

INDEPENDENT TOGETHER

Joanna L. Grossman*

JEANNIE SUK, *AT HOME IN THE LAW: HOW THE DOMESTIC VIOLENCE REVOLUTION IS TRANSFORMING PRIVACY* (2009). Pp. 204. Paperback. \$24.00.

JENNIFER NEDELSKY, *LAW'S RELATIONS: A RELATIONAL THEORY OF SELF, AUTONOMY, AND LAW* (2011). Pp. 542. Cloth. \$65.00.

In the classic 1964 holiday television special *Rudolph, the Red-Nosed Reindeer*, Rudolph and Hermey¹ the elf (who longs to be a dentist) run away from their homes to escape the persecution that comes with being a misfit in Christmas Town. Wandering in the wilderness, the runaways soon bump into each other and consider whether to combine forces. Hermey proposes to Rudolph that they should “both be independent together,” a perfect solution for two misfits who fear, but also desire independence and protection from families and societies that have been cruel to them. The two books discussed in this review, in very different ways, consider whether being “independent together” is an oxymoron (Suk) or a new path to liberalism (Nedelsky).

Does the law’s response to domestic violence make women better or worse off? Do women lose more autonomy than they gain when the state follows mandatory arrest policies and issues semi-permanent stay-away orders? Do battered women kill their abusers because they lack autonomy or because they possess it and reasonably assess their risk of injury or death? Is there a mode of legal analysis that would both enhance women’s security and restructure the underlying gender relations that give rise to intimate partner violence? These are some of the common questions raised, though not necessarily answered, by Jeannie Suk’s *At Home in the Law*² and Jennifer Nedelsky’s *Law’s Relations*.³ Before delving into their common ground, I will explore what each of these ambitious books sets out to accomplish. Then I will consider whether they have offered complementary or mutually exclusive theories about the appropriate role of the state with

* Sidney and Walter Siben Distinguished Professor of Family Law, Maurice A. Deane School of Law at Hofstra University. B.A., Amherst College; J.D., Stanford Law School.

1. Readers may remember this character as “Herbie,” not “Hermey,” but that is the product of Rudolph’s nasal pronunciation before he breaks free of the fake nose his parents had pinched on to cover up the glowing red one he was born with. *RUDOLPH, THE RED-NOSED REINDEER* (Rankin/Bass Productions Dec. 6, 1964).

2. JEANNIE SUK, *AT HOME IN THE LAW: HOW THE DOMESTIC VIOLENCE REVOLUTION IS TRANSFORMING PRIVACY* (2009).

3. JENNIFER NEDELSKY, *LAW’S RELATIONS: A RELATIONAL THEORY OF SELF, AUTONOMY, AND LAW* (2011).

respect to the problem of domestic violence. Although both books make some inroads into the puzzle of domestic violence, they do more to reinforce that it is a puzzle with no easy solutions, nor any without unintended consequences.

IF HOME IS A CASTLE, WHO IS THE KING?

At Home in the Law, animated by Suk's training in both literary studies and law, is a poetic exploration of the law's (changing) conception of home. Through this lens, she considers three issues that challenge, or at least implicate, the "traditional view of the home as the ultimate place of security from others:" domestic violence, the role of the Castle Doctrine in self-defense law, and takings of private property.⁴ In each area, she explores the meaning of home, the degree to which the law respects it as either a "literal boundary between private and public" or a "metaphorical boundary between private and public spheres," and the consequences of the state's relative willingness or reluctance to intrude.⁵

With respect to domestic violence, the crux of Suk's argument is that feminists have traded away American women's autonomy in exchange for the state's protection of their bodily safety.⁶ This has happened, she argues, because once the criminal law "comes home," the state intrudes not only in the physical space of the home, but also in the decisions that are made by the woman who lives there.⁷ According to Suk's account, the combination of mandatory arrest, no-drop prosecution, and no-contact-order policies are responsible for this deprivation.⁸ Arrests are mandatory when police are called to a home and have probable cause to suspect domestic violence has occurred.⁹ Prosecutors are supposed to prosecute even if the victim, who might be intimidated or might have changed her mind, refuses to cooperate.¹⁰ And no-contact orders, which can initially be issued *ex parte* and can later become semi-permanent, prohibit contact between victim and batterer and displace him, not her, from the home.¹¹ Once an order is in place, violation of the order becomes a criminal act that is more likely to be the basis for conviction than the underlying domestic violence.¹²

