VIOLENCE IN THE FAMILY

Edited by

Jocelynne A. Scutt

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A COLLECTION OF CONFERENCE PAPERS

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Jocelynne A. Scutt, 1980

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INTRODUCTION

In 1974 the first national conference on child abuse was held in Perth, Western Australia. Since that time there has been a growing recognition of the need to come to terms with a wider problem : that of violence at all levels of family life. This recognition came to fruition in a national conference hosted in November 1979 by the Australian Institute of Criminology, assisted by the Office of Child Care in the federal Department of Social Security; this conference dealt with the entire spectrum of domestic violence.

Attended by some 60 persons from every State and Territory - and including lawyers, social workers, sociologists, workers in women's refuges and rape crisis centres, academics, psychologists and psychiatrists, law enforcement officers, community health workers and officers of various government departments and instrumentalities, including Health Commissions, Child Welfare Departments, the Office of Child Care and Women's Affairs Bureaux - the aim of the conference was two-fold.

The Institute sought to assemble persons from around Australia researching into various aspects of domestic violence, putting them in touch with each other; in this way to disclose the extent of violence uncovered by research, the myths of domestic violence, and attitudes of the community towards the issues. Second, the aim was to look carefully at programmes designed to deal with domestic violence, both as to institutional or bureaucratic initiatives and initiatives taken at grass roots levels; to attempt to evaluate the various programmes; to determine what improvements might be made to them, and to formulate plans for future programmes with an aim to reducing - and finally eradicating - violence in the home. This collection of papers represents the basis of the discussions at that conference.

In her paper "Children and Family Violence", Marie Coleman, Director of the Office of Child Care, emphasises the concern felt by the Office as to the effect of family violence on children; she writes of the setting up of youth refuges to care for young persons frequently leaving home to escape violence or sexual abuse, or both; she refers also to government grants to women's refuges to assist them in their care of children coming in the company of their mothers from violent situations.

Dr. Lincoln Day of the Department of Demography at the Australian University and Anna Yeatman of The Flinders University of South Australia in separate contributions present an overview of the Australian family in 1979 and the social and legal ramifications of domestic violence. As Lincoln Day points out, "Marriage is still popular". However the traditional family of man, woman, two children, a cat, dog and television set is no longer predominant, if it ever were. It exists alongside the single parent family, the lone liver, the grandparents and child triad, remnants of the extended family. People are today living together without marriage, although the "... overwhelming majority of Australians give every indication of planning to marry legally". Marriage is, however, taking place at a later age, and one of the reasons Day accepts as a basis for this change

is the greater acceptability of birth control among young unmarried persons which means that "... a great deal fewer will be forced into marriages in response to pre-marital pregnancy."

In looking at the family in the context of violence, Anna Yeatman reviews the development of the social construction of family violence as a social problem. Has a change in social values identified the issues of child-abuse, spouse-assault, rape-within-marriage as "problematic"? What effects does the identification of particular issues as socially problematic have upon the social problems themselves, and what effects do professional "constructors" of these issues as "problems" have upon the persons involved, and upon the issues themselves? Yeatman suggests that systematic destructive conflicts between men and women in domestic relationships "... can be comprehended only in terms of a struggle around the legitimacy of patriachal power". She points out that patriachal power is legitimized by adult men over adult women by way of tradition, but that today's growing acceptance of aggression by men towards women being defined "social problems" may indicate that the exploitation of authority, and indeed the existence of authority itself, is being eroded in favour of democratic and consensual notions of relations between men and women. In the case of children, however, even if the authority of patriachy is being broken down by the recognition of social problems arising out of that authority, this erosion is only being replaced by the ideal of paternalist, protective tutelage of children. This serves simply to legitimise, even in the process of questioning, the authority of patriachy.

After placing the Australian family and violence within it in a social context, each aspect of domestic violence is presented in a research paper written by a person working in the field. These papers reveal that violence can and does occur at all levels of society, cutting across the style of family unit, class, race and ethnic lines. Jean Hamory, Social Work Supervisior with the Child Life Protection Unit in the Department of Community Welfare in Western Australia writes generally of the extent of child abuse of a physical nature, of child abuse by way of neglect, and of emotional abuse. She recounts the relatively short history of social concern about domestic violence. She points out that it is difficult to estimate the extent of child abuse in Australia, but concludes that it would be inappropriate to extrapolate from United States' statistics.

In "Staying Together for the Sake of the Children ...", Lovejoy and Steel give some indication of the extent of domestic violence, citing statistics from a survey taking into consideration persons presenting for counselling at the Marriage Guidance Council of New South Wales. They conclude that violent children are "... predominantly products of unhappy, broken and violent homes." The conclusion must, however, be put in context : that is, it was only persons presenting to counsellors who were studied; this of itself would not show that unhappiness alone breeds violence, for "happy" homes do not come to attention of marriage guidance counsellors.

Child sexual molestation is, perhaps, the least researched area of family violence ... or at least that which has most recently come to the fore. The Sydney Rape Crisis Centre conducted a phone-in in mid-1979, and

their paper, "The Myths of Child Rape" - "rape" being liberally interpreted as running the full range from masturbation, fondling genitals, anal, oral and vaginal rape - is an impressionistic analysis of the histories of those who phoned the Centre reporting on their sexual abuse during childhood and teenage years.

Maureen Kingshott's contribution recognises that sibling aggression, too, is a subject little researched as yet. She amasses a wealth of material on domestic violence that may or may not reveal aggression being acted out between brothers and sisters. Kingshott utilises United States' and United Kingdom research studies, for no research has as yet been carried out in Australia into sibling abuses. As she states, this is a field allowing for considerable speculation; most of the available studies are straight case histories with subjective interpretation, and objective research is yet to be undertaken. As she points out, none of the studies makes reference to any possibility of rivalry and aggression between half brothers and sisters, step siblings and child members of "reconstituted" families; the concentration is all upon children who are biological siblings within the traditional family unit, and exhibiting signs of aggression toward one another, which sometimes leads to murder of a sib.

Spouse assault and its inevitable culmination in marital murder are covered in respective papers by O'Donnell and Saville, and Therese Rod. In "Sex and Class Inequality and Domestic Violence" the authors criticise traditional explanations for domestic violence and those seeking to explain the continued presence of a badly abused woman in a marital relationship with her abuser. They conclude that explanations of domestic violence that concentrate upon individual psychology - either of the abuser or of the person abused - are misleading, for they ignore the manner in which individual choices are limited by social structures that relate directly to sex and class. Sexual inequality lies at the base of continuing spouse abuse, but class inequality acts to render some women particularly vulnerable to abuse and the continuance of that abuse. Because they are unable to exist in an economically independent manner, women are forced to remain with husbands who beat them. O'Donnell and Saville suggest that class and sex inequalities must be overcome before domestic violence between cohabiting couples will cease.

"Murder is typically a family affair" states Rod in a paper based on an examination of all cases of marital murder in New South Wales police files for the period 1958-1967 and 1976-1978. In both periods, patterns of murder remain relatively unchanged. No less than three quarters of spouse murders committed in New South Wales were committed by men. Nonetheless, husbands were "... the most likely victims of female killers". Rod finds that a history of assault is common in the case of wife murder and husband murder. Additionally, firearms appear to play a significant role in this form of spouse abuse. Although wives tend to kill husbands with whom they are living, husbands are wont to kill an estranged wife, frequently premeditating the murder and pursuing the wife from State to State in order to kill her. She concludes that spouse murder will probably never be "completely eradicated" however as it is frequently an extreme outcome of a more generalised pattern of domestic

violence, if this pattern can be lessened, then spouse murder will similarly decrease.

The law is frequently cited as a mechanism for social control. A series of papers discussing the inadequacy of the law in handling domestic disputes, and suggestions for law reform or for improvement of those reforms already effected begins with a paper by Jane Connors on "Reporting Child Abuse". As she relates, it is relatively recently that jurisdictions in Australia have introduced legislation requiring the reporting by medical practitioners of child abuse cases. In some States, reporting is mandatory; in others, doctors are merely urged to report the case to child abuse units or other agencies set up for the purpose of coping with domestic violence involving child victims. Although she concludes that in principle any scheme providing for the notification of child maltreatment in the hope of securing early intervention to protect a maltreated child from ensuing danger is to be applauded, those schemes which to date have been established have not fulfilled the hopes of their advocates. There is bound to be considerable under-reporting, and the very existence of child abuse reporting laws may tend to render parents reluctant to seek treatment from medical practitioners for their offspring. Connors concentrates finally on the need for adequate services, without which any reporting system will be empty of value.

Where domestic violence takes place between adults, Penelope Stratmann of the Women's Advisory Unit in the Department of the Premier of South Australia is critical of existing laws, but equally critical of the inadequacy of police operations in failing to enforce those laws that do exist to protect victims of spouse assault. By their very inaction, police are taken to condone violence between married partners and cohabiting couples. Stratmann describes the measures that have been taken in the United Kingdom by the passage of the Domestic Violence and Matrimonial Proceedings Act 1976. Although the Act "... goes someway" to achieving the goals of protecting women who are threatened with physical harm and demonstrating clearly that society frowns upon the use of physical force to "solve" disputes, she points out that the law is not necessarily adequate to its task. Second, Stratmann acknowledges that in Australia difficulties would arise in terms of our federal system : that is, the Commonwealth could pass laws relating only to violence between married persons; the States would be required to act in relation to cohabitees not being legally married. She speaks out strongly, however, against the "complacency" of the Family Law Council where in its first annual report of 1977 it rejected the idea that the Family Law Act 1975 (Cwth) should be amended in accordance with the provisions of the United Kingdom legislation. Nonetheless, she concludes that legal remedies alone are not necessarily the most appropriate direction for action. Where they do exist, however, then they must be properly enforced if they are to have any credibility. Without this, there can be no hope of any deterrent effect.

Not a part of the Children and Family Violence Conference, but presented at an earlier Research Conference conducted by the Institute, Duncan Chappell's paper "Rape in Marriage : The South Australian Experience" is nonethless particularly appropriate to be included in this collection. Arising out of a study conducted under a grant from the

Criminology Research Council, the paper deals with changes to rape laws in South Australia, where an amendment to the criminal law in 1976 abolished the traditional common law rule that a husband was deemed to be incapable of raping his wife. The study, conducted by Chappell together with Peter Sallman of La Trobe University in Victoria, involved interviewing women coming into refuges in South Australia post-1976. Questions were asked as to whether or not they had been victims of marital rape, and whether in fact the law had made any difference to the incidence of rape and/or the reactions and attitudes of victims and aggressors to that form of domestic violence. Many of the women questioned did not classify rape in marriage as "rape"; they were inclined to say that they had not been raped by their husbands. However they acknowledged they had been forced to have sexual intercourse without consent - not classifying this as "rape" - and that this was frequently the culmination of a series of hittings and bashings designed to have them "agree" to engage in sexual intercourse with the husband. Chappell concludes that suggestions during the controversial period of the introduction of the law that there would be a "flood of complaints" was not borne out; only two complaints were received by police in the period 1976-1979. The author states finally that the change to the law in South Australia "... demonstrates how an apparently highly contentious criminal law can, in practice, ultimately be implemented in society with scarcely a ripple".

Willis looks at the position of victims of domestic violence, and the lack of any remedy whereby they may, in the criminal jurisdiction, gain compensation for their injuries. Although legislation creating public funds for victims of crime have been passed in most Australian jurisdictions - excluding the Australian Capital Territory - each of these schemes ousts the idea that a victim of family violence is entitled to gain criminal compensation for injuries. The rationale behind this inequity is, states Willis, the fear that victims of family crimes will be granted compensation so that the offender, should he or she continue living with the victim, will thereby profit. Also, there seems to be some suggestion in discussion of compensation that there may in some cases be collusion between the parties in order to gain monetary rewards. The author rightly contends that these fears are ill-founded and are discriminatory against victims of domestic violence. He forecasts the laws will soon be changed, so that family violence victims will no longer be excluded from compensation schemes. As he points out, if victims of family attack were in a position to receive compensation, battered women would be better placed to gain economic independence and thus be able to make a real decision as to whether to remain in a violent situation, or to leave and seek a lifestyle that excludes sporadic or systematic abuse.

The final selection of papers describes, discusses, analyses and criticises various initiatives taken to assist victims of violence and (hopefully) to assist in the prevention of domestic crime. An overview of specialist units set up by governments is undertaken by Darryl Lightfoot in a paper tracing the development of approaches towards dealing with child abuse, revealing rapid and frequent shifts in policy and practice as to the allocation of resources and the emphasis on, respectively, specialist and generalist services. He traces the history of the development of current approaches accepting specialist units in

hospitals, designed to deal with child abuse. Working in such a unit in New South Wales, he is particularly able to describe and analyse the New South Wales position. Currently, the Child Life Protection Unit in which he works is designed to be capable of responding generally to child abuse matters and also to fill a gap in services for families experiencing varied problems. In particular, those problems involving family violence come within the programme of the Unit. Lightfoot agrees with David Gil that problems relating to child abuse "... will never be adequately addressed until as a community we address the problem of institutionalised violence in all its forms".

Andrew Paterson in two contributions outlines briefly the development and role of the South Australian Crisis Care Unit which was established in Adelaide in 1975. The Unit is designed to enable skilled intervention workers to be available on a twenty-four hour a day basis to work in liaison and co-operation with the Police Department in relation to domestic violence and other types of crisis situation. The Crisis Intervention Unit is, he states, a natural outcome of the growing concern in Australia and in other countries for prevention services in cases of crisis. He goes on to expand upon the history of formal mechanisms for dealing with crises. Paterson describes the development of formal units as preceded in Australia by voluntary organisations such as the Life Line Movement, and combining these informal mechanisms for dealing with crises with more formal programmes previously available only through such institutions and organisations as mental health authorities. Similarly, formalised mechanisms for dealing with sexual assault - such as sexual assault referral units in hospitals - are a natural outcome of the rape crisis centre movement within the community, whereby formal organisations are forced to alter their approaches and procedures in order to accommodate new demands arising out of social movements. Crisis care is centred upon the idea of prevention, states Paterson, but nonetheless recognises that where disputes and violence have occurred, social workers may be capable of intervening, and may be trained to intervene in a constructive way to assist parties to deal with the problem.

Lee Henry, social worker with the first sexual assault referral centre set up in an Australian hospital, describes in a short paper the services provided by the Centre, the staffing complement, and the aims of counselling within the Centre. The Sir Charles Gairdner centre is designed not only to deal with an immediate crisis, she writes, but to assist those persons who have been victims of sexual assault long in the past and who seek assistance in thinking through the abuse.

In contrast with formal organisational mechanisms for coping with situations involving domestic violence, Biff Ward and Robin Batterham, and Vivienne Johnston in respective papers on "self awareness" therapy in a community setting, and the women's refuge movement in Australia describe informal strategies designed to counteract the ravages of violence in the home. Both papers describe feminist approaches to ameliorating the violence, approaches that see a need for dealing with the underlying political nature of crime in the family.

Ward and Batterham describe their exploratory movement toward a living method for assisting victims of sexual molestation in the family.

In a workshop of 12 women, Ward and Batterham, together with the other members, began working through their own sexual "hang ups", feelings and adolescent interaction with family members. In a way few persons are currently capable of doing, they began to explore "their own self-awareness" so that they might better understand others who were victims of more than simply stressful - or "normal" - family interaction, but of exploitation and violence. "Our process", they conclude, "is our action".

Vivienne Johnston explores the development of Australia's refuge movement - the emphasis upon the fearsomeness of the abuse endured by many women; the way in which this stress has enabled ordinary, everyday individuals to dismiss battered wives and battering husbands as abnormal and having to be "dealt with". This has enabled us to ignore the violence that exists as rooted within our society, as part of a patriachal interaction between women and men, and adults and children. She concludes that we must once more return to regarding the initial causes of violent relationships. Thus, we must cease to emphasise extreme cases and look within ourselves at our own relationships and at the very nature of male-female interaction, at the very nature of adult-child interaction, before we can arrive at any appropriate and adequate mechanism for dealing with domestic violence. It is only in this way, Johnston concludes, that we may hope eventually to eliminate from our society the coercive and manipulative manner in which human beings currently interact with one another.

Thus, this collection of papers represents an overview of the nature of study and research into domestic violence in Australia at the present time; it represents an indication of the state of the law in Australia and its inadequacy in dealing with domestic violence; it represents an overview of agencies - both at bureaucratic and at grass roots level - by which the community is seeking to assist in eliminating domestic violence and alleviating the abuses of those who are at present forced to endure the violence. The diversity of views and approaches contained within these papers will no doubt lead readers to violently disagree with some aspects of studies and programmes outlined. Certainly there were "violent disagreements" between participants at the conference from which the papers are drawn. Yet the success of the conference giving rise to this collection lay in the drawing together of a diverse group, each with a particular expertise and each sincerely dedicated to formulating plans for ending domestic abuses. Difficulties in the task were all too clearly recognised by participants. Nevertheless it was considered that the opportunity given to hold discussions between those working in the field, bureaucrats, and academics - and between those classed "radicals" and those classified as "establishment" was valuable in itself.

The diverse body of conference participants was able to agree on directions that future moves might take, and came together in a final session to formulate and pass resolutions which it was hoped might be implemented by the various governments and agencies that are in a position to put them into effect.

It is also to be hoped that publication of these resolutions

might move members of the community to begin to rethink their lifestyles, to reconsider their methods of relating to one another, and to begin the painful process of readjusting our humanity so that we all might eventually live in a world where all abuses are ended, and in particular where violence committed by "loved ones" against the "loved" would no longer be an everyday occurrence in our society.

Jocelynne A. Scutt, 1980

RESOLUTIONS

RESOLUTION 1 ... Corporal Punishment

Recognising that the physical abuse of children is a product of a society which has institutionalised violence into its child rearing practices we call upon the governments of all States and Territories of Australia to repeal all statutes conferring the right upon parents, teachers and/or other persons to administer corporal punishment to children.

RESOLUTION 2 ... Child-Care in Women's Refuges

Because over half the number of residents in women's refuges are children, attention should be given to the needs and rights of those children to specific child orientated workers, facilities and equipment.

Funding available for child-care in refuges should show a direct correlation to the number of refuges that exist at any given time and should not be subject to a departmental lump sum distributed without recognition or understanding of the special and far reaching needs of those children.

