

EXPANDING THE CLASSIC SELF-DEFENSE DOCTRINE TO ACCOMMODATE THE NOVEL THEORY OF BATTERED WOMAN SYNDROME: PROBLEMS AND ISSUES IN PHILIPPINE CONTEXT

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Under Philippine criminal law, as it now stands, no criminal liability is incurred by a person if the act committed is justified, that is, if the act committed fulfills the requirements laid down by the law that will exonerate a person from criminal liability. Article 11 of the Revised Penal Code¹ enumerates the justifying circumstances recognized under Philippine jurisdiction. One of these justifying circumstances is self-defense.

The law on self-defense makes an act otherwise criminal lawful “because it would be quite impossible for the State in all cases to prevent aggression upon its citizens and offer protection to the person unjustly attacked.”² Self-defense finds justification in man’s natural instinct for self-preservation.

The law on self-defense embodied in any penal system in the civilized world finds justification in man’s natural instinct to protect, repel, and save his person or rights from impending danger or peril; it is based on that impulse of self-preservation born to man and part of his nature as a human being. Thus, in the words of the Romans of ancient history: *Quod quisque ob tutelam corporis sui fecerit, jure suo fecisse existimetur*. “To the Classicists in penal law, lawful defense is grounded on the impossibility on the part of the State to avoid a present unjust aggression and protect a person unlawfully attacked, and therefore it is inconceivable for the State to require that the innocent succumb to an unlawful aggression without resistance; while to the Positivists, lawful defense is an exercise of a right, an act of social justice done to repel the attack of an aggressor.”³

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¹ Rep. Act No. 3815, as amended.

² LUIS REYES, *THE REVISED PENAL CODE: CRIMINAL LAW* 142 (14th ed. 1996) quoting Judge Guillermo B. Guevarra.

³ *People v. Boholst-Caballero*, G.R. No. L-23249, 61 SCRA 180, 185 (1974).

Since a person who invokes self-defense, in essence, admits the commission of a crime, the law will not free such person from responsibility unless all the requisites of the law are met. Paragraph 1 of Article 11 of the Revised Penal Code provides for the essential requisites of self-defense, *viz*:

1. Unlawful aggression;
2. Reasonable necessity of the means employed to prevent or repel it; and
3. Lack of sufficient provocation on the part of the person defending himself.

Briefly, the law requires that the aggression be unlawful, actual or imminent. The means employed by the person defending himself/herself must be reasonably necessary, depending on the circumstances. There must be no sufficient provocation on the person invoking self-defense.

To properly appreciate the application of self-defense, consider this set of facts: An eight-month pregnant Marivic Genosa got into a heated argument with her drunk husband, Ben. In the course of the quarrel, Marivic was hit and then threatened with a bladed weapon by her husband. Ben accidentally dropped his weapon, prompting Marivic to take a lead pipe and hit him on the nape. Ben was not mortally wounded but he called off the attack and went to sleep.⁴

The confrontation was not new to Marivic. She had previously consulted a doctor six times for domestic-violence related injuries, and 23 times for severe hypertension due to severe emotional stress. She had also reported to the authorities numerous incidents of altercation culminating in violence between her and Ben, to no avail. Her neighbors and her in-laws likewise admitted overhearing the couple's violent episodes.⁵

That night, *while Ben was asleep*, Marivic took a gun and shot her husband in the head. Afterwards, she and her children fled. She took a new name and found a job.⁶ Two years later, Marivic was arrested to face the charge of parricide.

Can Marivic invoke self-defense? On a cursory look, she cannot successfully invoke the defense. Only the third requirement, the lack of sufficient

⁴ *Tribunal gives battered women a break*, at <http://www.inquirer.net/issues/oct2000/oct19/opinion/rina.html> (last visited Feb. 12, 2001).

⁵ *Id.*

⁶ *Hope raised for women in death row*, at http://www.inquirer.net/issues/oct2000/oct26/hometown/hom_3.html (last visited Feb. 12, 2001).

provocation, is satisfied. A sleeping husband, for obvious reasons, cannot constitute an unlawful aggression, actual or imminent, that the law contemplates. The reasonableness of the means employed is doubtful, considering that the deceased was asleep and incapable of responding to the attack.

Indeed, this was how the trial court ruled in 1998 when Marivic was found guilty and sentenced to death. According to the trial court, she could not have acted in self-defense under the circumstances of the case.

However, on automatic review by the Supreme Court, the case of *Genosa*⁷ was remanded to the trial court after her counsel pleaded the Court to “re-evaluate the traditional elements used in determining self-defense and to consider the ‘battered woman syndrome’ as a viable plea within the concept of self-defense.”⁸

The Supreme Court instructed the trial court to receive “expert psychological and/or psychiatric opinion” on the syndrome plea.⁹ Justice Artemio Panganiban, in his resolution, said that the Court was “convinced... that the syndrome deserves serious consideration, especially in the light of its possible effect on her [Genosa’s] very life. It could be that very thin line between death and life or even acquittal.”¹⁰

The traditional self-defense doctrine, therefore, is currently being challenged by a “novel”¹¹ concept, a “new paradigm”¹² as Justice Panganiban characterized it. Indubitably, the re-evaluation of the classic elements of self-defense, to make the Battered Woman Syndrome¹³ fit into the model, will occasion serious repercussions on Philippine criminal law.

Given these premises, this paper seeks to expound on the concept of BWS as applied in other jurisdictions, particularly in the United States. BWS will be best understood if seen in the context of the environment where it exists in a violent relationship. Hence, Part I will briefly examine the phenomenon of domestic violence in general, particularly in the Philippines. Part II of the paper will discuss the syndrome and its characteristic elements.

⁷ *People v. Genosa*, G.R. No. 135981, 341 SCRA 493 (2000).

⁸ *Id.* at 498.

⁹ *Id.* at 501.

¹⁰ *Id.* at 499.

¹¹ It is described as novel in this paper only because the case of *People v. Genosa* marked its introduction in our jurisdiction. However, in the United States, the Battered Woman Syndrome has been consistently availed of as a defense since the 1980’s.

¹² Justice Artemio V. Panganiban, *Old Doctrines and New Paradigms*, Lecture delivered during the Centenary Lecture Series to celebrate the centennial of the Supreme Court of the Philippines (February 13, 2001).

¹³ Hereinafter BWS.

As a defense, BWS is used not only in the context of self-defense but in insanity and duress defenses as well. Part III will tackle the various ways in which the syndrome can be used by a defendant.

The focal point of the paper is the application of BWS in self-defense and its possible repercussions in the traditional self-defense doctrine. Parts IV and V will dwell on these.

I. HISTORY, NATURE AND DYNAMICS OF DOMESTIC VIOLENCE AND WOMAN BATTERING

Without exception, women's greatest risk of violence comes not from 'stranger danger' but from the men they know, often male family members or husbands... What is striking is how similar the problem is around the world.¹⁴

Woman battering within a marriage is an age-old phenomenon.¹⁵ "Physical abuse by men toward their wives not only has been recorded for hundreds of years, but often has been portrayed as acceptable, even expected, behavior."¹⁶ In the past, it was legally allowed for a man to physically assault his wife, on the premise that a man has authority over the members of his household. The first "law of marriage", formalized by Romulus, provided that married women should "conform themselves entirely to the temper of their husbands" and the husbands should "rule their wives as necessary and inseparable possessions."¹⁷ Friar Cherubino of Siena, in his *Rules of Marriage*, was more instructive:

When you see your wife commit an offense, don't rush at her with insults and violent blows... Scold her sharply, bully and terrify her. And if still this doesn't work... take up a stick and beat her soundly, for it is better to punish the body and correct the soul than to damage the soul and spare the body... Then readily beat her, not in rage but out of charity and concern for her soul, so that the beating will redound to your merit and her good.¹⁸

The law, as it was then conceived, thought it best to entrust the husband with the authority to chastise his wife in order to correct her misbehavior.¹⁹

¹⁴ AMNESTY INTERNATIONAL, *BROKEN BODIES, SHATTERED MINDS: TORTURE AND ILL-TREATMENT OF WOMEN* 10 (2001) *quoting* JOHN HOPKINS UNIVERSITY POPULATION INFORMATION PROGRAM, *ENDING VIOLENCE AGAINST WOMEN* (2000).

¹⁵ MARGARETA HYDEN, *WOMAN BATTERING AS MARITAL ACT: THE CONSTRUCTION OF A VIOLENT MARRIAGE* 18 (1994).

¹⁶ JOANNE BELKNAP, *THE INVISIBLE WOMAN: GENDER, CRIME AND JUSTICE* 171 (1996) *quoting* DEL MARTIN, *BATTERED WIVES* (1976).

¹⁷ ANGELA BROWNE, *WHEN BATTERED WOMEN KILL* 164 (1987).

¹⁸ *Id.* at 164-5.

¹⁹ *Id.* at 165.