Suk criticizes this regime on a number of fronts. The home of the battered woman, Suk claims, becomes vulnerable to "routine" police inspections for the presence of the batterer, which muddies the public/private boundary traditionally reinforced by one's front door.¹³ It also muddies, if not destroys, her relationship with the accused (and

4. SUK, *supra* note 2, at 5.

5. *Id.* at 2-3.

6. *Id.* at 52-53.

7. *See id.* at 44-50.

8. She focuses her attention on the mandatory domestic violence protocol followed in the Manhattan District Attorney's Office, which she selected because it is "in the forefront of efforts to combat domestic violence." *Id.* at 35 (citation and internal quotations omitted). It is not clear whether this protocol is representative of other D.A.'s offices across the country.

9. *Id.* at 36, 152 n.14.

10. *Id.* at 36-37.

11. *Id.* at 37-38.

12. *Id.* at 39.

13. *Id.*

maybe convicted) batterer.¹⁴ The “protected” woman is subjected to a “state-imposed de facto divorce” by virtue of a protection order that “shifts the decision to exclude an alleged abuser away from the victim and to the state.”¹⁵ This phenomenon, she claims without much support, is so common “it disappears in plain sight.”¹⁶ Separation, rather than punishment for the violence itself, “becomes a goal of prosecutors in bringing criminal charges.”¹⁷ Thus, for the batterer, she criticizes, the state has made it hard for him not to be a criminal by treating the “otherwise innocent” conduct of “mere presence” in his own home as an independent crime (sometimes as burglary) and by using protective order violations, which are easier to detect and prove, as a proxy for enforcing the state’s policies against domestic violence.¹⁸ The last sentence of the first chapter neatly wraps up all these concerns: “The abuser is out, and the state is in.”¹⁹ The home itself also takes a hit, in Suk’s account, as “the exemplary place of coercion and abuse.”²⁰ “The notion that the home shields subordination within its walls becomes a kind of legal default understanding” that transmutes the “standard worry . . . about government intrusion” into worry about the government’s “failure to intervene in the home.”²¹ The state’s imperative to “protect the home no longer primarily refers to protection from intruders but rather to protection from family members.”²² For Suk, one cost of this shifting conception of home comes “in substantial reductions in the autonomy of women and men vis-à-vis the state — particularly in racial and economic communities already subject to disproportionate state control.”²³ She asks the reader to question whether the modern response to domestic violence “advance[s] women’s interests” or, instead, creates “a legal reality that seems in some ways untenable and incompatible with valuable autonomy, privacy, and even security.”²⁴ This emphasis on the danger at home, she contends, has implications beyond domestic violence.²⁵ It reinforces the need for protecting the home — and thus the need for more guns and greater latitude to defend oneself even at great cost to others — despite the nationwide decrease in violent crime.²⁶ And it dovetails with post-9/11 anxiety that has made us all more willing to shore up against enemies, real and imagined.²⁷

Suk expands her “exploration of home” in the remaining chapters through an interesting, though not always obviously connected, analysis of self-defense law and takings law. She considers the widespread adoption of Castle Doctrine laws, pushed by the Na-

14. *See id.* at 41–54.

15. *Id.* at 11, 16.

16. *Id.* at 42.

17. *Id.*

18. *Id.* at 38–39.

19. *Id.* at 34.

20. *Id.* at 5.

21. *Id.*

22. *Id.*

23. *Id.* at 7.

24. *Id.*

25. *See id.* at 57, 82–86.

26. *Id.* at 82–86.

