003, 1:02 PM), http://news.bbc.co.uk/2/hi/middle_east/2954060.stm.

140 *Id.* at 2 ("While there is some evidence of greater sensitivity in recent years, the courts still routinely accept a killer's excuse that he acted out of 'fury' and diminished capacity—even when the murder occurs weeks after the alleged offensive act—and are willing to consider the slightest gestures of female autonomy as provocations tainting family honor.").

141 Hussain, *supra* note 13, at 232.

142 AMNESTY INT'L, PAKISTAN, *supra* note 90, at 13 ("In some cases, courts have found extenuating circumstances even when the murderer did not claim to have been suddenly and severely provoked."). *See id.* at 14–15.

143 *Id.* at 15.

144 *Id.*

take advantage of youth mitigation provisions.¹⁴⁵ In Turkey, for example, Hacer Felhan's family took it as an insult to her honor when a friend dedicated a "love song" to her on the radio.¹⁴⁶ Hacer, fearing for her life, faked her own death and ran away to a friend's house.¹⁴⁷ Eventually found by the police and returned to her family, she was executed by her thirteen-year-old brother, Muhammed, whom the family had chosen to "clean their namus [honor]."¹⁴⁸ Because of his youth, Muhammed was sentenced to just ten years in prison, serving only two.¹⁴⁹

In 1921, Italian scholar Mario Manfredini described the first prohibitions against immodesty in the Italian penal code as follows: "[T]he equivalent of modesty in men is jealousy and honour; i.e. the defence of their own personal value in society, the reaction of the endangerment of their own property and goods."¹⁵⁰ Commenting on Manfredini's observation, Maria Gabriella Bettiga-Boukerbout offers, "[a]cts that breached modesty were therefore initially sanctioned because they jeopardized the man's exclusive enjoyment of a woman, his right to possess her without interference."¹⁵¹ According to this conception of honor, a man acted to exclude other men from sexual access to a woman in his family in an effort to protect male familial honor. The law recognized the need to protect honor as a valuable good or form of property.

The Rocco Code, the Italian penal code of 1931, reflects the notion that a man is entitled to go to great lengths to reclaim honor property once it has been taken through the "immoral" acts of others. Article 587 of the Rocco Code imposes a penalty of three to seven years in jail for someone who kills his spouse, sister, or daughter after she has

145 Kogacioglu, *supra* note 110, at 123 ("Such reductions are often combined with age reductions, leading to cases in which the family of the victimized woman designates a younger member to commit the crime so as to benefit from all possible legal mechanisms that can lessen the sentence."); *see also* Yakin Ertürk, Special Rapporteur on Violence Against Women of the Hum. Rts. Council, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled Human Rights Council: Addendum: Mission to Turkey*, U.N. Doc. A/HRC/4/34/Add.2 (Jan. 5, 2007) ("A young man or boy is often assigned to commit the crime because it is hoped that the young offender will receive a more lenient sentence.").

146 Sev'er & Yurdakul, *supra* note 52, at 983–84.

147 *Id.*

148 *Id.* at 984.

149 *Id.*

150 Bettiga-Boukerbout, *supra* note 55, at 231.

151 *Id.*

dishonored her family through “unlawful sexual relations.”¹⁵² This provision and other explicit references to honor were removed from the penal code in 1981.¹⁵³

Despite the fact that some jurisdictions have eliminated honor-related provisions and that others have laws that, on their face, do not apply to premeditated honor crimes, many courts continue to find ways to excuse honor-related violence or reduce penalties for offenders.¹⁵⁴ The law thus reinforces the perception that male possessors of honor property may vigilantly protect the value of their honor property, even through gender-based violence. By significantly reducing penalties for perpetrators of honor crimes or crimes committed by a cuckolded man that blur the line between honor-motivated crime and sudden provocation, the law signals a social acceptance of honor-related violence.¹⁵⁵

D. The Economy of Honor

Honor has significant value; for many, it determines self-worth. There are three primary ways in which honor and economics intersect. First, honor is itself a form of currency.¹⁵⁶ Second, honor-related violence often results from a cost-benefit analysis within families.¹⁵⁷ Third, families sometimes use honor fraudulently for economic gain.¹⁵⁸ These links between honor and economics reinforce the law’s implicit treatment of honor as property.

1. Honor as Currency

As Charles Reich famously recognized in 1964 in *The New Property*, “more and more of our wealth takes the form of rights and status rather than of tangible goods.”¹⁵⁹ Forms of

152 Article 587 of the Rocco Code states, “Whoever discovers unlawful sexual relations . . . on the part of their spouse, daughter or sister and in the fit of fury occasioned by the offence to their or their family’s honour causes their death, shall be punished with a prison term from three to seven years.” *Id.* at 234.

153 *Id.* at 239.

154 Hussain, *supra* note 13, at 235 (“Even when an honor crime conviction is obtained, eighty-five percent of perpetrators are either acquitted or given lenient sentences.”).

155 Obviously, there are differences between a typical honor crime and a typical case involving sudden provocation, but there are many cases which blur the line between honor and passion. It is these line-blurring provocation cases with which I am concerned here.

156 See discussion *infra* Part I.D.1.

157 See discussion *infra* Part I.D.2.

158 See discussion *infra* Part I.D.3.

159 Charles A. Reich, *The New Property*, 73 *YALE L.J.* 733, 738 (1964).

wealth can be culturally determined.¹⁶⁰ In high-tech virtual worlds, academics and gamers are beginning to identify the ways in which reputation operates as a form of property.¹⁶¹ “Virtual reputational economies show that reputation can be gained, lost, traded, protected, and shared, all in property-like fashion, without regard to whether it has independent economic value.”¹⁶² Recent scholarship in the world of virtual economies has explored the ways in which status and reputation function as property, including similarities in the transfer and protection of reputational property.¹⁶³ The fact that reputation in the virtual world lacks market value in the real-world economy is irrelevant to its operation as a form of Reich’s “New Property.”¹⁶⁴

In much the same way that virtual reputation is a form of property that is disconnected in any concrete sense from the market economy, so too is honor property. Virtual reputations are owned, “whether or not those reputations ever interact with the real-world economy.”¹⁶⁵ Honor property sometimes has measurable economic value—not because it is alienable, but because its absence can have serious economic consequences. The human rights organization, Amnesty International, describes the financial impact of familial shame, noting that “[t]he livelihood of entire families may be affected: a shopkeeper who does not ‘cleanse his family honor’ may lose all his customers, for example.”¹⁶⁶ A family’s shame may result in fewer economic transactions with neighbors, decreased odds that other daughters in the family will be able to marry, and a compromised ability to make financially beneficial alliances within the community.¹⁶⁷

160 *Id.* (noting that forms of wealth “are constantly changing and differ in every culture”).

161 Thanks go to my colleague, Joshua Fairfield, an expert in the legal regulation of virtual worlds, for pointing out the burgeoning scholarship on reputation as property in the virtual world. *See, e.g.*, Joseph Blocher, *Reputation as Property in Virtual Economies*, 118 YALE L.J. POCKET PART 120 (2009).

162 *Id.*

163 *See, e.g., id.*

164 *See id.*

165 *Id.*

166 AMNESTY INT’L, TURKEY: WOMEN CONFRONTING FAMILY VIOLENCE 18 (2004), <http://www.amnesty.org/en/library/asset/EUR44/013/2004/en/176dcc64-d5ed-11dd-bb24-1fb85fe8fa05/eur440132004en.pdf> [hereinafter AMNESTY INT’L, TURKEY].

167 *Id.* (noting that, conversely, when women fail to adhere to honor codes, the “livelihood of entire families may be affected: a shopkeeper who does not ‘cleanse his family honour’ may lose all his customers, for example”); *see also* Faqir, *supra* note 16, at 72 (recounting the story of Basma told in the introduction of this Article).

Even when there is no direct connection to market transactions or measurable economic consequences, however, honor property, like virtual reputations, resembles other forms of property. “[H]onorable deeds are . . . looked upon as a valued possession.”¹⁶⁸ The conceptual similarities between honor property and other forms of property help to explain why some legal systems have treated honor as property, albeit without doing so explicitly.

The meanings of honor and reputation, more broadly, are socially constructed. Cory Doctorow’s science fiction novel, *Down and Out in the Magic Kingdom*,¹⁶⁹ compellingly illustrates the degree to which our notions of property are socially constructed. Doctorow creates an imaginary world in which money is replaced by the currency of the “Whuffie.”¹⁷⁰ The Whuffie is a reputation-based currency: the value of a person’s Whuffie fluctuates according to that person’s behavior and the public’s perception of that behavior.¹⁷¹ Honor operates in the real world the way that Whuffie operates in Doctorow’s fictional world. Honor is a form of wealth that determines status and evokes desperate and violent efforts to retain or regain it.

Vigilant protection of honor property is also deeply constitutive of masculinity.¹⁷² Honor, as a form of wealth or property, thus, determines status and manliness. With both masculinity and property at stake, the cultural stakes are high.

2. Honor and Cost-Benefit Assessments

Violence against women occurs in all communities and across all socio-economic strata.¹⁷³ However, studies suggest that honor crimes are more prevalent in “economically

168 Sev’er & Yurdakul, *supra* note 52, at 971–72.

169 CORY DOCTOROW, *DOWN AND OUT IN THE MAGIC KINGDOM* (2003).

170 *Id.* at 5.

171 *Id.* (“[W]huffie recaptured the true essence of money By measuring the thing that money really represented—your personal capital with your friends and neighbors—you more accurately gauged your success.”).