The law did not improve until the 1870s, when a state court in the United States withdrew the legal right of the husband to assault his wife. The court held:

The privilege, ancient though it be, to beat her with a stick, to pull her hair, choke her, spit in her face, or kick her about the floor, or to inflict upon her like indignities, is not now acknowledged by our law.... [T]he wife is entitled to the same protection of the law that the husband can invoke for himself²⁰

The Church was instrumental in preserving patriarchal marriages. Legal history would reveal that "Christianity provided ideological justification for patriarchal marriages and the state codified these relations into law. Marriage laws explicitly recognized the family as the domain of the husband, forced women to conform to the man's will and punished men and women unequally for infractions of marriage vows."²¹ This point assumes importance considering that the Philippines was colonized by Spain in the 16th century. Spain brought to the country the "same misogynistic trend that was present in the Western church",²² as elucidated in this instruction to the parish priests: "Woman is the most monstrous animal in the whole of nature, bad tempered and worse [sic] spoken. To have the animal in this house is asking for trouble in the way of tattling...."²³

Women abuse began to be recognized as a social problem only in the 1970s when liberal feminists attempted to "bring the plight of battered women into the public eye."²⁴ The British feminists took the lead in organizing movements questioning violence against wives,²⁵ followed suit by feminists in the United States. Public information on battering increased with the publication of *Scream Quietly or the Neighbors Will Hear*, authored by Erin Pizzey, in England, and *Battered Wives*, written by Del Martin, in the United States. Soon after, shelters for battered women were established.²⁶

Today, although woman battering is disallowed, violence within marriage continues to be prevalent and widespread. Though the fundamental psychological conception of marriage from an individual's point of view is a harmonious one, a

²⁰ *Id.* at 167.

²¹ SYLVIA GUERRERO & LETICIA PEÑANO-HO, *THE MANY FACES OF VIOLENCE* 10 (1999).

²² *Id.* at 11.

²³ *Id.*

²⁴ J. BELKNAP, *supra* note 16, at 171, quoting Elizabeth Pleck, *Feminist Responses to 'Crimes Against Women'*, *SIGNS: JOURNALS OF WOMEN CULTURE AND SOCIETY* 451 (1983).

²⁵ Dobash and Dobash (1971) mentioned an incident in a small English town in 1971 wherein a group of 500 women and children and one cow marched to protest rising food costs and the reduction of free milk for children. The movement led to solidarity among the women marching, which resulted in a community gathering place for local women, called Chiswick's Women's Aid. In this place, women began revealing and discussing the systematic violence they had experienced from their husbands. *Id.*

²⁶ *Id.* at 171-2.

fairytale-like scenario of living happily ever after, violence within marriage is not at all unlikely. In the Philippines alone, a study on family violence²⁷ found that in 98 per cent of the cases, the victims were women and the abusers were their spouses and partners.

Domestic violence can take many forms. Infliction of physical injury is perhaps the most common form of abusive behavior. For instance, Gayford studied 100 battered wives and found that most of them have suffered from physical injuries.

The women he studied had been punched, kicked, attacked with knives, razors or broken bottles, beaten with belts and buckles, burned and scalded. Forty-two had been assaulted with various weapons. All 100 of these women had, at some time, been bruised by their batterers. Eleven had suffered lacerations, 32 had suffered fractures, including broken noses, teeth and/or ribs, and four had experienced dislocations. Nine of these women had been beaten to unconsciousness.²⁸

However, some women may suffer from sexual and psychological cruelty as well. In her own study of battered women, Walker's subjects "describe[d] incidents involving psychological humiliation and verbal harassment as their worst battering experiences, whether or not they had been physically abused."²⁹ More importantly, Walker found that each of the 435 battered women she interviewed had been subjected to one or more of the eight forms of psychological torture, as defined by Amnesty International. These forms are:

- (1) social isolation;
- (2) exhaustion stemming from deprivation of food and sleep;
- (3) monopolization of perception manifested in obsessive or possessive behavior;
- (4) threats (including threats of death) against the woman, her relatives and friends;
- (5) humiliation, denial of power, and name calling;
- (6) administration of drugs and alcohol;
- (7) induction of altered states of consciousness; and
- (8) indulgences which maintained the woman's hope that the abuse would cease.³⁰

Why do some men batter? Goolkasian claimed that woman battering continues to exist for two reasons. First, "violence is a highly effective means of

²⁷ SYLVIA GUERRERO ET AL., *BREAKING THE SILENCE: THE REALITIES OF FAMILY VIOLENCE IN THE PHILIPPINES AND RECOMMENDATIONS FOR CHANGE* (1997).

²⁸ CHARLES EWING, *BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AS LEGAL JUSTIFICATION* 8 (1987).

²⁹ *Id.* at 9.

³⁰ *Id.*

control." Second, "men batter because they can; that is because in most cases no one has told batterers that they must stop."³¹

Goode, on the other hand, attributed woman battering to the institution of the family as a power system.³² Still others view it as an "inevitable part of culture"³³ and as "an institution in its own right."³⁴

Whatever the reasons for woman battering, it is unquestionable that violence creates a tremendous impact on the battered woman. In fact, empirical research supports the contention that "domestic violence is associated with a wide range of traumatic psychological reactions,"³⁵ among others. Most battered women suffer from anxiety, depression, anger and rage, nightmares, dissociation, shame, lowered self-esteem, somatic problems, sexual problems, addictive behaviors and other impaired functioning.³⁶

Typical battered women suffering from depression were described by Hilberman and Munson as follows:

They felt drained, fatigued and numb, often without energy to do more than minimal household chores and child care. There was a pervasive sense of hopelessness and despair about themselves and their lives. They saw themselves as incompetent, unworthy, unlovable and were ridden with guilt and shame. They felt they deserved the abuse, had no vision that there was any other way to live, and were powerless to make changes.³⁷

More importantly, the abused women were in a chronic state of psychological distress. "There was a chronic apprehension of imminent doom, of something terrible always about to happen."³⁸

³¹ J. BELKNAP, *supra* note 16, at 176.

³² *Id.* at 174.

³³ *Id.* at 175, quoting Dorie Klein, *Violence Against Women: Some Considerations Regarding its Causes and its Elimination*, CRIME AND DELINQUENCY 64 (1981).

³⁴ J. BELKNAP, *supra* note 16, at 175, quoting Russell Dobash and Rebecca Dobash, *Community Response to Violence Against Wives*, SOCIAL PROBLEMS 563, 565 (1981).

³⁵ Mary Ann Dutton, *Validity of "Battered Woman Syndrome" in Criminal Cases Involving Battered Women*, <http://www.ojp.usdoj.gov/ocpa/94Guides/Trials/Valid/> (last visited Feb. 12, 2001).

³⁶ Jean Giles-Slins, *The Psychological and Social Impact of Partner Violence*, http://www.nnfr.org/research/pv/pv_ch2.html (last visited Feb. 12, 2001), citing Campbell, 1989; Dutton, 1993; Hilberman and Munson, 1977-78; Koss, 1990; Mitchell and Hodson, 1983; Prescott and Letko, 1977; Rounsaville, 1978; Rounsaville and Weismann, 1978; Stark, Flitcraft and Frazier, 1981; Trimpey, 1989; Walker, 1979; Walker, 1984.

³⁷ C. EWING, *supra* note 28, at 11.

³⁸ *Id.* at 12.

The almost uniform pattern of negative psychological consequences seen among battered women led to the development of a syndrome unique among battered women: the Battered Woman Syndrome.

II. THE BATTERED WOMAN SYNDROME

Why do battered women kill their male partners?

The search for answers to this inquiry induced the development of BWS in the late 1970s and early 1980s. The theory was conceived primarily as a defense for women who killed their batterers.³⁹

The theory begins with a definition of what a battered woman is.⁴⁰ Gayford defined "battered wife" as "a woman who has received deliberate, severe and repeated demonstrable physical injury from her marital partner."⁴¹ This definition, however, was clearly inadequate for its failure to consider women who suffer from psychological and sexual abuse. Hence, Walker redefined "battered woman" as "one who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without concern for her rights."⁴² Pagelow, on the other hand, defined battered woman as an

adult [woman] who [is] intentionally physically abused in ways that caused pain or injury, or who [is] forced into involuntary actions or [is] restrained by force from voluntary action by adult [man] with whom [she has] established relationships, usually involving sexual intimacy, whether or not within a legally married state.⁴³

The syndrome itself was defined by Walker in the course of her research on battered women. The term refers to "a series of characteristics common to women who are abused, psychologically and physically, over a period of time by the

³⁹ Rebecca Cornia, *Current Use of Battered Woman Syndrome: Institutionalization of Negative Stereotypes about Women*, 8 UCLA WOMEN'S L.J. 99, 100 (1997).

⁴⁰ It should be noted that psychologists and sociologists agree that no clear definition of the concept of woman abuse and battering can be made. See M. HYDEN, *supra* note 15, at 20. The disappointment over the apparently insurmountable problems in this type of research for an abstract, general, and normative definition that has dominated the field, is expressed by Gelles and Strauss (1988) as follows: Twenty years of discussion, debate and action have led us to conclude that there will never be an accepted or acceptable definition of abuse, because abuse is not a scientific or clinical term. Rather, it is a political concept. Abuse is essentially any act that is considered deviant or harmful by a group large enough or with sufficient political power to enforce the definition (citation omitted).

⁴¹ C. EWING, *supra* note 28, at 8.

⁴² *Id.* at 9.