27. *Id.* at 57, 84.

tional Rifle Association, which expand one's right to use deadly force in self-defense.²⁸ These laws, Suk reports, permit an individual to kill a home intruder whether or not the individual has a reasonable fear of injury or death.²⁹ And in public, they allow people to stand their ground, eliminating the duty of retreat as a predicate for a claim of self-defense.³⁰ These developments, she argues, have reinvigorated the notion of the home as a castle that can be defended at all costs.³¹

Battered women who kill their abusers could invoke the Castle Doctrine in its typical respect — to argue that they should be relieved of the duty to retreat when attacked in their own homes (even if their attackers called the same place “home”).³² But instead, Suk argues, feminists urged “an altogether different view of the home,” in which a “battered woman was permitted to kill without retreating, not because of a right that she had there, but because she lacked the capacity to retreat.”³³ She ties this view to other infantilizing developments in domestic violence law and the “accounts of feminist scholars and advocates who emphasized battered women’s impaired autonomy.”³⁴ In an ironic twist, a man is allowed to defend himself in his “castle” without retreat precisely because he possesses autonomy, while a battered woman can do so only because she lacks it.³⁵

The final chapters, “Taking the Home” and “Is Privacy a Woman?,” muse on the conceptions of home in several recent Supreme Court decisions, including *Kelo v. City of New London*, *Castle Rock v. Gonzalez*, and *Lawrence v. Texas*.³⁶ Most relevant to the prior chapters is the discussion of *Castle Rock*, in which the Court refused to hold a police department liable for failing to enforce a domestic violence protective order, the tragic consequence of which was that the subject abducted his three daughters from the front yard of their mother’s home and murdered them.³⁷ In the five hours leading up to the abduction, the mother called the police five times and visited them in person once, begging for enforcement of the order prohibiting her husband from being near her, her daughters, or her home.³⁸ There was no police involvement until the husband showed up at the police station with a semiautomatic weapon and three dead girls in the back of his truck, at which point he was shot dead by the police.³⁹ The plaintiff argued that the police inaction amounted to a denial of due process,⁴⁰ a notion reinforced by the modern domestic violence regime that has systematically removed discretion from police.⁴¹ The very point of the modern laws, the mother argued, was to make police intervention man-

28. *Id.* at 55, 72–73.

29. *Id.* at 55, 75.

30. *Id.*

31. *See id.* at 57.

32. *Id.* at 56.

33. *Id.*

34. *Id.* at 69 (citation omitted).

35. *Id.* at 72.

36. *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005); *Kelo v. City of New London*, 545 U.S. 469 (2005); *Lawrence v. Texas*, 539 U.S. 558 (2003).

37. *Castle Rock*, 545 U.S. at 766; SUK, *supra* note 2, at 87.

38. *Castle Rock*, 545 U.S. at 753–54; SUK, *supra* note 2, at 97.

39. *Castle Rock*, 545 U.S. at 754; SUK, *supra* note 2, at 97.

40. *Castle Rock*, 545 U.S. at 754.

41. SUK, *supra* note 2, at 98.

datory rather than discretionary.⁴² Suk argues that the modern regime has — perhaps not wisely — converted the restraining order into a quasi-property right, since its effect is to reallocate property rights in the home from the batterer to the victim.⁴³ But the Court did not agree.⁴⁴ While the police have less discretion than before, the Court held, they still retain some control over when and where they take action, and the failure to enforce a restraining order is no more actionable than the failure to enforce a criminal law in any other context.⁴⁵ Although many were critical of the *Castle Rock* ruling, Suk suggests that a ruling in favor of liability might have brought unintended detriments.⁴⁶ The standard for obtaining protective orders may have risen, as states faced the possibility of liability for failed enforcement,⁴⁷ and it would have further exacerbated the “vision in which the home, the archetype of private property, was also a space in which public supervision was expected.”⁴⁸ For Suk, this seems to be an unacceptable trade-off.

Suk writes in her conclusion that the “home lies at the center of the legal edifice that helps to construct human experience.”⁴⁹ This is of course indisputable. But it does not tell us whether the human experience is improved or damaged (or neither) by greater state intervention in the home, particularly when the home is, for many women, a place of unrelenting violence.