172 DAVID GHANIM, *GENDER AND VIOLENCE IN THE MIDDLE EAST* 43 (2009) (“A man’s masculinity is socially constructed through his ability to deny other men sexual access to his female relatives. Therefore masculinity is also related to punishing transgressions of this moral code.”).

173 See Pamela Goldberg & Nancy Kelly, *International Human Rights and Violence Against Women*, 6 HARV. HUM. RTS. J. 195 (1993) (“[P]hysical abuse of women is pervasive, cutting across cultural, class, and economic lines”); see also E.S.C. Res. 1990/15, Annex 23 (recognizing “that violence against women in the family and society is pervasive and cuts across lines of income, class and culture”); Moira L. McConnell, *Violence Against Women: Beyond the Limits of the Law*, 21 BROOK. J. INT’L L. 899, 899 (“Violence against women exists in various forms in everyday life in all societies.”).

disenfranchised, poverty-stricken areas.”¹⁷⁴ In a study conducted to determine whether there was a significant correlation between honor crimes and communities living in poverty, Jordanian economist Dr. Yusuf Mansur developed a cost-benefit model to explain the economic aspects of honor crimes:

The supply of crime is modeled as a choice between legitimate activities such as work on the one hand and criminal activities such as killing a female for breaking the honor code of the community, on the other. The choice depends on the net payoff of the . . . criminal activity itself—which may include increased inheritance to the perpetrator, job gain and positive reputation in the community—above all other costs associated with the crime.¹⁷⁵

Under Mansur’s model, the cost side of the calculus includes the lost wages from employment that result from incarceration, direct costs such as the cost of a gun, and the cost of government-imposed penalties in the form of fines or incarceration.¹⁷⁶ Indeed, “[i]n societies where no punishment is handed out for committing ‘honor’ crimes and where the perpetrator is rewarded in terms of social standing and job opportunities or commercial relationships, [honor crimes] tend[] to have a higher propensity.”¹⁷⁷

This kind of cost-benefit analysis suggests that increasing the costs or decreasing the benefits of honor crimes will help to combat them. On the cost side, increased legal penalties (if such penalties were actually enforced by the state) could lead to fewer honor crimes.¹⁷⁸ Another important cost calculation is the value of women’s lives within families and communities. Increasing women’s economic value to the family would theoretically increase the cost of honor killings. Economic empowerment for women then becomes an important strategy to increase the financial cost to families who sacrifice mothers, daughters, and sisters in the name of reclaiming honor property.

174 MANSUR ET AL., *supra* note 6, at 26.

175 *Id.* at 33–34. (“These costs include the foregone wages from continuing legitimate activities such as work in current employment, the direct costs of the crime such as cost of a gun, knife; elaborate criminal designs to commit the crime . . . and the expected future penalties from the crime (fines, incarceration, and other sanctions by the state or the community).”).

176 *Id.* at 34–35.

177 *Id.* at 35.

178 This assumes punishment is an effective deterrent to honor crimes.

Honor-related violence occurs across socio-economic groups in many communities.¹⁷⁹ In fact, one of the most notorious cases in Jordan involved Samia Sawar, the daughter of “one of the most successful businessmen in Peshawar,” the capital of a province in Pakistan, whose husband was abusive.¹⁸⁰ Though her parents allowed her to return home to escape the abuse, they refused to allow her to get a divorce because a divorce would damage the family honor.¹⁸¹ When she pursued a divorce despite her parents’ demand, she was met at her lawyer’s office by her mother and a man who was introduced as her mother’s driver.¹⁸² Immediately upon entering the lawyer’s office, the “driver” drew a gun and shot Samia in the head.¹⁸³

Sociological research, however, suggests that the incidence of honor-related violence is higher in economically disadvantaged communities.¹⁸⁴ Despite the potential misuse of such data to reinforce the class bias of elites, the data is relevant when considering the economic, property-based incentives at play in the context of honor-related violence. More research is needed to fully explore the potential links between structural poverty and honor-related violence.

3. Honor-Related Violence as Cover

Because in some countries the penalties for honor-related violence are considerably more lenient than those for comparable crimes, perpetrators sometimes disguise other forms of violence as honor crimes.¹⁸⁵ In some cases, a male family member may seek to extort money from an unrelated male by claiming that the non-family member has shamed

179 See, e.g., Kulwicki, *supra* note 69, at 81 (presenting the results of a survey on honor crimes and noting that victims varied from “belonging to ‘very good’ socioeconomic class to middle or poor class”); Safilios-Rothschild, *supra* note 69, at 210 (noting that honor crimes occur in both urban and rural communities).

180 KWAME ANTHONY APPIAH, *THE HONOR CODE: HOW MORAL REVOLUTIONS HAPPEN* 147 (2010).

181 *Id.*

182 *Id.* at 148.

183 *Id.*

184 See PARROT & CUMMINGS, *supra* note 95, at 175 (commenting that “honor killings are most common in poor, rural areas”).

185 Hussain, *supra* note 13, at 229 (“The justification of the honor crime is used as a cover-up for extortion and blackmail for the purposes of increasing personal wealth.”).

the family by engaging in sexual contact with a woman in the family.¹⁸⁶ The accused man, although not the female family member, may escape with his life if he is willing to pay compensation for the alleged loss of honor.¹⁸⁷ This extortion scheme often involves murdering a female relative to reclaim honor lost as a result of the fictional affair.¹⁸⁸ In this scenario, the male family member manipulates honor property and sacrifices a sister or daughter for economic gain.

Male family members also kill female family members in an effort to secure an increased share of inheritance.¹⁸⁹ Fadia Faquir notes, “a number of honour killings are in fact economic crimes, committed against female family members with whom there is a dispute about inheritance.”¹⁹⁰ Honor thus becomes a proxy for other motivations.

In some communities, dishonor results from a woman who refuses to marry the man her family has selected as her prospective husband.¹⁹¹ Jagmati Sangwan, president of the Haryana All India Democratic Women’s Association, suggests that the issue of marital choice for women is “deeply threatening to the panchayats[,]” or local councils, some of which have been accused of encouraging or ordering honor crimes.¹⁹² According to Sangwan, the issue of marital choice as a trigger for honor crimes is “a question of property

186 AMNESTY INT’L, PAKISTAN: VIOLENCE AGAINST WOMEN IN THE NAME OF HONOUR 25 (1999) [hereinafter AMNESTY INT’L, VIOLENCE AGAINST WOMEN] (“Reports abound about men who have killed other men in murders not connected with honour issues who then kill a woman of their own family as alleged *kari* to camouflage the initial murder as an honour killing.”).

187 *Id.* at 8 (“Justice means restoring the balance by compensation for damage. The karo who gets away has to pay compensation in order for his life to be spared. Compensation can be in the form of money or the transfer of a woman or both.”).

188 Hussain, *supra* note 13, at 229 (“For example, in order to blackmail a rival man to extract money, a husband may kill his wife and assert that she had an extramarital affair with the rival; the rival male would then be forced to pay a heavy sum of money or transfer property to the husband in order to preserve his life.”).

189 KARO KARI, TOR TOR, SIYAHKARI, KALA KALI, THERE IS NO HONOUR IN KILLING, NATIONAL SEMINAR REPORT 26 (Nabila Malick, Ishrat Saleem, Insha Hamdani & Shirkat Gah eds., 2003), http://www.boell-pakistan.org/downloads/Karo_Kari_Tor_Tora.pdf [hereinafter KARO KARI] (“Another common motive is to usurp woman’s share of inheritance. So accusing her of being *kari* and murdering her prevents not only loss of property but provides the added gain of compensation from whoever is accused as *karo*.”).

190 Faquir, *supra* note 16, at 72 (internal citations omitted).

191 AMNESTY INT’L, PAKISTAN, *supra* note 90, at 6 (“Women who are disowned by a family over a marriage are cut loose from their social moorings and become vulnerable to exploitation.”); HUMAN RIGHTS WATCH, HONORING THE KILLERS, *supra* note 17, at 1 (“In Jordan, a woman’s life is at risk if she engages in ‘immoral or shameful’ acts, such as . . . marrying someone of whom her family does not approve . . .”).

192 Roy, *supra* note 105.

rights.”¹⁹³ Families often insist that daughters and sisters “marry outside their villages, on the assumption that a woman who moves away can lay less claim to her paternal inheritance.”¹⁹⁴ A woman who refuses to accept her family’s economically motivated spousal choice may, therefore, be seen to have dishonored her family.¹⁹⁵ As a result, she may be vulnerable to honor-related violence or to other forms of economically motivated violence masquerading as honor-related violence.

My normative claim is that the notion of honor as property must be altered to include women as potential honor property holders and redefined so that its accretion in value is no longer contingent on women’s behavior. This approach is consistent with an understanding of honor as valuable social currency which should be available to women on equal terms with men. Women do, at times, control honor property and accumulate honor in their own right. Too often, however, women’s roles in the familial accumulation of honor property are limited to value preservation through virginity and chastity. The normative claim that honor must be disassociated from the strict policing of women’s sexuality reflects the pragmatic conclusion that honor, defined with or without reference to women’s sexuality, will continue to be culturally salient within many communities for some time.

II. Viewing Honor Through the Lens of Property

In order to explore honor concepts through the lens of property,¹⁹⁶ let us conceive of honor as an intangible form of property.¹⁹⁷ Honor property is “owned” by male family

193 *Id.*

194 *Id.*

195 *Id.*

196 This Article draws inspiration from Cheryl Harris’s 1993 groundbreaking article, *Whiteness as Property*, in which she “examines how whiteness, initially constructed as a form of racial identity, evolved into a form of property, historically and presently acknowledged and protected in American law.” Cheryl Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709, 1709 (1993).