⁴³ Donna Hale & Daniel Menniti, *The Battered Woman Syndrome as Legal Defense: Status in the Courtroom*, in WOMEN, LAW AND SOCIAL CONTROL 203, 204 (Alida Merlo and Joycelyn Pollock eds., 1995).

dominant male figure in their lives.”⁴⁴ In more practical terms, BWS is “a psychological condition where the victims believe the only way out of the situation is to kill their husbands.”⁴⁵

BWS is composed of four essential elements: the cycle of violence, learned helplessness, traumatic bonding and post-traumatic stress disorder.

A. The Cycle of Violence

Walker’s study of battered women revealed that “battering relationships have a clearly discernible cyclical pattern” which involves the “repetition of a three-phase cycle of violence.”⁴⁶ As a matter of fact, Walker considered a woman battered “only if she and her batterer have gone through this cycle at least twice.”⁴⁷

The first phase of the cycle is called the “tension reduction phase”.⁴⁸ In this phase, the woman is subjected to verbal and/or minor physical abuse by her husband. The woman responds to the abuse with anger reduction techniques to placate the batterer.⁴⁹

This is a sort of “calm before the storm.” The victim feels that the pressure is mounting and that a violent explosion is inevitable. While “minor” battering incidents may occur during this time (for example, shaking or slapping), a major abusive assault is what she most fears. She may try to calm him down with something that worked in the past, such as cooking his favorite meal or keeping the children quiet.⁵⁰

The second phase is the “acute battering incident” which “results from the growing and unresolved tension”⁵¹ of the first phase. In phase two, the batterer inflicts upon the woman severe physical and verbal abuse. After the battering incident, “there is a predictable sharp physiological reduction in tension.”⁵² Fortunately for the woman, this is the briefest of the three phases.⁵³

⁴⁴ *Id.* at 206, quoting M.J. Leary, *A Woman, A Horse, and a Hickory Tree: The Development of Expert Testimony on the Battered Woman Syndrome in Homicide Cases* 53 U. KAN. L. REV. 386, 397.

⁴⁵ *Id.*, quoting C.J. Postell, *Battered Woman: Understanding the Problem*, 22 TRIAL 75.

⁴⁶ C. EWING, *supra* note 28, at 18. See also Mary Ann Dutton, *Symposium on Domestic Violence: Understanding Women’s Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191 (1993); A. Renee Callahan, *Will the “Real” Battered Woman Please Stand Up? In Search of a Realistic Legal Definition of Battered Woman Syndrome*, 3 AM. U.J. GENDER & LAW 117 (1994).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ J. BELKNAP, *supra* note 16, at 173.

⁵¹ C. EWING, *supra* note 28, at 18.

⁵² *Id.* at 18.

⁵³ J. BELKNAP, *supra* note 16, at 173-4.

The third and last phase is the "loving contrition" phase in which the batterer "becomes remorseful, apologetic, and loving and assures the woman that the battering incident will not be repeated."⁵⁴ "He begs her forgiveness and promises her that he will never do it again."⁵⁵ This kind of behavior induces the woman to stay in the relationship and to hope that the batterer will change his ways.

The batterer often appears very sincere in his apology and in his commitment to change. He may lavish the woman with gifts, quit drinking, or do other things to convince her that he really loves her and that the battering will never happen again. "It is during this phase that the woman gets a glimpse of her original dream of how wonderful love is... The traditional notion that two people who love each other surmount overwhelming odds against them prevails" (Walker, 1979, 67-68).⁵⁶

Generally, after phase three, which is longer than phase two but shorter than phase one, the battering ends and the cycle begins anew. In some cases, the third phase lasts for an extended period of time.

It has been observed that "over time the violence tends to increase in frequency, severity, and injuries."⁵⁷ Dobash and Dobash noted that "each successive violent episode leaves the woman with less hope, less self-esteem, and more fear."⁵⁸ Walker, on the other hand, found that "as the battering relationship progresses, tension building (phase one) is longer and more evident, and loving and contrition (phase three) decline."⁵⁹

Eventually, it has also been observed that the batterer will less likely to be apologetic and will more likely blame the woman for making him violent. Thus, the woman will likewise feel less hopeful that the batterer will change and more scared to leave the relationship.⁶⁰

Walker's theory is often the subject of criticism on the ground that "scientific literature does not support a universal 'cycle-of-violence' pattern in battering relationships, although this pattern is recognized in some relationships."⁶¹ It is argued that not all battering relationships go through the cycle. For instance, "some battered women report violence that occurs suddenly with no observable tension-building phase prior to a beating. Some women report no history of

⁵⁴ C. EWING, *supra* note 28, at 18.

⁵⁵ J. BELKNAP, *supra* note 16, at 174.

⁵⁶ *Id.*

⁵⁷ *Id.* at 179, quoting Dobash and Dobash, *supra* note 32.

⁵⁸ *Id.* at 174.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Dutton, *supra* note 35.

apologies or acts of kindness, while others report that, over time, these behaviors following a beating have diminished.”⁶²

B. Learned Helplessness

The concept of learned helplessness was first developed by Seligman. According to his theory:

[O]rganisms, when exposed to uncontrollable events, learn that responding is futile. Such learning undermines the incentive to respond, and so it produces a profound interference with the motivation of instrumental behavior. It also proactively interferes with learning that responding works when events become controllable, and so produce cognitive distortions.⁶³

This learned helplessness is generalized to other aspects of the individual's experience. For instance, based on the research conducted by Seligman,

dogs subjected to inescapable electric shocks continued to behave in a passive, helpless manner even when given opportunities to avoid being shocked. Other dogs, who had not experienced inescapable shocks, quickly learned to avoid being shocked, but the “helpless” dogs never did so. Experiments with human subjects, using a loud noise instead of electric shocks, have achieved the same results.⁶⁴

Learned helplessness has been defined by Gerow as “a condition in which a subject does not attempt to escape from a painful or noxious situation after learning in a previous, similar situation that escape is not possible.”⁶⁵

In a similar manner, battered women who are repeatedly subject to abuse over which they have no control become helpless and passive. Despite the presence of alternatives or avenues for escape, these women fail to identify and recognize these alternatives or avenues. The theory is that “because nothing a battered woman did ended the violence, she would not only stop trying to control her own life, she would also stop trying to end the violence.”⁶⁶ Hence, learned helplessness is often used to explain why battered women stay in the battering relationship.

This theory, however, has been sharply criticized by some feminists. According to Wardell, for instance, that a woman is unable to recognize the variety

⁶² *Id.*

⁶³ C. EWING, *supra* note 28, at 20.

⁶⁴ *Id.*

⁶⁵ OLA BARNETT & ALYCE LAVIOLETTE, IT COULD HAPPEN TO ANYONE: WHY BATTERED WOMEN STAY 103 (1993).

⁶⁶ Lisa Scheff, *People v. Humphrey: Justice for Battered Women or a License to Kill?* 32 U.S.F.L. REV. 225, 229 (1997).

of alternatives available to her cannot solely be explained by learned helplessness. "The battered woman's recognition of a lack of alternatives is often rational, not simply a poor self-image, after she has sought help repeatedly from friends, family, the police, and the courts and is still in a threatening position."⁶⁷

C. Traumatic Bonding

Another explanation propounded to account for the failure of battered women to leave the relationship is traumatic bonding.

Traumatic bonding refers to "the strong emotional ties [which develop] between two persons where one person intermittently harasses, beats, threatens, abuses or intimidates the other."⁶⁸ According to Dutton and Painter, the relationship of battered spouse-battering spouse is characterized by two common features of social structure.⁶⁹ First, there is an imbalance of power such that the abused person feels subjugated or dominated by the other. The less powerful person in the relationship, i.e., the battered woman, "becomes extremely dependent upon, and may even come to identify with the more powerful person."⁷⁰ As Ewing aptly explained:

In many cases, the result of such dependency and identification is that the less powerful, subjugated persons become "more negative in their self-appraisal, more incapable of fending for themselves, and thus more in need of the high power person." As this "cycle of dependency and lowered self-esteem" is repeated over time, the less powerful person develops "a strong affective bond" to the more powerful person in the abusive relationship.⁷¹

Second, the abuse is periodic in nature.⁷² This means that the battered woman is "subjected to intermittent periods of abuse, which alternate with periods during which the more powerful, abusive person treats the less powerful person in a 'more normal and acceptable' fashion."⁷³

Given these features, Dutton and Painter concluded that most battered women have developed a traumatic bond with their batterers, making them unable to leave the relationship, no matter how difficult and painful it is.

⁶⁷ J. BELKNAP, *supra* note 16, at 181.

⁶⁸ C. EWING, *supra* note 28, at 19.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

D. Post-traumatic Stress Disorder

BWS, as it is presently understood, is a subcategory of the post-traumatic stress disorder.⁷⁴ This disorder was first applied to Vietnam War veterans who experienced severe trauma or stress. It is "an anxiety disorder produced by an uncommon, extremely stressful event."⁷⁵ Goldenson observed that PTSD is characterized by the following:

1. re-experiencing the trauma in painful recollections or recurrent dreams;
2. diminished responsiveness (numbing), with disinterest in significant activities and with feelings of detachment and estrangement from others; and
3. such symptoms as exaggerated startle response, disturbed sleep, difficulty in concentrating or remembering, guilt about surviving when others did not, and avoidance of activities that call the traumatic event to mind.⁷⁶

As applied in the case of battered women,⁷⁷ BWS is perceived to be "a collection of thoughts, feelings and actions that logically follow a frightening experience that one expects could be repeated."⁷⁸ Like PTSD patients, battered women experience "cognitive confusion, attention deficits, and lack of concentration."⁷⁹ Further, battered women exhibit high arousal symptoms or high anxiety which is generally characterized by *hypervigilance* to cues of potential danger; recognition of little things that signal an impending incident; nervousness, jumpiness and anxiousness.⁸⁰ Avoidance symptoms are also seen from battered women, who "become more isolated over time."⁸¹

⁷⁴ Hereinafter PTSD.