RESOLUTION 3 ... Canberra Rape Crisis Centre

The independence of Canberra Rape Crisis Centre from the bureaucratic-legal-medical structures in the Australian Capital Territory is an essential feature of its operation. Large numbers of women and children who will NOT report to 'official' agencies will contact Rape Crisis Centre.

In order to function adequately, Canberra Rape Crisis Centre must be adequately funded by government sources and this funding should not necessitate the R.C.C.'s being linked to 'official' agencies.

The need for an independent location, preferably an anonymous private home, is paramount.

Therefore the Health Commission must increase to an adequate level funding, by way of financial and other resources, for the provision and continuing maintenance of the Canberra Rape Crisis Centre to encourage self-help and care in the community of women and girls who are victims of rape and other sexual offences in the Australian Capital Territory.

RESOLUTION 4 ... Children's Advocates in Sexual Offence Cases

Children suffer particular problems in attending court and being cross-examined by defence lawyers in sexual offence cases. Due to misguided social attitudes, this may serve only to add further to the child's feeling that she is in so-e way to blame. The trauma for the child in such cases must be lessened, and this should be done by -

a. introducing child advocacy training courses into tertiary studies courses;

b. the court appointing children's advocates to act for children who are involved in sexual offence court cases.

RESOLUTION 5 ... Cultural Violence Against Women

Cultural practices that are harmful to women and girls - such as enforced sterilisation, clitoridectomies, infibulation and like practices must be condemned. All State and federal governments must outlaw these practices and act to combat them wherever they exist in Australia. All State and federal governments must affirm their support for those overseas who are trying to outlaw and/or combat these practices.

RESOLUTION 6 ... Police Training

Commissioners of police in all Australian States and the Australian Capital Territory and Northern Territory should review training programmes within their respective police forces at all levels and where necessary either include or increase segments within those programmes to ensure a conscious awareness at all levels of theproblems of child abuse and domestic violence and use as resource persons workers from such bodies as rape crisis centres, crisis intervention services, women's refuges, women's health centres and the like.

Other Resolutions Drafted at the Conference but not Debated due to Lack of Time

RESOLUTION 7 ... Criminal Compensation for Domestic Violence Victims

All State and federal governments must introduce/amend/expand victim criminal compensation legislation and victim compensation schemes to provide for compensation to victims of domestic violence. Calculation of victim compensation to victims of domestic violence. Calculation of victim compensation payments must be made on a scale (comparable with, for example, worker's compensation scales), rather than on a flat rate as is currently the case.

RESOLUTION 8 ... Legal Aid and Resource Centres

Special legal advice and resource centres should be set up to provide advice, to conduct community legal education programmes among women, and to investigate women's legal needs and improve our access to law.

All State and federal governments must reinstate the concept of legal aid as a right of all persons requiring legal advice and assistance, where they are unable adequately to pay for such advice and assistance from their own resources. Funding for legal aid should be increased, by all State and federal governments, to fulfill very real needs in the community in the way of legal advice and assistance.

RESOLUTION 9 ... Training of Lawyers, Judges and Magistrates

All lawyers, judges and magistrates must receive appropriate and thorough training as to the resolution of domestic crimes by way of the court process. All judges, magistrates and lawyers must be required to attend seminars together with resource persons working in the field - from refuges, rape crisis centres, crisis intervention services, women's health centres and the like, so that they may more readily understand the underlying problems in the area of domestic crimes.

THE BACKGROUND

CHILDREN AND FAMILY VIOLENCE

Marie Coleman*

In recent years much concern has been expressed about families in Western Society - and in our own country in particular. Most governments nowadays seem to have made some very generally-expressed promises to support family life, and to study the impacts of their policies on family life. His Holiness the Pope will convene a world conference of Cardinals in 1980 on the family. The President of the United States of America has established a process leading to a White House Conference on Families in 1981.

Following on a report to the Minister for Social Security in the Commonwealth Government, on Families and Social Services in Australia, produced by a committee of which I was chairperson, the Australian Conference of Social Welfare Ministers will sponsor in 1980 a national conference on the issue of family policy.

The Institute of Family Studies has recently been established by the Commonwealth Government, under the Family Law Act, to:

> 'promote.....the identification of, and understanding of the factors affecting marital and family stability in Australia with the object of promoting the protection of the family as the natural fundamental group unit in Society.'

It undertakes also to assist and advise the Attorney-General in relation to grants for purposes related to the functions of the Institute.

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The Minister for Social Security, through the Children's Services Program, has provided funds through the States for a pilot program of assistance to organisations for Family Support Services and has in addition approved a number of other demonstration/research projects addressed to testing the effectiveness of various ways of providing support to families in their parenting roles.

The South Australian Government has recently established a Family Research Unit in its Department of Community Welfare and will call for family impact statements on its various policies and program decisions.

I think it is helpful when trying to understand this concern about families to see it against a background of popularly perceived (but not completely comprehended) changes in family and social functioning over the last few years.

The circumstances of our birth as a nation probably shaped what is often perceived as the 'traditional' Australian family. In their recent book Burns and Goodnow have this to say:

> 'This typical Australian family that has emerged in the later 19th century has been described as "born modern". With kith, kin and traditional lifestyle left behind in the old country, husband and wife faced alone the task of establishing themselves and building a family....the pattern, well estabished by the 1880s, seems very close to what later writers have said about the Australian family and have given the name of matriduxy. Its major elements appear to be a relatively high standard of living, a major investment in the family home, few servants, small family size, a belief in the centrality of children to the marriage, a marked sexual division of labour, an intense engagement in domesticity by women and their consequent low profile in public life....'[1]

When the newly-established Arbitration System in 1907 established the 'basic' or minimum wage - a family wage - at a level adequate to support an unskilled labourer, his wife and three children in frugal comfort - the Australian nation committed itself to economic support of the 'standard' or 'typical' family in a manner unparalleled in the rest of the world at that time.

Families in Australia, of course have never been 'typical' but we have seen this typical family used as a yardstick for many years. There have been great changes since the 1880s but the concept of the 'typical' family still lingers.

We know for example that in 1979 sole parent families make up approximately 13% of all families and almost half of sole parents are employed.[2] Average family size has decreased - and stabilised at slightly over two children. People are marrying later, the first child is postponed longer, and children are spread over fewer years. Present dissolutions of marriage[3] involve over 29,000 families with children per year (64% of all divorces or about 1.5% of all families with children in Australia), and some 30% of marriages involve persons previously divorced.[4] Female work force participation has increased dramatically - at March 1979, 40% of married women were employed (29% in 1967) and married women now comprise almost two-thirds of employed females.[5] Postwar immigration has brought profound changes in our country in terms of values held about families and children and about social customs and has made us a multi-cultural nation.

Set this against a pattern of economic uncertainty in the present decade, against new public sensitivity as to the legal and human rights of the individual, often displayed as concern for minority rights, women's rights, and children's rights, and add the impact of mass communications media to produce what McLuhan called 'The Global Village' and it becomes easier to understand how issues previously hidden have become areas of public concern, and why those who seek certainties sometimes find them missing.

I have consciously used a phrase 'issues previously hidden' because so many issues are not, in fact, new. What is new is the willingness of individuals, of governments, of society to openly confront them, and to consider the need for solutions. After all the 'typical' Australian family was not always an entirely happy family in 1880, nor since then.

A great many of these previously hidden issues which have been confronted in the past decade have led us to focus on the family - domestic violence in its many forms in one emotive example, human sexuality is another. The feminist movement has addressed itself to the issue of violence against women. Among other responses - Governments have been moved to estabish new social institutions such as rape counselling services and women's refuges.

The issue of violence in the family involving, or directed against, children has been the subject of much study, and of many governmental enquiries in recent years. The issue makes most people uneasy....angry.....sometimes we vary in our attitudes to the persons inflicting the violence - are they criminals to be punished, or sick people to be treated?

We know a little but not enough about physical violence to children but, nonetheless, some continuous progress is being made towards public recognition of a problem and towards a development of policies and programs designed to prevent or to mitigate its effects and its incidence. Sexual abuse of children is an issue which most of us prefer not to acknowledge and indeed have difficulty in considering in the dispassionate manner which is important if problems are to be elucidated, and if policies and effective programs of preventative/ameliorative measures are to be developed. The very emotional public reactions to the valuable Report of the Royal Commission on Human Relationships, and its analysis of child abuse, sexuality, and family behaviour, is a reminder to us of the potential divisiveness of public consideration of these issues.

Overall, our society tends to have a profound (almost irrational) sense of the privacy of the family and its relationships, at the same time as having some sense that our society has responsibilities towards families, to assist them to carry out the tasks of caring for their dependant members, young and old. Because of the special value our society places on children, many of us find the thought of family violence involving them and the thought of sexual abuse within the family almost beyond rational consideration. This may lead to an ambivalence about intervention where children's lives and well-being are at stake. Nonetheless, there is obvious public concern manifested in such forms as the recent enquiry into sexual abuse of children which was commissioned by the Government of Western Australia and more recently by the national conference on Total Child Care, organised by the Festival of Light. Groups from both the radical and conservative ends of the spectrum of opinion are beginning to raise publicly the issue of sexual abuse of children. Some to their slight surprise find themselves showing the same concerns.

Much of the activity in the past few months which has marked the observance of the International Year of the Child has celebrated the delights of childhood, both from the parents' and child's viewpoints. The Federal Government, through the Office of Child Care, has supported special ongoing projects to help disadvantaged children in various ways, whilst not forgetting projects designed to help parents in their parenting roles. We have given increased assistance to Aboriginal child care agencies working to protect Aboriginal family life; we have helped establish a National Child Accident Prevention Foundation; we have helped the Blue Folk in Canberra develop a Children's Village intended to involve

parents and children in creative recreation; we have introduced a Youth Services Program, directed towards homeless adolescents. Our intention always is to stimulate innovative approaches to children's services and to open up issues requiring public attention.

A seminar on domestic violence as it affects children is not something new from the point of view of the Office of Child Care - the first national conference on child abuse was financed by the Children's Services Program in 1975, and sponsored by the Western Australian Department for Community Welfare. We will assist the Queensland Department of Children's Services in planning the next national conference. We are pleased to be associated in this seminar with another Commonwealth instrumentality - the Australian Institute of Criminology, especially given the close working links the Institute has with our colleagues in State and Territorial Government Departments.

I trust this seminar will assist in the process of opening up an issue of such profound concern to us all, and hopefully help clear away some of our misconceptions, some of our fears about ourselves and of the darker side of our society. No doubt passionately-held views will be expressed, from different value positions - I trust that the exchange will lead us to a position of clearer appreciation of the nature and dimensions of a little-discussed problem area in family functioning, and ultimately to more effective ways of helping families and children.

Footnotes

1. Children and Families in Australia. Burns, Goodnow George Allen and Unwin 1979.

2. A.B.S. 1976 Population Census Cross - Tabs T 50

3. A.B.S. Divorce 1977.

4. A.B.S. Marriage 1978.

5. A.B.S. Labour Force March 1979.

AN OVERVIEW OF THE AUSTRALIAN FAMILY TODAY

Dr. Lincoln H. Day*

It seems to have become something of a cliché to refer to almost any period one happens to be passing through as a time of 'great' or 'momentous' change, possibly even as a time 'fraught with difficulties'. As far as this kind of rhetoric is concerned, the present is certainly no exception. Yet it does seem to be a time of rather more, and rather more rapid, change than has been the case before. In countries like Australia this change seems particularly present with respect to matters relating directly to the family: Australia is today undergoing rather rapid and extensive change in the composition of the family, in the timing of certain events associated with the family, in the family's functions, in its durability, and finally in the consequences for the larger society of all these changes in structure and function and durability.

Marriage is still popular. Whatever the press may say, whatever some of the ministries may have said, marriage remains popular in Australia. The overwhelming majority of Australians give every indication of planning to marry legally. However, they are marrying a bit later. Particularly significant in this is the fact that there has been a drop in the rate of teenage marriage. In the five-year period between 1971 and 1976 the male first marriage rate declined by 37 percent at ages 15 to 19; the female by 30 percent. At ages 20 to 24 the rate for men declined 27 percent, that for women by 33 - and so on. In the 30 to 34 year age groups, the marriage rate declined among men by only about 11 percent, and among women by only 7 percent.

Even more interesting, is what has happened at single years of age below 20. For example, recent years have seen a 66 percent decline in the marriage rate for women aged 16. Sixteen year-old girls are simply not marrying anymore to the same extent as in the past. There has been a 56 percent decline in the marriage rate of 17 year-olds, and so on up to 24 year-olds where there has been a decline of only about three percent. A similar decline has occurred in the marriage rates among very young men. Clearly we are experiencing a decline in the incidence of teenage marriages.

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At the higher ages marriage rates in recent years have either stayed about the same or actually risen slightly. Age for age, people who have been divorced are more likely to marry than are people who have never been married. While people are now getting divorced with greater frequency than before, it does not look as though they are becoming soured on marital unions, that is, legal marital unions, for non-legal unions are not included in statistics. However, it must be recognised that the decline in legal marriage rates at younger ages may lead to a decline in the proportion who ultimately marry. If there was a decline of, say, five percentage points, this would reduce the proportion who ultimately married to something in the neighbourhood of 90 percent - which would still be high in terms of our history and that of western Europeans generally. This could be 'A Good Thing' if it means there is less pressure to marry, or to marry early, or to marry someone one is not suited to. But if, on the other hand, it means that people are going through life without have the kind of companionship, or enjoying the kind of status that accrues to a person who is married, then a decline in the proportion who ultimately marry has to be viewed as 'A Bad Thing'.

Whether it is, in fact, a Good Thing or a Bad Thing depends on the availability of other sources of the satisfactions that are presumably met in marriage. These range all the way from sexual gratification to economic support to having suitable housing, and certainly include much related to companionship and the satisfaction of psychic needs. Of course, the absence of a legal marriage does not necessarily mean the absence of a union that for all practical purposes is a marital union

The later age of marriage no doubt owes a good deal to changes in attitudes to pre-marital chastity. Among a sample of never-married persons interviewed in Melbourne in 1977, for example, the experience of sexual intercourse rose rapidly with age. While this should come as no surprise, there may be a surprise in the rapidity of the increase and in the proportions reached - and I might add that similar findings have been made in the U.K. and the United States. About half of these never-married Melbourne men had experienced sexual relations by the age of 18 and about 90 percent of them by age 23. Among the women, it was again about half who had engaged in sexual relations by age 18, after which the proportion rose to about three-quarters having had sexual relations by age 23. There seems to be some evidence here of a lingering double standard, but it is not a pronounced differentiation.

Another source for this delay in marriage particularly for the decline in teenage marriages - is the greater availability, and particularly the greater acceptability, of birth control among the young unmarried. This means that a great deal fewer will be forced into marriages in response to pre-marital pregnancy. The situation

is by no means perfect. For example, some doctors continue to feel it is incumbent upon themselves to give lectures to young unmarried people who request information on contraception. A number of improvements could be made in distribution of contraceptive measures and devices. But while we still have a long way to go in this regard, we have less far to go now than was the case a scant give or ten years ago.

What is happening with ex-nuptial births may at first appear to run counter to all this. The proportion of ex-nuptial births to all births has increased from an average of eight percent of all births in the period 1966-1970 up to a little more than 10 percent of all births in 1977, which is the last year for which statistics are available. But while the proportion of all births that are ex-nuptial has increased, the actual number of ex-nuptial births has declined; and because there are now more unmarried women capable of having them, this means that the rate has declined too. It has declined especially among teenagers. The 15-19 year age group still bears most of the ex-nuptial births, but the rate of such births among women this age has shown a marked decline. There was, in fact, a decline of 17 percent in the number of births occurring to girls this age in the period 1972-1977. But perhaps of more interest is the fact that during this period there was also a 42 percent decline - almost a halving - of the number of births occurring to girls this age who were married. So there is a decline in fertility among the youngest age group of women, whether married or unmarried, and the biggest percentage decline turns out to be among those who are married.

I suggest that one reason for the decline among young married women is that they are less likely to have married prematurely in order to legitimate an ex-nuptial pregnancy. Further, they are probably using birth control more efficiently, in part because they had practice before they married. If women are now more likely to practice some measure of contraception before marrying they are entering marriage with a little more skill, a little more efficiency in its use. But the fact must not be overlooked that we now have in Australia relatively ready access to abortion, certainly far readier access than was previously the case - which means that fewer people are forced into unwanted childbirth, that fewer people are forced into early marriage, that fewer unwanted children are being born.

In addition, we are seeing the development of more consensual unions and more trial marriages. It is not possible to state how common such unions or 'marriages' are - everybody knows of one or two, and we could all be talking about the same two cases - but they certainly seem to be more frequent today than was formerly the case. Certainly the establishment of sexual relations before marriage now seems to be the norm. Overseas evidence is at least

suggestive of what is happening, or can be expected to happen, here in Australia. For example, a recent study in Denmark found that well over half those who were officially unmarried at age 25 were living in some kind of consensual union. This suggests an entirely different definition of marriage and of the family from that we have become accustomed to using, that we are still using in courts of law and, in some countries, in social welfare legislation.

There is also a readier acceptance of the ex-nuptial birth. The term 'bastard' is not heard anymore, except as a kind of joke: 'funny old bastard', that sort of thing. The illegitimate child is accepted more, as is the parent of an illegitimate child. In fact, ex-nuptial births in Australia have actually increased somehwat among older women, among those in the 25 to 29 and 30 to 34 years of age categories. This suggests that at least some women who for one reason or another have decided not to marry, or who have not met someone they want to marry, are deciding that they want a child anyway, that they have a right to motherhood without necessarily having to be a wife to exercise that right. This is quite a different view, I would suggest, from that existing a scant ten or fifteen years ago.

What about divorce? Divorce has risen; in fact, the number of divorces doubled the first year after the introduction of the Family Law Act Cmth) 1975. Subsequently the number declined markedly, although by no means to the level of the years preceding that Act. The divorce rate is still a good deal lower in Australia than it is in the United States, however. By plotting current duration-specific divorce rates, an estimate can be arrived at for the United States of some 35 to 40 percent of marriages likely to end in divorce - that is, if present duration-specific rates continue. In Australia, this proportion does not appear to be going to rise very much above 25 to 30 percent; in fact, I would calculate that it will be closer to 20 than to 25 percent.