197 “Although by popular usage property describes ‘things’ owned by persons, or the rights of persons with respect to a thing, the concept of property prevalent among most theorists, even prior to the twentieth century, is that property may ‘consist[] of rights in ‘things’ that are intangible, or whose existence is a matter of legal definition.’” *Id.* at 1725 (citing Frederick G. Whelan, *Property as Artifice: Hume and Blackstone*, in NOMOS XXII: PROP. 101, 104 (1980)).

members.¹⁹⁸ Honor property is located in the bodies of the sisters, daughters, mothers, and wives of these male property holders.¹⁹⁹ I do not claim that women themselves are the property of men in the family. The assertion that women are themselves property ignores women's agency and fails to recognize the many ways in which women resist categorical victimhood. Rather, my claim is that the legal system has implicitly treated honor as a form of property that is owned by men. The value of honor property fluctuates according to the behavior of female family members.²⁰⁰ Honor property is derived from socially respectable behavior of female relatives.²⁰¹ When female family members act "honorably," the value of honor property increases for the family as a whole.²⁰² When female family members act "dishonorably," or are merely perceived to have acted "dishonorably," the value of honor property decreases—sometimes significantly.²⁰³

As noted above, there are real economic costs associated with a decrease in the value of honor property. The community may ostracize all family members, community members

198 See AMNESTY INT'L, *VIOLENCE AGAINST WOMEN*, *supra* note 186, at 11 ("Ghairat [honor] is closely linked with izzat, respect or standing in society. Izzat bases itself on possession, wealth, property. 'A man's property, wealth and all that is linked with these is the sum total of his honour value.'") (quoting Nafisa Shah, *Honour Killings: Code of Dishonour*, THE REV. NOVEMBER 19–25, 1998, at 7). "A key observation is that 'although honour is located in material wealth, the language and expression of honour reside in the body.'" *Id.* (quoting Shah, *supra*, at 8).

199 See HUMAN RIGHTS WATCH, *CRIME OR CUSTOM?*, *supra* note 54, at 43 ("The high incidence of sexual assault in [Pakistan] is partly fostered by the societal subordination of women to men, by the custom of avenging oneself upon one's enemies by raping their women, who are seen as *repositories of family honor*, and by the impunity with which these crimes are carried out.") (emphasis added).

200 See BOURDIEU, *supra* note 1, at 45 (explaining that the value of alliances gained through the marriage of women, and therefore the symbolic profit they can yield, "partly depends on the symbolic value of the women available for exchange, that is to say, on their reputation and especially their chastity").

201 See Abu-Odeh, *Honor Killings*, *supra* note 73, at 917–18 (explaining that, in honor cultures, a woman must maintain both a biological and a social virginity, and by violating the regulations and prohibitions meant to guard one's physical virginity, a woman loses her social virginity and causes dishonor to her family).

202 See Joanne Payton, *Collective Victims, Collective Crimes: A Case Study of the Murder of Banaz Mahmood*, in *HONOUR, VIOLENCE, WOMEN AND ISLAM* 67, 68 (Mohammad Mazher Idriss & Tahir Abbas eds., 2011) (noting that a marriage can produce new alliances, and these alliances can facilitate connections to prestigious allies). These new allegiances, in turn, can produce increased economic opportunities for the patrilineal family unit as a whole. *Id.* The creation of prodigious new alliances, however, is dependent on the women being "offered for exchange" having a reputation for chastity. *Id.*

203 See Vandello, *supra* note 5, at 998 (noting that "women carry great influence in determining the reputation of a family" and that "[w]omen have both negative power (they can 'stain' the family honor through their behaviors) and positive power (. . . they can increase the reputation of the family by marrying up in the social chain).").

may refuse to patronize the family business, or the daughters in the family may be unable to marry,²⁰⁴ increasing costs for the natal family that must continue to support them. Within many communities, there is a widespread belief that the only way to restore value to honor property is by killing the female family member who allegedly engaged in “dishonorable” behavior.²⁰⁵ In many countries, the law makes allowances for those who act to reclaim their honor property—even when such acts involve extreme forms of violence against a family member.

Property theory may shed some light on the ways in which law has implicitly treated honor as a form of property held by men, with unfortunate consequences for women in those communities. Although this section focuses on property theory principles as they have evolved in the United States, the principles, broadly defined, are replicated in some form in many formerly colonial states.²⁰⁶ My intent here is not to argue that the theories themselves drive interpretation in any particular national courts. Rather, I argue that understanding the underlying property theories, many of which surface in vaguely similar forms in various parts of the world as a result of colonialism,²⁰⁷ will help us to critique and fine-tune the application of property principles to the honor context.

Property is not easily defined in the law. As a result, there are multiple theories that attempt to classify property and to determine what counts as property under the law.²⁰⁸ Many of the underlying theoretical principles help to explain why legal systems might implicitly treat honor as a form of property.²⁰⁹ As I demonstrate, a number of property law concepts are particularly salient in recognizing the ways in which law has treated honor as property. The relevant property concepts fall roughly into two conceptual categories: property as

204 Faqir, *supra* note 16, at 72 (recounting the story of Basma told in the introduction of this Article).

205 See, e.g., Asa Elden, *Men's Violence and Women's Responsibility: Mothers' Stories About Honor Violence*, in HONOUR, VIOLENCE, WOMEN AND ISLAM 128, 133 (Mohammad Mazer Idriss & Tahir Abbas eds., 2011) (“Only when a woman who is branded as a whore no longer exists, socially or physically can the honour of the collective be restored. Reputation may thus become a question of life and death.”); Meltem Müftüler-Bac, *Turkish Women's Predicament*, 22 WOMEN'S STUDS. INT'L FORUM 303, 309 (1999) (“*Namus* can only be cleansed—because it has been dirtied by the woman—by blood; so the woman has to be killed by one of the male members of the family”).

206 John Sheehan, *Conceptualising Property Rights Research*, 12 PAC. RIM PROP. RES. J. 389, 391 (“[T]he historic roots of property rights in other common law countries is the legacy of a historical colonial process . . .”).

207 See *id.*

208 See discussion *infra* Part II.A–B.

209 See *id.*

power and property as communication. Although these principles offer analytical insight into the law's implicit treatment of honor as a form of property, I argue in Part III that, as a normative matter, we must refine the understanding of honor as property to include women as rights holders with rights to honor property, which is defined without reference to women's sexuality.

A. Property as Power

1. First Possession Through Discovery or Conquest

The first possession rule guides courts in awarding property rights to those who first possessed a disputed, previously unowned property.²¹⁰ Not surprisingly, courts have struggled to determine the precise meaning and parameters of "possession."²¹¹ Generally, the law rewards those who are able to clearly articulate a claim to previously unowned or undiscovered territory.²¹² In the honor context, the "previously unowned or undiscovered territory" is the virginal, female body. The value of honor property is correlated with the notion of the undiscovered female body. Once, however, the female body has been "discovered," so to speak, either through premarital sex or even rape, the familial honor is so devalued that it triggers an attempt to reclaim that value through violence directed at the female family member.

Articulations of possession can also be assertions of power. In other words, those who define "possession" in any legal regime often do so in a way that reflects their own

210 See HERBERT BROOM, A SELECTION OF LEGAL MAXIMS 212–15 (1845) (discussing the various areas of law in which the legal maxim, "*qui prior est Tempore, potior est Jure*" [he has the better title who was first in point of time] has been applied).

211 See *Nat'l Safe Deposit Co. v. Stead*, 232 U.S. 58, 67 (1914) ("[B]oth in common speech and in legal terminology, there is no word more ambiguous in its meaning than possession."); see also FREDERICK POLLOCK & ROBERT SAMUEL WRIGHT, AN ESSAY ON POSSESSION IN THE COMMON LAW I (1888) ("[A]s the name of Possession is . . . one of the most important in our books, so it is one of the most ambiguous."); JOHN SALMOND, JURISPRUDENCE 285 (Glanville L. Williams ed., 10th ed. 1947) ("In the whole range of legal theory there is no conception more difficult than that of possession.").

212 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND 258 ("Occupancy is the taking possession of those things which before belonged to nobody. This, as we have seen, . . . is the true ground and foundation of all property . . . [H]e who could first declare his intention of appropriating anything to his own use, and, in consequence of such intention, actually took it into possession, should thereby gain the absolute property of it . . ."); Rose, *Possession*, *supra* note 36, at 74 ("For the common law, *possession* or 'occupancy' is the origin of property.") (emphasis in original).

interests.²¹³ A classic case in United States jurisprudential history, *Johnson and Graham's Lessee v. M'Intosh*,²¹⁴ illustrates the operation of this definitional power in a rights contest concerning territorial conquest. The case involved the colonization of the "New World" and the dispossession of indigenous peoples.

In *Johnson*, the dispute centered on land to which two different parties claimed title—Johnson through purchase from a Native American tribe and M'Intosh through a land patent obtained from the federal government.²¹⁵ Cheryl Harris describes the Court's assessment as follows: "Because the land had been left in its natural state, untilled and unmarked by human hands, it was 'waste,' and, therefore, the appropriate object of settlement and appropriation."²¹⁶ As Harris suggests, in other words, the courts only accepted the cultural practices of whites as methods for demonstrating legal possession, effectively making "whiteness" a prerequisite for property ownership.²¹⁷

In much the same way, courts have implicitly recognized a male interest in honor property. Women are required to conform to strict expectations regarding chastity.²¹⁸ This compliance with social expectations is, in fact, what creates value in honor property. Despite this role in value-creation, however, women are not the recognized holders of honor property. Women's efforts to increase the value of honor property are erased by cultural scripts that emphasize the role of men in safeguarding familial honor. Like the indigenous peoples in *Johnson*, women's control over honor property is rendered invisible and thus becomes legally insufficient to articulate a possessory claim to honor property.