⁷⁵ O. BARNETT & A. LAVIOLETTE, *supra* note 65, at 95.

⁷⁶ *Id.*

⁷⁷ Barnett and LaViolette made an excellent analogy between war victims and battered women in general. ("Due to circumstances of war [her married life], extended grieving was unproductive [and not allowed] and could become a liability [exacerbating his guilt, leading to increased anger]. Grief was handled as quickly as possible [to make way for the honeymoon stage]. Many soldiers [battered women] reported feeling numb. They felt depressed and unable to tell anyone. "How can I tell my wife [neighbor/friend/family member/pastor], she'd [he'd] never understand?" they ask. "How can anyone who has not been there understand?" Essentially, Vietnam-style combat [home-style combat] held no final resolution of conflict for anyone. Regardless of how one might respond, the overall outcome seemed to be an endless production of casualties with no perceivable positive results. They found little support from their friends and neighbors back home, the people in whose name so many people were drafted into military service [a battering relationship]. They felt helpless. They returned to the United States trying to put some positive resolution to this episode in their lives, but the atmosphere at home was hopeless. They were still helpless.") *Id.* at 97.

⁷⁸ Leonore Walker, *Battered Women as Defendants*, in LEGAL RESPONSES TO WIFE ASSAULT: CURRENT TRENDS AND EVALUATION 233, 247 (N. Zoe Hilton ed., 1993).

⁷⁹ *Id.* at 248.

⁸⁰ *Id.*

⁸¹ *Id.*

The use of PTSD as a core component of BWS is often criticized since it is perceived to erroneously classify battered women as mentally ill. Moreover, there is a paucity of proof that "PTSD is necessary, generally, to establish the relevance of battering and its effects to the various elements of criminal cases involving battered women."⁸²

III. THE BATTERED WOMAN SYNDROME AS A LEGAL DEFENSE

Research revealed that there are certain factors which increase the likelihood of a battered woman killing her batterer.

First, battered women who kill are more likely to be involved with a batterer who physically and often, sexually abuses her/their children (Browne 1987; Ewing 1987; Walker 1989). Second, battered women who kill have perceived a more immediate sense of danger, usually involving violence that has increased in frequency, severity, and injury (Browne 1987; Ewing 1987; Walker 1989). Finally, battered women who kill are more likely to have received death threats and been terrorized with weapons (often firearms) (Browne 1987; Ewing 1987).⁸³

If a battered woman eventually kills her batterer,⁸⁴ BWS helps explain the crime in the context of the battering relationship, thereby furnishing the accused with a valid defense. However, it should be borne in mind that BWS is not a defense *per se*.⁸⁵ The question of BWS is not the ultimate issue in a criminal case involving a battered woman. It is only a means of determining the ultimate issues, in relation to the applicable legal defenses of the battered woman on trial.

The syndrome is particularly relevant in three instances: to support a defense of self-defense,⁸⁶ of insanity and of duress.

In the United States, although only a few battered women invoke the defense of insanity, most of these women are acquitted on that basis. The defense relies on either the M'Naughten standard or the Model Penal Code standard. Under the M'Naughten standard, "a battered woman homicide defendant may be acquitted by reason of insanity if, at the time of the killing, she was, by reason of mental

⁸² Dutton, *supra* note 35.

⁸³ J. BELKNAP, *supra* note 16, at 192.

⁸⁴ Walker's research revealed that women who killed their batterers tend to do so during the tension-building phase "because they lack the physical strength and/or skill to defend themselves during the 'acute explosion' stage when the abuse occurs and because they are receiving the benefits of the relationship during the 'loving contrition' phase." Scheff, *supra* note 66, at 230.

It should likewise be noted that "homicide is a last resort, and it most often occurs when men simply will not quit." ANN JONES, *WOMEN WHO KILL* 317 (1980).

⁸⁵ Dutton, *supra* note 35.

⁸⁶ This subject will be discussed more lengthily in the latter part of the paper. At this point, only the defenses of insanity and of duress will be discussed.

disease or defect, unable to know the nature and quality of her act or unable to realize that it was wrong.”⁸⁷ Under the Model Penal Code standard, on the other hand, she may be acquitted by reason of the same defense “if, at the time she killed, she suffered a mental disease or defect and as a result lacked the substantial capacity either to appreciate the wrongfulness of the killing or to conform her behavior to legal requirements.”⁸⁸

In practice, expert testimony on BWS is offered to prove and explain “how traumatic reactions and their associated symptoms may preclude the victim from knowing right from wrong or appreciating the consequences of her action at the time of the criminal acts.”⁸⁹ For instance, it may be argued that due to memory loss, disorientation and confusion,⁹⁰ the mental state of the battered woman at the time of the incident was so impaired that she could not be held liable.

Many battered women know that difference [between right and wrong], but cannot conform their behavior to that knowledge because they believe they will be seriously hurt or killed if they do. Other battered women have been so seriously damaged by abuse that they do indeed fit the traditional insanity standard. Some battered women lose the ability to make appropriate judgments because of organic brain damage from head injuries or because they have become psychotic, perhaps as a way to escape from the terrible psychological abuse that accompanies physical and sexual abuse. Many battered women... have learned to dissociate their mind from their body and to operate on “automatic pilot”, without any ability to think about right and wrong (Krystal et al., 1989; Spiegel, 1990; van der Kolk, 1988).⁹¹

In all of these cases and in similar cases, the battered women may invoke the insanity plea.

As expected, only a small percentage of battered women utilize BWS to support a defense of insanity. This is so because most of the defendants, “though perhaps emotionally distraught or on the verge of mental illness, were well aware of what they were doing when they had killed their batterers and knew that killing was morally and legally wrong.”⁹² Hence, it is not possible to claim that the defendant was insane at the time of the killing because she was aware of the rightness or wrongness of the act. Besides, the act was motivated by a rational reason: protection from further physical, psychological or sexual abuse.

⁸⁷ C. EWING, *supra* note 28, at 45.

⁸⁸ *Id.*

⁸⁹ Dutton, *supra* note 35.

⁹⁰ These are some of the symptoms of PTSD. A battered woman suffering from PTSD may suffer from cognitive disturbances, which include loss of memory, accompanied by denial, minimization, and repression of violent incidents. L. Walker, *supra* note 78, at 247.

⁹¹ L. Walker, *supra* note 78, at 241.

⁹² C. EWING, *supra* note 28, at 45.

Another reason propounded for the scarcity of insanity defense cases is that this defense is rarely successful. According to Schneider, the juries in the United States may apply a different standard to women in applying the defense of insanity. "The jury may require a woman who asserts an impaired mental state defense to sound truly insane. A woman who sounds too angry or too calm may not fulfill the jurors' role expectations. The jury may then feel punitive toward her for not conforming to the stereotype."⁹³

More importantly, a defense of insanity has serious personal consequences to the battered woman. If she is acquitted by reason of insanity, she will be committed to a mental institution for her rehabilitation. If, in time, she is released from custody, she "must forever bear the stigma of having been declared legally insane and having been committed to a state institution for the criminally insane."⁹⁴

The insanity plea also denies the fact that women frequently have no other option but to kill.

The defense of duress, on the other hand, is relevant only in situations where the battered woman is forced to comply with the batterer's demands in order to avoid further violence and abuse.

For some, compliance means being an accomplice to or actively engaging in illegal behavior, perhaps involving drug-related activity, fraud, theft, or even violence toward others. When a battered woman has participated in these and other criminal acts in response to the batterer's coercion, threats or actual violence, a defense of duress is often introduced.⁹⁵

The key to a successful defense of duress, from a battered woman's point of view, is to prove that she reasonably believed the criminal behavior was necessary to avoid violence and abuse.

In *Dunn v. Roberts*,⁹⁶ during a long trip to Florida, the batterer physically abused the defendant, constantly threatened her with a gun, and told her that she or her family would be hurt if she tried to leave him.⁹⁷ The batterer then shot a police officer and another man and killed two hostages. The defendant was charged with aiding and abetting the following: felony, murder, kidnapping, aggravated battery, and aggravated robbery.⁹⁸ In defense, the battered woman sought to introduce

⁹³ *Id.* at 46.

⁹⁴ *Id.*

⁹⁵ Dutton, *supra* note 35.

⁹⁶ 963 F.2d 308 (10th Cir. 1992).

