**During** the **[her] pregnancy** with the youngest child, **the abuser** beat the defendant and **pushed her down a flight of stairs. To obtain money, the abuser forced the defendant to prostitute herself every day.** Her husband would beat her when she failed to earn a minimum of one hundred dollars in a day. **He would use anything available to beat her, including a bottle, his fist, [and] a baseball bat**, and his shoe. Thedefendant exhibited her scars to the jury. **The abuser** often **made the defendant sleep on a concrete floor and forced her to eat dog** and cat **food.** Additionally, **the abuser often threatened to kill the defendant. On the day of the killing, the abuser threatened to cut off the defendant's breast, and** then he **put a cigarette out on her chest. Later** in the day, **while the abuser was sleeping, the defendant** found a gun and **shot him. In this case, the defendant** took the stand and **testified that she could not leave the abuser because he had threatened to kill her in the past.**[80](http://208.34.222.250/bin/rdas.dll/RDAS_SVR%3Dweb.lexis-nexis.com/scholastic/document?_m=f78ae42985bca9ba845089127c8571b9&_docnum=17&wchp=dGLbVtb-zSkVk&_md5=545ddf19a640cdddc2b56ead848f2d56" \l "n80" \t "_self) **She had made previous attempts to leave but her husband always found her and beat her severely.** [81](http://208.34.222.250/bin/rdas.dll/RDAS_SVR%3Dweb.lexis-nexis.com/scholastic/document?_m=f78ae42985bca9ba845089127c8571b9&_docnum=17&wchp=dGLbVtb-zSkVk&_md5=545ddf19a640cdddc2b56ead848f2d56" \l "n81" \t "_self) She also testified that **she did not report the abuse to the police because the abuser told her that if he were put in jail, he would kill her when he was released.[[1]](#footnote-1)** *She had no other option.*

The case of Judy Norman is but one of many. Because deadly force is often the only possible recourse to domestic violence I affirm. In the face of narratives like Judy Norman’s there is no question over the morality of domestic violence; domestic violence is uncontroversially and nauseatingly immoral. Rather, the resolution concerns the permissibility of a particular form of recourse to the injustice of domestic violence, namely a deadly response. In evaluating the ethical quality of a victim’s deadly response, Lyotard’s conception of the *differend* will be my starting point. Galbraith[[2]](#footnote-2) explains:

The courtroom thereby stands for what Lyotard terms **‘absolute injustice’** – which **arises when a person’s** particular **concerns are silenced by** the strictures of the rule of justice itself – under circumstances which Lyotard names a differend. **a *differend*.** most simply stated, is the lack of a single rule applicable to each of two or more parties to a dispute (Lyotard 1988: xi)*.* **Where there is a *differend***, therefore, **one of the parties must *necessarily* be wronged.** Lyotard distinguishes a differend from a *litigation*, on the grounds that a litigation is carried out according to a single rule of judgment applicable to *both* parties, and is able to be settled by a single tribunal. In the case of a *differend*, however, the tribunal which regulates the conflict between the parties employs the idiom of only *one* of the parties, while the wrong suffered by the other party is not signified in that idiom(Lyotard 1988: No. 12). **In a differend, the person who suffers** a **damage[’s]** is not merely wronged in the way that the plaintiff to litigation is wronged, because their **wrong *cannot even be presented*.** Lyotard describes such a wronged party as **a ‘victim’** rather than a ‘plaintiff’, a person for whom a court appearance would be futile, because **[has] not only** has he or she **been wronged, but** he or she **has been ‘divested of the means to argue’**.