The doctrines of first possession and discovery within property theory have particular resonance in the context of honor property. The law rewards property holders who are

213 Cheryl Harris notes that early American property law defined "possession" to "include only the cultural practices of whites" and that "[t]his definition laid the foundation for the idea that whiteness—that which whites alone possess—is valuable and is property." This redefinition essentially nullified first possession rights, thus justifying white conquest. Harris, *supra* note 196, at 1721.

214 *Johnson & Graham's Lessee v. M'Intosh*, 21 U.S. 543 (1823).

215 *Id.*

216 Harris, *supra* note 196, at 1721–22.

217 *Id.* at 1721, 1724.

218 In fact, at least one local governor in Afghanistan forces women to suffer the humiliation of "chastity checks." Drumbl, *supra* note 16, at 358 ("Ismail Khan, the Governor of Herat, has forced women to undergo 'chastity checks' and has forbidden them to shake the hands of foreign men.").

able to clearly articulate a claim to previously unowned or undiscovered territory.²¹⁹ In the honor context, “first possession” symbolizes the loss of virginity. For unmarried daughters or sisters, the value of honor property corresponds to the notion of the undiscovered body, or territory. First possessors of honor property include fathers, brothers, and other family members who have a stake in loudly and publicly maintaining the virginity of their daughters/sisters, which is explicitly calibrated to the value of honor property.

2. Occupancy Theory

As with common law first possession, occupancy theory provides a rationale for recognizing as superior the property claims of someone who establishes possession through occupation or control over the disputed property.²²⁰ Occupancy is one among many legally cognizable property rights. Because one may establish occupancy through demonstrated control over property, it, too, resonates with the notion of honor as property in which male family members work hard to exert control over honor property.

Once occupancy has been established, the law generally protects a continuing expectation of ownership based on an assertion of control over the property in question.²²¹ Property law, in fact, protects expectations: the law “recognize[s] and protect[s] even the expectation of rights as actual legal property.”²²² As a social construct, the law privileges the expectations of some above others.²²³ Male members of the natal family who exert control over female members in an effort to protect the value of honor property establish themselves as “occupants” in the property through such control over women’s actions.

219 Rose, *Possession*, *supra* note 36, at 74 (“For the common law, *possession* or “occupancy” is the origin of property.”) (emphasis in original).

220 See, e.g., GEORG WILHELM FRIEDRICH HEGEL, *PHILOSOPHY OF RIGHT* § 51 (T. Knox trans., 1821) (“[M]y inward idea and will that something is to be mine is not enough to make it my property; to secure this end occupancy is requisite. The embodiment which my willing thereby attains involves its recognisability by others. The fact that a thing of which I can take possession is a *res nullius* is a self-explanatory negative condition of occupancy, or rather it has a bearing on the anticipated relation to others.”).

221 Robert Sugden, *The Economics of Rights, Cooperation and Welfare*, in *PERSPECTIVES OF PROPERTY LAW* 178 (Robert C. Ellickson, Carol M. Rose & Bruce A. Ackerman eds., 1995) (noting that “[c]onventions favouring possessors can be found everywhere” and providing as the “purest” example the common law principle that “a right to a parcel of land or to a right of way can be established by a long period of undisputed occupation or use”).

222 John A. Powell (intentionally lower case), *New Property Disaggregated: A Model to Address Employment Discrimination*, 24 U.S.F. L. REV. 363, 366 (1990).

223 Joseph W. Singer, *The Reliance Interest in Property*, 40 STAN. L. REV. 611, 651 (1988) (“It is not the case that everyone in our society has equal access to wealth and power or that opportunities in the marketplace are even roughly equal.”).

Gendered conceptions of honor are imbued with expectations about women's future behavior. Family members' expectations of the sexual behavior of their daughters/sisters are central to familial notions of honor. By recognizing and protecting honor property through minimal or greatly reduced penalties for violent efforts to reclaim it, legal systems reinforce the expectation that women conform to rigid ideals of virginal behavior.

Describing how white privilege in the United States became a property right, Cheryl Harris observes: "Because the law recognized and protected expectations grounded in white privilege . . . these expectations became tantamount to property that could not permissibly be intruded upon without consent."²²⁴ In much the same way that racial privilege became an expectation for whites in the United States, the expectation of continued control over honor property instantiates this form of property in the legal systems of some countries.

The mostly male family members who invest their labor in protecting the value of honor property through control over the actions of women in their natal families certainly have an expectation of continued control. Men's control over the sexuality of women in their natal family often continues even after the woman marries.²²⁵ At that point, her husband may also share control, but male members of the natal family rarely relinquish it.²²⁶ In the case of honor property, this expectation of control is constitutive of the self; it becomes a measure of family identity and self-worth. Like Harris's notion of whiteness, honor is "an 'object' over which continued control was—and is—expected."²²⁷ The law reflects this understanding of honor and, therefore, makes allowances for those who seek to reclaim it or preserve it through socially sanctioned violence.

3. Labor Theory

Lockean labor theory tells us, "Whatsoever [one] removes out of the state that nature hath provided, and left it in, he hath mixed his *labour* with, and joined to it something that is his own, and thereby makes it his *property*."²²⁸ According to Locke, a thing derives its

224 Harris, *supra* note 196, at 1731.

225 MANSUR ET AL., *supra* note 6 at 16 ("In the event that a woman is perceived to have acted against the traditional ethical code, it is the patrilineal family, not the woman, on whom 'honor' is lost. According to widespread cultural values, it is possible to reclaim or repair family honor by punishing the woman. In conservative families, this reparation may translate into ending her life.")

226 *Id.*

227 Writing about race, Harris observes, "*Whiteness* was an 'object' over which continued control was—and is—expected." Harris, *supra* note 196, at 1730 (emphasis added).

228 LOCKE, *supra* note 37, at 19 (emphasis in original).

value from someone's investment of labor, and, as a result, the person who invested that labor deserves to call the property his or her own.²²⁹

In the honor context, family members vigilantly police the behavior of women in the family.²³⁰ Women and girls learn to act in a way that is consistent with chastity and honor at a young age.²³¹ They conform their behavior to an "elaborate system of commands and prohibitions."²³² Women's alleged violations of the social code range from relatively minor transgressions, such as being seen talking with a man, to what are perceived to be more serious transgressions, such as being accused of illicit sexual contact.²³³ Family and community members enforce this social code by imposing sanctions on women, including "the threat of physical punishment, spatial entrapment through segregation of gender spaces, and the active mobilization of the institutions of social gossip and reputation."²³⁴

The policing of women's behavior is labor-intensive. The mostly male possessors of honor property go to great lengths—and invest considerable labor—in preserving the value of honor property by restricting women's behavior. Consistent with Lockean labor

229 See Anupam Chander, *The New, New Property*, 81 TEX. L. REV. 715, 742 (2003) (noting that Lockean labor theory may "be characterized as one of moral desert: the law grants a person a property right in a thing because that person deserves it as a reward for the virtue of having created the major part of its value").

230 See Payton, *supra* note 202, at 69 ("The self-interested vigilance of brothers and fathers to maintain the family reputation creates a level of surveillance of women which any totalitarian state would envy.").

231 Abu-Odeh, *Honor Killings*, *supra* note 73, at 918. An example of early gender performance is sequestration, or *pardah*, in Pakistan:

Starting at puberty, a woman must . . . observe certain rules of behavior both inside and outside the house. The indoor restrictions would prohibit admittance of any male other than from the prescribed list of close relatives. The outdoor restrictions would require her to cover herself completely except for the upper part of the face. She must dress modestly and use a veil.

Izzud-Din Pal, *Women and Islam in Pakistan*, 26 MIDDLE E. STUDS. 449, 450 (1990) (citing ABUL A'LA MAUDOUDI, *PURDAH* (12th ed., 1967)).

232 Abu-Odeh, *Honor Killings*, *supra* note 73, at 918.

233 PARROT & CUMMINGS, *supra* note 95, at 174–75 (A perceived sexual transgression can consist of, but is not limited to, the following actions: being "raped, . . . wanting to be educated, . . . selecting [one's] own spouse[], . . . marrying outside [one's] caste or class, . . . marrying outside [one's] ethnicity, . . . marrying outside [one's] nationality, . . . not obeying [one's] husband, . . . having premarital sex, . . . having extramarital sex, . . . being pregnant outside of wedlock, . . . being suspected of having lost [one's] virginity, . . . being seen with or talking to a man other than a relative, [causing one's husband to want] another wife, [having one's] whereabouts . . . unaccounted for during [a] time [one] *could* have been with a man.") (emphasis in original).

234 Abu-Odeh, *Honor Killings*, *supra* note 73, at 919.

theory, those family members have mixed their labor with the honor property and have, in fact, worked to preserve or increase its value. As a result of this labor, the law implicitly recognizes a property interest in honor held by those who work to preserve its value, namely the predominantly male family members who require strict adherence to social norms from the women in their families. There is, thus, a Lockean reward for actively policing the boundaries of women's sexuality.