Most of those making submissions to the Joint Parliamentary Committee that has been established to inquire into the operation of the 1975 Family Law Act see in this Act some indication that Australia is on the skids, that the family is doomed, that perhaps even western civilisation is doomed. Yet there are some who see the Act as heralding a millennium, a time when nobody will be unhappy in marriage because nobody will be forced to live with someone with whom he or she does not want to live. All kinds of 'facts' and figures are cited - even though these are irrelevant because there are no data on the points at issue. For example, divorce statistics are used as indicators of marital disharmony, of marital disruption or unhappiness. Yet

there are doubtless a lot of people living in quite unharmonious unions who, for a variety of reasons, put up with this condition for the sake of the children, the social stigma attached to it, whatever it may be.

In the submissions to the Joint Parliamentary Committee a number of individuals seem to have been much concerned about the divorce rate as such. Of course, the obvious answer to that is that if we really are particularly worried about the divorce rate there are two sure ways of reducing it all the way to nil. One is not to have divorce at all, which is the way they do it in the Republic of Ireland. With no divorce, the divorce rate is zero. Whether that means that the Irish are all happy in their married lives is another matter. The other way is to encourage people never to marry. If no one marries, there will be no divorces. These are two sure-fire ways to reduce the divorce rate to zero. No one has yet proposed them, but in moments of desperation perhaps someone will.

There is no assurance as to what increases in divorce rates mean. We recognise that the range of the family's functions is probably considerably narrower today than in the past. Moreover, families do not, on average, have as many children as they used to have, so there is less need now to stay in a marital union to look after children for a long period of time. That is one element. Another is that women are not as dependent as they once were on a man - any man - for economic support. Still another relates to changes in housing. As more flats, more townhouses, more group housing become available, we approach a situation in which people are less likely to be condemned to live together in order to have a halfway decent place to live. With these changes, I would suggest that the functions of the family have become narrower.

Yet, at the same time, those functions that are performed by the family may have become more important than ever: those pertaining to psychic, emotional needs. The family is possibly the only institution in our society offering a haven of rest, a setting in which to restore the spirits and ego. As we become a more competitive society, as we put more emphasis on economic growth - never mind what kind of economic growth or what group of people benefit from it - it seems that the family becomes increasingly important for the satisfaction of the very fundamental human needs. One factor is that today we are a more mobile people than was previously so in Australia, both socially and geographically. When the population was concentrated in five cities, people tended to stay in the same city for a lifetime: this meant remaining with family members, with siblings, with parents, with friends of long duration. As we become what economists so delight in, namely, a more mobile labour force, the problems of adjustment, of meeting various psychic needs will be multiplied. They will not be capable of being met by people on whom, because of long association or because of family

relationships, one has some prior emotional claim. To the extent that these needs are met, it will more than ever be through the family.

I would therefore suggest that the real wonder is not why has the divorce rate risen so high, but rather why has it remained so low. What a marvellous group of marriages must exist in Australia. We ought to wonder why they have apparently been so stable, rather than to concentrate only upon why so many of them have not been stable.

What about fertility? Fertility rates in Australia are now below the level necessary for replacement purposes. That does not mean however, that the Australian population will vanish. It does not even mean that Australia will have zero population growth. In fact if fertility continues at its present levels Australia will have continuing population increases for approximately another 50 to 60 years - even without immigration. This rests with the age structure, itself a result of of the unusually high birth rates in this country until about five or six years ago. If the current net reproduction rate, which is just a little below the level sufficient to replace and keep on replacing the number of women of childbearing age in Australia today, were to continue indefinitely, in 600 years' time there would be only half as many Australians as there are today. Now that is something to worry about!

Just because we are moving towards zero population growth rate at the present time does not mean that fertility cannot go up again and it does not mean fertility cannot go down further. One of the matters sometimes raised is that of the ageing of the population: this would ensue with a continuation of today's fertility rates and no net immigration. As it happens, this more aged population would be only a little older than that of the present time. In fact, the proportion age 65 and over would be only 3 percentage points higher than it is now. The population age structure would be virtually identical with that obtaining in England and Wales and also in Sweden for the last decade. Backward, grey-haired, decrepit populations indeed!

The way the decline in fertility is taking place in Australia is not through numerous individuals avoiding parenthood altogether, but rather through their not having those fourth, fifth, sixth, seventh children that they used to have. This means that childbearing will be finished sooner than it was before, and also that children will be raised with fewer siblings than previously. In fact, the typical child will have but one sibling.

A lot has been written as to the effect of different numbers of siblings on individual personality and development, on how the child performs at school and in various other areas. Over 400 such studies are summarised in a publication produced by the Public Health Service in the United States Department of Health and Education and Welfare in 1977.

What comes out of this is that the small number of siblings to family does not truly seem to be related to performance and other activities. If there is anything to be drawn from it all, it is that the only child does rather better in school, on average, and seems to adjust somewhat better to his peers than does the child who has other siblings at home. Obviously, if the only child is going to have playmates, they will have to come from outside the family; they will have to be people on whom he or she has no prior claim. Thus it is hardly surprising that the only child might be a little better able to adjust to different types of families, to different types of personalities and so on.

But this change in fertility does suggest, I think, that we will have to do something to make it possible - more possible than it already is - for children and adults to come together without necessarily being related to one another. Adults will have to be able to have greater access to other people's children, to children who are not their own. This can be extended to child care, as well. We will have to devise more ways for children to come into contact with adults who are related to them, and to children who are not related to them.

The various changes in family structure and behaviour raise a number of important issues. But I would say in conclusion that while we are now experiencing a number of changes, the majority of these changes are probably more for the better than for the worse. Some of the changes that are at present being thought of as undesirable may turn out in the long run to be about the best that could have happened.

CHILDREN AND COERCIVE PARENTAL AUTHORITY:

TOWARDS A SOCIOLOGICAL PERSPECTIVE

Anna E. Yeatman*

Over the last decade, within such advanced capitalist societies as Australia, the United States and Britain, 'child abuse', 'spouse assault', 'rape-within-marriage' and 'rape' in general, have been constituted as social problems.[1] What these phenomena are, why they exist, and what should be done about them, all depend on how they are socially constructed. It is, then, impossible to understand what, for example, 'child abuse' or 'spouse assault' is, except by means of investigation and analysis of the social construction of these problems.

The process and nature of the social construction of social problems in modern, capitalist societies is complex and affords many specific lines of sociological analysis. This complexity should be reduced, bringing to bear on this particular group of social problems two general questions. First, why is it the case that the phenomena defined respectively as child-abuse, spouse-assault, rape-within-marriage, and rape have been constituted increasingly, as problematic? What social values identify them as problematic? Second, if in general it is specific groups of professionals who enjoy relative monopoly over the socially legitimate construction of social problems, how do they translate that monopoly, and its attendant authority? This question is particularly germane for two reasons. First, this group of social problems involves, in each case, 'victims': that is the action which is found to be socially problematic identifies itself only with regard to victims of it. Thus, it is interesting to enquire as to the extent to which the professional constructors of these social problems not only consult the victims but integrate them into the process of defining what it is that constitutes the problem. Secondly, some attention to professional domination in the socially legitimate constructions of social problems is warranted to the degree that it

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is these constructions that inform typifications of who is likely to commit the problematic act, and whatever sanctions, criminal or therapeutic, are brought to bear against those who are labelled as committing such acts.

These questions must be pursued specifically with regard to the social construction of 'child abuse'. Indeed theoretically child abuse can be ranged with spouse-assault, rape-within-marriage and rape as expressions of violence in domestic relations and recently, there has been greater proclivity to link child-abuse and spouse-assault in the social constructions of these as social problems. Yet it seems to be the case that the construction of child abuse has a relatively distinct and discrete history. As a social problem 'child abuse' emerges somewhat earlier than 'spouse-assault' and 'rape'. Moreover, there are some significant differences in the way 'child abuse' has been constructed relative to the other social problems at hand, and it remains the case that there is very little analysis of why these problems should be empirically conjoined to the extent that they are.

Before looking at the social construction of 'child abuse', two further comments are necessary. None of these social problems, with the exception of 'rape-within-marriage', are strictly new social problems: in some way or other, there have been anticipations of these identified social problems prior to the last two decades. However, it is fair to say that domestic violence has never before been so salient or regarded as of such legitimate concern: this is clearly attested to by both realised and mooted new legislative initiatives with regard to domestic violence. Secondly, implicated in the constructions of these social problems is concern with the status of children and women in society: these constitute the two prime 'at risk' social categories with regard to domestic violence, if violence is defined as physical force, or the threat thereof.

A brief history of the development of the construction of the problem 'child abuse' is revealing. Both official and professional constructors of the problem (e.g. Royal Commission on Human Relationships, 1977: 160, para 27; Newberger and Bourne, 1978: 597; Gelles, 1975: 363) date its 'recognition' from the work of Kempe, a paediatrician at the University of Colorado. Kempe named and documented 'the battered child syndrome' in an article by that name published in the American Medical Association Journal in 1962. Newberger and Bourne add that

> 'In the four-year period after this medical article appeared, the legislatives of all 50 States, stimulated partly by a model law developed under the aegis of the Children's Bureau of the United States Department of Health, Education and Welfare, passed statutes mandating the identification and reporting of suspected victims of abuse.'

The 'battered baby syndrome' appeared in Australia in the late 1960's and in 1969, South Australia introduced mandatory reporting (Burns and Goodnow, 1979: 159).

When it is recalled that the New York and British Societies for the Prevention of Cruelty to Children were established in 1874 and 1899 respectively and that such nineteenth-century novelists as Charlotte Bronte and Charles Dickens graphically indicted acts of cruelty by guardians, sometimes parents, the dating of the construction 'child abuse' as a salient social problem from 1962 appears peculiarly naive and difficult to explain. Perhaps it required to be 'rediscovered', for reasons that are investigatable: certainly it can be suggested that the term 'child abuse', to cover acts of violence by adults towards children, is new and, further, the construction 'child abuse' is a more complex and refined definition of the problem that is to be found in the nineteenth century. Incidentally, those (Burns and Goodnow, 1979: 8-9: 158-9) who argue that improved diagnostic techniques specifically, radiology, generated 'medical recognition' of child abuse on a serious scale, do not explain why it was that radiologists and other physicians began to apply techniques to investigate whether so-called accidents were in fact cases of abuse.[2] Further, if it is indeed in the professional interest of the physician 'to discover or describe a new disease or syndrome' (Illich, cit Newberger and Bourne, 1978; 597), this does not explain the value paradigm that directs investigation along particular lines. Nor does it explain why the 'battered child syndrome' so quickly aroused official national concern.

The history of the construction of the problem 'child abuse' roughly breaks down into two phases. The first phase concerns its construction in terms of the 'battered child syndrome': 'the term was originally meant to apply to young children (usually under three) who had received "serious physical abuse, generally from a parent or foster parent"' (Royal Commission on Human Relationships, 1977: 160, para.28). Knowledge of developments in the second phase allows us to bring out the significant features of the first. First, abuse was very restrictively defined in terms of medically constituted evidence of physical abuse: since clean-cut abuse of this kind was inevitably fairly serious the construction tended to bracket out less serious expressions of physical abuse, as well as to confine 'abuse' to physical expressions. Second, the focus on young children, principally infants, tended to bracket out both abuse with regard to older children and, since infants are essentially domestically-bound, instances of public institutional abuse of children. Third, the medical contribution to the construction of the problem legitimated both the moral entrepreneurship of the medical profession in this area, and a psycho-pathological model of explanation for abuse. Apart from the vested medical interest in drug or psycho-therapy for 'abusers' (see Newberger and Bourne, 1978), there was necessarily the idea arising out of the medical model of deviance that what caused the abuser to do what they did was some pathological disturbance. This focused the problem as arising out of either individual psychological problems or the collective pathology of those 'socially distressed', that is the poor, the alcoholic and the socially 'deviant' generally.

Two consequences followed from this psycho-pathological perspective on child abuse, restrictively defined. First, no serious disturbance was caused the society, no stimulus to reflect on generally condoned patterns of child rearing, because the problem was seen to be one of pathological disturbance. Second, the positivist self-understanding of medical science, which represents it to be value-free, obscured the way in which the problem had been constructed, not simply recognised. Specifically, it disguised the value-laden construction of potential 'abusers' and was one more additional support for the way in which social control of the poor and marginal is disguised as their expert-provided welfare (see especially Newberger and Bourne, 1978; Gelles, 1975; Piercy, 1976).

The second and present phase of the social construction of 'child abuse' seriously complicates the problem. First, the professions involved in the construction of the problem widen: mandatory reporting and statutes concerning child abuse bring a significant 'legalization' of the problem, and the salience accorded the 'battered child syndrome' stimulates research on child abuse by psychologists, sociologists and others. The result of this is a structured field of conceptual debate and conflicting data with regard to the problem. Second, the originally restricted definition of child abuse as in effect 'baby battering', is questioned both empirically and speculatively: older children become viewed as potentially 'at risk' (see e.g. Gil, 1971, 639-40). Third, what constitutes child abuse begins to be constructed as definitionally problematic, not only in terms of what the term should cover, but also the problems of operationalising it in professional recognition of abuse when clear-cut evidence is lacking.[3] Clearly the expansion of the category at risk and of the nature of 'abuse' even if it is confined to physical abuse, change conceptions of the likely incidence of abuse within a population. This, if professional recognition is regarded as the only legitimate way of discovering abuse, along with the private character of child-parent relations, makes the problem almost intractable.

However, there are two even more significant features of this current phase of social construction of the problem, 'child abuse' First, questioning is made of the typification of 'abusers' as likely to be poor. This typification is supported by reported incidents, but mandatory reportage is more likely to be adhered to in public than in private medical settings: 'Physicians in public settings seem, from child abuse statistics, to be more likely to see and report child abuse than those in private practice' (Newberger and Bourne, 1978: 601). This, when combined with the greater frequenting of hospital casualty departments and clinics by the poor rather than the affluent, along with the way in which the professional elitism and social status of doctors is likely to conduce to typification of the poor as the potential 'abusers', it seems more than likely that the poor are over-represented in reported incidence of child-abuse. Moreover, there is evidence that "affluent families childhood injuries appear more likely to be termed 'accidents' by the private practitioners who offer them their services" (Newberger and Bourne, 1978: 595; and see Skolnick, 1978: 288).[4]

The second significant feature of the current construction underlines the scepticism as to easy typification of abusers as pathological or deviant, individually or socially. This feature explores the problematic issue of where to draw the line between corporal punishment and child abuse by recasting it in a particularly challenging way. If, it is argued (Gil, 1971: 634-6; Burns and Goodnow, 1979: 178; Royal Commission on Human Relationships, 1977: 168, para. 97), the society condones or tolerates corporal punishment as a mode of exercising parental (or teacher) authority over children, child abuse is always a possibility.[5]

The implications of this point are these. First, with regard to child abuse, we must distinguish the basic cause from the precipitating factors which allow 'discipline' to become 'abuse'. The basic cause lies in the normative acceptance of corporal punishment as legitimate exercise of parental authority over children. The precipitating factors may lie in stress of any kind, not simply the particular stresses associated with poverty (see Burns and Goodnow, 1979: 174). Second, if the cause is the normative acceptance of this mode of discipline of children, the most basic remedy lies in normative change, that is in:

> 'developing clear-cut cultural prohibitions and legal sanctions against such use of physical force'

(Gil, 1971: 646). Third, it is pointless to address the problem by social control strategies aimed at the 'deviant': it is necessary to encourage all parents to see themselves as potential abusers precisely because they are likely to share normative acceptance of corporal punishment as a mode of disciplining children. If it is a shared problem of this kind, collective 'self help' strategies along with counselling and, of course, the securing of reproductive self-determination for women, appear the most efficacious practical approaches.

Now, undoubtedly, I have focussed on the more sophisticated expressions of the second and current phase of the social construction of child abuse. I now wish to offer some analysis of the value framework the two phases presuppose.

Elsewhere (Yeatman, 1979), I have suggested that systematic destructive conflict between men and women in domestic relationships can be comprehended only in terms of a struggle round the legitimacy of patriarchal power. The crisis of legitimation of patriarchal power of adult men over adult women persists, but the government acceptance of spouse-assault and rape-within-marriage as social problems indicates that, <u>in principle</u>, this crisis has been resolved, in favour of a democratic, consensual relation of authority. Stated

differently, while there persists inconsistencies at the level of state agencies, especially those involved in the administration of social welfare, at the level of broad legislative principle, patriarchal authority of men over women is no longer regarded as legitimate.

The question arises as to how the construction of child abuse as a social problem relates to this crisis of legitimation of patriarchal power. When patriarchal power was intact, the common law conception was that children were chattels of their father. It is possible to argue that the progressive breakdown of absolute rights of custody of the father over this children in favour of equal rights of custody of both parents meant not the breakdown of patriarchal authority over children but its extension to the mother (Yeatman, 1979: 8). The problem here arises as to how then to interpret the State's assumption of a right to intervene with parental authority if the physical integrity and welfare of the child are considered at stake.

Clearly the social construction of 'child abuse' presupposes that right of intervention by the State, and here concern over child-abuse is to be situated as an aspect of the tradition of 'child saving' social reforms which began towards in the last half of the nineteenth-century (see Takanishi, 1978). It is the securing of the physical integrity and welfare of the child by the State which legitimates its intervention with parental authority. Necessarily, this partakes in the crisis of legitimation of patriarchal power in two related respects. By assuming such right of intervention the State implicitly contests the patriarchal conception of children as chattels of the family. Indeed, the logic of such intervention is to reconstitute the status of these children to become that of members of the whole society. In so doing, the State is assuming authority over children as over all its members, and, in effect, then delegates this authority to the social parents of children, that is to those who actually undertake, and are recognised as undertaking, the primary socialisation of children.

This is the formal aspect of the challenge to the patriarchal mode of parental authority. The substantive aspect lies in the conferral on the child of a right to physical integrity. Implicitly, this is to confer on the child status as a distinct will, a will separate from that of his/her parents. To state it in the language of classical democratic theory it is to confer on the child property in his/her person, for one has no right to life if one's life belongs to another.[6] The parent, as with the State, is placed under obligation to respect the right to physical integrity of the child.

If this is the general direction of challenge to patriarchal parental power over children, it is clear that it is a challenge that unfolds slowly, and often by fits and starts. However, it is noteworthy that 'child abuse' has been defined as a social problem at about the time when, in matters of custody dispute, for example, there is increasing stress, not merely in principle, that the child's welfare must be the 'first and paramount consideration'. This is to confer on the child an interest separable from those of his/her two parents.

