

Policing Domestic Violence: An Overview of Emerging Issues

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Abstract

In recent years a coercive criminal justice policy has been promoted as the appropriate response to control and deter perpetrators of domestic violence. In varying degrees, across western democracies, pro-arrest and mandatory arrest policies, mandatory prosecution, and tougher penalties have been proposed and implemented. However, recent literature and research on domestic violence has questioned the underlying assumption that the criminal justice system is always the most effective and appropriate response to domestic violence. This research raises two serious challenges, not only for the criminal justice system, but also for women's advocates, policy makers and researchers. First, how can the criminal justice system acknowledge and respond to the heterogeneous nature of domestic violence perpetrators? Second, whose goals should be paramount in police response to domestic violence, the system's or the victim's? This paper examines each of these two challenges and considers their implications for the policing of domestic violence.

Introduction

There have been substantial changes in the policing of domestic violence since the early 1970's, when women's groups, recognizing the seriousness of domestic violence, became active in placing domestic violence on the social and political agenda. Prior to this time domestic violence was seen as a private, family matter and, except in cases of extreme injury, the law was not involved in its management (Binder & Meeker, 1992). During the 1980's the women's movement shifted its attention from the broader agenda of women's rights to the rules and operation of the criminal justice system. Not surprisingly, much of the feminist-inspired research during this period was critical of the police handling of domestic violence cases. This research reported that police assigned low priority to domestic violence calls and rarely responded to these disputes. Furthermore, even when the violence would have justified such action, police seldom made arrests or used other criminal sanctions. Moreover, this research indicated that women who made contact with police were invariably left dissatisfied or even further traumatized by the inappropriate or uninformed police responses (Hoyle, 1998).

In response to these findings campaigns were focused on improving the police response by increasing police powers, with the goal of higher arrest and prosecution rates. These campaigns were based on the assumption that crime could be reduced by arrest and sentencing policies aimed at deterring potential offenders. In the United States, women's advocates used litigation, legislation and research to press for the increased use of arrest (Buzawa & Buzawa, 1996). These campaigns have been very effective in changing community attitudes, legislation, and public policy concerning domestic violence. Domestic violence is now, in theory, recognized as a "real" crime and the fact that it occurs in the home does not detract from its status as a criminal offense.

Following these international trends there has been a shift across Australia to a more vigorous criminal justice approach (Seddon, 1993). In Queensland, for example, there have been considerable changes to the policing of domestic violence. Currently, in responding to domestic violence, the Queensland Police Service provides police officers with a wide range of training opportunities, both as part of recruit training and in-service professional development programs. Examination of the police calls for service data indicated that calls in relation to a domestic violence matter took an average of two hours to complete, double that of a typical call, indicating the complexity of domestic violence incidents (Criminal Justice Commission, 1997). In 1997 over 13,000 applications were made for a domestic violence protection order. This represents a substantial increase in the use of protection orders since the introduction of the *Domestic Violence (Family Protection) Act* in Queensland in 1989. Furthermore, just under half of these applications were made by police (Department of Families Youth and Community Care, 1998). These figures reflect a substantial change over a period of 10 years in the Queensland Police Service's response to domestic violence.

However, despite substantial reforms in policing, domestic violence is still very firmly on the agenda as a major social problem since there is little evidence of any reduction in its incidence. One consequence in Australia, as overseas, has been increasing calls for a more coercive criminal justice response, which include pro or even mandatory arrest policies and harsher sentences. Campaigns have been focused on improving the police response, which has come to mean the granting of more police powers, with the goal of higher arrest and prosecution rates. Current police policies on domestic violence are premised on the belief that laws and the efficient use of police powers can protect women from future violence

(Stanko, 1995). However, although there is some evidence to support this premise, there is also some contradictory evidence (Hirschel & Hutchinson, 1992; Sherman, Schmidt, & Rogan, 1992).