Critical race theorists have offered an important critique of Lockean labor theory.²³⁵ Because slave labor was not treated as labor in the Lockean sense, critics have rightly charged that the theory reflects a privileged, white account of labor and fails to adequately account for coercive or slave labor.²³⁶ Lockean labor theory, therefore, privileges some forms of labor over others. In the honor context, a similar critique applies. A feminist critique of Lockean labor theory reveals why male efforts to preserve honor are rewarded as useful labor, while women's own efforts to maintain family honor are largely invisible. Men thus reap the benefits of enhanced-value honor property, even when women have acted with agency to protect the family's honor through self-policing or policing the behavior of other women in the family. Lockean labor theory, therefore, sheds light on the ways in which labor may increase the value of honor property, but its value is limited because it fails to fully account for women's agency and women's self-regulatory, value-enhancing behavior.

4. Exclusion

The right to exclude is one of the core tenets of modern property theory.²³⁷ In the context of honor property, exclusion means excluding others from gaining sexual access to the family's daughters, sisters, or wives, thereby diminishing the value of honor property. Through this exclusion, the property holder both establishes the value of honor property and asserts a possessory claim to it.

235 See Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 979 (1982) (“[I]f Locke’s claim is that property is justified because it is a condition necessary to produce or sustain free individuals, his theory carries the inherent limitation that any form of property incompatible with free individuals is not justified.”).

236 See Harris, *supra* note 196, at 1727–28 (discussing how Lockean labor theory was used to justify white racial domination with respect to Native Americans).

237 RICHARD A. EPSTEIN, *TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN* 65 (1985) (“The idea of property embraces the absolute right to exclude.”).

The legal systems of some communities reinforce the right to exclude as a possessory right by reducing penalties for honor crimes.²³⁸ In so doing, the law suggests that the holder of honor property may assert the right to exclude others and demand compliance with that assertion. When an offender fails to comply and meddles with honor property (through an alleged sexual transgression), the law allows the property holder to take steps to reclaim the property through violence directed at the offending female family member and the community member who failed to respect the possessory claim.

Gender subordination undergirds the right to exclude others from meddling with or diminishing the value of honor property. Even when other females in the family share in the benefits of honor property and police each other's sexual behavior, the regulatory approach to women's sexuality is deeply subordinating and relies on male dominance. Whether carried out by women or men, the regulation of women's sexuality in the name of honor property severely undermines women's sexual autonomy and bodily integrity. The law recognizes a possessory right to exclude others from interfering with one's use, enjoyment, and control over honor property, thereby reifying women's lack of autonomy in decisions related to sexual activity. Women do, of course, exercise agency in decisions regarding their sexuality. When those decisions threaten the value of honor property, however, women become vulnerable to violence.

B. Property as Communication

1. Property as Relational

Property is relational. There must be "some sort of social recognition of this relationship [between property holder and the object of property]."²³⁹ To be meaningful, the external world, or community, must recognize the relationship between the property holder and the object of property.²⁴⁰

Male family members situate themselves in a particular relationship with the object of honor property. Their relationship is one of control and exclusion; they seek to control honor property and the status and benefits that flow from proper control. In other words, if the male members of the family—in collaboration with female family members who

238 See *supra* notes 107–55.

239 See Adam Mossoff, *What Is Property? Putting the Pieces Back Together*, 45 ARIZ. L. REV. 371, 380 (2003).

240 *Id.* ("In order for property to make its final appearance, individuals must consent to recognize and respect each other's rights.").

have a stake in the rewards of honor property—are able to control the sexuality of female family members, they benefit in terms of social capital and economic reward.²⁴¹ There are significant incentives for them to place themselves “in the proper relationship with” honor property.²⁴²

2. Communication of Possession

Property theorist Carol Rose observes the “social relationship of claim and recognition only exists because people are able to communicate their claims and because others understand and more or less agree to honor them.”²⁴³ Rose, in fact, suggests that communication is the core of property theory.²⁴⁴ To establish oneself as the rightful possessor of an item of property, one must communicate that claim to others. In determining what counts as “possession,” Rose observes that possession requires “a clear act, whereby all the world understands” that a person intends to exert control over something.²⁴⁵ It is the communication, or “clear act,” and the receptivity within the community that leads to a recognition and understanding of possession.²⁴⁶

In the case of honor property, the community plays two significant communicative roles in maintaining the concept of honor as property. First, the community recognizes the relationship between the property holder and the honor property and expects family members, particularly male family members, to zealously guard the family’s honor

241 See AMNESTY INT’L, TURKEY, *supra* note 166, at 18 (noting that, conversely, when women fail to adhere to honor codes, the “livelihood of entire families may be affected: a shopkeeper who does not ‘cleanse his family honour’ may lose all his customers, for example”).

242 See Mossoff, *supra* note 239, at 381 (“For the essential characteristic of private property is the fact that it belongs to a given individual in such a way as to be incapable of belonging to another individual.”) (quoting HUGO GROTIUS, *DE JURE BELLI AC PACIS LIBRI TRES* (II)(2)(ii)(1), 228 (William Whewell trans., 1853)).

243 Carol M. Rose, *Introduction: Property and Language, or, the Ghost of the Fifth Panel*, 18 *YALE J.L. & HUMAN.* 1, 3 (2006) [hereinafter Rose, *Introduction*] (describing language as the origin of property in the common law system).

244 *Id.*

245 Rose, *Possession*, *supra* note 36, at 76. Rose further clarifies this position by providing that “[t]he first to say, ‘This is mine,’ in a way that the public understands, gets the prize, and the law will help him keep it against someone else who says, ‘No, it is mine.’” *Id.* at 81.

246 *Id.* at 78 (“Possession now begins to look even more like something that requires a kind of communication, and the original claim to the property looks like a kind of speech, with the audience composed of all others who might be interested in claiming the object in question.”).

property.²⁴⁷ Second, the community also plays a role in assigning and regulating the value of honor property. I call the community's first role its "receptive" role in honor property. In the relational sense of property, the community receives information about the family's honor property based on how vociferously the ownership of honor property is communicated to the community, or, in other words, how aggressive the family is in openly policing women's behavior.²⁴⁸

As recipients of this communication, the community thus reinforces the notion that family members must police women's behavior in an effort to protect against devaluation of the family's honor property. By social mandate, the community requires that family members police women's behavior.²⁴⁹ Laura Heymann notes that reputation is created by the collective judgments of a community.²⁵⁰ Reputation itself is a thing of value that is created not by its owner, but by the community at large through "intergroup communication."²⁵¹ When an individual's reputation is injured, the resulting harm is primarily due to the effect

247 See AMNESTY INT'L, VIOLENCE AGAINST WOMEN, *supra* note 186, at 12 ("The man who kills for reasons of honour becomes *ghairatmand* [possessing honour] and is morally and legally supported by his kinsmen. A man's ability to protect his honour is judged by his family and neighbours and he is taunted by *tano* [insinuation bordering on insult] that he is 'socially impotent' and *beghairat* [without honour] if he fails to kill a woman of his household who has damaged his honour. Honour killings consequently are not hidden away but openly performed, often ritually and with the maximum spilling of blood.") (emphasis in original). Communal recognition of the honor property is in line with Carol Rose's requirement that there be an audience for the communication and that that audience understands the language and message. See Rose, *Introduction*, *supra* note 243, at 6 ("A manifestation to inform the world means that there is in fact an audience out there, and the audience has to 'get it.'").

248 See GHANIM, *supra* note 172, at 40 ("Honor killing is strongly related to the protection of honor in patriarchal societies. Perpetrators of these crimes are loaded with the pressures of a male-centered culture. The honor of men and the community is mostly, if not solely, linked to the restriction of female relatives' sexuality, thereby establishing a cult of virginity within the lives of Middle Eastern families."). Further, female family members are often complicit in the policing of honor code violations. *Id.* at 45. "From the perspective of women who perpetrate or contribute to honor killings, they have been forced into obedience and oppression their entire lives; why, then, would they choose to take a different course of action, by allowing some women to behave differently?" *Id.*

249 MANSUR ET AL., *supra* note 6, at 13 (2009) ("Sections of society not only accept the crime as an honorable deed, but more worryingly, they pressure, shun, ostracize and force families within their fold to murder their daughters, sisters, mothers and female cousins.").

250 See Laura A. Heymann, *The Law of Reputation and the Interest of the Audience*, 52 B.C. L. REV. 1341, 1342 ("[A]t its core, reputation is the result of a collective act of judging another.").

251 See *id.* Professor Heymann describes "intergroup communication" as what happens when members of a community share opinions with one another about an individual or firm's reputation. *Id.* For example, it is not enough for a single individual to visit a restaurant three times, have a bad meal each time, and then single-handedly determine that the restaurant has a bad reputation. *Id.* Instead, "an inquiry about the reputation of another is seeking a collective judgment formed via communications among a relevant community." *Id.* at 1351. "Communicating one's opinion about another is thus necessary to the formation of reputation and to the acquisition of its benefits by both the holder of reputation [and] by the relevant community." *Id.*

it has on a community's perception of that individual, which in turn produces additional injuries such as emotional harm or economic loss.²⁵² Thus, the community plays an important role in determining the value of an individual's reputation.²⁵³ Because masculine identity and self-worth is often tied to one's ability to protect the value of honor property,²⁵⁴ men must effectively control honor property and communicate that control to the community in order to derive value from it.