It remains the case, however, that the challenge to patriarchal authority over children has to date been partial only. The child's rights as a distinct person or will have been conceived minimally: the existence of the will has been secured, but its substance has been denied. Thus the State has intervened with patriarchal parental authority to secure the conditions of physical maintenance and social cultivation (compulsory schooling) of the child's will, but has assumed the neo-patriarchal right to speak for the child in its protection. Undoubtedly, this limit on the challenge to patriarchal authority partly arises out of confusion as to how far the will of the child may be recognised when it is not sufficiently mature to be treated as an independent or responsible will.

Paternalist tutelage of the child's will, however, directly contradicts the principle of recognition of the child as a distinct will. There are signs of recognition of this contradiction emerging now: e.g. in more frequently heard criticiyms of the lack of elementary principles of the rule of law in children's courts (see Stamm, 1979; and Rodham, 1976). To be adequate to recognition of the child as a distinct will in process of maturation, adult tutelage or authority over the child's will must be rationally accountable to it. This accountability cannot be secured without the participation of the child's will in it, i.e. to invite questions from and the perceptions of the child with regard to the matter at hand, which simultaneously presupposes education of the child in the asking of such questions and legitimation of the child's articulation of its constructions of reality. This is a consultative mode of adult authority: it does not dispense with the domination of the adult over the child. It makes it merely rationally accountable, and the extent to which this accountability can be operative is clearly relative to the degree of competency, i.e. maturation, of the child's will. Such a consultative model of parental authority entails, then, positive rights and obligations for the child: it is the final blow to patriarchal modes of adult authority over children. Finally, it clearly rules out all forceful constraint of the child, except where the child's symbolic, moral and cognitive capacities are so underdeveloped as to allow no other recourse, and where absence of such constraint can be shown to positively harm the child.

At this point, I want to return to the social construction of 'child abuse'. The first phase of construction of this social problem is a good illustration of the minimal recognition to be secured to the child's will that is widely and officially accepted now: the child's physical person is to be secured against violent physical attack. The second phase of construction goes further, toward a more developed construction of the rights of the child, in implying that not merely abuse, but physical punishment in any form, in inadequate to recognition of the child as a separate, albeit immature, will.[7] Yet, the second phase of construction does not transcend the paternalist, protective model inherent in the first; and it is certainly not indicated positively why corporal punishment should be regarded as an illegitimate mode of exercise of adult authority over children.

Specifically, the second phase of construction of 'child abuse' is severely limited by its failure to provide the following. First, there seems to be very little enquiry as to how overt physical force, or the threat thereof, fits into a general coercive frame of sanctions applied by adults, particularly parents, to children. This may be particularly salient if the hypothesis offered by Goode (1971: 628) is correct: this suggests that the more social resources a male parent ('patriarch') has at his command, the less likely he is to revert to use of physical force. Accordingly, if it is true that class-privileged sections of our society deploy physical force against their children less frequently than the poor, it may be that they are deploying other coercive and non-rationally accountable sanctions (e.g. financial reward and punishment). Second, as intimated already, there is not attempt made to offer a positive model of non-coercive parental authority.

Finally, the second phase of construction of 'child abuse' fails to consider whether and how children might be brought into the construction of the problem. This failure exists on two levels, one of which is glaring when contrasted to 'spouse-assault' and 'rape'. First, with regard to spouse-assault and rape, it is well known that efficacious sanctioning of these offenses depends on the willingness of the victim to both recognise and report the offense, depends i.e. on the resistance of the victim to the assault. Indeed, positive attempts are made to encourage such resistance on the part of women. With regard to child abuse, where the problem of reportage in relation to incidence is paramount, there seems to have been very little consideration of involving children in reportage. Clearly, this could be done with due care to the rights of parents and outside any process of formal sanctions: indeed, children over a certain age, (let us put it at ten years), could report to instituted peer groups, who then send delegations to the parents to investigate the report. Second, with all the problems of definition of abuse, it is noteworthy that no one seems to have considered it worthwhile to invite children to participate in the definition of what constitutes 'abuse'. Clearly, this would require to be undertaken after a certain age, and collectively, so that children could compare, sift and reflect on their own judgments of 'abuse' and 'fairness'.

To conclude: if the emergence of 'child abuse' as a social issue, not to say the United Nations International Year of the Child itself, testify to the breakdown of patriarchal power over children, it is clear that both are couched in the terms of paternalist, protective tutelage of children. To this extent both legitimise, even while they question, patriarchal authority.

FOOTNOTES

1. For the purposes of this paper, I shall not speak specifically to the social problems of 'child sexual molestation', 'marital murder' and 'sibling aggression', but presuppose their generic links to the problems named above.

2. Medical recognition is generally considered to have begun in the mid-]950's with the arguments by Caffey and other American radiologists that (a) infants presenting as subdural haematoma often showed multiple fractures, both old and new, and (b) the most probable explanation lay in trauma or injury, even though this was often denied by parents or care-givers because of the implication of negligence. The following ten years saw further papers documenting the use of force (rather than some psecial frailty of infants), leaving the radiologists often in the position of having to convince 'trauma insensitive colleagues' ...that their diagnosis could be in error, and their approahc to parents somewhat gullible...the spark to a sharp increase in awareness....is generally credited to Henry Kempe...' (Burns and Goodnow,]979:]59)

3. Gelles (]975: 365) cites the definition given in the U.S. Child Abuse Prevention and Treatment Act of]973, and comments: 'While some parts of this definition are straightforward, there is a serious problem in determining what constitutes 'mental injury', 'negligent treatment 'maltreatment', 'harm', or 'threatened harm'. While broken bones can be identified by X-Ray, how can we identify a mental injury. Furthermore, if no bones are broken, who is to determine what is an injury and what is routine use of physical punishment?'

4. This questioning of a social pathological etiology of child abuse relates to questioning of the widely accepted proposition that battered children become battered parents. When this thesis is conjoined with as association of abuse with poverty, we get a particular version of the 'cycle of pvoerty', pathological sub-culture, argument. As Burns and Goodnow (I979: I76-I79) point out, the problem with claims as to a cycle of abuse is that the methodology is often faulty, as expressed in the lack of control groups.

5. Gil's statement (I97I: 643-4) is worth offering in full: 'One important conclusion of the nationwide surveys was that physical abuse of children as defined here is not a rare and unusual occurrence in our society, and that by itself it should therefore not be considered as sufficient evidence of 'deviance' of the perpetrator, the child, or the family. Physical abuse appears to be endemic in American society since our cultural norms of child rearing do not preclude the use of a certain measure of physical force toward children by adults caring for them. Rather, such use tends to be encouraged in subtle, and at times not so subtle, ways by 'professional experts' in child rearing, education and medicine; by the press, radio and television, and by professional and popular publications. Furthermore, children are not infrequently subjected to physical abuse in the public domain in such settings as schools, child care facilities, foster homes, correctional and other children's institutions, and even in juvenile courts'.

6. Thus, logically enough, Locke and Rousseau are forced to contest the understanding of paternal power as patriarchal power.

7. We recognise that there is a wide difference between the occasional slap administered by a frustrated parent and the kind of violence that constitutes child abuse, but in principle we believe that physical punishment is not a suitable way of dealing with the problem of children, nor is it an effective way of changing behaviour. (Royal Commission on Human Relationships, I977: I69, para. I06).

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THE VIOLENCE

CHILD ABUSE: AN OVERVIEW OF RECENT DEVELOPMENTS

Jean Hamory*

Family Violence - Child Abuse

In speaking of intra-familial violence and the child it must be recognised that children are against the odds, physically and usually intellectually inferior to adults around them. Even if it is possible to run away, there is usually no where to go. Probably the child lives far away from uncles, aunts and grandparents who might be expected to understand and minimise the situation in which she is found. This is not to say that children themselves make no contribution to situations of violence. There may be aspects of a child's physical condition or behaviour that invite or predispose violence against him or her. As a survival mechanism, patterns of behaviour may be adopted that demand attention from adults who seek to ignore the child, or fail to provide the love and caring attention needed to grow into a whole adult.

Familial and inter-personal violence has long lasting and varied affects on children. Fear, deep-seated anger, detachment, learned or modelled behaviour - all responses to violence at home can last into adult life and colour it permanently. But violence directed by parents or caretakers against children takes the actors and the observers into another realm, where deep-seated human values and emotions are aroused. Some would suggest that basic instinctual imperatives or beliefs connected with the survival of society become involved.

The re-emergence of interest and concern about child abuse in Australia began a decade ago. In that short time there has been a movement from the stage of admitting and recognizing visible signs of physical abuse in infants to recognizing and perhaps redefining a whole range of adult acts - omissions and commissions - that can militate against the normal development of the child. This is indeed a far cry from the eighteenth century when children, having passed out of infancy, were treated as mature adults and from a tender age had to survive disease, felony, violence and adult cunning and exploitation in a busy street life of the day.

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In Australia the approach to child abuse has been tied to history, degree of public interest, and existing power structures, usually medical, legal and protective, in each State. As a result a grand diversity exists with the smaller States, by reason of small population and better visibility of cases, making somewhat faster progress than the larger States in the development of integrated programmes.

Differential development State by State is an area of considerable interest. However, it is sufficient here to say that each jurisdiction is beginning to look beyond State boundaries at child abuse in relation to Australian culture as a whole. As a wider view of child abuse emerges, institutions in Australian society and procedures impinging on children's lives - such as schools, residential care, children's and family courts, institutions, reformatories and foster and other alternative care - must be regarded.

Sensitised by the views of David Gil (I975), broader sociological perspectives cannot be ignored: negative issues in our society weighing heavily on family life and the parental role in particular require consideration. Gil suggests these are in reality the obscure starting places from which many of the individual instances of child abuse will be presented to professionals working in the area.

In looking at family violence and specifically child abuse, the first question to be addressed is - is child abuse a crime? In I976 at the Royal Society of Medicine in London Jan Carter suggested that considering whether child abuse is a crime leads into three separate issues - law, science and morality - all of which have been 'tried out' in differing identifiable approaches to child abuse. First, vested in the law is the concept of free will and a belief that penalties will act as a deterrent. This is a reminder of the days when all identified abusing parents were charged with child abuse and put on trial. When child abuse is seen as a criminal act in the legal sense, interest begins to focus not on the victim but on the offender. The main issue becomes the descriptive characteristics of the offender as a person deviant from the remainder of society. Second, the studies of Selwyn Smith, an Australian psychiatrist working in England, typified the scientific approach to child abuse. This led to a pessimistic defeatist attitude, with scepticism about the possibility of treating abusers successfully. The third approach, Carter states, utilises situational morality - that is, the morality of compassion for the abused and the abuser, rather than an appeal to justice. This approach signifies the first time that the needs of the child have been considered. It seeks to modify, even circumvent, formal legal codes in favour of rehabilitation. Such a model emphasises the value of the family and its worth for preservation. Yet such a model must be prepared to show results better than those of the criminal justice system if it is not to receive open disapproval and non-cooperation of the law enforcement system.

To return to the deviancy model, earlier approaches to child abuse in Australia confirmed the dominance of the medical model which continues to persist in some States. This dominance occurred because of heavy reliance upon psychiatric skills. These were sometimes forensic and sometimes therapeutic, but always viewed the offender as 'sick'.

Paediatricians, too, because their evidence was so essential to diagnosis of cases in the early stages, became powerful in determining the later management of the family and the child. However, their dominance in the power sense was not catered for in terms of their knowledge and experience, as well as their training. Yet integrated with this medical model came the social work rehabilitative model which increasingly influences the direction and management of child abuse today. One of the most important functions of this role is the promotion of co-ordination and co-operation in the multi-disciplinary, multi-agency teams characterising most successful child abuse management services today. Where this social work role is lodged in the social service or protective service component of the team, Carter suggests there is a problem of deciding as to the morality and the effectiveness of sentencing people to compulsorily receiving help. This of course is a day-to-day problem in the life of social workers in protective services. Some social workers can resolve this problem and some cannot - but child advocacy is something parents can understand and are eventually able to respond to. As a final issue, Carter suggests that there is some value in arguing whether or not all offences involving familial or domestic relationships might not better be dealt with in a special structure (for example, a Family Court or a Children's Court) outside the system of criminal courts.

The therapeutic model has also been termed the 'compassionate' or 'humanitarian' approach. The model developed with the increasing realisation that abusing parents were in very few instances psychiatrically ill but were revealing themselves to be psychologically deprived, isolated persons, low in self-esteem and with little confidence that they were capable of controlling their environment or their own lives. These feelings often coincided with high expectations of their child's behaviour or with minimal resources or skills in child management. They either had no child care available to them or they frequently resorted to unreasonable physical punishment to control the behaviour of their children. Often they appeared to live in relative poverty with little or no family support. Some, no matter what their financial position, were socially isolated or geographically separated from relatives, or too independent or fearful to seek out assistance from helping services. A group that has not yet been fully documented is that of the single woman with children being rejected or abused by a de-facto male partner. Another group contains normal coping persons who under conditions of increasing and unforeseen stress commit isolated acts of child abuse that are unlikely to be repeated.

In Jan Carter's model of professional ideology here reproduced, these examples lie on the dividing line between psychotherapeutic and social models. It would be invaluable for professionals to remain at this point and develop an approach integrating the most valuable aspects of each, or at least to enable each approach to inform the other.

As these factors reveal themselves, the impetus towards finding solutions by law that seem to satisfy justice and traditional morality began to appear less attractive. Social and community welfare departments were identified with the possibility of finding more constructive or creative ways of preventing abuse, and with support for parental and family functioning. It was at about this period in I975 that the first National Australian Conference on the Battered Child was organised and hosted by the Western Australian Department for Community Welfare in Perth. At the same time there was a marked increase in action and development of programmes in most States, some of this as a result of the conference.

A subjective view of the efficacy of the setting up of special units is that today there appears to be a reduction in the severity of injury in young children presenting at hospitals. Because in Western Australia this approach was begun earlier than most, and because there were fewer entrenched institutions that had to be convinced of the value of the new approach, it is useful to outline the Western Australian experience.

From I969 until the present, work has been based upon the initial premise that most parents do not wish to hurt their children; that if they do so, it is a response to a situation of stress of one kind or another; and that these situations are therefore open to change. There is no hesitation in stating, and also acting in accordance with, the community's view that parents have a responsibility to try to make changes, and if necessary they must accept help to enable them to do so. In return, the community has a responsibility to attempt to change circumstances and help those parents who are in need, indeed all parents. The media has also assisted in underlining a strong emphasis on parents seeking help before serious abuse occurs and making their choice from a group of clearly listed agencies for this purpose.

Although the Child Protection Unit is required to seek legal protection for a constant small number of physically abused children under six years each year, its main work lies in developing a wide range of therapeutic supportive responses to the difficulties parents encounter, and to prevent further abuse. It has reduced re-injury to a minimal level in client families and has gained considerable confidence and greater creativity in dealing with the physical abuse of small children, as well as training others in the wider departmental field services to do so.

Yet it would not be appropriate to attempt to determine the incidence of child abuse without looking at Australian society, asking whether particular elements contribute to child abuse. Most workers in child protection tend to link child abuse with factors in people's present or past lives. Some of these are external (permanent or temporary) and some internalised and psychological. Allan has from her careful review of British and American controlled studies of abusing parents, suggested a more fruitful approach. That is, developing a system whereby weight could be given to factors thought most influential in producing violent behaviour in various individuals. Initially she suggests four groups can be distinguished;

I. Persons in whom violence seems to stem from persistent or extreme external pressures for which they can perceive no alternative means of relief.

2. The group whose early learning experiences predisposed them to violence because they have come to regard violence as normal and are not aware of alternatives to harsh discipline.

3. Violence stemming from emotional deficiencies characterised by jealousy, a lack of empathy, extreme egocentricity and poor impulse control (these could arise from childhood learning experiences or be linked with youth and general immaturity).

4. Violence appearing as a symptom of severe serious mental illness.

In looking at these four groups, it becomes obvious that intervention based on both therapeutic and social models as outlined by Carter are required. For example, any model programmes failing to constructively involve fathers must have reduced effectiveness. Unfortunately, few Australian programmes have truly managed to involve male partners effectively.

The Australian Family

Very little research is available as to Australian child-rearing and socialisation practices. It is only recently that researchers like Freud and Goss in England and Straus (I979) and Gelles (I978) in America have begun to look at self-reported family violence, linking it to cultural factors.

The Australian family of today is very different from the family of thirty years ago - when it was virtually immobile, probably living near relatives, inter-generationally aware and interested and involved with most of its members. The family today is, of

course, well known as the nuclear family, and increasingly as the one-parent family. It is intensely privatised with a strong investment in 'coping' or being seen as coping; travelling extensively, sometimes by choice and sometimes not; committed to conspicuous consumption, and infinitely more vulnerable under the relentless pressure of twenty-four hour child caring tasks.

It is debatable whether Australian society generally may be described as violent though it may reasonably be termed aggressive. However, violence is certainly becoming part of its entertainment; so much so that finally an influential sector of its public has been successful in demanding respite from this. It may never be assessed how much damage has already been done by depiction of violence in entertainment. Recent accounts of child abuse in America (Gelles, 1978) speak horrifyingly of attacks on children by parents with guns and knives. It may be possible to state that this would not occur in Australia, however the 1975 general social survey of fire arm ownership in this country shows farmers, fisherpersons, hunters, timbercutters have a reasonable estimate of 44 firearms to 1,000 of the population. Tradespeople, production process workers and labourers have 302 firearms per 1,000 of their population. It should also be noted that 168 per 1,000 of firearms are kept in the bedroom of the house and 47 per 1,000 are kept in the kitchen, lounge, dining room or elsewhere.

It is well known that most murders occur within the family. How many women or children are made submissive by the threat of firearm use? Should not joint approval of husband and wife be needed for all firearms kept in the house? Recently demands have been made for police to carry guns at all times in Western Australia, and guns have recently been put on sale in supermarkets in this State. This is a State where firearms' licensing and control is generally very effective. The question should therefore be asked whether Australia is on the brink of an escalation into the type of situation existing currently in the United States, where the use of firearms in domestic and marital situations is almost common place.

More police recognition of the need for special training and the adoption of techniques designed to reduce violence and increase sensitivity would pay dividends. The development of the crisis care services now presently underway in South Australia is an encouraging sign, whereby police skills and social work skills support one another in family crisis situations that are potentially violent.