The importance of the role of police in managing domestic violence cannot be underestimated, because police are generally the first and frequently the only agency to intervene. But there are increasing concerns that a coercive criminal justice response is too simplistic to deal successfully with such a complex problem. Two major challenges to researchers and practitioners have emerged. The first one is to understand better the heterogeneous nature of domestic violence perpetrators. The second one is to develop system responses that are sensitive to victims' needs. Both of these have substantial implications, not only for policing, but also for the way domestic violence is understood and conceptualized.

Understanding of the heterogeneous nature of perpetrators of domestic violence.

Much early research examining domestic violence perpetrators treated them as a homogenous group. However, there is increasing evidence that the differential impact of criminal justice interventions may be explained by the characteristics of the perpetrator. Sherman, Smith, Schmidt and Rogan (1992) reported that arrest of perpetrators reduces violence among employed people but increases it amongst unemployed people. A number of researchers (Buzawa, Hoteling, & Klien, 1998; Gondolf, 1988; Holtzworth-Munroe and Stuart, 1994; Johnson, 1995; Kantor & Jasinski, 1998; Shields, McCall & Hanneke, 1988; Straus, 1996) have developed typologies of male domestic violence perpetrators. I first propose to review the development of these typologies of domestically violent men, before considering their implications for policing domestic violence.

In a comprehensive review of the literature Holtzworth-Munroe and Stuart (1994) identified three descriptive dimensions along which domestic violence perpetrators varied. These were (a) the severity of the physical violence and related issues such as frequency of the violence and the extent of psychological and sexual abuse, (b) the generality of the violence (i.e. family-only or extra-familial violence) and related variables such as criminal behavior and involvement with the criminal justice system; and (c) the perpetrator's psychopathology or personality disorders. Using these three descriptive dimensions, Holtzworth-Munroe and

Stuart proposed three major subtypes of perpetrators; family only, dysphoric/borderline, and generally violent and antisocial.

Of the three types the family-only perpetrators engage in the least severe and least frequent domestic violence and are the least likely to engage in psychological or sexual abuse. The violence of this group of men is generally restricted to family members and these men are the least likely to engage in violence outside the home or to have related problems with the criminal justice system. These men also evidence little psychopathology and either no personality disorder or a passive-dependent personality disorder.

The dysphoric/borderline group engages frequently in moderate to severe violence, including psychological and sexual abuse. The violence of this group is primarily confined within the family although some extra-familial violence and criminal behavior may be evident. These men are the most dysphoric (mood disordered), psychologically distressed and emotionally volatile. They frequently evidence borderline and schizoid personality characteristics and have problems with alcohol and drug abuse.

The third subtype of perpetrators, who are the generally violent and antisocial perpetrators, also frequently engage in moderate to severe domestic violence, including psychological and sexual abuse. But, in addition, these men engage in high levels of extra-familial aggression and have the most extensive history of related criminal behavior and confrontations with the law. They are most likely to have problems with alcohol and drug abuse and are most likely to have an antisocial personality or psychopathic disorder.

Holtzworth-Munroe and Stuart (1994) compared the subtypes of perpetrators on a range of developmental and psychological variables. Generally violent/antisocial perpetrators were more likely than the family-only perpetrators to have witnessed parental abuse as a child, experienced physical abuse as a child, and engaged in juvenile delinquency. As adults they show no remorse, tend to blame the victim, use violence and intimidation to solve problems, and have rigid conservative attitudes to traditional sex roles. This group was also less likely to have been married, and if married, they reported less marital satisfaction than family-only perpetrators. Of the three groups the dysphoric/borderline group were the least satisfied with their marriages, most jealous and most dependent on their spouse. They had the highest level

of ambivalence regarding the relationship and the highest level of anger. This group also blamed the victims and had relatively conservative sex role attitudes.