⁹⁷ David Faigman and Amy Wright, *The Battered Woman Syndrome in the Age of Science*, 39 ARIZ. L. REV. 67, 94, *citing* Dunn v. Roberts, *id.*

⁹⁸ *Id.*

expert testimony on BWS to prove that she lacked the necessary intent to aid and abet these crimes. The trial court, however, denied the introduction of expert testimony and convicted the defendant. The Kansas Supreme Court affirmed her conviction but the district court granted a writ of habeas corpus on petition of the defendant. On appeal by the state, the Tenth Circuit observed that

one of the "basic tools of an adequate defense" was expert psychiatric assistance "when a defendant makes a threshold showing that her mental condition at the time of an offense is likely to be a 'significant factor' at trial." Finding that the case 'rested on...[the defendant's] ability to show that she lacked the requisite intent," the court concluded that the trial court's denial of expert witness funds "precluded Petitioner from presenting an effective defense." Because expert testimony could have explained "why a defendant suffering from the battered woman syndrome wouldn't leave her batterer," the court stated that "such evidence could have provided an alternative reason for Petitioner's continued presence with Daniel Remeta."⁹⁹

IV. THE CLASSIC DOCTRINE OF SELF-DEFENSE IN THE PHILIPPINES

The law on self-defense in the Philippines hinges on the doctrine of justification. While generally, liability is attributed to a person who commits an act deemed punishable under the law, a person acting in self-defense is considered justified and therefore freed from any liability. Hence, under article 11 of the Revised Penal Code, self-defense is one of the justifying circumstances that an accused may invoke. Justifying circumstances refer to "those where the act of a person is said to be in accordance with law, so that such person is deemed not to have transgressed the law and is free from both criminal and civil liability."¹⁰⁰

Art. 11 partly states that:

The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

In *US v. Mack*,¹⁰¹ the Supreme Court explicitly stated:

⁹⁹ *Id.* at 94-5.

¹⁰⁰ L. REYES, *supra* note 2, at 139.

¹⁰¹ 8 Phil. 701 (1907).

An accused person is not entitled to complete exemption from criminal responsibility on the plea of self-defense unless each and all of the following facts are established to the satisfaction of the court: First, that there was an unlawful aggression; second, that there was reasonable necessity for the employment of the means taken to prevent or resist such unlawful aggression; third, that there was no sufficient provocation on the part of the accused.

A. Unlawful aggression

The first requisite of self-defense is that there must be unlawful aggression on the part of the person injured or killed by the accused. This element is a condition *sine qua non*¹⁰² because without it, there is nothing to prevent or repel, thereby eliminating the basis for the second requisite. As held in the case of *People v. Yuman*,¹⁰³

[H]er act of mortally wounding her lover Marciano Martin had not been preceded by aggression on the part of the latter. There is no occasion to speak here of the "reasonable necessity of the means employed to prevent or repel it", nor is it necessary to inquire whether or not there was "sufficient provocation" on the part of the one invoking legitimate self-defense because both circumstances presuppose unlawful aggression which, we repeat, was not present in the instant case.¹⁰⁴

Aggression may be lawful or unlawful. *People v. Alconga*¹⁰⁵ defined unlawful aggression as an assault or at least threatened assault of an immediate and imminent kind. In other words, an unlawful aggression exists "when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of weapon."¹⁰⁶ The peril is actual when the danger is present or actually in existence.¹⁰⁷ It is merely imminent if "the danger is on the point of happening. It is not required that the attack already begins, for it may be too late."¹⁰⁸

Generally, the aggression must consist of an actual physical assault,¹⁰⁹ manifested by the use of physical force or actual use of weapon. Thus, in *US v. Carrero*,¹¹⁰ the Supreme Court ruled that:

A threat even if made with a weapon, or the belief that a person was about to be attacked, is not sufficient, but that it is necessary that the intent be

¹⁰² L. REYES, *supra* note 2, at 143.

¹⁰³ 61 Phil. 786 (1935).

¹⁰⁴ *Id.* at 788.

¹⁰⁵ 78 Phil. 366 (1947).

¹⁰⁶ *People v. Crisostomo*, G.R. No. L-38180, 108 SCRA 288, 298 (1981).

¹⁰⁷ L. REYES, *supra* note 2, at 147.

¹⁰⁸ *Id.* at 148.

¹⁰⁹ *Id.* at 145.

¹¹⁰ 9 Phil. 544 (1908).

ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material unlawful aggression. In this case the attitude and behavior of the deceased at the time certainly did not constitute the unlawful aggression, which the law requires, and the insulting words addressed to the accused, no matter how objectionable they may have been, could not constitute so important a requisite as the aggression defined in the Penal Code.¹¹¹

A threat constitutes unlawful aggression only if such is offensive and positively strong, showing the wrongful intent to cause an injury.¹¹² The test applied by the court is that the threatening or intimidating attitude must be coupled with an attack, a material aggression, or an act positively showing the wrongful intent of the aggressor.¹¹³

While the Supreme Court held that a light push on the head with the hand¹¹⁴ or a mere push or a shove, not followed by other acts, do not constitute unlawful aggression, a slap on the face is considered unlawful aggression.¹¹⁵ The Court ratiocinated thus:

Since the face represents a person and his dignity, slapping it is a serious personal attack. It is a physical assault coupled with a willful disregard, nay, a defiance, of an individual's personality. It may therefore be frequently regarded as placing in real danger a person's dignity, rights and safety. A friendly kick delivered on a person's foot obviously falls short of such personal aggression.¹¹⁶

It is likewise a rule in Philippine criminal law that in order to justify an otherwise criminal act on the ground of self-defense, the attack upon the defendant must be simultaneous with the killing, or must have succeeded the latter without appreciable interval of time.¹¹⁷ Following this rule:

If any time intervened between the supposed attack of the deceased and the firing of the revolver by the defendant, the latter's actions would cease to have the true character of a real defense, which, in order to be legally sufficient, requires primarily and as an essential condition that the attack be immediately present.¹¹⁸

¹¹¹ *Id.* at 547.

¹¹² L. REYES, *supra* note 2, at 145.

¹¹³ *US v. Guy-sayco*, 13 Phil. 292, 295 (1909).

¹¹⁴ *People v. Yuman*, 61 Phil. 786 (1935).

¹¹⁵ *People v. Sabio*, L-23734, 19 SCRA 901 (1967).

¹¹⁶ *Id.* at 902.

¹¹⁷ *US v. Ferrer*, 1 Phil. 56 (1901).

¹¹⁸ *Id.* at 58-59.

The existence of unlawful aggression may be subjective. As cited by the Court in *US v. Ah Chong*:¹¹⁹

"A in the peaceable pursuit of his affairs, sees B rushing rapidly toward him, with an outstretched arm and a pistol in his hand, and using violent menaces against his life as he advances. Having approached near enough in the same attitude, A, who has a club in his hand, strikes B over the head before or at the instant the pistol is discharged; and of the wound B dies. It turns out the pistol was loaded with *pouder only*, and that the real design of B was only to *terrify* A. Will any reasonable man say that A is more criminal than he would have been if there had been a bullet in the pistol? Those who hold such doctrine must require that a man so attacked must, before he strikes the assailant, stop and ascertain how the pistol is loaded — a doctrine which would entirely take away the essential right of self-defense. And when it is considered that the jury who try the cause, and not the party killing, are to judge of the reasonable grounds of his apprehension, no danger can be supposed to flow from this principle." (Lloyd's Rep., p. 160.)¹²⁰

The belief of the accused may be taken in consideration in determining the existence of unlawful aggression. Although the belief of the defendant may be appreciated, it is necessary that such belief be reasonable. The aggression must be real and not merely imaginary.

Thus, when the accused, disliking the intervention of the deceased in a certain incident between the accused and a couple, armed himself with a gun and went to the house of the deceased, and upon seeing the latter holding a *keris* in his hand, shot him to death, there was no unlawful aggression, notwithstanding the claim of the accused that the deceased was a man of violent temper, quarrelsome and irritable, and that the latter might attack him with the *keris*, because *he merely imagined* a possible aggression. The aggression must be *real*, or, at least, *imminent*. (People v. Dela Cruz, 61 Phil. 422)¹²¹

Expected aggression, however, is sufficient to constitute unlawful aggression, despite the fact that it merely exists in the mind of the accused. The law regards expected aggression as real, provided it is imminent.

It is well known that a person who pursues another with the intent and purpose of assaulting him does not *raise* his hand to discharge the blow until he believes that his victim is within his reach. In this case, it is not necessary to wait until the blow is about to be discharged, because in order that the assault may be prevented it is not necessary that it has been actually perpetrated. (US v. Batungbacal, 37 Phil. 382)¹²²

¹¹⁹ 15 Phil. 488 (1910).

¹²⁰ *Id.* at 502-503.

¹²¹ L. REYES, *supra* note 2, at 166-7.

¹²² *Id.* at 167.

B. Reasonable Necessity of the Means Employed To Prevent or Repel it

The second requisite refers to the necessity of the course of action taken by the person making a defense and the necessity of the means used.¹²³ The law requires that both the course of action taken and the means used be reasonable. In turn, the reasonableness of both hinges on the existence of unlawful aggression and the nature and extent of the aggression.¹²⁴

The application of this second requisite is explained by the Supreme Court¹²⁵ in this wise:

The person attacked is not duty-bound to expose himself to be wounded or killed, and while the danger to his person or life subsists, he has a perfect and indisputable right to repel such danger by wounding his adversary and, if necessary, to disable him completely so that he may not continue his assault.¹²⁶

Whether or not the requirement of reasonableness is met depends on the circumstances of the case. As regards the course of action taken, the rule is that the act is reasonable if unlawful aggression exists. In *People v. Narvaez*,¹²⁷ the Supreme Court ruled that despite the existence of aggression, the act of the defendant in firing a shotgun from the window was unreasonable, being disproportionate to the attack.