The Incidence of Child Abuse in Australia

The unpalatable but not unexpected truth is that no one is able to estimate the incidence of child abuse in Australia. It is unlikely that the habit will continue of attempting to adapt American figures or estimates to Australia, since these estimates now vary widely and in any case bear little relation to the Australian situation. The sole statistics available in Australia come from hospitals and child protection services; the risk of sample bias and duplication in these areas is great, and the range and definition of child abuse vary from State to State. In recognizing this, the State Welfare Administrators recently agreed to accept a common definition of an abused or maltreated child. This definition is:

> 'A non-accidentally injured or maltreated child is one who is less than eighteen years of age whose parents or other persons inflict or allow to be inflicted on the child physical injury by other than accidental means or gross deprivation which causes or creates a substantial risk of death, disfigurement, impairment of physical or emotional health or creates or allows to be created a substantial risk of such injury other than by accidental means. This definition includes sexual abuse or sexual exploitation of the child.'

The definition was proposed by South Australia. It allows for a wider definition of abuse than physical injury sustained through punishment or violence. Burns and scalds, the ingestion of poisons, punitive toilet training, non-organic failure-to-thrive, the administration of drugs, psycho-social dwarfism, the withholding of food or liquids are some of the more subtle kinds of abuse that are forced to be recognised. Many of these in fact have physiological and measurable results for children so it is impossible to dispense with a scientific medical model. Some would argue that the shifting of focus towards sociological aspects of child abuse has spurred on the medical profession towards the identification of more subtle abuses. Furthermore, although the accepted definition of child abuse attempts to resolve many anomalies, the definition may yet be viewed critically by legal and social work practitioners.

Reporting and Registers

Briefly, States with mandated reporting - South Australian, Tasmania, New South Wales, and soon Queensland, do not have uniformity of detection, reporting or data collection. Western Australia, the Australian Capital Territory and the Northern Territory as well as Victoria have opted for non-mandatory or permissive reporting only, allied to community education. It is assumed that permissive reporting

continues in the mandated States. Presumably all States maintain indexes of reported cases, but no central registers exist to far that would be capable of being used for diagnosis and case monitoring, as they are in some American States. Central registers could also be of great assistance in the following up of families which travel rapidly from State to State, where children are found to be at considerable risk. These families are difficult to lock into support services and in Western Australia they tend to be the families where the child may be most severely injured.

Because American States have mandatory reporting it does not follow that they all have sophisticated social welfare protective systems. These in fact range from an electronic data processing system to a bundle of cards in a shoe-box. Olson and Besharov (I978) of the United States Department of Health, Education and Welfare in Washington continue to advocate the use of central registers, although difficulties about access, invasion of privacy and removal of information are admitted. The authors advocate State wide systems that receive, store, monitor and analyse reports. All such registers are housed or should be housed in social welfare departments in the United States.

In Western Australia a pilot scheme for a central index has been set up from January I980 to which the major agencies and hospitals will contribute for a period of six months. No agency is as yet prepared to give individual identifying information however, so the resultant data will be available only to be utilised for forward planning of services for abused children of all ages. Inevitably the definition of child abuse will present difficulties.

Emotional and Sexual Abuse of Children

To address the problems contained in the area of emotional and sexual abuse of children demands the development of greater skills, more sensitive legislation and procedures, and closer interaction between the law, and the therapeutic and social welfare and community services that can support the child and the family. Our perception of emotional abuse once more is significantly connected with our culture, in its holding that all parents and children will 'fit' together and therefore almost automatically love each other. Korbin (I978), an anthropologist with a demonstrated interest in child abuse, points out that other cultures deal with the problems more realistically: eager surrogate parents await any child born in a small community if the parents cannot or do not want to rear the particular child. These arrangements are seen as entirely appropriate if they are suitable to all concerned. The child's satisfaction is seen as important and no shame or stigma is produced as in Western society. The reality is that in our culture parent and child can be locked into a relationship that is painful and destructive to both, and physically and emotionally damaging for the child.

Three things have helped to develop greater awareness of emotional abuse in Western culture. First, the impotence of professionals in effecting changes in resistant families was noted; secondly, the growth in development psychology; and thirdly the accounts of adults who had suffered abusive treatment at the hands of their parents.

Presenting a case of great emotional deprivation or psychosocial dwarfism to a court requires professional expertise and minute observation over time of the child's behaviour and progress, linking this with periods in and out of parental care. The court needs to be assured at that point that ways are already being explored to provide a future plan of case management that works together with the family towards changing and reshaping the parent/child relationship, or if this is impossible, towards helping the parent, over time, to relinquish the child for adoption or other long term alternative care.

The psychological and intellectual deficits suffered by these children are now being documented by many researchers - such as Hopwood and Beeker (I979) and Ohlsson (I979) and this is gaining impetus for a better deal for such children. New ways must constantly be sought to reach the parents who can be oblivious, hostile, or passively or actively resistant to any suggestion that their care of the child is curiously distorted. Sometimes court action for care and protection may be the operative factor galvanising parents into facing their situation and making necessary changes.

Sexual abuse is probably the least talked about, most distressing and most controversial form of child abuse. Until recently most efforts and concern were directed towards 'perverts' and stranger molesters about whom the young were warned and who were apprehended without much difficulty. The rehabilitation rate for these offenders seems not to have been particularly successful. The small number of cases of rape, sexual abuse and incest that previously came to light were dealt with by very severe penal provisions or by psychiatric methods.

The Western Australian Department for Community Welfare's recent survey of cases coming to criminal justice or professional attention in the Perth metropolitan area in the three months from October to December I978 revealed I27 cases. Fourteen percent of these offences were against males; eighty six percent against females. Fifty two percent were against children of between I3 and I8 years; thirty one percent were of children between 7 to I2 years and seventeen percent were against children under the age of six years. In forty nine percent of the cases the molester was a parent figure and in twenty six percent it was a person known to the child but not a relative. Of the parent figures who molested the children, sixty four percent were the natural fathers; twenty one percent were the step father; twelve percent were a de facto father; and three percent were mothers. Although the sample is far from conclusive and represents broad indicators only, it supports

the proposition that female children are more at risk as to sexual approach from male persons living in proximity to them, or known to them, than from strangers.

When the respondents to the survey began to examine the services available to the sexually abused child and the family of that child, a depressing and disturbing situation emerged. Some of the most significant features:

1. The fear, ignorance and immobility of both professionals and the public at the possibility of police intervention.

2. Over-harsh penalties, leading to denial at all costs by molester, or to the final destruction of the family and consequent guilt of the child.

3. Frequent adult disbelief and suspicion of a child's account of the molestation, very young children subjected to cross-examination in the presence of the accused.

4. Numbers of cases investigated by police, but not charged, presumably for lack of evidence, and the subsequent abandonment of these families, without any referral to any counselling services.

5. The intermittent life long effects on many women's lives as a result of childhood molestation by a father figure.

6. The inability of prison or probation services to provide the intensive support and therapy needed for each family member individually (but particularly the child), and family therapy if needed.

7. A self perceived lack of confidence, experience and skills in the helping professions in this area.

8. Though many agencies said the child was their primary client, this was shown to be inaccurate.

This report recommended the setting up of a special abuse team to gain practical knowledge and to attempt to co-ordinate, speed up and humanise legal, welfare and therapeutic assistance to victims and their families. Though approved, no funding is yet available.

Questions About the Future

Apart from normal problems inherent in specialisation, specialist services for child abuse have their champions and their critics. Arguments against are that they divert much needed resources away from support services, they over-sensitise the population, and that they prevent integration of local services. Arguments for the services point to results shown - such as reduction in severe injury, a reduction in the cost to the community by intervention in the generational cycle of abuse - though not yet substantiated and the impetus given to case work and family support through co-ordination of cases utlising a multi-disciplinary child-centred approach.

In Western Australia the view would be supported that specialisation has a time and place in which growing skills, time and commitment can be exchanged for knowledge that can be made available to all. The specialisation process then lapses or is diverted into another area of need.

Successful fusion of services can occur. In the area of family-related sexual abuse the most successful and long standing management programme known has combined the most positive elements of justice system supervision, therapeutic counselling and a dynamic parent self help group - the Child Sexual Abuse Treatment Program attached to the Juvenile Court in San Jose, California (Giaretto 1977).

Some women's groups have seized on the issue of child sexual abuse as one where the statistics so far available seem to point clearly to men as aggressors and exploiters of children. While this is undoubtedly true in many instances, the entire issue is infinitely more complex than the problems presented so compellingly by the women sexually molested as children. Responsibility will ultimately fall on both women and men, with the key to improvement lying in both hands. Angry denegration and denouncement will not only serve to delay constructive dialogue, but may threaten the confidence of children listening to the debate. They above all have a right to feel more confident about the ability of society to understand what is happening and to help them and their parents deal firmly and constructively with it. Without detracting at all from the issue of male violence against women, which must completely be opposed, the issue of sexual violence against children requires separate and calm consideration, and above all helpers who have come to terms with their own sexuality and who have no need to crusade.

Conclusion

An attempt has here been made to outline recent developments in the Australian approach to child abuse and to point towards new developments that have effected, and will further effect, people, professions and services, and above all, children. The development of services and skills across all States has been uneven and not spectacular, but there has been consistent attention, and there is a growing feeling that national implications must be addressed

The problems of legislation should be more fully confronted, and it is here amendments in legislation, law and legal procedures could be made to minimise the harsh impact of the criminal law on family relationships. At the same time strengthening of the legislation should be sought to uphold the equality in law between persons that is said to exist but in practice is in some doubt. Child abuse is what a society thinks it is - too often it is what a professional person thinks it is. No one really knows what the child thinks. Probably he or she would just like it to stop.

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STAYING TOGETHER FOR THE SAKE OF THE CHILDREN: SPOUSE BEATING AND ITS EFFECT ON THE CHILDREN

Frances H. Lovejoy*
and
Emily S. Steel#

"No lions rage against the lioness:
The tiger to the tigress is not fierce:
No eagles do their fellow birds oppress:
The hawk does not the hawk with talons pierce:
All couples live in love by nature's law,
Why should not man and wife do this and more?"

An apology for Women - William Heale, 1609[1]

When divorce was difficult or impossible to obtain, various rationalisations for staying together were made. One of the most common was 'staying together for the sake of the children.' Although the difficulties of one parent both caring for the children and earning the money to support them and him/herself may have been considerable, the phrase nevertheless implies that it is better for the children to have a stable home situation with incompatible parents than to suffer the change of living arrangements attendant on divorce or separation. The freeing-up of divorce law in both England and Australia since World War 2 coincided with the period of wives increasingly working outside the home. Consequently Bowlby's 'maternal deprivation theory' which promised dire results for the children of working wives might be extended more frequently to those of working divorcees.

Since 1971 when Erin Pizzey first rendered wife battering visible as a widespread social phenomenon, little has been done to assess the effect on children of continued marital violence or the cessation of marital violence.

Again, the adults in the family are more likely to be seen as 'clients' by the marriage counsellor or social worker and so the focus of the counselling activity may be on resolving adult conflict rather than coping with the children's priorities. Although the intervention

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of the state in child abuse cases (as in N.S.W. in recent years) has redressed the balance in some extreme cases, the 'best interests of the child' are still not accorded the same degree of concern as the 'best interests of the spouses'. In particular we are concerned in this paper with the effect on children of a violent marital relationship.

Often the violence does not extend from parent to child. Here the psychological effect on the child of the parents' violence to each other may be glossed over.

In order to determine how extensive violence was in parents presenting for marriage counselling, the co-operation was sought of the Marriage Guidance Council of N.S.W. First results came from an in-depth study of 50 persons presenting for counselling. A very large amount of data was collected on these cases as the presence or absence of a large number of factors was sought for predictive purposes. 'Violence' was mentioned to be present in 16% of the cases. (Note: This data had been collected before we approached them to ask if 'violence' might be included in the study.)

Next, marriage counsellors employed in a variety of suburbs of Sydney and Newcastle were asked if they would note for one specified week (first week in August, 1978) how many of their current cases involved violence.

The results of the survey are given below. Two counsellors did not fill in the total size of their case load so that the total number of cases involved in the survey has an estimated upper limit of 300. (Cases reported by the other counsellors totalled 282.) At the first interviews in which the couple presented, it was specifically mentioned that the man beat the woman in 58 cases; this was reported in a further 24 cases in later interviews, and suspected by the counsellor in another 6; that is in about 27% of the cases the husband has beaten his wife.

An interesting result of the survey was the number of cases in which the woman had beaten the man. This emerged in the first interview in 5 cases, in later interviews in 7 cases and was suspected by the counsellor in another two, that is in approximately 4% of cases going for counselling the woman had beaten the man.

Two facts need to be emphasised; first, that these were marriages already in difficulty when the counselling took place; second, that these were not interviews in which the parties were asked if they had been violent - the information came out normally in the course of the interview.

Questioning of workers at the Council elicited the information that the style of violence differed. Men were more likely to use violent techniques compatible with their strength and social conditioning, such as punching or hitting with the hands or a weapon. The woman did such things as pouring boiling water from a kettle on the husband or tipping the contents of a frying pan, say (with hot fat) on him; such actions can cause quite severe injury and yet require little physical strength.

In 12 cases (approximately 4%) both spouses were violent. Of all the cases, 13 involved violence by either parent towards the children. In approximately half of these, the parents were violent to the children but not to each other.

Thus this study confirms earlier work that the violence may tend to be specific (that is, directed towards a particular person such as the wife) rather than general (one person lashing out at all members of the family).[2]

Before going on to record the reasons which triggered the violence, it may be appropriate to record the general background of the respondents.

Occupational background is available for spouses:-

	HUSBAND		WIFE	
	Reported	Suspected	Reported	Suspected
Professional	20	1	5	0
Skilled	22	4	19	3
Unskilled	42	0	19	1
Don't know	4	0	2	0
Home duties	-	-	42	4

Educational background:-

	HUSBAND		WIFE	
	Reported	Suspected	Reported	Suspected
Tertiary	12	2	8	0
Secondary	55	6	57	8
Primary	4	0	1	0
Don't know	7	0	2	0

Thus we can see that the persons presenting for interviews come from a variety of occupational backgrounds. In most cases recorded, they had an education level of secondary or higher. It can be seen that even ordinary data like occupation was not recorded for all cases. Consequently the incidence of violence may also tend to be substantially under-recorded.

The reasons provided by the spouses for violence were:-

	First interview	Second interview	Suspected
Drink	17	6	2
Jealousy	11	2	2
Frustration	6	9	4
Sex	7	2	0
Power	3	1	0
Money	3	1	1
Access to child	2	0	-
Nagging	6	3	-
Housework unsatisfactory	2	0	-
Temper	3	0	-

	First interview	Second interview	Suspected
Mutual argument	3	1	-
Don't know & other	7	3	-
Boredom & isolation	-	2	-

It can be seen that most of the reasons given reflect adult concerns rather than directly involving the children. Nevertheless, the effect on the child's feelings of security, or arguments on matters not directly affecting it should not be dismissed out of hand.

The tendency to insist that any set of parents is better than none for a family of children is surely no longer the central gospel of the social worker though it does persist in the community in general.[3] A lot of marriage counselling still aims to patch an impossible relationship - to keep the family together.

Work done by such bodies as the NSPCC School of Social Work, London, UK, shows the change in attitude - 'although it is felt that an emphasis on the immediate family and the cutting off of close ties with grandparents, uncles, cousins and aunts is not a helpful thing for the children, this view may need to be modified'[4] and goes on to note the frequent need for care orders and the like since the mother is most likely to fall into another similar relationship. This inability to avoid violent relationships seems a characteristic of women brought up in one. Naturally enough, since their early training has been that a true male (father) reacts to frustration of almost any type by lashing out at the only legal assaultee (mother). Goode, in his study of people in different social settings and their dynamics of conflict, Faulk in his work on 23 men in pre-trial detention for assault and Steinmetz summarising data from 37 families in Delaware, amongst others, support this theory of learning and the acceptance of the situation and expectation of its fulfilment in her own union are equally supported by Goode's later work,[5] Steinmetz and Straus' splendid text,[6] Gayford's work with 100 cases from the Chiswick Woman's Aid[7] and Gelles' more recent interviews with 80 New England families of whom 41 included beaten wives.[8]

The children of the violent home are generally described as, if boys, aggressive, restless and violent and, if girls, as withdrawn, docile and biddable by the Steinmetz study, Jean Renvoize English study, Erin Pizzey, Margaret Ball in work with the Family Service of Detroit and Wayne County, Detroit, Michigan[9] and probably most important though very brief, there is mention of anxiety. As a school counsellor, I have also noted quite a number of hyperactive children coming from broken homes, some of which were, and some I suspect of having been earlier scenes of violence. Since the children with whom I deal are predominately of High School age (12+), they are capable of considerable fluency and insight when dealing with their problems, but one must allow for an element of fantasising and exaggeration. However, it seems certain (on supporting evidence) that in many cases the marriage has broken down because of a violent father. In two cases that I clearly recall the mother's educational standard was far above that of the father - professional she, unskilled he - and the elder girl of each family had suffered severely in her school work, falling to the bottom of a class

in which there was every reason to expect her to excel. This is a criminal waste of valuable intellectual powers - added to the risk of perpetuating a poor attitude to a marriage relationship.

The two schools at which I gained most of my work experience were so-called 'rich' girls' schools of the North Shore Line of Sydney, so that my experience is indeed limited. I have also noted, and had confirmed by discussion with my colleagues in similar boys' schools, that the bully boys are also predominately products of unhappy, broken and violent homes.

Although this suggests very narrow experience, it is significant in that most of the studies are of less advantaged families, and the stereotype of the beaten woman is the companion of the laborer, unskilled worker or the unemployed. One part of this stereotype can be substantiated, however, in that alcohol most frequently plays a part in the violent scene, I think likely because an Anglo-Saxon male needs the excuse 'I was drunk - I didn't know what I was doing.'

The two points I would emphasise are that the cycle of violence needs to be broken as early as possible for the sake of the children - before violence breeds violence and the pattern is set, and that this requires more help to enable the battered wife to remove herself from the violent partner as outlined by Erin Pizzey, J. Melville in her English work, Del Martin in the summarising of N.O.W.'s work in its Task Force on Battered Women, Betsy Warrior (who outlines the temporary nature of the help from the refuges) and Langley and Levy in their work on the American experience.[10]

Since a 'loving and affectionate childhood tends to innoculate persons and societies against violence, it seems likely that this would be particularly true for violence in the family'.[11]

Social re-education of both perpetrator and victim as well as the children, and adequate shelter for the refugees from violence seem the only answer, but who is to pay?