Ethics, then, must seek to prevent *differends;* morality must be oriented towards eliminating situations where a wronged person cannot redress the wrong that has been done to them. Morality cannot create conditions whereby injustice goes unresponded to, but rather must always allow for the possibility of recourse. In the case of the resolution, a *differend* occurs when victims are unable to respond to domestic violence and are forced to passively endure the oppression of domestic abuse. Thus, the resolution is not a question of *whether* victims should respond when wronged by their abuser, but a question of *how*. First, by asking debaters to discuss and understand a particular avenue of recourse the resolution generally presumes that victims should respond in some manner. Second, since domestic violence is universally condemned as oppressive and inhumane, morality dictates that there should be a remedy. The issue at hand is of the form that such a remedy should take. Moreover, if morality is to have any bearing on our actions, there must be a process that ensures violations are addressed; else there would be no reason or motivating force compelling subjects to act morally. Since morality is meaningless unless it plays a role in our lives, morality must reflexively demand the enforcement of its principles. And, absent a response to violations of moral norms, the violence of the *differend* becomes normalized. In order to combat the normalization of obvious “moral bads” like genocide, and in order to remain an operative normative system at all, morality cannot condone passive acceptance of norm violations. In addition, morality requires a response to norm violations in order to deter future violations. When violations of moral norms are corrected, there will be a cost associated with transgressions, thereby changing the offenders cost benefit analysis such that violations become more costly. Finally, morality’s basic commitment to respecting human dignity implies a condition of reciprocity: morality would be directly self-defeating if it did not reject *differends,* and self-defense was forbidden in the face of oppression.

As such, today’s discussion must concern the comparison of a deadly response to other forms of recourse to domestic violence. A response to domestic violence must successfully communicate the evilness of the act in order to directly respond to domestic violence as a violation of a moral norm, and must rectify the victim’s subordinate position such that a *differend* is avoided.

I contend a deadly response often represents a victim’s only avenue of recourse against domestic violence. The majority of the world isn’t governed by laws prohibiting domestic violence. The United Nations[[3]](#footnote-3) explains that: “**There are 102 States that have no** specific **legal provisions against domestic violence. Marital rape is not a prosecutable offence in at least 53 States.** Only 93 States (of 191 reviewed) have some legislative provision prohibiting trafficking in human beings.  In many places, **laws contain loopholes that allow perpetrators to act with impunity. In a number of countries, a rapist can go free under the penal code if he marries the victim**.

Thus, on balance, legal recourse is impossible, and a *differend* whereby victims literally have no forum to speak out against their oppressors is the norm. For instance, in many Muslim societies, cultural norms of gender inequality derived from Shari’a law create the conditions for rampant domestic abuse; in these settings, victims cannot turn to friends, family or the law, and do not have the opportunity to give testimony to their oppression. Hajjar[[4]](#footnote-4):

Domestic violence is strongly—and directly—related to inequality between men and women. But the contested legitimacy of **gender [in]equality impedes** or complicates **efforts to deal with domestic violence as a social problem in many parts of the world. There is strong and pervasive** opposition to the notion that men and women should be equal in the context of the family. The corollary is the **belief that domestic relationships are** legitimately i.e., naturally and/or **divinely** **hierarchical. In Muslim societies, this belief is** both derived from and **reinforced by shari’a, which tends to be interpreted to give men power over women family members.** The politics of communalization **in India** exacerbates the vulnerability of Muslim women to intrafamily violence, making them doubly disadvantaged—as women and as Muslims. For example, the Indian parliament passed a law criminalizing ‘‘bride burning’’and other forms of dowry related harassment in 1983 (supplementing a 1961 law). However, **Muslim women are excluded from the protection of criminal sanctions for dowry-related violence and murder;** the Dowry Prohibition Act (1986) explicitly exempts ‘‘persons to whom Muslim Personal Law (Shariat) applies.’’ This [an] exemption, like the state’s response to the Shah Bano case, was instituted to placate leaders of the Muslim community and deter sectarian violence. Communal politics and the risk of sectarian violence in India remain charged by the enduring conﬂict with Pakistan over Kashmir and the ascension of right-wing Hindu parties in national and regional governments. [In addition] The vulnerability of the Muslim minority to political violence on the national level serves to entrench the power of a conservative religious leadership within the community. This communal vulnerability, [which] in turn, fosters a rigid refusal by the All India Muslim Personal Law Board to reform shari’a (Engineer 1999) and excludes Muslim women from the protections that national laws and institutions might afford(Lateef 1998). However, even on the national level in India, **prospects for combating domestic violence are dismal.”**