While there was an actual physical invasion of appellant's property when the deceased chiseled the walls of his house and closed appellant's entrance and exit to the highway, which he had the right to resist, the reasonableness of the resistance is also a requirement of the justifying circumstance of self-defense or defense of one's rights. When the appellant fired his shotgun from the window, killing his two victims, his resistance was disproportionate to the attack.¹²⁸

The reasonableness of the means used, on the other hand, subsists if the means employed by the person making a defense is rationally necessary to prevent or repel an unlawful aggression.¹²⁹ The requisite of reasonableness depends on several factors, including "the nature and quality of the weapon used by the aggressor, his physical condition, character, size and other circumstances, and those of the person defending himself, and the place and occasion of the assault."¹³⁰ In assessing these

¹²³ *Id.*

¹²⁴ *Id.* at 168.

¹²⁵ *U.S. v. Molina*, 19 Phil. 227 (1911).

¹²⁶ L. REYES, *supra* note 2, at 168, *citing* *U.S. v. Molina*, 19 Phil. 227 (1911).

¹²⁷ 206 Phil. 315 (1983).

¹²⁸ L. REYES, *supra* note 2, at 170, *citing* *People v. Narvaez*, 206 Phil. 315 (1983).

¹²⁹ *Id.* at 173.

¹³⁰ *Id.* at 174.

factors, the rule to be applied is rational equivalence.¹³¹ Hence, it is not required for the weapon used by the defendant and the aggressor to be perfectly equal.

Reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is rational equivalence, in the consideration of which will enter as principal factors the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than the reason, that moves or impels the defense, and the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury xx xx As WE stated in the case of *People vs. Lara*, in emergencies of this kind, human nature does not act upon processes of formal reason but in obedience to the instinct of self-preservation; and when it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to sanction the act and hold the act irresponsible in law for the consequences.¹³²

C. Lack of Sufficient Provocation On the Part of the Person Defending Himself

Under the Revised Penal Code, in order to completely justify the act of an accused, the person defending himself from the attack should not have given sufficient provocation to the aggressor. Otherwise, both the defender and the aggressor should be blamed for the incident.

Citing decisions of the Supreme Court of Spain on March 5, 1902 and April 20, 1906, J.B.L. Reyes wrote that the third requisite of self-defense is present when:

1. No provocation at all was given to the aggressor by the person defending himself; or
2. Even if a provocation was given, it was not sufficient; or
3. Even if the provocation was sufficient, it was not given by the person defending himself; or
4. Even if a provocation was given by the person defending himself, it was not proximate and immediate to the act of aggression.¹³³

The test of sufficiency of provocation was laid down by the court in *People v. Alconga*:¹³⁴ the provocation should be proportionate to the act of aggression and adequate to stir the aggressor to its commission. Applying this test, a verbal

¹³¹ *Id.*

¹³² *People v. Encomienda*, G.R. No. L-26750, 46 SCRA 522, 534-535 (1972).

¹³³ L. REYES, *supra* note 2, at 179-180.

¹³⁴ 78 Phil. 366 (1947).

argument preceding the act of killing is insufficient provocation, hence the defendant could properly invoke self-defense.¹³⁵ However, in *US v. McCray*,¹³⁶ the Court considered the provocation, consisting of challenging the deceased to come out of his house and to engage in a fist-fight with the defendant, sufficient. In *People v. Sotelo*,¹³⁷ the provocation is likewise sufficient "when one hurls insults or imputes to another the utterance of vulgar language, which imputation provoked the deceased to attack them."¹³⁸

In addition to the requisite of insufficiency, the provocation must not also be proximate and immediate to the aggression in order to validly invoke self-defense. For example:

[I]f A slapped the face of B one or two days before and B, upon meeting A, attacked the latter but was seriously injured when A defended himself, the provocation given by A should be disregarded because it was not proximate and immediate to the aggression made by B. In this case, the third requisite of self-defense is still present.¹³⁹

V. THE BATTERED WOMAN SYNDROME AND THE CLASSIC DOCTRINE OF SELF-DEFENSE

BWS was chiefly developed as a reaction to the fact that women perceive situations differently compared with men. "The traditional doctrine of self-defense was based on the experiences of men and did not accommodate acts of self-defense by battered women that were reasonable but different from men's."¹⁴⁰

Feminists espousing BWS claim that "the law of self-defense has developed with an underlying gender bias that has rendered it unable to deal fairly with homicides committed by abused women."¹⁴¹ Further, they argue that the doctrine is governed by two paradigms: "first, a case in which a person is suddenly attacked by a stranger or intruder; and second, a case in which a dispute between two equals (in terms of size and strength) gets out of control."¹⁴²

The role of BWS in the law of self-defense was clarified by Hale and Menniti. According to them, BWS "is used to explain killing outside of actual

¹³⁵ L. REYES, *supra* note 2, at 180.

¹³⁶ 2 Phil. 545 (1903).

¹³⁷ 55 Phil. 396 (1930).

¹³⁸ L. REYES, *supra* note 2, at 181.

¹³⁹ *Id.* at 182.

¹⁴⁰ Cornia, *supra* note 39, at 104.

¹⁴¹ *Developments in the law—legal responses to domestic violence v. battered women who kill their abusers*, 106 HARV. L. REV. 1574, 1575.

¹⁴² *Id.* at 1576.

battering incidents. Its use is not necessary if killing occurred during a battering incident. This would permit the self-defense as defense justification for the woman's killing."¹⁴³

The theory of BWS is particularly relevant in addressing two important elements of self-defense: that the unlawful aggression must be imminent and that the course of action taken and the means used must be reasonably necessary.

A. The Battered Woman Syndrome and the Requirement of Imminence

As a rule, a person defending himself "must reasonably and honestly believe that he is in *imminent danger* of being harmed by the other."¹⁴⁴ Black's Law Dictionary defines imminent as "near at hand; mediate rather than immediate; impending; on the point of happening; threatening; menacing."¹⁴⁵ Imminent danger, on the other hand, refers to "immediate danger, such as must be instantly met."¹⁴⁶

The key, therefore, to the imminence requirement of self-defense is an understanding of the relationship between the present and some future event. The danger to the life or limb of the person defending himself must be perceived to be on the point of happening, as shown by an act of the aggressor revealing an intent to cause injury. This act may be an actual physical assault or a threat to inflict real injury. However, a threat of future harm will not be justified¹⁴⁷ because in this case, the imminence requirement is lacking.

It is likewise important for the perception or belief to be reasonable. So long as there is reasonableness, the right of self-defense will arise even though the belief may turn out to be erroneous later on.

As applied to battered women who killed their batterers, the imminence requirement is easily met if the criminal act occurred during an episode of physical

¹⁴³ Hale and Menniti, *supra* note 43, at 205. See also Claire O. Finkelstein, *Self-Defense and Relations of Domination: Moral and Legal Perspectives on Battered Women Who Kill: Self-Defense as Rational Excuse*, 57 U. PITT. L. REV. 621 (1996); Hibi Pendleton, *Self-Defense and Relations of Domination: Moral and Legal Perspectives on Battered Women who Kill: A Critique of the Rational Excuse Defense: A Reply to Finkelstein*, 57 U. PITT. L. REV. 651 (1996); David Faigman, Note: *The Battered Woman Syndrome and Self-Defense: A Legal and Empirical Dissent*, 72 VA. L. REV. 619 (1986); Mira Mihajlovich, *Does Plight Make Right: The Battered Woman Syndrome, Expert Testimony and the Law of Self-Defense*, 62 IND. L.J. 1253 (1987); Richard Rosen, *On Self-Defense, Imminence and Women who Kill their Batterers*, 71 N.C.L. REV. 371 (1993); Cathryn Jo Rosen, *The Excuse of Self-Defense: Correcting a Historical Accident on Behalf of Battered Women who Kill*, 36 AM. U.L. REV. 11 (1986).

¹⁴⁴ I. SLOAN, *THE LAW OF SELF-DEFENSE: LEGAL AND ETHICAL PRINCIPLES* 8 (1987). [Italics supplied.]

¹⁴⁵ Black's Law Dictionary 749, 750 (6th ed. 1990).

¹⁴⁶ *Id.* at 750.