FOOTNOTES

1. From An Opposition to Mr. G. in his assertion, who held in the Act at Oxforde Anno 1608 that it was lawful for husbands to beat their wives.

2. Lawrence Angle and Lester Pierce, "The All-American Blood-Soaked Family" (1976) 5 (2) Human Behavior 34-35.

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THE MYTHS OF CHILD RAPE

Sydney Rape Crisis Centre*

Child rape has also been called 'incest', 'child molesting', and 'child sexual assault'. For the purpose of clarification, 'child rape' includes all of the above terms and runs the full range from forced masturbation, fondling genitals, to anal, oral, and vaginal rape.

MYTH : Very few children are ever raped.

FACT : At least 70% of Australian female children are raped sometime before the age of 15 years.

MYTH : Most children are raped by strangers.

FACT : Less than 10% of children are raped by strangers. About 70% are raped by their fathers, uncles, grandfathers, or other relatives. The remaining 20% are raped by men that they 'know' such as neighbours, family friends, etc.

MYTH : Most children are raped in playgrounds, parks, toilets, lanes, etc.

FACT : Over 80% are raped in eithertheir own home, the offender's home, or their mutual home.

MYTH : Girls and boys are in equal danger of being raped.

FACT : 90% of child rape victims are female - while 99.9% of attackers are male.

MYTH : Men who rape girls are 'psychopaths' - usually from lower class society.

FACT : Child rapists are 'normal' men - most are married with children of their own, hold 'respectable' jobs, and are from all classes and backgrounds.

MYTH : There is a social 'taboo' against child rape.

FACT : The 'taboo' seems to be on talking about child rape. In fact, this silence makes it easier for the child rape to continue.

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* Kimberley O'Sullivan and Radda Gorgan attended the Conference as representatives of the Sydney Rape Crisis Centre, but presented no formal paper. A transcription of their talk may be obtained from the Institute.

MYTH : Girls often fantisise/make up stories about being raped.

FACT : This is a device used by men to obscure the truth as rape for women and girls is a reality.

MYTH : Once a child tells somebody she is being raped, 'help' will immediately arrive.

FACT : Only about 50% of rape victims ever tell anybody and most are not believed when they do. The girl is more likely to be believed when it is a 'stranger in the park' who raped her. If, however, she is believed, rather than bring it out into the open and possibly break up the family, the relatives or friends may have a 'quiet talk' to the offender and encourage him to 'seek help'. Preservation of the family is seen as more important than the girl and her feelings/ needs, etc.

The man in these cases will more often than not, 'lie low' for a time then continue the abuse, accompanied by threats so that the child does remain silent, or switch to another child.

MYTH : Mothers can tell if their husbands are raping their daughters.

FACT : Few men are stupid enough to have a witness around when they rape. Child rape is also usually accompanied by threats of one kind or another to make sure the child doesn't tell her mother or anybody else. ('This is our little secret' or 'This is what Daddy's do' or 'Don't tell anybody or else'.) Children are taught to do what adults tell them to do.

Mothers, because of all the myths, are unlikely to suspect their 'normal' husbands, uncles, etc. of rape.

MYTH : Little girls often 'provoke' men by the way they act.

FACT : As girls are encouraged to be 'ladylike' and 'sweet' almost anything they do can be seen as 'asking for it'. (E.g. by smiling sweetly, kissing Daddy goodnight, or even having the body of a young woman.)

MYTH : Fathers rape their daughters because they are not sexually satisfied with their wives.

FACT : The mother's sexuality is not involved. Rather it is the man's sexuality and it's link with power that is important.

As a result of these myths and misconceptions, the reality of child rape continues almost unnoticed. Child rape happens to girls of all ages. About 70% of it happens more than once, and in fact may continue for years.

About 50% of the children are coerced/threatened/intimidated into remaining silent. Of the 50% who do tell somebody, about 70% get no support or are not believed.

Often it is blamed on the mother - she 'should' have known, or she 'should' have watched her children more carefully. Mothers are seen as 'overprotective' if they watch their children every minute and 'neglectful' if they leave a child with a trusted friend, husband, or relative while they go shopping. She is seen as 'frigid' if she doesn't enjoy sex, and 'oversexed/nymphomaniac' if she does. In short, she can't win even though it is the man who is raping the girl.

In actual fact, if the girl tells her mother she is being/has been raped, she is more likely to get help and support from her than from anybody else. But then the mother runs into walls trying to help the daughter.

Often the police see the complaint as a 'domestic affair' and will do nothing. They may also be reluctant to prosecute because 'the case is not likely to get through the court'. First there must be 'good' medical evidence to 'prove' that the child is telling the truth. Anything short of full anal or vaginal penetration does not usually show up under a medical exam.

In the court a child under the ages or 5-7 years may be seen as not old enough to understand the oath, and therefore cannot testify.

The permission of the Attorney General must also be obtained before the case can go ahead if the rapist is the father.

In court the judge must read the 'corroboration statement' which states that it is

> ' ... dangerous to accept the uncorroborated testimony of a woman, child, or mentally disadvantaged person.'

In other words, if it comes down to the woman or child's word against the man's, the jury must acquit the man.

A very low percentage of cases ever make it to court. If the police do press charges, the man/offender may be arrested and even spend the night in gaol, but will soon be out on bail and possibly back in the family the next day. It is usually about three months until the preliminary trial, and may take up to a year for the full case to be heard. The rapist often uses this time to further intimidate the child and/or the mother to get the charges dropped. He may even manage to threaten the girl into saying that she 'made it all up' - hence part of the reason for the myth that girls do make it up.

Child rape is happening right now to some girl that you know - maybe even in your family.

AN OVERVIEW OF RESEARCH ON SIBLING AGGRESSION AND VIOLENCE WITHIN THE FAMILY.

Maureen Kingshott*

My search for information concerning aggression and violence between siblings living within a family unit has highlighted the lament of researchers in the 'violent family field' that the sibling relationship has remained undiscovered, undisturbed and unexploited by their social science confreres till recently. Doubtless overshadowed by the increased interest in parent-parent and parent-child conflicts, siblings appear to have been left by researchers to work (or whack) out their relationships between themselves. This dearth of research illustrates the normality of sibling aggression in basically white, Anglo-Saxon cultures. As Jane Pfouts opines in an article entitled The Sibling Relationship: a forgotten dimension:

> '....Sibling interaction, like parent-child interaction, is characterised by ambiguity and complexity. When people speak of their siblings, they speak of ambivalence, of solidarity and rivalry, of the desire to be equal and yet differentiated... A child may take many roles in interaction with his siblings: beloved companion, model, pest, torturer, rival, teacher, protector, caretaker or vengeful enemy....Interaction among siblings is more likely to be stressful and volatile than that in most other human relationships because and the sibling relationship is so firmly rooted in ambivalence. Love and hate are the two side of the sibling coin.'[1]

Violence between siblings, or perpetrated by one against another, is accepted as commonplace and is generally regarded as a normal aspect of family relationships. '.... they fight all the time. Anything can be a problem....Oh it's just constant, but I understand that this is normal. I talk to other people, their kids are the same way.'[2]

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The concept of 'sibling rivalry' in literature and traditional family experience can encompass behaviour ranging from covert aggression in the form of lies and subtle manipulation to overt pitched battles of fierce proportions and murderous inclination. It seems that as a result of our general acceptance of sibling rivalry as a fact of existence - a stage through which we all pass, most of us with less trauma than some - researchers have pursued behaviour patterns considered to be less 'normal' such as mothers beating their children, and husbands bashing their wives. After all, mothers are instinctively prone to love and nurture their children, and husbands to adore their wives. Siblings, by contrast, are expected to react jealously or aggressively toward each other in even the most harmonious and passive of families.

Problems for Researchers

Those hardy individuals who have ventured to investigate sibling aggression in even the most rudimentary scientific fashion have almost unanimously outlined the problems inherent in such a task and the pitfalls that await their research colleagues. To quote Dr Pfouts again:

> '....Not only are the dynamics of sibling interaction complex; so also are the demands of sibling research design. The use of adequate controls is particularly crucial because without them one cannot determine which differences between siblings are due to their interaction and which are the result of such nonsibling variables as socio-economic status, family size, race, or ethnicity. In addition, the composition of the sibhood must be taken into account. Such structural factors as the sex of sibs, birth order, and age spacing, considered both individually and in interaction with each other, not only curcuially affect the sibling relationship itself but also present serious methodological problems.'
>
> '...Disregard of these problems by researchers has plagued the literature on siblings, which is, in the main, characterised by small, unrepresentative or unmatched smaples, inadequate controls, lack of an explicit theoretical framework, and impressionistic, AD HOC analysis...'[3]

In similar vein, Dr Suzanne K. Steinmetz lists seven common problems encountered in researching family violence.[4]

1. The data tend to focus on a general frequency of behaviour over a broadly specified time, e.g. 'during the last year'. What one family defines as 'frequently' another family might consider 'almost always' or 'usually' or even 'now and then'.

2. The data relied upon is usually retrospective, e.g. recollections of past problems or behaviour patterns.

3. Data are usually gathered from mothers/wives to the exclusion of fathers/husbands and children/siblings.

4. Data are usually gathered from only one member of the families concerned. This gives a biased - though not necessarily inaccurate - account that is impossible to verify.

5. Research usually focuses on a particular dyadic combination parent/child or husband/wife interaction - rather than studing the entirety of the family environment in both its nuclear and broader social or community aspects. There are ramifications in understanding the causes of family-related violence for gaining a better understanding of violence in society at large.

6. The families from whom data are gathered are usually considered unrepresentative of the population at large, hence the extent and nature of family violence in our society is extremely difficult to ascertain. There is thus a need to examine the interactions of families not labelled as deviant.

7. Most studies reported in the literature have used either unstructured, in-depth interviews to obtain their data, or conversely easily comparable, standardised questionnaires - A research design that combines the advantages of semi structured interviews with questionnaires is suggested as providing a better method of collection data on faimily interaction.

Some Studies and Statistics

Under this sub-heading I have outlined the more systematic (less subjective) research studies that relate to the phenomena of sibling aggression and violence.

(a) Some Causes of Jealousy in Young Children
Mabel Sewell (USA 1930)[5]

Seventy children in nursery schools and pre-school clinics were studied by means of case records and home visits. The study is limited to sibling rivalry between a young child and its newborn brother or sister, and results indicated that jealousy seemed to be associated with certain age differences between the child and the sibling. A difference in age of 18-24 months for girls and 30-36 months for boys was found to show the greatest amount of resistance and negative behaviour. Inconsistency in parental discipline was considered to be a major factor and more closely associated with jealousy than were the number of other children in the family and conditions of poverty and its associates. A large (but unspecified) group of the 70 children exhibited what was considered jealousy by bodily attacks on the younger sibling, whereas others were more subtle in their behaviour.

(b) Sibling and Parent-Child Incest Offenders
T.C.N. Gibbens, K.L. Soothill, C.K. Way[6] (U.K. 1951 and 1961)

The previous and subsequent offences of all incest cases charged in England in 1951 (102 cases) and 1961 (177 cases) were studied. I have included the summary of this study in deference to those among us who incline to the view that an incestuous relationship does not necessarily begin spontaneously as a manifestation of natural interest and/or affection between the relevant relatives but is more likely to be initiated through pressure - psychological, physical, or both - by one or other of the pair involved:

> 'the criminal statistics do not differentiate between father-daughter and brother-sister incest (or rarer types). About half of incest cases 'known to the police' reached court in 1951 and 1961, possibly influenced especially by sibling cases, which fell from a third in 1951 to a quarter in 1961. Full criminal records of 1961 offenders were traced in 97 per cent, and the present report concentrates on these; 96 per cent of all incest cases charged are convicted; in fact very few plead not guilty'.
>
> 'There are major differences between paternal and

sibling offenders and their treatment. A large majority of the fathers are first offenders (61 per cent) and of the 68 cases all but one had no subsequent convictions of any kind. Only 12 per cent of all the fathers had any subsequent convictions, but since 72 per cent of them were over 40 at the time a low rate can be expected. Some 13 per cent of fathers had prior sexual offences, usually indecent exposure or indecent assaults, and among these were the small group who were a serious menace. Nevertheless, over 90 per cent of fathers received substantial prison sentences in both 1951 and 1961. It is questionable whether such routinely heavy sentences are justified.'

'On the other hand, some 60 per cent of sibling offenders were aged 20 years or less and 74 per cent of them received non-custodial sentences. A surprisingly high proportion of all the siblings had previous convictions or findings of guilt (54 per cent), but these were overwhelmingly for the common types of property offences (theft, burglary, taking cars etc.), with very few previous sex or violence offences. Moreover, in the next 12 years they continued to be heavily convicted, 49 per cent being reconvicted mainly for property offences but to an increasing extent (15 per cent) for violence. There were very few with previous or subsequent sexual offences. The explanation for this high rate of crime is not clear from the data. It might indicate that (1) the incest behaviour came to light more often where the family was in other respects under observation by social workers or probation officers;

(2) sibling incest is concentrated in the large over-crowded families;

(3) a group of young recidivists continue offending partly or wholly because of sexual maladjustment, which often does not reveal itself in actual sexual convictions.'

As these researchers were more interested in comparing the punishments received by fathers and siblings, the issue of violence between the siblings concerned is a matter not mentioned in the study and therefore one purely for speculation.

(c) Maltreated Children: A Study of Hospital Records
P.M. Price, J. Krupinski (Australia 1967-73)[7]

A total of 316 records of children suspected of having been maltreated, who had attended the Royal Children's Hospital, Melbourne between 1967 and 1973 are the subject of this report. The reporters were interested in parental abuse rather than sibling aggression hence the emphasis in the following extracts:

> 'Evidence as to who was responsible for inflicting the injuries was available for only 111 of the 394 incidents. The information was unavailable for 187 incidents involving boys and 96 involving girls. Whilst maltreatment may be suspected, experience suggests that it is very difficult to be sure who is responsible. As the Chief Medical Social Worker at the Royal Children's Hospital said:
> 'In most cases we would be sure it was a parent but we don't know which one.'
>
> 'Table 8 gives a distribution of the 111 incidents where there was evidence of responsibility for the injuries.'[8]

Person Responsible for Maltreatment

Person Responsible	Boys		Girls		Total	
	No.	%	No.	%	No.	%
Mother	45	67.1	28	63.6	73	65.8
Father	16	23.9	11	25.0	27	24.3
Both parents	5	7.5	4	9.1	9	8.1
*Other relative	1	1.5	1	2.3	2	1.8
Total	67	100.0	44	100.0	111	100.0

This table shows that there was no difference between boys and girls in relation to whether it was the mother or the father who inflicted the injury.

Whilst the evidence available suggests that more mothers were responsible for maltreating their children than were fathers, it is unwise to draw any conclusions from this evidence as information is available for only 28.2 per cent of the 394 incidents. Further the sample of mothers to be discussed later included 8.3 per cent (25) who were single.

For 35.1 per cent of the incidents no explanations were available.

The two main explanations given by parents were that the injuries were the result of an accident (27.7 per cent) or that the temper of a parent was lost (19.9 per cent). The loss of temper was explained by such comments as:

> 'I did my block'.
>
> 'I could have killed him the other day. I picked him up and threw him through the door I would have cheerfully killed him. I'm not really a baby basher. He runs away, just takes off.....He was all right until I took up a part-time course.'

Other explanations were 'child did it himself'(6.1 per cent). 'Other child did it' (3.3 per cent),* 'punishment' (3.8 per cent), and 'other person did it'. (1.5 per cent).* A variety of other explanations made up the remaining 2.6 per cent.[9] No further delineation of who the 'other relative', 'child' or 'person' asterisked in the above results is given by the reporters, thus we are left to speculate on the possibility of sibling involvement in these cases of physical abuse.

(d) National Commission on the Causes and Prevention of Violence 1968-1969 (U.S.A.)[10]

This commission collected data in a representative sampling of seventeen major cities in the U.S. In these cities combined, 15.8 per cent of homicides involved husband-wife killings; 2 per cent children killing a parent; 3.9 per cent parent killing a child; 1.4 per cent brother-sister killings; and 1.6 per cent 'other family' homicides. Additionally, 14 per cent of all aggravated assaults (i.e. physical injury of a grievous character, with a gun, knife, or similar weapon, causing serious injury) were between family members half of which were husband-wife assaults.

Once again we are left to speculate upon the perpetrators of the other half of these aggravated assaults between family members.

(e) The Sibling relationship: a Forgotten Dimension. Jane H. Pfouts (U.S.A. 1972)[11]

Fifty pairs of brothers comprised the subject of this research study, the hypothesis for which was as follows:

'When siblings differ significantly in culturally valued characteristics, a less well-endowed child will show more hostility toward his siblings than will a more favourably endowed child. To control for racial, structural, demographic, and class characteristics, all fifty families in the sample studied were white, intact, urban, and middle class. To control for family size, sex, role differences, and age differences, all families had only two male children (no twins) no more than four years apart between the ages of 5 and 14. The sample was not randomly chosen from among the available two-boy families but was stratified to include both sibling pairs who differed significantly in personality adjustment and sibling pairs who differed significantly in intellectual achievement, as well as siblings who did not differ significantly on either variable.'

The following tests were given to each child and comprised the instruments used to test the hypothesis:

- The family Relations Test, a sociometric device, required the child to distribute among cardboard family figures printed messages describing his feelings about specific members of the family and his appraisal of their feelings toward him and toward his brother. The results were quantified in such a way that the child's view of his place in the family and his positive and negative fellings toward his father, mother, and sibling could be analysed. Comparative analysis of the scores of each pair of brothers was also made possible.

- The Slosson IQ Test was used to assess the brothers' individual and comparative intellectual ability.

- The California Test of Personality measured the child's personal and social adjustment as well as yielding subscores on such factors as self-esteem and social skills.

For purposes of analysis, the fifty pairs of brothers were divided into four groups on the basis of the comparative scores of each pair of brothers on the personality test and the IQ test. The findings generally supported the hypothesis that when children differ significantly in highly valued characteristics, the less well-endowed will show more hostility toward siblings than will the more favourably endowed.

Group A The equally endowed brothers were equally ambivalent toward each other (-.30 and +.30) as predicted.

Group B. The intellectually gifted brother was ambivalent (-.10) and his less able brother quite hostile (-.29). The difference approached but did not quite achieve significance in the predicted direction.

Group C. The intellectually able, well-adjusted brother was ambivalent (+.08) whereas his equally able but maladjusted brother was hostile (-.34). This predicted difference was statistically significant beyond the .05 level.