IT'S ALL RELATIVE

Law's Relations is a feminist political theorist's tour of the self and society that searches for a more prominent role for human relationships than is found in conventional liberal theory. In her book, Nedelsky argues that autonomy is possible only when relationships are restructured to allow for it.⁵⁰ Unlike Suk, who makes a brief argument at the expense of hiding a messier reality, Nedelsky leaves no theoretical stone unturned in a tome that exhausts as it enlightens. (The book is over 500 pages in a type too small for someone like me, who is old enough to need reading glasses, but too vain to wear them yet.)

Nedelsky begins her book with a reconsideration of the basic concepts of liberalism: self, autonomy, and rights. But what conventional understandings miss, she argues, is the importance of human relationships to individuals throughout all stages of their lives.⁵¹ It is not just the child whose fate is determined by a caring or uncaring parent, but every person whose fate is dependent on, if not determined by, interrelationships with family, friends, co-workers, as well as with more distant individuals and institutions. These relationships both affect, and are affected by, an individual's ability to achieve self-determination, equality, and other aspirations we collectively hold. She

42. *Castle Rock*, 545 U.S. at 754.

43. SUK, *supra* note 2, at 97–100.

44. *See Castle Rock*, 545 U.S. at 766.

45. *Id.* at 764–65.

46. SUK, *supra* note 2, at 101.

47. *Id.*

48. *Id.* at 103.

49. *Id.* at 133.

50. NEDELSKY, *supra* note 3, at 3.

51. *Id.* at 3–4.

summarizes this point of view in the very first sentences of the book:

Relationships are central to people's lives — to who we are, to the capacities we are able to develop, to what we value, what we suffer, and what we are able to enjoy. This book makes that relational dimension of human experience central to the concepts and institutions by which we organize our collective lives.⁵²

What does that mean for autonomy? She acknowledges some tension between “the idea of adults as autonomous actors” and the “idea that people continue to be profoundly shaped by relationships.”⁵³ But she makes the case that this view is too simplistic. Rather, she contends, one purpose of her “relational approach is to understand what kind of relationships foster — and which undermine — core values, such as autonomy, dignity, or security.”⁵⁴ And the “next step is to examine what kinds of laws and norms help structure constructive relationships and which have helped generate the problems people are trying to solve.”⁵⁵ One key to that second step is appreciating that state intrusion is not always inconsistent with autonomy — indeed, an increase in state power may restructure relationships in a way that enhances individual autonomy more than it dampens it. A relational analysis, she contends, “will not predetermine whether a problem is best solved by an increase, decrease, or redirection of state power.”⁵⁶

By way of example, Nedelsky usefully compares the welfare recipient with the tenured university professor at a public university.⁵⁷ Both are dependent for their subsistence and standard of living on the state.⁵⁸ But while the welfare recipient is “necessarily subject to a power hierarchy” and in a relationship with the state that does “not promote autonomy,” the professor benefits from a system in which “vast creative resources have been expended to structure that basic dependence in a way that maximizes [his] autonomy” and “insulates [him] from the inevitable hierarchies of power” vis-à-vis the university and the state.⁵⁹ It is the structuring — and restructuring — of relationships that sets the stage for autonomy and self-fulfillment, rather than some wholly unrealistic conception of the freestanding individual.⁶⁰

Later in the book, Nedelsky considers the application of her theory of relational autonomy to the problem of violence against women.⁶¹ This is central to her book, but also the context that provides the best platform for a comparison with Suk's *At Home in the Law*. Two aspects of this analysis are noteworthy. First, Nedelsky cautions that the modern regime, which appears to reflect a sudden intrusion of state power — through mandatory arrest laws, no-drop policies, no-contact orders, and the like — is better understood as a change in the exercise of state power.⁶² The prior regime, in which the state “explic-

52. *Id.* at 3 (citation omitted).

53. *Id.* at 20.

54. *Id.* at 32.

55. *Id.*

56. *Id.* at 71.

57. *Id.* at 39.

58. *Id.*

59. *Id.*

60. *See id.* at 40–41.

61. *Id.* at 200.