¹⁴⁷ I. SLOAN, *supra* note 144.

abuse or in a confrontational situation. The problem arises in the so-called non-confrontation cases. In these cases, the battered women exerted "deadly force against the batterers in the absence of any concurrent abuse but in anticipation of renewed attacks. Some of the latter cases have occurred in circumstances in which the batterers presented no overt evidence of immediate threat because they were reclining in another room or sleeping."¹⁴⁸ Applying the traditional doctrine of self-defense, it is obvious that the women cannot successfully invoke the defense because they did not do so "in response to what reasonably appears to be a threat of imminent death or serious bodily injury."¹⁴⁹

BWS addresses this issue by arguing that "even when not confronting a specific overt act threatening immediate harm, a woman can honestly and reasonably believe she must kill in self-defense."¹⁵⁰ The reasonable belief of the battered woman rests on her concept of imminence, which is necessarily different from that of a man or a woman who has not suffered severe abuse. For instance, in *State v. Wanrow*:¹⁵¹

The Washington Supreme Court held that the jury instruction, drawn to the standard of a "reasonable man" (and incidentally couched in masculine pronouns), did not adequately represent a woman's perspective and consequently threatened to deny women equal protection under the law.... The Wanrow jury instruction made it possible to argue that a woman who killed to save herself or her children from imminent danger or great bodily injury might be acting in a reasonable and justifiable manner.¹⁵²

It is necessary, therefore, to appreciate the term "imminent" from the point of view of the battered woman who is "constantly in a heightened state of terror because she is certain that one day her husband will kill her during the course of a beating."¹⁵³

This argument finds its justification from the cycle theory, which "forms the conceptual bridge that spans the time gap between the batterer's threat of death or serious bodily harm and the defendant's act."¹⁵⁴ It should be remembered that, based

¹⁴⁸ Robert Schopp et al., *Battered Woman Syndrome, Expert Testimony, and the Distinction between Justification and Excuse*, 1994 U. Ill. L. Rev. 45 (1994). See also Renee Romkens, *Ambiguous Responsibilities: Law and Conflicting Expert Testimony on the Abused Woman who Shot Her Sleeping Husband*, 25 Law & Soc. Inquiry 355 (2000).

¹⁴⁹ Alan Tomkins et al., *Self-Defense Jury Instructions in Trials of Battered Women who Kill their Partner*, in LEGAL RESPONSES TO WIFE ASSAULT: CURRENT TRENDS AND EVALUATION 258, 262 (N. Zoe Hilton ed., 1993).

¹⁵⁰ Faigman and Wright, *supra* note 97, at 83.

¹⁵¹ 559 P.2d 548.

¹⁵² A. JONES, *supra* note 84, at 304-5.

¹⁵³ Tomkins et al., *supra* note 149, at 267.

¹⁵⁴ Faigman and Wright, *supra* note 97, at 72.

on this theory of violence, a battered woman is subjected to repeated violence which reduces her to a state of fear and anxiety, extending beyond the battering episodes.¹⁵⁵

This fear continues even during the peaceful interlude between episodes of abuse. It is during this lull in the violence that the woman may seize the opportunity to strike back at the batterer. Thus, according to the cycle theory, the woman experiences the growing tension of phase one, develops a fear of death or serious bodily harm during phase two, and, perceiving that she will be unable to defend herself when the next attack comes, finally "defends" herself at her only opportunity, usually during a lull in the violence.¹⁵⁶

A corollary reason for the existence of imminence is the fact that the battered woman becomes hyper-vigilant to any cue of impending danger as a result of repeated abuse.¹⁵⁷ It has been shown that "women who have been repeatedly assaulted by their partners over time become sensitized to cues of impending assault."¹⁵⁸ According to Elizabeth Bochnak:

The battered woman learns to recognize the small signs that precede periods of escalated violence. She learns to distinguish subtle changes in tone of voice, facial expression, and levels of danger. She is in a position to know, perhaps with greater certainty than someone attacked by a stranger, that the batterer's threat is real and will be acted upon.¹⁵⁹

In other words, a battered woman's appraisal of danger is different such that in most cases, they "live their lives always having an underlying fear of the man's violent potential."¹⁶⁰

The theory can be summarized thus:

The battered woman's knowledge of the batterer's history of violence shapes her perception of harm. A woman's prior experience with the recurring cycles of violence instills a constant fear of what appears to her as imminent harm. This factor addresses the first element of the battered woman's self-defense claim: the reasonableness of her belief in the necessity for self-defensive action.¹⁶¹

The difficulty with this approach is exemplified by the decision of the North Carolina Supreme Court in the case of *State v. Norman*.¹⁶² The defendant here

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 73.

¹⁵⁷ Tomkins et al., *supra* note 149, at 243.

¹⁵⁸ A. BROWNE, *supra* note 17, at 172.

¹⁵⁹ *Id.*

¹⁶⁰ Tomkins et al., *supra* note 149, at 244.

¹⁶¹ Faigman and Wright, *supra* note 97, at 73.

¹⁶² 89 N.C. App. 384, 366 S.E.2d 586 (1988), *rev'd*, 324 N.C. 253, 378 S.E.2d 8 (1989).

had been abused¹⁶³ by Mr. Norman since five years after their wedding. On 12 June 1985, while her husband was sleeping, the defendant shot her husband. She was charged with first-degree murder but the jury convicted her of voluntary manslaughter. On appeal, the appellate court ruled that the defendant was entitled to an instruction to the jury on North Carolina law of self-defense. The State appealed to the Supreme Court, which reversed the appellate court.¹⁶⁴

The North Carolina Supreme Court ruled that "the circumstances did not establish an 'immediate danger, such as must be instantly met, such as cannot be guarded against by calling for the assistance of other or the protection of the law'."¹⁶⁵ It concluded that the harm was not imminent at the time the defendant shot her husband because:

She was not faced with an instantaneous choice between killing her husband or being killed or seriously injured. Instead, *all* of the evidence tended to show that the defendant had ample time and opportunity to resort to other means of preventing further abuse by her husband. There was no action underway by the decedent from which the jury could have found that the defendant had reasonable grounds to believe either that a felonious assault was imminent or that it might result in her death or great bodily injury. Additionally, no such action by the decedent had been underway immediately prior to his falling asleep. (*State v. Norman*, 1989, p. 13, emphasis in original)¹⁶⁶

The risk of admitting self-defense based on BWS, according to the Court, involves the "broadening of the 'established law of self-defense'" and giving "the term 'imminent' a meaning substantially more indefinite and all-encompassing than its present meaning."¹⁶⁷ Indeed, if the Court allowed the battered woman to invoke self-defense, on the ground of a reasonable belief of the presence of imminent

¹⁶³ The abuse was described as follows by Tomkins et al., *supra* note 149, at 263. "His violence was extensive; it included slapping, punching, kicking, and striking Mrs. Norman with various objects (e.g., glasses, beer bottles, ashtrays, and other objects). Mr. Norman extinguished cigarettes on Mrs. Norman's neck, splashed her with hot coffee, smashed glass in her face, and crushed food on her face. He frequently made his wife bark like a dog, with the penalty for not barking being more beatings. She was constantly verbally demeaned by him; he often called her a bitch, a dog, and a whore. She was even made to eat dog or cat food out of the dog's or cat's bowl and to sleep on the concrete floor. At times, Mr. Norman would prohibit Mrs. Norman from shopping for food for the family (including five children, four of whom were still residing with the couple at the time of his killing) or from eating food herself. She carried several scars on her face caused by her husband's violence. Mrs. Norman was forced to work as a prostitute to support herself and her husband (who did not usually work). If she resisted prostituting herself, or if Mr. Norman was not pleased with the amount of money she made (she was supposed to reach a minimum quota of \$100/day), he would assault her. Finally, he made frequent threats to kill his wife. He not only made these threats directly to her, but also would tell others of his plans."

¹⁶⁴ *Id.* at 266.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 266-7.

¹⁶⁷ *Id.* at 267.

danger, the requirements of self-defense would be relaxed. In the words of the Supreme Court:

It would tend to categorically legalize the opportune killing of abusive husbands by their wives solely on the testimony concerning their subjective speculation as to the probability of future felonious assaults by their husbands. Homicidal self-help would then become a lawful solution, and perhaps the easiest and most effective solution to this problem. (*State v. Norman*, 1989, p. 15)¹⁶⁸

The promulgation of *People v. Genosa*,¹⁶⁹ where the Philippine Supreme Court remanded the case to the trial court for reception of evidence concerning the syndrome as a plea within the concept of self-defense, will certainly pose similar issues regarding the imminence requirement.

As in the United States, self-defense in local jurisprudence is considered only if at the moment of the attack or provocation, the defendant considers herself in imminent danger or harm. To establish self-defense, the aggression must still be existing when the aggressor was injured or attacked by the person making a defense.

The facts of *People v. Genosa* explicitly point out that the defendant killed her husband while the latter was sleeping. The act occurred during a lull in the violence, at a time when there was no imminent danger on the life of the defendant. However, counsel for the defendant argued that despite the circumstance of the sleeping husband, the defendant “could have committed the crime ‘out of self-defense’ because ‘if a woman waits to defend herself in a physical confrontation, she is likely to be hurt or killed.’”¹⁷⁰ This was corroborated by Genosa who said, “It was only a matter of who got killed first.” She stated that after every fight with Ben, she felt her husband “was killing her softly.”¹⁷¹ On this point, the Supreme Court said, quoting Genosa’s Urgent Omnibus Motion:

Living in a constant danger of harm or death, she knows that future beatings are almost certain to occur and will escalate over time. Her intimate knowledge of the violent nature of her batterer makes her alert to when a particular attack is forthcoming, and when it will seriously threaten her survival.¹⁷²

The Supreme Court, indeed, is treading on dangerous grounds with these pronouncements. While the law on imminence within the concept of self-defense

¹⁶⁸ *Id.*

¹⁶⁹ G.R. No. 135981, 341 SCRA 493 (2000).