Perpetrators from the generally violent/antisocial and the dysphoric/borderline groups are frequently violent and can be identified as posing an ongoing risk of severe future assaults. It is difficult to assess what proportion of domestic violence perpetrators would fall into these two high-risk groups. Much of the research examining domestic violence perpetrators has identified the offender from police, hospital admissions or women's shelters. As research indicates that only a small percentage of victims come to the attention of these services (Ferrante, Morgan, Indermaur and Harding, 1996) research concentrating on these groups will include a far higher percentage of high-risk perpetrators. However, using community based probability samples (National Family Violence Survey) Straus (1996) estimates only 10% of all perpetrators in violent relationships could be classified as "high-risk".

Distinguishing between high risk perpetrators and perpetrators of less severe types of violence provides a basis for more informed applications of the two predominant models of appropriate intervention. These have been called the *feminist model* and the *family therapy model* (Johnson, 1995; Straus, 1996). The feminist model assumes that the fundamental cause of domestic violence is the patriarchal social order, including a patriarchal family structure, where men are invariably the offenders and women are invariably the victims. This intervention model stresses the importance of empowering women, criminal prosecutions of men, and separate treatment programs for men and women. From this perspective, any intervention, which involves jointly working with the perpetrator and the victim, such as couple therapy and victim-offender conferencing, is seen as not only inappropriate but also as exposing women to further victimization. The second intervention model, the family therapy model, assumes that the fundamental cause of domestic violence is a lack of interpersonal skills and dysfunctional relations. This dysfunction leads to an escalating pattern of frustration and anger, which may lead to violence. Consequently, this model emphasizes the improvement of interpersonal skills on the part of one or both partners, including negotiating skills and the correction of dysfunctional relationships, which includes moderating power relationships in the family.

While police are more likely to encounter perpetrators from the two high-risk groups, because of the increasing use of the criminal justice system as a response to domestic violence, they will also encounter perpetrators from the family-only group. Perpetrators from each of these three groups are likely to respond differently to criminal justice interventions.

Perpetrators from the high-risk groups are the least likely to be deterred by current criminal justice interventions, even if rigorously coerced by authorities. These are men already immersed in a criminal subculture. In a Queensland sample, over 50% of respondents of multiple domestic violence protection orders had criminal records for violence both inside and outside the family (Stewart, 2000). Furthermore, a small proportion of these men were the respondents of multiple orders taken out by different women. The coercive control exerted by the criminal justice system is necessary to try and manage these seriously violent repeat offenders. However, it is naive to think that this intervention will reduce these men's offending behavior and it is imperative that the possible negative consequences, such as displacement of the behavior and increased use of violence, are acknowledged and managed. Moreover, although these men's behavior may be modified by participating in perpetrator treatment programs, any form of conjoint therapy with the victim would be extremely inappropriate (Straus, 1996).

Perpetrators from the family-only group are the most likely to be deterred from future violence by a criminal justice response. For these men arrest, even without prosecution, will serve as an effective deterrent and reinforce the view that domestic violence is a "real" crime. Furthermore, these men would probably also benefit from appropriate therapy-based interventions, including conjoint and family therapy.

Domestic violence perpetrators are not a homogenous population. Criminal justice and therapeutic interventions need to ensure the safety of the victim by using procedures suited to the level of violence and risk exhibited. To this aim Straus (1996) has commenced development on an inventory that will enable the identification of the level of risk that the perpetrator poses to those around him. These assessment procedures need to utilize more information than the information collected by police officers when determining that an offense occurred and whether or not to proceed with a prosecution. Additional information includes the chronicity of the assaulting behavior, criminal history and other psychological

characteristics of the offender. Unfortunately, the information necessary to make distinctions among offenders is rarely collected and the current interventions, both criminal justice and therapeutic, do not differentiate among offender types.