Rose refers to the "texts" of property as "signals . . . that announce one's claims and that are generally accepted as establishing or maintaining property rights."²⁵⁵ The policing actions of family members, such as ensuring that daughters or sisters are always accompanied by a male family member, are the texts that communicate to others the high value of that family's honor property. Other examples include forcing women to dress "modestly," arranging marriages through force or coercion,²⁵⁶ and requiring women to undergo virginity examinations.²⁵⁷ The public nature of many incidents of honor-related violence plays a communicative role. The United Nations special rapporteur on extrajudicial, summary and arbitrary executions reported, for example, that "[i]n Egypt, a father paraded his daughter's

252 *Id.* at 1342 (explaining that "[a]lthough an individual may suffer emotional harm and a corporation may lose profits as a result of a reputational injury, these harms are derivative" of the change in the collective judgments of that individual or firm resulting from the injury).

253 *See id.* (recognizing that although one "may have control over many of the statements, acts, and other data points that form the basis of reputation," the end result, the assessment of those data points, is solely the province of others).

254 *See GHANIM, supra* note 172, at 43 ("A man's masculinity is socially constructed through his ability to deny other men sexual access to his female relatives."); Vandello, *supra* note 5, at 998 ("A man who allows his partner to stray may be seen as less of a man. He may be perceived as weak and vulnerable, someone who can be taken advantage of in other situations as well."). A woman's adultery (real or perceived) "represents not only an infringement of [a male family member's] rights but the demonstration of failure of his duty. He has betrayed the values of his family, bringing dishonor to all the social groups who are involved reciprocally in his honor: his family and his community." *Id.* (quoting Pitt-Rivers, *supra* note 46, at 46).

255 Rose, *Introduction, supra* note 243, at 12 ("[N]o text means no property—no claims can be made and none understood.").

256 *See Ertürk, supra* note 145 ("For women, compliance with the code of honour can range from having to dress and act with 'modesty,' to observing chastity prior to marriage, to accepting arranged marriages and not leaving the house without the consent and/or accompaniment of an older relative.").

257 *See GHANIM, supra* note 172, at 43 ("Women are frequently taken to the hospital for a virginity test by parents who suspect that the woman has lost her virginity, or by husbands who, on the wedding night, suspect that their new wife is not a virgin. Although the doctors must ask for the woman's consent before performing the exam, women have little choice but to consent given the circumstances and the social pressure to obey their husband and parents.") (quoting OMCT (WORLD ORGANIZATION AGAINST TORTURE), VIOLENCE AGAINST WOMEN IN TURKEY (2003), http://uudenmaanpiiri.mll.fi/@Bin/126557/vaw_Turkey.pdf).

severed head through the streets shouting, ‘I avenged my honour.’”²⁵⁸ This tragic, public act communicated to the community that the father was retaking lost honor property and served as a warning to other women who might transgress social and sexual mores.

In many ways, these property-policing texts are similar to those employed by other groups signaling their exclusive rights to a particular form of property. Rose offers several examples. In support of the proposition that “violent or symbolically violent messages . . . are a particularly crude form of group property texts,” Rose mentions the phenomenon of “localism” among surfers, in which they police the waters by excluding outsiders, “signaling exclusive claims through dirty looks, rude comments, and jostling”²⁵⁹ Rose also cites the example of the lobstermen of Monhegan Island in Maine, who police each other and exclude non-local lobstermen through a range of “property-claiming texts.”²⁶⁰ Lastly, Rose offers an example through her own research on racially restrictive covenants. Rose notes that although the covenants were popular and legal at the time, the “most sharply segregated white neighborhoods did not have them.”²⁶¹ Instead of covenants, those communities relied on violence and threatening “texts” that were intended to signal exclusive ownership based on race.²⁶² In the context of honor, family members communicate possession as “text” through their efforts to control women’s sexual behavior and assertions of authority more generally.

Second, the community plays a role in assigning and regulating the value of honor property.²⁶³ I call this the community’s “expressive” role in honor property. In this sense, the community is making a statement to the family regarding the family’s effort to control honor property. To speak of the community as having one voice is, of course,

258 U.N. POPULATION FUND, THE STATE OF THE WORLD POPULATION 2000, <http://www.unfpa.org/swp/2000/english/ch03.html> (citing Jahangir 2000 report to the Commission on Human Rights).

259 Rose, *Introduction*, *supra* note 243, at 13 (citing Daniel Nazer, *The Tragicomedy of the Surfers’ Commons*, 9 DEAKIN L. REV. 655 (2004)).

260 *Id.* at 14. Though Maine law forbids excluding “outsider fishers,” Monhegan fishers disregard this prohibition by using crude, but apparently effective, property texts: they mark “coarse sexual symbols on outsiders’ traps, or in more serious instances, cut[] the buoys from the outsiders’ traps to make the traps impossible to locate.” *Id.* (citing JAMES M. ACHESON, *THE LOBSTER GANGS OF MAINE* 48–49, 75 (1988)).

261 *Id.*

262 *Id.* (finding that violent and threatening behavior, such as racist signs painted on the walls of minority-owned homes or bricks thrown through the windows, “sent a message of ownership: that the neighborhood belonged to the white residents, to the exclusion of all others”).

263 Rose notes that property cannot exist without the community’s recognition of the validity of an individual’s claim, that the community “understand[s] and more or less agree[s] to honor [the claim].” *See id.* at 3.

inaccurate. As with any expressive system, some voices carry more weight than others, and those voices tend to be considered definitive.²⁶⁴ Because the community shuns or embraces a family depending on the behavior of females in the family, it ascribes variable value to the honor property.²⁶⁵ The community may express this valuation in many ways, ranging from public ridicule to refusing to engage in commerce with the “tarnished” family.²⁶⁶ Because honor property is inalienable, the market cannot determine the value of honor property through traditional market-based transactions.²⁶⁷ The community, however, plays an integral role in valuing or devaluing honor property.

The law reflects and reinforces the community’s understanding of honor property through its treatment of honor crimes. Efforts to reclaim honor property are treated as mitigating circumstances, and perpetrators often receive reduced penalties for violence that is understood or “read” as an effort to reclaim honor property.²⁶⁸ The law thus lends credibility to the symbolic system of texts that construct honor property.²⁶⁹

As with most property systems, clear articulations of ownership or possession avoid ambiguity and therefore reduce conflict.²⁷⁰ Owners of honor property clearly communicate their ownership to the world and thus avoid the necessity of fighting off those would-be suitors who could significantly reduce the value of honor property. They invest their labor (in the Lockean sense) in policing women’s sexual behavior and thereby continually articulate their claims to honor property in ways that are unambiguous and widely recognized.²⁷¹ For men, clear articulations regarding the possession of honor property operate to curtail

264 Rose, *Possession*, *supra* note 36, at 85 (noting that not all audiences will use or understand a particular “expressive” system and that “audiences that do not understand or accept the symbols are out of luck”).

265 See *supra* notes 166–67 and accompanying text.

266 See AMNESTY INT’L, TURKEY, *supra* note 166, at 18 (explaining that when women fail to adhere to honor codes, the “livelihood of entire families may be affected: a shopkeeper who does not ‘cleanse his family honour’ may lose all his customers, for example”).

267 See Rose, *Introduction*, *supra* note 243, at 20 (noting that the market typically determines the value of property).

268 KARO KARI, *supra* note 189, at 39.

269 Rose, *Possession*, *supra* note 36, at 85 (“[I]n defining the acts of possession that make up a claim to property, the law not only rewards the author of the ‘text’; it also puts an imprimatur on a particular symbolic system and on the audience that uses that system.”).

270 *Id.* at 81–82 (“Why, then, is it so important that property owners make and keep their communications clear? Economists have an answer: clear titles facilitate trade and minimize resource-wasting conflict.”).

271 *Id.* at 81 (“If I am careless about who comes on to a corner of my property, I invite others to make mistakes and to waste their labor on improvements to what I have allowed them to think is theirs.”).

violence.²⁷² Women, on the other hand, often experience the “textual” assertion of honor property in ways that increase rather than curtail violence. Women are forced to adhere to strictly circumscribed gender roles, knowing that the consequences of straying outside the bounds of “proper” behavior range from bullying to murder.²⁷³

III. Implications of the Property Perspective

There are several possible responses to the problem of treating honor as a form of property that is held largely by male family members. The first is to simply disavow honor as an organizing principle. Given that honor is a deeply entrenched social value within many communities, this reform strategy is misguided and unlikely to succeed. Moreover, honor as reputational property is not inherently problematic. It becomes a problem when its value is linked to the chastity or behavior of female family members, and it is possessed and controlled largely by men in the natal family.

The second possible response is to relocate the ownership of honor property in the women who are themselves the source of honor property. Although in some instances women already generate honor through conduct that is culturally valued and completely unrelated to sexuality,²⁷⁴ many women experience honor primarily as a regulatory device. This approach argues that women should directly and primarily experience the benefits and harms that flow, respectively, from conformity and nonconformity to social and sexual expectations. Refocusing honor property on women as potential beneficiaries would treat women as potential honor property holders and vest in them the right to make decisions about their sexuality. Recognizing women’s right to make autonomous decisions about sex and marriage would delegitimize male assertions of control over the sexuality of their sisters,

272 Jane Schneider, *Of Vigilance and Virgins: Honor, Shame, and Access to Resources in Mediterranean Societies*, 10 *ETHNOLOGY* 1, 17 (1971) (“Honor is . . . important as a substitute for physical violence in the defense of economic interests. The head of a family challenges the rest of the world with the idea of his family’s honor.”).