¹⁷⁰ *Supra* note 4.

¹⁷¹ *Supra* note 6.

¹⁷² *People v. Genosa*, G.R. No. 135981, 341 SCRA 493, 498 (2000).

may not be abandoned, the admission of the theory of BWS will largely modify the concept of imminence in Philippine jurisprudence.

The Supreme Court has consistently ruled that for unlawful aggression to exist, there must be an attack that has actually broken out, or materialized, or at the very least is clearly imminent, and the attack cannot consist in oral threats or a merely threatening stance or posture.¹⁷³ Incorporation of BWS will force the Court to rule that, even in cases where the aggressor is sleeping and is of no physical threat, a battered woman may be acting in self-defense at the time she killed her batterer. This is so because accepting the theory of BWS necessarily entails accommodating its principle that a battered woman lives in constant imminent danger of harm or death. As Genosa's Urgent Omnibus Motion alleged:

A definition of imminent must be realistically applied to a battered woman's situation. Danger can be imminent without being immediate. A battered woman knows that danger is imminent even though she is not currently being beaten... An abusive husband is a bomb waiting to explode. The fuse is lit, the clock is ticking. The victim should be able to disarm the bomb before it actually explodes.¹⁷⁴

B. The Battered Woman Syndrome and the Requirement of Necessity

The law on self-defense requires that the use of force (or any other means) must be necessary to prevent the harm sought to be inflicted. Necessity, according to Murdoch, signifies two distinct but related sets of circumstances.¹⁷⁵ First, necessity refers to "absolute physical necessity or inevitability."¹⁷⁶ Second, it refers to "something, which in the accomplishment of a given object cannot be dispensed with."¹⁷⁷ The first definition is unconditional; the second, conditional. The latter definition is applicable to self-defense law since it is possible that "the defendant allow the attacker to proceed unopposed and kill or severely harm the defendant."¹⁷⁸

The law on necessity, as applied to battered women on trial for homicide or murder, again faces difficulty in cases where a sleeping batterer was killed, i.e., in non-confrontation cases. Even supposing that the battered woman honestly and reasonably believed that her life was in imminent danger, still the necessity of killing is problematic. The classic problem, according to Ewing, is posed in this question: "Why didn't they telephone the police or simply flee? Is it reasonably necessary to

¹⁷³ People v. Tac-an, G.R. Nos. 76338-39, 182 SCRA 601 (1990).

¹⁷⁴ *Supra* note 4.

¹⁷⁵ Jeffrey Murdoch, *Is Imminence Really Necessity? Reconciling Traditional Self-defense with the Battered Woman Syndrome*, 20 N. ILL. U. L. REV. 191, 193 (2000).

¹⁷⁶ *Id.* at 195.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 196.

kill someone who is sound asleep in order to keep that person from killing or serious injuring you?"¹⁷⁹

The problem presents itself once more in a situation where the killing takes place after the battering incident: "Even if the woman honestly and reasonably fear for her life or bodily safety, is it reasonably necessary to kill to prevent the possibility of further injury or death *sometime in the future*? Again, why doesn't the woman leave or seek help from the authorities?"¹⁸⁰

The answer to these questions, according to BWS, is the concept of learned helplessness. Learned helplessness, as previously discussed, "results in a loss by the battering victim of the ability to take steps to protect herself from further abuse. This condition leads to passivity and inability to realistically assess danger. Even if an opportunity to escape the situation presents itself, the victim of the battering may fail to take advantage of it."¹⁸¹

This concept is relevant to self-defense because it proves the existence of necessity despite the presence of choices available to the battered woman. "Necessity entails a lack of feasible alternatives. If, because of the condition of learned helplessness, a battering victim is unable to take measures to protect herself short of using deadly force, the alternative measures are not feasible."¹⁸²

The application of BWS on the issue of necessity is borne out by the following:

A defendant who has experienced an extended battering relationship involving serious bodily injury has reasonable grounds to believe that if an attack is forthcoming, it is likely to include the danger of serious injury. Thus, by establishing her reasonable beliefs that an attack was forthcoming and that past attacks by this batterer have included conduct likely to inflict serious bodily injury, the defendant demonstrates the basis for a reasonable belief that deadly force is proportionate to the threat. If in addition, the defendant's experience provides her with a basis to believe that due to factors such as size, gender, or physical disadvantage she can prevent the batterer from causing her serious bodily injury only by exercising deadly force, then she reasonably believes that deadly force is necessary.¹⁸³

People v. Genosa faces the same predicament considering that the defendant in this case killed her husband while he was sleeping. Indeed, by allowing the

¹⁷⁹ C. EWING, *supra* note 28, at 49.

¹⁸⁰ *Id.*

¹⁸¹ Murdoch, *supra* note 175, at 213.

¹⁸² *Id.*

¹⁸³ Schopp et al., *supra* note 148, at 73-74.

reception of evidence on BWS, the Supreme Court will modify the existing law on necessity in this jurisdiction, which is aptly recapitulated in their own words:

The law on self-defense is founded on necessity. Unless the person attacked is so placed that either he has to forfeit his life or take the life of the assailant, he cannot be completely justified in killing him. The right to kill depends upon the right to live to which all other rights are subordinated. The rationale is "that which anyone should do for the safety of his own person is to be adjudged as having been done justly in his own favor."¹⁸⁴

A sleeping batterer presents no necessity to kill because, as argued earlier, it is possible for the battered woman to simply leave or seek the help of the authorities. Logically, there are various alternatives available for the defendant, which would not necessitate the sacrifice of one life. However, the accommodation of BWS in Philippine jurisdiction will result in the acceptance of the concept of learned helplessness, which would make killing a sleeping husband legitimate.

The Supreme Court itself seemed to agree to this when it cited the defendant's Urgent Omnibus Motion:

Trapped in a cycle of violence and constant fear, it is not unlikely that she would succumb to her helplessness and fail to perceive possible solutions to the problem other than to injure or kill her batterer. She is seized by fear of an existing or impending lethal aggression and thus would have no opportunity beforehand to deliberate on her acts and to choose a less fatal means of eliminating her sufferings.¹⁸⁵

VI. CONCLUSION

"If we are to end violence against women, we must profoundly transform the relationship between men and women in this culture. We must engage all justice and human services system in ending this domestic terrorism."

-Jeremy Travis, Director of US National Institute of Justice, July 1995¹⁸⁶

It is unfortunate that the era of modernization and globalization has changed so little the power structure of the family in the world and in the Philippines. Despite the advocacy of women's rights and the success of the women's liberation movement throughout the years, the phenomenon of family violence remains a serious social problem. Though there have been attempts at family intervention to prevent further abuse, these efforts have not been on a large scale yet.

¹⁸⁴ People v. Bayocot, G.R. No. 55285, 174 SCRA 285, 291 (1989).

¹⁸⁵ People v. Genosa, G.R. No. 135981, 341 SCRA 498 (2000).

¹⁸⁶ BARBARA HART, *Rule Making and Enforcement/Rule Compliance and Resistance*, in I AM NOT YOUR VICTIM: ANATOMY OF DOMESTIC VIOLENCE 258 (Beth Sipe and Evelyn Hall eds., 1996).

The history and development of BWS is largely driven by this social phenomenon. In the United States, at least, the impact of BWS is principally felt in the legal arena where it has resulted in the re-examination and modification of the traditional self-defense doctrine. Indeed, it is the purpose of the law to seek justice and what better way to accomplish this purpose than to redefine its perspectives to accommodate a battered woman's point of view, whose goal "is to stop the abuse, not to kill the man."¹⁸⁷

The problem is that "at every step of the legal process the prevailing standard of justice is male." As attorneys Elizabeth Schneider and Susan Jordan have written:

Standards of justifiable homicide have been based on male models and expectations. Familiar images of self-defense are a soldier, a man protecting his home, family, or the chastity of his wife, or a man fighting off an assailant. Society, through its prosecutors, juries, and judges, has more readily excused a man for killing his wife's lover than a woman for killing a rapist. The acts of men and women are subjected to a different set of legal expectations and standards. The man's act, while not always legally condoned, is viewed sympathetically. He is not forgiven, but his motivation is understood by those sitting in judgment upon his act since his conduct conforms to the expectation that a real man would fight to the death to protect his pride and property.¹⁸⁸

The accommodation of BWS in Philippine jurisprudence, as exemplified by the landmark case of *People v. Genosa*, may be interpreted as a step towards the maturity of the law. However, as what it did in other jurisdictions, BWS will certainly require a modification of the law on self-defense. As the Supreme Court itself admitted, "[I]ndeed there is legal and jurisprudential lacuna with regard to the so-called 'battered women syndrome' as a *possible modifying circumstance* that could affect the criminal liability or penalty of the accused."¹⁸⁹ The degree of such change, however, is unknown.

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¹⁸⁷ L. Walker, *supra* note 78, at 238.

¹⁸⁸ A. JONES, *supra* note 84, at 330.

¹⁸⁹ *People v. Genosa*, G.R. No. 135981, 341 SCRA 493, 499 (2000). [Italics supplied.]

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