The needs of domestic violence victims in criminal justice interventions

The second challenge to the criminal justice system when policing domestic violence is to take into account properly the needs of the victim in the criminal justice process. Unlike in other crimes, the unique feature of domestic violence is the level of intimacy between the victim and the offender. The victim has had, and may continue to have, an ongoing relationship with the offender. As with perpetrators, victims of domestic violence are also not a homogenous group. For example, they do not all experience the same severity or frequency of violence and consequently they do not all define what is happening to them as a crime. Furthermore, they have varying levels of resources for managing the violence and they have different needs and expectations from police interventions. In this section the role of the victim will be examined.

The most reliable predictor of a police response is the victim's complaint rather than the existence of evidence of an offense. Victim support is a necessary precondition to the arrest of a perpetrator in both domestic and non-domestic disputes. Even if there is substantial evidence of a crime having been committed, police are unlikely to arrest and charge the perpetrator, unless the victim is committed to the prosecution process (Hoyle, 1998; Stanko; 1995; Cretney and Davis; 1997). In addition, Hoyle (1998) found that, in the majority of domestic incidents where the police to which police responded, it was not the intention of the victim to have the perpetrator arrested. Furthermore, when an arrest did occur, the majority of victims did not wish to proceed with prosecution.

A number of advocates have argued for limiting the victim's role in criminal proceedings. Policies such as mandatory arrests, mandatory prosecution and the compelling of witnesses to testify have all been introduced as mechanisms, not only to limit police discretion, but also to reduce the victim's power to influence criminal proceedings. Two arguments are made for restricting the victim's role in the police proceedings. The first concerns the safety of the victim and it is argued that by limiting the victim's role in the process there will be less

opportunity for the perpetrator to blame the victim. Therefore there is less chance that criminal justice intervention will escalate the violence experienced by the victim. The second argument concerns general deterrence goals of the criminal justice system. This argument states that it is important that a strong consistent message is sent to the general community that domestic violence is a crime so as to deter future offenders. Domestic violence victims often equivocate when it comes to charging the perpetrator and then proceeding with the prosecution. Consequently, the message sent to the community is that domestic violence is not taken seriously by the criminal justice system.

Many domestic violence incidents are not reported to the police. Victimization surveys indicate that only 25% of incidents of domestic violence are reported to the police (Australian Bureau of Statistics, 1996). In addition many domestic violence incidents to which police respond are not notified by the victim but by the victim's family, friends and neighbors (Stewart, 1998). To investigate the reasons why women did not report to the police Hoyle (1998) interviewed women who had come to the attention of the police but who had not reported the incident. She found three interrelated reasons why women did not call the police; first, they wanted their relationships to continue, second, they feared retaliation, and third, the outcomes of a criminal justice prosecution were not worth the 'costs' to the victim.

Hoyle's (1998) finding that women do not contact police because they wish to remain with their partners, confirms earlier research (Caputo, 1988). Reasons given by women as to why they are unprepared to leave their partners include financial security, children, hopes that their partners will change and stop being abusive, and lack of affordable accommodation (Mooney, 1994). In reality, if a woman chooses to stay with her partner it is extraordinarily difficult for the criminal justice system to protect her from further abuse (Hoyle, 1998). The second reason why women did not contact the police was that they feared retaliation from the perpetrator. This is a realistic fear. There is evidence that in some situations violence can increase after police intervention, regardless of whether this intervention was supported by the women (e.g. Dunford, Huizinga, & Elliot, 1990). The third reason women did not contact the police is that the sentence was not worth her going through with the prosecution process (Hoyle, 1998). Women considered that sentences for assault were lenient, and were often unhelpful and inappropriate. Most women wanted help and support for both the perpetrators as well as themselves and they realized this could not be provided through the penalties

imposed by the courts. Ultimately, fines were inevitably paid for out of the household budget and prison sentences were likely to make men more aggressive and embittered. This lack of sentencing alternatives has been identified by other authors including Dutton and McGregor (1991) who have argued for more treatment alternatives through the courts.