273 See HUMAN RIGHTS WATCH, *HONORING THE KILLERS*, *supra* note 17, at 1 (“In Jordan, a woman’s life is at risk if she engages in ‘immoral or shameful’ acts Male relatives may beat, shoot, stab, or otherwise physically harm an accused woman, with the approval of both her family members and large sections of the general population.”); Cohan, *supra* note 14, at 187 (“[W]hen honor is supposedly betrayed or lost, disciplining, or even killing, the woman at fault may restore honor that has been damaged by a woman’s immoral or unchaste actions.”).

274 Examples include women who have garnered respect and honor as a result of achievements in their personal or professional lives as well as women who enjoy respect and honor by birthright such as female traditional leaders (or Queenmothers) in Ghana. See Marijke Steegstra, *Krobo Queen Mothers: Gender, Power, and Contemporary Female Traditional Authority in Ghana*, 55 *AFRICA TODAY* 105, 106 (2009).

daughters, and wives. Without delinking the concepts of honor and women's sexuality, however, shifting the ownership of honor property to women themselves preserves the oppressive, gender-based regulation of female sexuality.

Under this second possible response, which maintains an intact and unchallenged relationship between honor and women's sexuality, women would continue to face ostracism, discrimination, and potentially violence if they expressed their sexuality in a way that transgressed social mores. Even if a conceptual shift were successful in recognizing women as the legitimate holders of honor property, women's decisions concerning sexuality would continue to be severely constrained by the threatened loss of honor property. In other words, women would themselves continue to suffer potentially severe social consequences if they themselves experienced a loss of honor.

It is true, however, that lawmakers would no longer be able to justify reduced penalties for those who commit honor crimes, because women's alleged sexual transgressions would not cause a loss of value in the natal family's collective honor property. Rather, the accused woman herself would suffer a loss of esteem not shared as acutely by the other members of her family. Male family members would no longer be able to justify honor-related violence as a way of reclaiming collective family honor. Preserving honor and recognizing women as the holders of honor property would provide a basis for discrediting legal provisions that offer reduced penalties for perpetrators of honor crimes, but it would do little to dismantle the oppressive social and sexual codes that require women's strict adherence.

A third, and preferable, response would be to recognize women's rights both to possess honor property *and* to dismantle the rigid system of reward/punishment surrounding women's sexuality. Although this would not be easily accomplished because of the entrenched nature of honor within the value systems of many communities, this strategy offers women greater long-term hope for the enjoyment of a range of human rights, including rights related to dignity, bodily integrity, and sexual autonomy.

Within many communities, honor is a foundational, constitutive value that is unlikely to recede in the public consciousness any time soon. The challenge, therefore, involves redefining honor without reference to women's sexuality. Recognizing the saliency of honor, human rights activists in a number of countries have begun to appropriate and redefine the concept of honor.²⁷⁵ The core message of these campaigns seeks to define

275 See Welchman & Hossain, *supra* note 4, at 6–7 (“[I]n Pakistan, activists have named the killers of women as dishonourable, in an attempt to destabilise the prevailing understanding of ‘honour’ Recovering or reclaiming the notion of ‘honour’ would reformulate it as attaching to women as well as to men, designating qualities of respect, tolerance and inclusivity.”).

honor crimes themselves as dishonorable.²⁷⁶

If this discursive shift is successful over time, honor will continue to be a socially valued asset. The accumulation and retention of honor, however, will not depend on the extent to which women's behavior conforms to social norms. Perhaps honor or shame will stem from the treatment of children, neighbors, or business affiliates. The redefinition of honor will be highly contextual and dependent on the interpretations and normative agendas of local communities. The human rights framework offers a vocabulary and a range of core concepts that local advocates can tailor to specific audiences and social justice strategies. A human rights approach is a useful tool in re-framing the issues surrounding women's sexuality.

By recognizing the ways in which legal systems have implicitly treated honor as a form of property, it may be possible to institute reforms that both respond to and refine the conception of honor as property. For example, criminal law reform that responds to the cost-benefit calculations of families who commit honor crimes by increasing the costs associated with honor-related violence may benefit women living in those communities.

A punitive, criminal justice response serves a limited function. In some cases, increasing the costs of honor-related violence may have a welcome deterrent effect. Experiences within the domestic violence community in some countries suggest that increasing the punitive consequences of violence within the family may be counterproductive, particularly within communities that are already marginalized by the legal system.²⁷⁷ There is expressive value, however, in prohibiting and punishing violent conduct. Increasing the costs of honor-related violence thus challenges the prevailing understanding of honor as a male form of property by discrediting the notion that male family members may act with relative impunity for reclaiming honor property through violence. In addition to legal reform, a successful campaign to combat honor crimes must also include wide-scale community discourse designed to redefine honor in ways that disassociate it from women's sexuality and recognize women as potential honor property holders.

276 *Id.*

277 See Natalie J. Sokoloff & Ida Dupont, *Domestic Violence at the Intersections of Race, Class, and Gender: Challenges and Contributions to Understanding Violence Against Marginalized Women in Diverse Communities*, 11 *VIOLENCE AGAINST WOMEN* 38, 55 (2005) (noting that the unintended consequences of an overreliance on law enforcement can "create tensions for poor women of color between the need for some kind of state intervention to protect them from abuse in their homes and the recognition that many of the women most in need of such protection are made more vulnerable by these very interventions").

A. Regulation and Rationality

Generally, laws are designed to regulate behavior by manipulating incentives.²⁷⁸ For example, in the criminal context, deterrence works if the government makes it costly (in terms of personal, professional, or economic cost) to commit a crime.²⁷⁹ The model of deterrence, however, assumes a rational actor who is able to evaluate and act upon the evaluation of the costs of crime and punishment.²⁸⁰

Honor crimes—for the most part—involve just such a rational actor. As has been shown above, honor crimes are often committed by a member of the family after some degree of planning.²⁸¹ The violence is often a concerted effort by the family to regain its honor.²⁸² Unlike heat of passion murders, which may also implicate notions of honor and masculinity, they are rarely committed as a result of genuine, sudden provocation.²⁸³ Because honor-related violence is generally premeditated, honor crimes should—at least theoretically—be responsive to appropriate criminal legislation. This, of course, assumes the existence of a state that is willing to enforce the law and prosecute perpetrators of honor-related violence.

278 Amitai Aviram, *The Placebo Effect of Law: Law's Role in Manipulating Perceptions*, 75 GEO. WASH. L. REV. 54, 68 (2006) (“Laws attempt to modify incentives and payoffs in order to reduce the actual (objective) likelihood of harmful behavior (risks).”).

279 FRANKLIN E. ZIMRING, PERSPECTIVES ON DETERRENCE 3 (1971) (“The theory of simple deterrence is that threats can reduce crime by causing a change of heart in would-be offenders, induced by the unpleasant prospect of the specific consequences threatened. Many individuals who are tempted by a particular form of threatened behavior will, according to this construct, refrain from committing the offense because the pleasure they might obtain is more than offset by the risk of great unpleasantness communicated by a legal threat.”).

280 MANSUR ET AL., *supra* note 6, at 30–31 (“The subject of using economic tools in the analysis of crime was first legitimized by the groundbreaking research of Gary Becker, which, based on rational choice theory, subsumes that perpetrator of a crime is a rational person who weighs prior to committing the crime, the cost and benefits from committing the crime. Since then, a number of studies using several data collection approaches have supported the central proposition of rational choice theory, that offenders weigh the costs and benefits of crime in deciding whether to offend.”).

281 Ertürk, *supra* note 145 (“What distinguishes honour-related killings from other forms of violence against women is the way they are organized and executed. A family council, which may also include members of the extended kin, decides upon and organizes the murder.”).

282 *Id.*

283 Warrick, *supra* note 18, at 327 (“In most cases [honor crimes] are premeditated, and they are typically extremely violent . . .”).

One way to change the rational evaluation of risk surrounding honor-related violence is to increase penalties. Eliminating the penalty discount for honor-related crimes would be a good place to start. States should consider going further with criminal law reform and increasing penalties for honor-related violence. Rather than being neutral on honor, the criminal law could create a penalty enhancement for honor-related violence. Serious criminal penalties send a message that there is honor in preserving—rather than taking—women’s lives, which is a normative message that should be embraced by states.

Violence perpetrated for economic gain is often seen as more nefarious than other forms of violence. Many states in the United States’ legal system, for example, treat economic gain as an aggravating motive in sentencing violent crimes.²⁸⁴ The law creates a penalty enhancement for economically motivated violence. If one accepts the premise that honor-related violence is an effort to reclaim honor property, then it certainly falls within the category of violence that is motivated by economic or property concerns. Because it falls within this category of “violence plus,” and, most importantly, because it severely undermines women’s rights to be free from violence, states should consider a penalty enhancement for honor-related violence. Whether or not enhanced penalties will actually curb honor-related violence—and some feminists credibly critique this notion—the law’s prohibition of the violence serves important expressive goals. There is value in public condemnation of gender-based violence.

Although a detailed description of international advocacy related to honor crimes is outside the scope of this Article, it is useful to point out that many of the relevant international human rights documents urge states to amend criminal laws that allow for lenient penalties for honor-related violence. The international discourse surrounding honor crimes has encouraged states to critically examine the ways in which their legal systems have supported honor-related violence. The United Nations Committee on the Elimination of All Forms of Discrimination Against Women has often raised the issue in its examination of States Parties’ reports.²⁸⁵ And the United Nations General Assembly passed a resolution

284 Carissa Hessick, *Motive’s Role in Criminal Punishment*, 80 S. CAL. L. REV. 89, 103 (“Pecuniary gain may be the most prevalent aggravating motive. Many state capital sentencing schemes classify pecuniary gain as an aggravating sentencing factor.”).