Even in liberal Western countries conditions that make other forms of recourse to domestic violence impossible persist. Undocumented Hispanic immigrants to the US are open abuse without the possibility of reprieve; the only method by which immigrants can stop domestic violence is to take matters into their own hands. Wood explains[[5]](#footnote-5):
**A noncitizen spouse** whose petition is approved **is only granted** permanent **resident status conditional upon the marriage having been entered into in good faith, [and]** the filing of **a joint petition to remove the conditional status** within ninety days of **[after] the second anniversary of the** approval of the **initial petition**, and the participation of both spouses in an INS interview within ninety days of the approval of the second petition. **The** added burdens of a two-year **waiting period for** permanentresident status, the filing of a second petition, and the joint appearance at an INS interview **increase[s] the power** that **the sponsoring spouse wields over the immigration status of the noncitizen** spouse.Even if the citizen or permanent resident spouse agrees to sponsor the immigrant spouse and files the initial petition, **he may** still **prevent her from achieving** unconditional permanent **residence if he declines to file the second petition or appear for the** joint **interview.**

**[Or]** The victim’s batterer, if arrested, may try to punish her further by **report**ing **her undocumented status to law enforcement** or to the INS itself. **The threat of deportation may seem greater than the threat of further battering.**

Moreover women of color and lesbian victims are often intimidated into accepting domestic violence because batterers coerce their victims into feeling guilty about their identity, which denies victims access to outside help or external recourse. Westlund[[6]](#footnote-6): **Battered women of color are often kept silent by being told that reporting the violence would betray the cause of the larger group by dividing loyalties or feeding into racist stereotypes.** **A lesbian batterer may threaten to "out" her partner, taking advantage of her partner's vulnerability to homophobic attitudes to** intimidate her and **keep her quiet.”**

And as a rule, victims who kill are more likely to have been severely abused, have received death threats, and ultimately feel they have no other form of recourse. Victims who kill do so when in great duress. O Keefe[[7]](#footnote-7):

There have been few studies documenting the experiences of battered woman who have killed their abusive partners. The research available indicates that **women who kill their abusers frequently do so in self-defense following years of severe abuse** (Browne, 1987; Ewing, 1987; Walker, 1984). **Using in-depth interviews, Browne** (1987) **compared 42** battered **women who killed or seriously injured their partners with 205** battered women **who had not and found those who killed** their abusers **had experienced a greater frequency of violence**, including sexual assault in their relationships, had sustained more severe injuries,andhad **received more death threats,** compared to those who did notuse lethal force.Browne (1987) also noted that thewomenin the homicide group **reported feeling trapped** in a dangerous situation of escalating violence **and had no hope for** improvement or **escape**.  Walker's psychological evaluations of 50 battered women (1989) who killed their spouse/partner also substantiated this. Walker (1989) reported that battered women who kill do so not out of anger, but out of fear, and that **the use of lethal violence was their last attempt to protect themselves or their children from further** physical and mental **harm.**

Thus, victims who kill typically do so when they believe there is no other form of recourse. It is senseless for victim to attempt to escape their *differend* in a way they perceive to be impossible, so deadly force is the only reasonable form of recourse.

Moreover, the majority of deadly responses to domestic violence occur in confrontational situations. Out of a sample of appellate opinions, Maguigan[[8]](#footnote-8) found that: **Of the 223 incident**scomprising the **base**, **75% involve confrontations.** Twenty percent are nonconfrontational cases (4% "con-tract killings,"64 8% sleeping-man cases, and 8% defendant as initial aggressor during a lull in the violence).65 In the remaining 5%, the appellate opinions did not include a discussion of the incident facts introduced at trial.66 As the breakdown indicates,the appellate opinions do not support the conclusion that **most battered women kill during** non**confrontational situations.**

Thus, most victims who kill do so in self-defense. For victims in confrontational situations, deadly force is often the only form of recourse against their oppressor. Moreover, deadly force is the most effective means to end domestic violence since kills the oppressor and ensures the wrong will not be recommitted, whereas other alternative methods always leave open the possibility of future attacks.