62. *Id.* at 71.

itly or tacitly provided impunity for certain kinds of (normally illegal) behavior,” such as assault or rape, was itself a significant exercise in state power, just one that benefitted batterers rather than victims.⁶³ But the shift “give[s] rise to a sense that the law has become unreasonably intrusive, interfering in relationships that would be perfectly fine, or at least better, without it.”⁶⁴ Yet, in either case, the law is structuring the underlying relationships, and “[a] relational analysis . . . invites a more accurate reflection on the role of the state.”⁶⁵ Second, Nedelsky argues that because the protection of citizens from violence is one of the state’s primary objectives, attention must be paid to the relationships that produce violence.⁶⁶ Nedelsky’s “central claim” is that “violence against women cannot be prevented until the relations between men and women are transformed — which means that transformation of these social and intimate relations must be an objective of the liberal state.”⁶⁷

In different parts of the book, Nedelsky probes more deeply into the problem of domestic violence. Nedelsky considers the relationship between domestic violence and autonomy.⁶⁸ She asks whether we should consider battered women “as trapped by their relationships . . . such that they no longer have real autonomy[.]”⁶⁹ “Or does this sort of ‘understanding,’ this focus on context and relationship, do a disservice to women in abusive relationships? Does it wrongly deny their autonomy?”⁷⁰ Is it true, as a student of Nedelsky’s once insisted, that “[y]ou can always leave[?]”⁷¹ Her theory, she contends, helps avoid a stark choice between “a determinism that denies autonomy and a naive assumption of autonomy that ignores its conditions.”⁷² How exactly it avoids that choice is where Nedelsky’s book gets a little murkier.

Analyzing the specific issue of battered women who kill their abusers, Nedelsky suggests that a primary problem with current law is the treatment of autonomy as dichotomous.⁷³ Autonomy is seen as the presumptive state of humans and a necessary predicate for the imposition of criminal liability.⁷⁴ Prosecutors portray battered women who kill as fully autonomous actors who overreacted to a future risk.⁷⁵ Defense lawyers, in contrast, present battered women as lacking autonomy because of the abuse, which prevents them from making what appears to be the rational decision to leave rather than kill.⁷⁶ But Nedelsky argues that both sides of the conventional coin conflate two separate issues and misunderstand the reality of battered women’s lives.⁷⁷ Yes, she argues, bat-

63. *Id.*

64. *Id.* at 72.

65. *Id.*

66. *Id.* at 200.

67. *Id.*

68. *Id.* at 53.

69. *Id.* (citation omitted).

70. *Id.*

71. *Id.*

72. *Id.* at 54.

73. *Id.* at 175.

74. *Id.*

75. *Id.* at 175–76.

76. *Id.* at 175.

77. *Id.* at 176.

tered women's autonomy has often been impaired by the violence.⁷⁸ But autonomy comes on a continuum rather than with an "on/off" switch.⁷⁹ It is not universally intact or impaired, but rather "contingent, shifting, and variable" and likely to be damaged to different degrees in individual cases of battering. Battered women are "neither simply agents nor victims; they are both."⁸⁰

Moreover, Nedelsky argues, moderately impaired autonomy does not necessarily preclude a battered woman from accurately assessing her risks and options.⁸¹ The conventional story about battered women claims that they kill despite the absence of immediate lethal danger because their lack of autonomy makes them feel as if that is the only option, which suggests that someone with autonomy would choose another path.⁸² What if, Nedelsky asks, these women are correctly assessing the (non) viability of other options and that killing an abuser during a moment of relative calm could be understood as justified self-defense?⁸³ Abusive relationships are "in part caused by the many layers of difficulty of getting out of them: the autonomy-impairing fear and dependency created by the relationship itself; the difficulty of supporting one's kids once one has left; and the increased danger of getting killed, a danger police are not good at preventing."⁸⁴ She calls for a

[N]uanced, relational conception of autonomy that can make sense of a picture of a woman whose capacity for autonomy has indeed been seriously damaged by an abusive relationship but who is nonetheless capable of reasonable judgments about the nature of the threat she faces and the options she has to protect herself.⁸⁵