Group D. The intellectually able, well-adjusted brother was ambivalent (+.05) and his intellectually and emotionally deficient brother was hostile (-.39). This predicted difference was significant beyond the .025 level.

Generally, the findings suggest that when brothers in middle-class, two-boy families differ significantly in personality assets or intellectual assets, the boy who suffers from the comparison feels hostility toward the brother who outshines him, whereas the adequate brother feels ambivalent rather than hostile toward his less able sibling.

(f) Child Abuse in New Zealand
D.M. Fergusson, J. Fleming, D.P. O'Neill (1967)[12]

This study reports the results of a national survey designed to provide information on the characteristics of incidents of child abuse, the nature of the family situation in which the abuse took place, and the characteristics of the children involved in these incidents. The sample described in this study consisted of all cases of alleged or suspected child abuse that came to the attention of the Child Welfare Division during the survey year (1.January-31 December 1967). A total of 363 individual children were involved in the 419 incidents of suspected or alleged abuse that came to notice during that year.

In the report the analysis of individuals responsible for abuse is limited to the parent figures of the abused child. However, 24 persons other than the child's parent figures came to the attention of the Division as suspects in survey incidents. Unfortunately for our purposes the characteristics of this group are not discussed in the main body of the report but are outlined very briefly in Appendix 6 of the report.

In the interests of layout a number of abbreviations have been used throughout the appendix.

A. Refers to abused children

NA Refers to non-abused children

R Refers to responsible persons - i.e. the individuals deemed to be responsible for abuse.

NR Refers to non-responsible persons - i.e. the individuals deemed not to be responsible for the abuse.

NA Refers to a residual group associated with incidents of non-abuse.

The distinction between abuse' and 'non-abuse' is explained in the report as follows and incidentally indicates one of the problems that plague students of family violence:

> 'The initial sample contained all cases in which there was some suspicion of abuse. The problem with which the authors were immediately confronted was to establish some systematic means of distinguishing the cases in which abuse had taken place, from those in which there was either insufficient evidence, or no evidence, of abuse. An initial examination of the data revealed that standardised criteria (e.g injury severity) were not adequate for this purpose, as cases often involved a complex set of evidential factors. To resolve this problem a judgmental approach to the definition of child abuse was adopted. Two judges independently rated each case on the six-point category system set out in the Table below. This table also shows the numbers of cases that were assigned to each category.'

ABUSE RATINGS FOR THE SAMPLE OF CASES

Rating	Number
1. Child definitely ill -treated	126
2. Child very likely to have been ill-treated	83
3. Child likely to have been ill-treated	91
4. Child possibly ill-treated, but case possibly accounted for by:	
(a) punishment	31
(b) accident or rough handling	8
(c) other	29
5. Child unlikely to have been ill-treated, case probably accounted for by:	
(a) punishment	14
(b) accident or rough handling	7
(c) other	23
6. No evidence of ill-treatment	7
Total	419

The criteria used in making these judgements were consistent with the following definition of child abuse: That the child had been subject to non-accidental physical attack or injury, including minimal as well as fatal injury, by an adult. In one group of cases an exception to these criteria was made. In these cases there was no evidence of injury at the time of the survey inquiry, but there was evidence that the child had been subject to injury or attack some short time prior to the investigation. These cases were categorised as abuse when the evidence was sufficiently strong to suggest that the child had been subject to undue physical violence.

After this initial classification had been made the sample of cases was partitioned into two groups:

1. Incidents of 'abuse', i.e. those cases described by categories 1-3 of the table.

2. Incidents of 'non-abuse', i.e. those cases described by categories 4-6 of the table.

There appeared to be no way in which the validity of these judgments could be determined. However, a check on the inter-judge reliability revealed that there was a high degree of concordance between ratings. A test/retest procedure carried out on a random sample of 54 cases revealed that inter-judge ratings correlated +.96 when the ratings were dichotomised as described above.

A similar procedure was used to classify responsibility for the incident. The adults who were caring for the child at the time of the incident were described as his 'parent figures' although these individuals were not always the child's natural parents. Each parent figure was rated according to the evidence of his or her responsibility for the reported incident(s), irrespective of whether or not the incident was judged to have been abuse. The table shows the ratings used, and the number of parents who fell into each category.

Returning to Appendix 6, those 24 suspect individuals other than parents were characterised thus:

Relationship to Child	R	NR	NA	TOTAL
Natural parent	2	4	0	6
Adoptive parent	0	0	0	0
Legal step-parent	0	0	0	0
De facto step-parent	0	0	0	0
Foster parent (not related)	0	1	0	1
Relative	6	1	4	11
Other	4	1	1	6
TOTAL	12	7	5	24

Age	N	NR	NA	TOTAL
10-14 years	2	1	1	4
15-19 years	3	1	1	5
20-24 years	2	2	0	4
25-29 years	1	2	2	5
30-34 years	2	0	0	2
35-39 years	0	0	1	1
40-44 years	1	0	0	1
45-49 years	0	0	0	0
50-54 years	0	0	0	0
55-59 years	0	0	0	0
60-64 years	0	0	0	0
65-69 years	0	0	0	0
Not known	1	1	0	2
TOTAL	12	7	5	24

When the explanations given by the child in the following table are considered in conjunction with explanations given by parents (in the study's raw data) such as 'arents considered their daughter may have been responsible' and 'mother punished the child for burning one of his sibs.' (10 explanations such as these were given), the tantalising spectre of possible abuse by siblings begins to materialise once again.

Child's Explanation	A	NA	TOTAL
Not applicable or not known, e.g. child too young, not asked, etc.	119	78	197
Child would not comment	11	2	13
Child explained incident away (i.e. offered an explanation other than that of infliction by an adult).	10	9	19
Child blamed some person	102	17	119
Conflicting stories from child	13	2	15
TOTAL	255	108	363

However, as with most of the other studies dealing with physically abused children, it is the parental relationship that was being examined, not the siblings' role, and I have included the study as much for what it does not say, as for what it does.

(g) Adolescents who Kill a Member of the Family

B.M. Cormier; C.C.J. Angliker; P.W. Gagne; B. Markus (Canada 1950-1974)[13]

This study is part of an inventory of all cases of adolescent homicidal violence in the Canadian Province of Quebec covering the period from 1950-1974. It focuses on homicidal violence in a specific relationship where the killer is an adolescent and the victim is a member of his family, either a parent or a sibling. The authors (inconveniently for our purposes) relate that as the incidence of sororicide appears to be extremely rare and mainly confined to children 0 in comparison with matricide, patricide or fratricide (also known as 'filicide') - they have decided not to discuss sororicide in this report. They continue with the following observations:

> 'Within the family group, the incidence of adolescents who kill a sibling seems low compared to adolescents who kill a parental figure. This can be explained in terms of our culture where brothers and sisters are either close to each other or very far apart. When close they share a lot and discover a lot together. When they are apart they tend to live the full experience of adolescence within their peer groups rather than within the nuclear family. Bad or conflictual parental figures often unite adolescent siblings rather than increase the conflict among themselves. This binding together of adolescent siblings promotes the discharge of aggression against the parents rather than amongst themselves. Conversely, good relationships with parental figures ultimately favour normal detachment of children from the family unit, so that in either good or bad parental relationships, adolescents are somewhat protected against homicidal aggression against each other. Thus, the lower incidence.
>
> In a previous paper we summed up the cases in a number of studies on homicide and included our own cases.[14]
>
> In comparison with the other types of homicide committed by adolescents, the combined incidence of matricide, patricide and fratricide is less frequent. In our own series of 26 adolescents who have killed, the ratio is approximately 1: 5 while in another series of 50, the ratio is 1:7. In covering some of the literature on homicide, out of a total of 100 cases described, including our own, there were 14 cases of matricide, 11 cases of patricide, and two cases of fratricide. Only three cases were adolescent girls, all of whom killed their mother. It is interesting to note that some authors state that the ratio of matricide over patricide is in the region of 2 to 1. However, in the literature cited in this chapter, the ratio is almost

equal. The reason for this appears to be that in adolescence the ratio is equal whereas when one does not take the age of the perpetrator into account, the frequency of matricide is higher.

Table]

COMPARISON OF ADOLESCENT MURDERERS IN THE LITERATURE

	Total number	Matricide	Patricide	Fratricide
Bridgeman	4	]	-	-
Briguett-Lamarre	50	I	5	I
Brown	I	I		
Carek Watson	I	-	-	I
Duncan, Duncan	5	I	2*	-
Malmquist	4	-	I	-
McKnight, et al	4	4	-	-
Medlicott	2	I*	-	-
Scherl Mack	3	3	-	-
Forensic Clinic	26	2	3*	-
TOTAL	]00	]4	]]	2

*Partnership

On the report on Homicide in Canada published in June I976 statistical data reveal that during the period from I96] to I974 there were 735 homicide suspects between the ages of 7 and]9 years. Two hundred of these suspects killed in the context of a domestic relationship defined in Statistics Canada as members of the nuclear family, common-law family and other kinship. There were 63 between the ages of II and I5, and I37 between I6 and I9.

These figures of course indicate to what extent homicidal violence is carried out within the family in general but do not specify the incidence of matricide, patricide and fratricide.

Although the sibling rivalty of brothers is known to all, only rarely does it culminate in fratricide. The reported incidence is low, and we could find only two cases. However, the true incidence may be somewhat higher, for the deaths of siblings may often be reported as 'accidents' in order to cover up and protect the child from legal and psychological sequelae. This has also been noted in cases of sororicide.

> Of the two cases reported, one boy was aged 17 and mentally retarded, while the other was aged 10. In these youngsters, one is impressed with the air of helplessness, of economic and psychological depression, and a certain distance between the individual family members, with a hesitancy towards intimacy. It is very different from the seductiveness, turbulence and brutality that is present in the cases of matricide and patricide. Both boys demonstrated an episode of impulsive and irrational behaviour as the result of experiencing a sense of helplessness or fear of not being accepted. They became enraged at their own impotence. In one of the cases, the parents, too, would react in a similar fashion.

(h) Sibling Violence. Suzanne K. Steinmetz (USA 1970's) [15]

The following extracts [16] indicate results from a number of research projects conducted by Steinmetz, her colleagues and others:

> 'Steinmetz, (1977b) [17] in an examination of physical violence between 88 pairs of siblings from 57 randomly selected families with two or more children between 3-17, found that high levels of physical violence were used by siblings to resolve conflicts. The study found that 70 per cent of the young families (mean age of all children eight or younger) used physical violence to resolve conflicts, most of which centered around possessions. Sixty-eight per cent of the adolescent families (mean age 9-13) also engaged in physical violence. Among this group, conflicts tended to revolve around personal space boundaries, touching or 'looking funny' at each other. Even among teenage families (mean age 14 or older) who fought over responsibilities and social obligations, 63 per cent used high levels of physical violence, a finding consistent with Straus (1974) who reported that 62 per cent of a sample of college students used physical force on a brother or sister during the past year. Further analysis of these data revealed that although male sib pairs more often threw things, pushed and hit than did female sib pairs (60 per cent against 49 per cent), the highest use of physical violence occurred between boy-girl sib pairs of which 68 per cent engaged in high levels of violence (see Table I). There are also differences in the use of physical violence based on the ages of the sibs. The data in Table 2 suggest that older sibs are likely to use physical violence to resolve conflicts than are younger sibs.'

TABLE I

THE SEX COMPOSITION OF SIB PAIRS WHO ENGAGE IN HIGH LEVELS OF PHYSICAL VIOLENCE

	Throwing Things	Pushing	Hitting	Combined Physical Violence
Girl/Girl (27)	37%	59%	52%	49%
Boy/Boy (22)	54%	73%	57%	6I%
Boy/Girl (39)	55%	88%	69%	68%

TABLE 2

AGE OF SIB PAIRS AND THE METHODS USED TO RESOLVE CONFLICT*

Age	Throwing Things	Pushing	Hitting
9 years or under (9)	78%	78%	I00%
9-I3 years (I5)	80%	I00%	I00%
II-I3 years and I4 or above (I7)	82%	82%	76%
I4 years and above (27)	6I%	74%	6I%

* Five sib pairs II-I3 and 8 or younger, one sib pair 8 or younger and I4 or above, seven sib pairs 9-II and I4 or above and seven pairs 9-II and 8 or younger are not included in the above analysis because of large differences in ages of sibs involved.

In another exploratory study, composed of a broad-based but non-representative sample of individuals between I8 and 30 years, 82 per cent of the respondents reported using physical violence to resolve a conflict between siblings (Steinmetz, I977a). Preliminary data from a nationally representative sample of 2,I43 families (Straus. Gelles, Steinmetz, I977) are also revealing. During the survey year (I975) I,224 pairs of siblings between 3-I7 years of age used the following methods to resolve conflicts (See table 3).'

TABLE 3

METHODS USED TO RESOLVE SIBLING CONFLICTS

Method	Per Cent
Pushing and shoving	60
Slapping	45
Throwing	39
Kicking, biting, hitting with fist	38
Hitting with an object	36
Beating up	I4
Threatening to use a Knife or gun	0.8
Use of Knife or gun	0.3

Steinmetz then proceeds to make some fairly extravagant extrapolations on the basis of the results documented thus far, viz:

> 'Although the three-tenths of one per cent using a knife or gun on a brother or sister may not seem high, when one applies this rate to the 46 million children in the United States, there were an estimated I38,000 children who had actually used a knife or gun on their brother or sister during the survey year. Furthermore, the 14 per cent who beat up a sibling is consistent with Weston's (I968) reports that I4 per cent of the battered children examined had received the battering from a sibling.
>
> When the question regarding the method used by sibling to resolve conflict was asked as ever happening, rather than just during the past year, I8 per cent reported having beaten up their sib, and 5 per cent had actually used a gun. Based on these figures, about 8.3 million children in the United States have been 'beaten up' by a sibling and 2.3 million children at some time used a gun or knife on a brother or sister.'

Interesting Cases Reported

Of the fifteen most relevant articles and books that I have read in connection with the topic of sibling aggression or violence more than half have concentrated, by means of individual case studies, on the psychodynamics of sibling aggressors or the sociological milieu of the family and individuals involved in aggressive incidents. I found each of these reports equally fascinating and have included some of them - not merely to titillate the voyeur that lurks in all of us - but in an attempt to document the fact that each case is similar to the next and that both the means and the end results of the violence used are not necessarily inevitable. [18]

The first case illustrates the frightening possibilities of psychological trauma for the sibling victim as well as the blissful ignorance of those significant others in his environment - parents, teachers, welfare and medical personnel - who would usually be expected to afford him/her protection. The second and third cases show the apparent irrationality of sibling homocide which, when analysed, is terrifying in its logic.

1. ALLEN - Aged Six Years

> '.....an opportunity both to examine and to see a 'child victim' arose. The child was brought in for treatment, not because he had been badly hurt several times by his older sibling, but because he had begun to exhibit behaviour which has been described as 'prepsychotic'. This victim, who was old enough and intelligent enough to have a vivid but imperfect comprehension that he was in danger, conveyed a strong sense of his nightmarish inability to convince anyone of the reality of the danger. He grew to doubt his own reality perceptions but still felt consistently vulnerable to attack. He was living day and night - weaponless and without safe refuge - in enemy territory. He was six years old.
>
> Allen was impelled into treatment at a local child guidance clinic at the insistence of his kindergarten teacher who found his behaviour 'wild, peculiar, aggressive and frightening'. Allen's mother described him at that time with pride as 'all boy - he stands up for himself'. After a few months of treatment his behaviour changed radically. He became very quiet and withdrawn, occupying himself for hours with intricate drawings of pipes and faucets and with any elongated collection of objects which he would designate as pipes. His behaviour, while no longer threatening or disturbing seemed to his therapist to be 'prepsychotic'. Allen reacted with obvious terror to the presence of his eight-year-old brother and to the threat of his three-year-old sister to 'hit him with a sock'. Allen was referred to Children's Psychiatric Hospital for inpatient treatment. The mother, Mrs J., recounted without much evident concern that over a period of a year the older boy had: tried to drown Allen in the bathtub; pushed him down the stairs; cut his head to the degree that he required a dozen stitches to close the wound; and had set fire to the family home. In the last instance, which was never fully clarified by the parents, Allen had been trapped in his bedroom and had to be rescued by firemen 'with hoses and axes'. (At a later point in treatment, Allen told of turning the door handle and finding that it did

not work - it came away in his hands. A vivid part of the symptomatic behaviour had to do with his pre-occupation with keys - which ones worked and which ones did not.)'

'Mrs J. further reported that she was often tired and left the three younger children in the elder boy's care. She never disciplines the children, she said. When she gets angry she just feels that she is going to kill someone and so does nothing. Mrs J. reported several dreams about killing her children and her husband. In one dream she soaked her husband's mattress with kerosene and ignited it as he slept. Mr J. had withdrawn psychologically from affective involvement with his wife and children. In Allen's period of psychotic-like withdrawal, when he was so good and quiet, Mrs J. saw him as very much like his father. She found him much more likeable, however, when he was acting out aggressively in kindergarten. She appreciates her elder son's babysitting and she finds him 'spunky'. The mother also reported, this time with mild disapproval, that her elder son had put a kitten in a school bag and had banged it again and again against a tree trunk and then had jumped up and down on it.

The hospital staff, of course, had the impression that the wrong child had been referred. The parents, however, were not willing to consider hospitalisation for the older boy. The hospital agreed to accept Allen (for his own protection) with the stipulation that the older boy be entered into intensive treatment in his home community. The parents agreed to this arrangement.

It took a full year to coax Allen out of his fearful withdrawal and into the bare beginnings of warm and trusting relatedness. His therapist described several months in which he ignored her and busied himself with building Tinkertoy pipe systems. He spoke very little and met her comments with silence and a more pointed withdrawal. Her patient persistence, her demonstrated wish to protect his pipes and keep them safe, gradually convinced Allen that she would be helpful in expanding his plumbing project. The therapist was able to exploit this collaboration and the relationship warmed quite dramatically and was extended to other people in the milieu with surprising swiftness.' [19]

2. TWO BOYS - Aged I7

'....the mother of one of the boys did not like her son's friend. She tried to discourage her son from seeing the other boy and told him so in front of the friend at dinner. After dinner the boys walked to the neighbourhood playground to play volleyball. On the way home they decided to kill the one boy's mother. They also decided to kill his six-year-old sister so she would not be left alone. They agreed upon a pact that at precisely II.00pm the son would strangle his mother and the friend would strangle the sister. When they returned about I0.00pm a neighbourhood friend, age I4, came by. They quickly kicked him out so he would not be a party to their murderous behaviour. At precisely II.00pm each went to his respective place and committed the deed assigned. For about half and hour before II.00pm they had sat in the boy's room with a knife on a table between them. After the strangulation and killing they stuffed the bodies into the trunk of the car and drove south.