285 See, e.g., Comm. on the Elimination of Discrimination Against Women, Concluding Comments of the Committee on the Elimination of Discrimination Against Women: Pakistan, 38th Sess., May 14, 2007–June 1, 2007, U.N. Doc. CEDAW/C/PAK/CO/3 (June 11, 2007) (“The Committee calls on the State party to ensure that the Qisas and Diyat law has no application in cases of violence against women, especially crimes committed in the name of honour . . .”).

encouraging states to take steps to aggressively combat the practice.²⁸⁶

The global campaign to end violence against women has made significant strides in the last two decades.²⁸⁷ One major accomplishment has been the expansion of state responsibility to include human rights accountability for states that fail to use due diligence to combat violence against women.²⁸⁸ Under this standard, states that fail to prosecute or adequately punish perpetrators of honor-related violence will be responsible under international human rights law for the failure to act.²⁸⁹ Under relevant international human rights law, reformers would find support for eliminating penalty reductions for honor-related violence.

In addition, states that cede too much authority to local communities to police themselves may be responsible under international human rights law for failing to act to prevent violence against women.²⁹⁰ Shakti Vahini, a non-governmental organization in India, conducted research to determine whether the presence of a strong and active *panchayat*, or local community council, had an effect on the rate of honor killings in a particular area.²⁹¹ The research revealed a correlation between an active *panchayat* and

286 Working Towards the Elimination of Crimes Against Women Committed in the Name of Honour, G.A. Res. 57/179, U.N. Doc. A/RES/57/179 (Jan. 30, 2003) (“Bearing in mind that crimes against women committed in the name of honour are a human rights issue and that States have an obligation to exercise due diligence to prevent, investigate and punish the perpetrators of such crimes and to provide protection to the victims, and that not doing so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms . . .”).

287 Johanna Bond, *International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations*, 52 EMORY L.J. 71, 77 (2003) (describing progress made in combating violence against women globally).

288 G.A. Res. 57/179, *supra* note 286.

289 Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, art. 4, U.N. Doc. A/RES/48/104 (Dec. 20, 1993) (requiring states to “[e]xercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”).

290 Special Rapporteur on Violence Against Women, Its Causes and Consequences, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, U.N. Doc. E/CN.4/2002/83/Add.1, at 31 (Feb. 27, 2003) (“By arguing that custom, tradition and religion cannot be invoked by State parties to defend violence against women in the family, international standards reject the cultural relativist argument that cultural practices that are violent towards women in the family should be shielded from international scrutiny.”).

291 Roy, *supra* note 105 (“In districts where councils play an active role, there have been more honor killings than in districts where the councils are dormant or absent.”).

increased incidents of honor-related violence.²⁹² In an unprecedented ruling, one local court responded by finding members of the local *panchayat* responsible for incitement to murder.²⁹³ Shakti Vahini's research suggests that, in this particular location in India where the state has ceded greater control to local councils, honor-related violence thrives.²⁹⁴ As a result, activists within Shakti Vahini may urge intervention at the national level to ensure that strategies to combat honor crimes are coordinated and successful.

International pressure can be a useful catalyst for national and subnational discussions concerning honor-related violence. If not coupled with culturally sensitive community-level human rights programs, however, international discourse may be seen as an attack on cultural identity and serve to entrench support for honor-related violence. For any legislative reform to be effective, it must be accompanied by an attitudinal shift at the community and state level. Without a genuine discursive shift, legislation will accomplish little in terms of lasting social change. The challenge, therefore, is to supplement law reform with meaningful community-based dialogue that is designed to challenge the normative construction of honor as a male property right.

B. Regulation as Social Text

Because reputation derives its force from the socially constructed meaning attached to it,²⁹⁵ honor is susceptible to social re-construction. The challenge, then, is to shift the normative meaning surrounding honor so that its gain or loss no longer threatens the very identity and well-being of families.

Changing public sentiment concerning honor and honor-related violence will require rights activists to be actively engaged in community-level discourse. Kwame Anthony Appiah argues that honor crimes will not disappear until it becomes dishonorable to commit them.²⁹⁶ Exploring the eradication of foot binding in China, Appiah argues that concern about China's global reputation was a significant motivating force in the eventual

292 *Id.*

293 *Id.* ("In rural Haryana, people mention not the Manoj-Babli murders, but simply 'Manoj-Babli'—referring to the killing of a young couple by members of the girl's family and to a local court ruling that became the first in modern Indian history to find council members guilty of incitement to murder.").

294 *Id.* ("Ravi Kant, a lawyer and founder of Shakti Vahini, said the organization's research found a relationship between the local power of the community councils and a rise in [honor] killings.").

295 See Heymann, *supra* note 250, at 1358.

296 APPIAH, *supra* note 180, at 172 ("Honor will only perish when it is seen as dishonorable.").

demise of the tradition.²⁹⁷ Kang Youweri, a member of the ruling Chinese class, wrote to the Imperial Palace in Beijing in 1898, arguing that foot binding had damaged China's international reputation and calling for its prohibition.²⁹⁸ The argument concerning China's international reputation eventually took hold and the practice ended in the early 1900s in what Appiah describes as a "moral revolution."²⁹⁹

To dismantle the notion of honor as a "legitimate" justification for gender-based violence is to modify the content of the communications surrounding honor property. As Rose argues, communication is a necessary part of possession.³⁰⁰ For the community to recognize and respect a possessory claim, the property holder must articulate the claim in a way that the community understands.³⁰¹ Community members share an understanding of the property "text."³⁰² In the case of honor crimes, the "text" signals control over women's sexuality. For example, ensuring that a female in the family never leaves the home unescorted by a male relative is an intelligible communication about the level of control that the family asserts over its female members, from which the family derives honor property.

Law is also a communicative text. Penal provisions that discount punishment for honor-related violence reflect and reinforce the notion that male holders of honor property are justified in their actions to reclaim damaged honor property. As noted above, social science indicates that the incidence of honor-related violence is greater when there is

297 *Id.* at 60 (explaining that footbinding in China ended because "concern for national honor was shared by many in the educated classes who shaped China's transformation from an empire into a modern state").

298 *Id.* (Kang states, "Foreigners have been taking pictures and laughing at us for these things and criticizing us for being barbarians. There is nothing which makes us objects of ridicule so much as footbinding. I, your humble servant, feel deeply ashamed at heart.").

299 In one rural province, rates of foot binding went from ninety-four percent in 1899 to zero in 1919. *Id.* at 98 (citing Gerry Mackie, *Ending Footbinding and Infibulation: A Convention Account*, 61 AM. SOC. REV. 991, 1001 (1996)).

300 See Rose, *Possession*, *supra* note 36, at 81 ("Possession as the basis of ownership, then, seems to amount to something like yelling loudly enough to all who may be interested. The first to say 'That is mine,' in a way that the public understands, gets the prize, and the law will help him keep it against someone else who says, 'No, it is mine.'") (emphasis in original).

301 Rose, *Introduction*, *supra* note 243, at 6.

302 *Id.* ("A manifestation to inform the world means that there is in fact an audience out there, and the audience has to 'get it.'"); Rose, *Possession*, *supra* note 36, at 84-85 ("It is not enough, then, for the property claimant to say simply, 'It's mine' through some act or gesture; in order for the 'statement' to have any force, some relevant world must understand the claim it makes and take that claim seriously.").

less law or where the influence of criminal penalties is weak.³⁰³ Criminal law reform that eliminates the penalty discount then serves as an important communicative text. The text challenges the notion that men are the proper possessors of honor property. In so doing, the law implicitly recognizes women as the holders of honor property, which may lead to a decrease in the violent policing of behavior by male members of the family.

State intervention in the form of criminal enforcement also serves as symbolic text. Importantly, when the state eliminates penalty discounts for honor-related violence and prosecutes perpetrators of such violence, it conveys a social disapproval that should, over time, decrease incidence of the violence. Law alone will not combat honor-related violence, however.

Delegitimizing honor property as a male property right will require active and sustained discursive engagement with local communities. The goal of this community discourse should be to change the normative meaning of the communications surrounding the possession of honor property. Appiah's insight that honor crimes will not be eliminated until it becomes dishonorable to commit them is instructive. Legal regulation of honor-related violence is a crucial first step to reframing honor-related violence as dishonorable.

CONCLUSION

Around the world, honor operates as social capital. Property theory elucidates the many ways that honor property resembles more traditional forms of property. Recognizing honor as a form of "new property" provides a better understanding of the economic incentives motivating honor-related violence and offers new insight concerning strategies to combat this form of violence. This Article offers a new theoretical, property-based model through which to explore the social meaning of honor. Because honor operates to constrain women's sexuality in similar, although not identical, ways around the world, it is a generalized model that may be fine-tuned for applicability in different geographic or socio-political areas.

Legal regulation of honor-related violence, specifically criminal law reform that eliminates penalty discounts for crimes motivated by honor, is a critical mechanism to alter the normative meaning of honor. This type of law reform becomes a social text signaling disapproval of male efforts to reclaim honor property through violence. It also delegitimizes the notion that honor property is owned by male family members and is thus subject to reclamation through male violence. Legal regulation opens the door for relocating honor property within the women who are themselves responsible for generating value in honor property. To make honor property a potential asset for women, however, also requires delinking honor from women's strict adherence to norms of chastity and virginity. Such a redefinition of honor holds the potential for women to be full citizens with equal rights to property, economic empowerment, bodily integrity, and sexual autonomy.

303 See *supra* note 297 and accompanying text.