For instance, less than deadly force is often impossible and counterproductive because victims are typically smaller than their abusers. Ayyildiz[[9]](#footnote-9) explains that a victim “**may not be able to confront the batterer without a deadly weapon because of disparities in size, strength or emotional control.** The **[a] lower degree of force** a woman typically exert[ed]s upon a man **may have little** or no **impact on a physically stronger abuser. Indeed, a** woman's **lesser degree of force may only incite a vicious retaliation** by the abuser.

Thus, deadly force is often the only form of recourse to the abuser’s immoral actions, and is therefore permissible. Since recourse against norm-violations is a necessity, the sufficient negative burden is to articulate a viable and preferable alternative to deadly force that meets the criteria for successful recourse outlined in the framework. Absent the negative proving an alternative to a deadly response that is categorically viable in the scenarios the AC outlines and preferable to killing the abuser you should affirm, since where the negative’s approach fails a victim’s deadly response would be the only possible form of recourse and thus permissible.

That said, there are a number of reasons to prefer an active form of recourse that originates in the victim. Passivity creates a *differend* in which a victim is unable to rectify their situation or testify to the wrongs that have been done to them. Furthermore, the victim is the only agent that can communicate the specific nature of the abusers wrongdoing, and thus a victim-based response best expresses the particularities of their human experience. And since the resolutional actor is the victim, responses rooted in the victim’s agency provide the most textual basis for comparison. Finally, by killing their abuser, victims liberate themselves from the psychological effects of their oppression. Killing the abuser is the only form of recourse through which victims can not only communicate the evilness of the abuser’s actions but also rehabilitate themselves and correct the injustice that has been done. Kebede[[10]](#footnote-10) argues that in a violent response to oppression: **“The**y **[oppressed]** no longer consent to be defined by fixed attributes, for instance, as belonging to a race or having this or that glorious past. All these attempts have failed, and the colonized must **show their humanity**, not in an incarnated form but **in its pure, transcendent**, universal **form, as ready to die for freedom,** in short, **as untamable.** "No," said Fanon (1967), in the colonial situation, "I do not have the right to be a Negro.... I have one right alone: That of demanding human behavior from the other" (p. 229). What comes first is not the recognition of particularity but the humanity of the colonized, the struggle for recognition as human beings. It is a struggle for human rights not for the recognition of difference or sameness.Violence expresses this disincarnate, ethereal freedom. It is how freedom exists less as an attribute than as the very subject exacting recognition through the risking of life. **The rehabilitating value of violence lies in the equation that the** colonized **[oppressed] are ready to risk** the only and most precious thing they have, namely, **their life, for their dignity and equality.** It brings the whole issue of the emancipation of the colonized to a final showdown: The awe-inspiring act of **violence cleans the disabilities inflicted by** colonial **[oppressive] rule off the soul of the [oppressed]** colonized. It forces respect on the colonizer, but more impor- tant, it **[and] brings** thecolonized **them**selves round to the idea of their own self**-respect.** Completely disavowing the method of ethno- philosophy, which expects the rise of pride and dare from cultural revival, Fanon (1982) maintained,"Violence alone, violence com- mitted by the people, violence organized and educated by its leaders, makes it possible for the masses to understand social truths and gives the key to them" (p. 147). Hence, the cathartic value of the violence against the [oppressor] colonizer: It purges the colonized [oppressed] of the aggressiveness that is eating them. **Because it steers the internalized violence toward the real culprit, it** emerges as **[is] the right remedy to a situation that violence itself created. It is** a cure, a **therapy.** As Abiola Irele (1981) put it, The colonized native [oppressed person] is thus a pathological case; in the circum- stances, therefore, the only remedy is that the colonized masses [oppressed] take up arms against their overlords in order to recreate themselves as men. The emphasis is then upon the **creative** role of **violence**. (p. 140) In thus channeling the aggressiveness of the native, violence succeeds in undoing the drawbacks of colonial rule. In particular, it **dissolves the inferiority complex from which the** colonized **[oppressed] suffer.** Violence cannot extract the colonized from the arsenal of com- plexes without at the same time inaugurating their historicity. **The act by which the colonized become defiant is** also **the act by which they begin to exist for themselves, and so become subjects. Violence** thus attains **[is] self-creation.** It is transition to historicity because "it is only when the colonized appropriates the violence of the colonizer and puts forth his own concrete counterviolence that he reenters the realm of history and human historical becoming" (Serequeberhan, 1994, p. 71). There is no doubt that Fanon's personal participation in the Algerian war of liberation was instrumental in his under- standing of the transforming role of violence. Resistance against the colonial army requires a new and higher form of organization, just as it institutes new forms of relationship among the partici- pants. It promotes a whole process of culture change in which peo- ple develop new ideas and forms of struggle to defeat a more pow- erful army. On the basis of their fighting organization, they also imagine a new social order. As Irele (1986) remarks, In the general mobilization of the physical and psychic energies of an entire people, **old values** inappropriate to the situation we **are swept away, [and] new values created**, presaging a new social order. The revolution thus took on the significance of an immenseprocess of collective **[Violence is] metamorphosis.**