The question that still remains is: What do women want when they contact the police?

Ferraro and Pope (1991) argued that when women contacted the police they wanted help in *managing* the violence in their lives but were not necessarily ready to end their relationship. Hoyle (1998) interviewed women about their expectations of the police. With regard to the perpetrator, she found that in a third of cases the women wanted immediate protection, and in a further third of cases the women wanted the situation defused and the offender calmed down without recourse to criminal law. In less than a third of cases they wanted the men arrested. Regardless of the outcome of the situation, the majority of women wanted information and support, and they wanted to retain some influence on what was going to happen having reported to the police.

Women who have separated or are in the process of separating are more likely to use the criminal justice system as a strategy for assisting in violence episodes. In this situation the criminal justice system could provide more protection for the individuals. However, even in the situation where a woman wants the man arrested, many do not want to proceed with the prosecutions. This is illustrated by substantial research which shows between 50% (Hoyle, 1998) and 70% (Ford & Regoli, 1993) of cases are dismissed because the victim withdraws the charge. This sometimes leads to police perceptions that women are 'uncooperative' and 'hostile'. However, there is some evidence that the very process of arrest has secured the outcomes the women wanted, which is reduction in the violence. In the woman's eyes, prosecution is no longer necessary (Ford, 1991). These findings support the view that a woman's wishes, expressed in the context of her understanding of her own situation, should be considered above the general deterrence goals of the criminal justice system.

According to recent research many of those women who did not want arrest and prosecution still expected police to provide an immediate response to the violence, which included removing the perpetrator for a period of time. The reasons provided for this were to give the perpetrator a chance to 'sober up', 'cool down', and 'come to his senses'. Hoyle (1998)

found a third of women wanted the police to 'tell the man off'. They felt that a warning from the police would deter the offender from future violence. However, Hoyle reports that although police did caution offenders they felt that it was not part of their job to 'chastise adults'.

Researchers have found that most women who came into contact with the police wanted advice and/or information about their short-term and long-term needs (Hoyle, 1998; Brownlee, 1990). They wanted someone who would listen to them and talk to them about their problems. However, police do not feel comfortable or adequately trained to provide this service, frequently stating that they are not 'social workers'. A second requirement of these women is that police do not insist on taking action if the women do not feel this is the best course of action, or they feel they are unprepared to follow through with this (Hoyle, 1998). Ford (1991) argued that these women are manipulating the criminal justice system to obtain their desired outcomes. He suggested that women file and then drop charges, as a "rational power strategy" rather than using the traditional police response. This threat of intervention by the criminal justice system has the potential to empower victims by providing the possibility of criminal sanctions to prevent further abuse. McGillivray (1987) also indicated that women employ various strategies to gain the protection of the state while not wanting to end their relationships. They want to utilize the criminal justice process as a stabilizing factor in unstable and violent relationships.

When managing violence in their lives, victims have different needs from, and expectations of, the criminal justice system. Frequently, the police are the first and only agency that women contact. It is important that victims, regardless of their needs and the outcome of the criminal justice intervention, perceive the police as *responsive* to their situation. Women need to be able to use the criminal justice system as a resource to help them manage the violence in their lives.

Summary and Conclusions

A 'one size fits all' criminal justice response is inappropriate in relation to domestic violence because of the variability in the needs and expectations of victims and the different types of perpetrators. On arriving at a domestic violence incident police often confront heated and

complex situations. Regardless of the situation, they are required to make a range of decisions and to take appropriate action. Rather than limiting police discretion by the use of mandated responses, police must be supported and trained in using a wide range of possible alternatives. These include understanding the complexity of the situation, recognizing and responding to the victim's needs and wishes and being able to refer either the victim or the perpetrator to more appropriate agencies and programs. Since domestic violence is often impossible to prevent the criminal justice system in general and the police particularly need to have the flexibility to respond with a range of strategies that help women deal with and manage such violence in their lives.

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