The relational approach requires that we examine not only how the intimate relationship has shaped the woman's autonomy, but also how other "societal institutions, practices, and beliefs structure relationships in ways that can both damage the capacity for autonomy and call for violent self-defense."⁸⁶ This inquiry would not result in the same outcome for every case when an abused woman kills her batterer. Yet, it would avoid perpetuating stereotypes that demean battered women, it would advance the goal of fair trials for both men and women, and it would allow women who do not fit the stereotype to potentially mount a defense against prosecution for killing a batterer.⁸⁷

Nedelsky considers cases involving battered women who kill and observes that the "best opinions" proceed with two steps:

78. *Id.*

79. *Id.* at 173.

80. *Id.* at 173, 175.

81. *Id.* at 176.

82. *Id.* at 177.

83. *Id.*

84. *Id.* at 312.

85. *Id.* at 176.

86. *Id.*

87. *See id.*

First, they take seriously the abuse the woman has suffered and the harm it has done to her, and they also make it clear that the fact of her staying in the relationship is not to be seen as evidence against the seriousness of her abuse or of her being viewed as at fault for finding herself in this life-threatening situation. This part of the opinion often seems an appropriate discussion of the ways in which abusive relationships can be destructive of the capacity for autonomy. Second, the courts accept the argument that the woman had acquired a kind of expertise over her long experience with violence and threats at the hands of her partner. Based on this experience, she was able to make a reasonable judgment about the seriousness of the threat. Thus, to this point in the argument, they are at least tacitly acknowledging both impaired autonomy and a capacity for the kind of reasonableness the law requires for self-defense.⁸⁸

But the reasonableness assessment itself requires a relational approach, one that considers, for example, the likelihood that her partner will seriously injure her or kill her if she tries to leave, as well as “the particular and the general evidence suggest[ing] an inability of the police or anyone else to protect the woman against violent assault.”⁸⁹ The current domestic violence regime, which Suk criticizes as being overbroad, over reactive, and insufficiently protective of individual autonomy, arose in response to the fact that, for most battered women, “the police and others have already failed, usually over many years, to protect her from violence. She has excellent grounds, both particular and general, to believe they will fail again if she misses this opportunity to protect herself.”⁹⁰

Given the confirmed realities of “separation assault” (violence triggered by a victim’s effort to leave), and the confirmed failures of the state and third parties to protect victims of domestic violence, Nedelsky queries why battered women’s syndrome is conceptualized as a failure to perceive exit options.⁹¹ Should the law, which generally does not require someone to leave her own home for self-protection, require a battered woman to go into hiding before resorting to lethal action?⁹² Should we think of her more as a hostage who correctly assesses future risk and understandably takes whatever action is necessary to free herself when the opportunity arises?⁹³ Relational autonomy, Nedelsky persuasively argues, allows us to understand the battered woman’s actions “within the conventional understandings of autonomy. The objective threat to her life is external, and though the ongoing failure of protection has led to impaired autonomy, the assessment of her options to save her life is reasonable because of the *external* constraints on her action.”⁹⁴

88. *Id.* at 176–77.

89. *Id.* at 177.

90. *Id.* at 178.

91. *Id.* at 177–78.

92. *Id.* at 178.

93. *Id.* at 179–80.

94. *Id.* at 182.

LET'S "BOTH BE INDEPENDENT TOGETHER"⁹⁵

One reading of these two books is that they offer mutually exclusive interpretations of the modern domestic violence regime and its impact on women's autonomy. Suk complains that the redistribution of property rights from abusive husband to battered wife and the concomitant restructuring of their personal relationship through a no-contact order *compromises* the woman's autonomy.⁹⁶ The feminists who advocated for that very autonomy indirectly promoted a system that treats the home as "a space in which criminal law's goal is coercively to reorder and *control* intimate relationships."⁹⁷ The victim loses the ability to choose whether to continue the relationship or whether to allow her abuser into the home that they shared.⁹⁸ Nedelsky, in contrast, suggests that the destructive relationship between batterer and victim, as well as the relationship between the state and each of them, must be accounted for, and perhaps restructured, in order to *preserve* women's autonomy.⁹⁹ Can only one of them be right?