Violent change is not a debater’s point for a victim of domestic violence. Rather, for the victim, it is the last hope for agency that morality can offer. The abuser has already taken away all other options; do not negate and take the last option off the table.

1. Pamela Posch; American University Journal of Gender, Social Policy & the Law; Spring, 1998; “ARTICLE: The Negative Effects of Expert Testimony on the Battered Women's Syndrome” [↑](#footnote-ref-1)
2. Galbraith, Deane. “Would You condemn me that you may be justified? Job as Differend.” 2009. [↑](#footnote-ref-2)
3. <http://www.un.org/en/women/endviolence/pdf/VAW.pdf>. Marital rape is not punishable under shari’a law; it is considered a natural act of sex between married people. [↑](#footnote-ref-3)
4. Lisa Hajjar (teaches in the Law and Society Program at the University of California– Santa Barbara), Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis. Law & Social Inquiry, 29: 1–38, 2004 [↑](#footnote-ref-4)
5. (Sarah M. Wood, J.D., Duke University School of Law; Ph.D., Yale University; A.B., Harvard College. VAWA’s Unfinished Business: The Immigrant Women Who Fall Through the Cracks, Duke Journal of Gender Law and Policy, 2004) [↑](#footnote-ref-5)
6. Westlund, Andrea C. “Pre-Modern and Modern Power: Foucault and the Case of Domestic Violence.” *Signs,* 1999. [↑](#footnote-ref-6)
7. Maura O'Keefe (USC), Incarcerated Battered Women: A Comparison of Battered Women Who Killed Their Abusers and Those Incarcerated for Other Offenses, Journal of Family Violence, Vol. 12, No. 1, 1997 [↑](#footnote-ref-7)
8. Maguigan, Holly (Associate Professor of Clinical Law, NYU) “Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals.” UPenn Law Review, Vol. 140, No. 2 (Dec., 1991) pp. 379-486. [where confrontational situations entailed that the aggressor was awake; he behaved in a way that the victim interpreted as posing an imminent or immediate threat of death or serious injury to her; and there was evidence that she did not provoke his behavior by unlawful conduct and was not the initial aggressor,] [↑](#footnote-ref-8)
9. When Battered Woman’s Syndrome does not go far enough: The Battered Woman as Vigilante. Elisabeth Ayyildiz. [↑](#footnote-ref-9)
10. Kebede, Messay. “The Rehabilitation of Violence and the Violence of Rehabilitation: Fanon and Colonialism.” *Journal of Black Studies*, 2001. [↑](#footnote-ref-10)