There may be, at second glance, less of a difference between the two approaches. Suk, for example, admits that in "truly violent and dangerous abusive relationships . . . the state may readily conclude that victims' autonomy is already worn so thin that paternalism will best enhance it."¹⁰⁰ Nedelsky may agree that these cases will often involve greater impairment of autonomy, although she surely would not dismiss all state intervention as "paternalism," nor its absence as protective of her autonomy. She would insist that we examine whether a woman — in the case of a battered woman who killed — acted reasonably despite the impaired autonomy. In this vein, Nedelsky and Suk may overlap, at least when it comes to their preferred outcomes. Suk argues that the traditional Castle Doctrine could be invoked by battered women to defend against a charge of murder even when fleeing the home could have avoided the violence.¹⁰¹ Nedelsky also argues that the law should not impose a requirement that a battered woman flee her home rather than kill her abuser — not because she has a right to defend herself with lethal force in her home, but because fleeing would not have saved her.¹⁰²

In the case of a battered woman who does not kill her abuser, but suffered serious injury, Nedelsky would want us to ask whether increased state intervention would enhance or undermine her autonomy. She would not reject state intervention out of hand, as Suk tends to do. She may well conclude, if asked, that the reallocation of property rights and the "*de facto* divorce" that Suk finds so troubling effectuate a restructuring of the intimate relationship in a way that enhances the victim's autonomy.¹⁰³ It gives the victim the power to reinforce the boundaries of "home," and the right to decide whether the destructive relationship continues. (Suk clearly overstates the likelihood that the state

95. RUDOLPH, THE RED-NOSED REINDEER, *supra* note 1.

96. SUK, *supra* note 2, at 17–18.

97. *Id.* at 10.

98. *See id.* at 41–50.

99. *See* NEDELSKY, *supra* note 3, at 176–77.

100. SUK, *supra* note 2, at 53.

101. *Id.* at 72–73.

102. NEDELSKY, *supra* note 3, at 177–78.

103. *See* SUK, *supra* note 2, at 11.

would enforce a protective order without a request from the victim that it do so.) The “*de facto* divorce” seems like more of a unilateral option that heightens her power relative to his, rather than a state mandate that strips her of discretion to order her private life.

In cases that do not involve serious physical injury, Suk questions the validity of a system that presumes a lack of victim autonomy.¹⁰⁴ She focuses on domestic violence that does not rise above the misdemeanor level and yet results (or can result) in harsh and long-lasting consequences.¹⁰⁵ Nedelsky would agree that a presumption that victims of domestic violence lack autonomy regardless of the level of risk or injury is inappropriate. But she would insist that we still examine how the law structures relations and whether it could be deployed in a way that would restructure them so as to enhance autonomy, equality, or dignity more effectively. Suk, on the other hand, never entertains the question whether her critique, if used to roll back aspects of the modern domestic violence regime, would make women less safe and therefore less free. She assumes that her description of a system that reallocates property rights and results in “*de facto* divorce” is self-evidently suspect.¹⁰⁶ It is not.

CONCLUSION

Which brings us back to Rudolph. Perhaps the notion of being “independent together” is what we should bring to bear on the problem of intimate partner violence. Liberalism has never had a good handle on oppression at the hands of private parties rather than the state, and a woman harmed within the private sanctity of the home and at the hands of a spouse is perhaps the best illustration of a situation in which autonomy does not rise up in the absence of state intrusion. The autonomy of battered women depends on either the elimination of the violence or the institution of an effective means of protecting her from it. She can be independent only if together we protect her.

At Home in the Law and *Law's Relations* are both provocative and well-written books. Suk provides a clear and persuasively argued blueprint for reform that is somewhat tenuous in normative justification, while Nedelsky provides a deep and theoretical justification for ideas that have a less clear practical application. Both are worth reading, however, and contribute fresh perspectives to the literature on domestic violence, which has grown somewhat stale.

104. *See id.* at 45.

105. *Id.*

106. *See id.* at 45–50.