After crossing the state line, one boy turned to the other and asked whether they ought to turn themselves in. They did, and we were called to assess their state of mind. Examining each boy individually revealed no evidence of psychopathology, but together they had felt compelled to complete the act and honour their mutual contract. Each felt the other would become violent, i.e. stab him with the knife if he suggested backing out of the pact. Alone, neither boy would have killed, but together they felt they had little or no choice in their agreement.' [20]

3. BOY - Aged I2

'A I2 year-old boy had been having difficulties with his family. When his friend was humiliated by his older brother, he ran into the house, grabbed his father's pistol, loaded it, came out, and threatened his 26-year-old brother. "For no reason at all" he shot and killed him. He then tan away and was finally apprehended several days later. He was without remorse and felt justified in what he had done. In the presence of his mother he became demanding, aggressive, hostile, and violent.

He was diagnosed as schizophrenic, paranoid type, and hospitalisation was recommended. He was acutely psychotic in the presenct of his mother, but at other times he appeared to go into remission and could be readily controlled in a maximum security environment.' [2I]

Points to Ponder

Researchers seem to agree that an important difference between aggressive or murderous children and their adult counterparts is the impulsiveness and spontaneity of the children's attacks. Physical assault with whatever weapon is conveniently at hand is the usual means of injury - to alleviate the build-up of tension and anger that generally immediately precedes the sudden physical outburst of the child against the victim.

Most of the reports quoted throughout this paper also point to the liberating sense of relief experienced by adolescent siblings following their violent acts. This is particularly evident in cases where death of the sibling or parent has ensured. Indeed on reading the studies and cases reported I was impressed with the Dostoevsky-style inevitability and logic of the violent attacks perpetrated by one sibling against another.

Where younger aggressors were the subject of study, researchers noted the tendency of significant adults involved - parents, welfare personnel and other authority figures - to deny repeated serious assaults by siblings because such violence is psychologically unacceptable to most adults in our culture. Thus the possibility of resolving aggressive conflicts between siblings before they reach the stage of grievous bodily harm or death is attenuated where parents and other adults involved refuse to recognise pathological signs in sibling aggression. It is much easier - psychologically and socially - to accept an injury as accidentally inflicted than to harbout suspicions that all is not well within the nucleus of the family unit.

No reference was made by researchers to the rivalry and aggression between half brothers/sisters, step-siblings and child members of 'reconstituted' families.

To give Dr Steinmetz the last word for the moment:

> 'The complacency over sibling violence must be seriously questioned. Violence used by siblings to resolve conflicts represents a training ground - an opportunity to practice physically violent interaction with peers. The training prepares them when they marry to use physical violence on their spouses to resolve marital conflicts, and when they become parents, on their children to discipline them. Studies have suggested that the patterns of conflict resolution used by family members are transmitted for over three generations (Steinmetz, I977a, I977b). These studies suggest that the methods used by husband and wife to resolve marital conflict are then used to discipline their children, and the children imitate these methods when attempting to resolve conflicts with their siblings. When these children marry, they used the methods learned during their childhood to interact

with their spouses and children, thus continuing the cycle. The impact of witnessing violence between parents and experiencing violence in the form of severe physical discipline has been found to characterise the background of child abusers (Bryant, I963: Wasserman, I967: Zalba, I966) murders (Bender, I959: Sargent, I962: Sadoff, I97I Tanay, I975) rapists (Brownmiller, I975: Hartogs, I952), and those who committed political assassination (Fontana, I973: Steinmetz, I977b). In a less dramatic context, the mother's use of physically violent methods of discipline accounted for over 25 per cent of the variance in predicting physical violence between siblings, based on a regression analysis.

Since sibling violence represents the child's first opportunity to engage in violence which had been witnessed and experienced, it is, therefore, a very critical link for understanding and attempting to break the cycle of violence in the family. The practice of viewing sibling violence as a normal part of gorwing up simply reinforces the acceptability of using this method of resolving conflicts and provides an early opportunity for children to practice that which they have observed and experienced.' [22]

FOOTNOTES

1. Pfouts, J.H. "The Sibling Relationship : A Forgotten Dimension" (1976) Social Work Vol. 21, No. 1, 200.

2. A mother quoted by Steinmetz, S.K. "Family Violence", in Family Violence (J.M. Eekelaar and S.N. Katz eds), Butterworths, Toronto, 1978 460.

3. Pfouts, J.H., op. cit. 200-201.

4. Steinmetz, S.K. The Cycle of Violence, Praeger Publishers, New York, 1977, at 5-7.

5. Reprinted in Steinmetz, S.K. Violence in the Family, Harper and Rowe, New York, 1974, at 82.

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SEX AND CLASS INEQUALITY AND DOMESTIC VIOLENCE

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Introduction

In their attempts to explain continuing domestic violence, many studies examine the individual peculiarities of the marriage partners. This paper attempts to show that explanations of domestic violence which are rooted in the individual psychology of marriage partners tend to present a highly distorted view of why women remain with men who batter them. We want to show that continuing domestic violence is closely linked to the structural inequality built into male and female roles in our society. We will argue that constant battering is closely associated with a women's vulnerability as housewife and mother, and in this position, any woman is to some extent at risk. Whilst sexual inequality is seen to be the major reason for continuing spouse abuse, class inequality makes some women particularly vulnerable. Explanations of domestic violence which concentrate on the psychology of the abused or the abuser are misleading in that they ignore the way in which people's choices are formed and controlled by social structures relating to sex and class.

In our study a battered wife was defined as a woman who had received deliberate and repeated injury. The minimal injury was severe bruising but there were many cases of fractures, lacerations, internal injury caused by punching or kicking, assault with a variety of weapons or attempts at strangulation. No differentiation is made between those living in a defacto relationship and those who are legally married.

Method

A sample of 145 women who had been assaulted were asked to complete questionnaires on their experiences of domestic violence. The women were contacted through 8 women's refuges throughout Sydney, at an academic conference held at Macquarie University, by word of mouth and through advertisements in minority magazines and newspapers. Supplementary information was obtained from the records of a women's health centre in the outer western region of Sydney, and an inner city legal aid office.

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The questionnaire contained questions on:

- The woman's age.
- Number and ages of any children.
- The injuries received.
- The duration of the relationship, and the frequency if any, of past attacks.
- Whether the woman had experienced violence in any other adult relationship.
- The family history of violence, if any, of both the woman and her attacker.
- The occupation of both the woman and the man.
- Whether they were employed at the time of the assault.
- Whether either had used alcohol before the attack.
- Whether the woman had sought advice from family, friends, or helping agencies at any time during the relationship, if not why not, and if so, what advice had she received.

Previous Research into Domestic Violence

There has been little study in Australia, and, until recently overseas, of the problem of continuing spouse abuse. The Journal of Marriages and the Family since its inception in I939 through to I969 contained not a single article with the word 'violence' in its title, though studies of 'conflict' were common. [I] 'Conflict' rather than the blunt term 'violence' sits more easily with a cultural concept of marriage as a benign institution entered into by free and equal contracting individuals.

The implicit assumption that marriage partners are free and equal underlies the propensity of many researchers to ignore the possibility that many women's lack of economic and social power in our present society may provide an important explanation for situations of continuing domestic violence. It is no accident that the resurgence of the feminist movement in the late sixties and early seventies brought with it a new awareness of the problem. By opening the first women's refuge in Chiswick, England, in I972, feminists began the exposure of the societal mythology of happy marriage between free and equal partners. With the opening of refuges, women who were beaten at last had somewhere to go.

At present there are two basic approaches to research into domestic violence. The first emphasises the individual peculiarities of marriage partners. For example, one claims that drunkennes is a major cause, or one investigates the sado-masochistic properties of the marital relationship. Teynolds and Siegle, [2] Wolfgang, [3] Field and Field, [4] Scott [5] Snell, Rosenwald and Robey, [6] Gelles, [7] and, in Australia, P-ice and Armstrong, [8] view domestic violence in terms of specific characteristics of individual psychology, and this approach seems to be the most popular one in the literature.

Many studies suggest that women who are beaten are predisposed to be treated violently, and seek out partners who will meet their need to be ill-treated. Price and Armstrong [9] examined the battered women's predisposition to assault because 'traditionally it takes two to make a quarrel'. [10] One would not expect to see child abuse researched on the basis of such an assumption, largely we suspect, because the vast inequalities of power between children and adults are all too obvious and are part of the ideology of child/parent relations, whereas the ideology of marital relations is one of equality. Snell [11] and Scott [12] suggest that women who are battered are predisposed to this treatment largely because of ill-treatment in childhood.

More recently, a new kind of research has emerged [13] which points to the structural inequality existing in male and female roles in our society, particularly where children are present in the relationship. Continuing domestic violence, it is argued, is linked to a social structure where women are disadvantaged economically and psychologically by being female. They are often further disadvantaged by their relative physical weakness and by the need to protect and nurture their children. Research from this perspective is a direct result of the growth of women's refuges both here and overseas. It is no longer possible to deny the existence of large numbers of battered women, and their stories point time and again to the structural difficulties under which they labour.

The Incidence of Domestic Violence

We believe that it is impossible to ascertain the real incidence of domestic violence in our society. Earlier research has attributed this difficulty to the sensitive nature of the topic, and its obvious libks with cultural expectations of marital harmony. [15] The fear of violent reprisals is, we think, another factor preventing women discussing the problem. Our data relating to the incidence of domestic violence in Sydney relies largely on sources and organizations situated in lower socio-economic areas, where many are unable to afford regular doctor or solicitor fees, and have therefore made use of the agencies we surveyed. Poorer groups may thus be over-represented in our sample.

A search of the records of an inner city legal aid centre found that of a total of 3,486 cases handled over a 17 month period, 680 (19.5%) were concerned with domestic matters. Of these 680, 150(22%) involved violence to some degree, as shown in Table I.

TABLE I

Form of Violence	No. of Cases	Percentage
Rape	8	5.3
Men assaulting men	3	2.0
Women assaulting men	4	2.7
Men assaulting women	135	90.0
	150	100.0

As might be expected, these figures show that men are more likely to assault women in a domestic situation than women to assault men, or one man to assault another. They also, we would suggest, represent the tip of the iceberg, if only because they are concerned solely with those people whose position was sufficiently desperate to cause them to seek legal aid.

The records of the women's health centre we visited showed that 3.5% of the 4,500 women who had attended the centre over a period of three years were counselled or helped with regard to domestic violence. Workers at the centre made the point that many others mention it during the course of an interview, but unless a woman herself regards it as relevant to the visit, no record will be kept.

Of the I45 women we personally contacted, 43 (30%) had not approached any institution for help prior to leaving the relationship. Eleven had contacted legal aid centres, and four a woman's health centre. This leads us to suggest that the problem is much greater than is indicated through the records of the legal aid centre and the women's health centre involved in our study.

Currently, there are 65 refuges in Australia; 27 of them are in New South Wales. Whilst violence is not always the reason for women coming to refuges (although in around 50% of cases it is), it is estimated that over 60% of all residents have experienced violence from their partners during the course of the relationship. [I6] During the period March I974 to June I976, refuges sheltered over 5,000 women and 7,000 children. [I7] This figure would be much larger if other church and welfare institutions had been included. Then, as now, many women are turned away from refuges due to lack of accommodation. Without exception, they are full almost all the time.

Female Predisposition to Violence

In the light of previous researchers' assumptions, we attempted to examine women's predisposition to be battered by asking whether they had ever been assaulted by any other man in a previous adult relationship, or if, as children, they had experienced violence within the family. Thirty-eight described their fathers as violent towards their families, including their mother, but in only one case did a woman describe her mother as violent towards her father. The results of this enquiry are set out in Table 2.

TABLE 2

	Assaulted by more than I man	Assaulted by only I man	Total
History of violence by father	I4	24	38
No history of violence by father	I6	78	94
	30	I02	I32

N.B. Of the remaining I3 women, 3 were brought up in Orphanages, 3 were members of single parent families, and there is no useful information in response to these questions available for the remaining women.

As the table demonstrates, only I4 women (9.6%) in the sample could reasonably be said to exhibit a predisposition to violence under the criteria of definition adopted in the questionnaire. In addition, half of the women who became involved in violent relationships with more than one man, had no history of family violence. Such a finding queries the common assumption that a violent family background creates the setting for a woman's future violent relationship with men. This may well be true of a small number of battered women but it is clearly not the case for the majority. Two of the I4 women who might reasonably be viewed as predisposed to accept violence were clearly aware that their childhood experiences play a part in this process. One of them wrote:

> 'I consider the violence in this relationship was primarily due to my early experiences making me emotionally over-demanding and inclined to hang out through violent scenes for the making up after. To put up with "bad" and in some way inadvertently encourage it for the "good".'

However, with over 90% of women in the sample, it seemed unlikely that predisposition to assault played a part in the violence they experienced.

Unemployment, Alcohol and Domestic Violence

High unemployment levels were evident amongst the men in our study. Twenty six (I8%) of the men were unemployed. The national average is currently estimated at around 7 %. The high incidence of unemployment in our study suggests that the pressures placed upon a family during such a period are greatly increased. It would seem reasonable that unemployment and the associated financial and social pressures which it brings are causal factors in domestic violence.

There is plenty of evidence that alcohol plays an important part in domestic violence, but studies have shown that around 50% of such violence occurs in the evenings or at weekends, and up to 60% of the attacks involve prior use of alcohol. We must remember, however, that perhaps 60% of the population consumes at least some alcohol most evenings and during the course of a normal weekend. In our own study, alcohol was involved in 55% of the attacks and was equally distributed throughout the sample. There was no obvious association between unemployment and alcohol use. To state that use of alcohol frequently plays a part in domestic violence seems reasonable but to claim it as the cause begs the question: what caused the drunkenness?

Sexual Inequalities and Domestic Violence

To find more cogent explanations for continuing domestic violence, we feel it is necessary to examine the structural inequality present within the marital relationship, and within sex role divisions in general.

Besides being physically weaker than their husbands, many women, particularly those with small children, are housewives, materially dependent on the man's income. Even where women are employed, it may be thro necessity, and their role still involves dependency on the family unit and a male breadwinner. Women without partners supporting children are highly represented in poverty statistics in Australia, [19] and it is likely that of the 23 battered women in our study who were employed full-time, at least some were forced into work through economic necessity. Alone, they would perhaps have no better potential to support a family than a dependent housewife who decided to leave the marital home.

In Gibbeson's study of III battered women, [20] only 24 (2I%) had been employed outside the home at the time of separation from their husbands. Thoug there is no breakdown of figures available, it is clear that of the 5,000 women who used Australian refuges between March I974 and June I976 a very large number were mothers, as the refuges accommodated nearly 7,000 children as well. The following tables from our own study indicate clearly the extremely vulnerable position of the housewife with children if she is unlucky enough to find herself in a violent relationship.

TABLE 3

	Employed women	Unemployed women	Total
Children	A 15	B 106	121
No children	C 8	D 16	24
	23	122	145

N.B In this instance, those women in part-time work were classed as unemployed, as in all cases the type of work in which they were involved would have yielded insufficient income for them to be self-sufficient, let alone to provide for their children.

Whilst Table 3 shows us that housewives with children are by far the largest group (73%) of women who are battered, it also suggests that employed women with no children form a very small percentage of women who are battered. 94.5% of the women in our sample were mothers and/or were unemployed.

TABLE 4

Unemployed Women with Children

	Infrequent Assault	Frequent Assault	Total
Duration of Relationship (Less than 5 years)	29	15	14
Duration of Relationship (More than 5 years)	35	27	62
	64	42	106

N.B. Table 4 shows that break-up of group B in Table 3

TABLE 5

Employed Women with No Children

	Infrequent Assault	Frequent Assault	Total
Duration of Relationship (Less than 5 years)	6	2	8
Duration of Relationship (More than 5 years)	0	0	0
	6	2	8

N.B. Table 5 shows the break-up of Box C in Table 3.

Table 4 looks at the frequency with which unemployed women with children are battered. When we compare the situation of these women with the situation of employed women with no children (depicted in Table 5) we find that the latter group are not only a small minority, but also stay in battering relationships for a shorter period of time and are beaten less frequently than women with children who are unemployed. The vulnerability imposed by motherhood and economic dependence makes it near impossible for many women to leave partners who batter them.

Work and Child Care

A housewife who wishes to leave her husband and find a job is in a unenviable position. If she has children the picture is even more bleak, as the Submission for the National Confederation of Women's Refuges notes:(21)

> "At the Melbourne Half-way House, out of 222 women seeking employment in the period October 1974 to December 1975, 18 found full-time employment, and 4 part-time employment. By far the most identifiable need in this area is for free child care, extended hours to cater for shift workers, as well as 9 to 5 Monday to Friday workers."

Unless a woman with children can find a very well-paid job she is in a Catch 22. Even if work and child care facilities are available to her she may end up in a worse position economically than the single women supporting children on a government pension. The process worker, for example, earning $112 per week will be below the poverty line once rent and child care costs are paid. Lack of job security too, is increasingly a factor in a woman's assessment of her opportunity for survival as a single parent.

It should be realised that many women who leave the marital home and make do on a government pension are locked into a welfare cycle because adequate and inexpensive housing and childcare are not available to them. Many would prefer to be in paid employment but simply cannot afford it.

Discrimination against single parents in the housing market places yet another restriction on a woman's ability to alter her circumstances. Renting is difficult and expensive, and landlords regard single mothers as 'bad risks'. The Housing Commission offers little hope either, with a waiting list of between 3 and 4 years, and up to one year even under emergency conditions. 22

Female Socialisation

Women in our society are usually brought up to play a nurturing, caring, self-effacing role as wives and mothers. The family, the church, the media, and often the school reinforce this. Chesler [23] points out that in regard to childhood behavioural problems, boys are most frequently referred to child guidance clinics for aggressive, destructive and competitive behaviour, whilst girls are referred for excessive fears, shyness, timidity, lack of self confidence and feelings of inferiority; and extension of the subordinate, self-effacing role demanded of a future wife and mother. Such conditioning has a hand in preparing women to accept domestic violence mutely if not unquestioningly.

At the same time it places the main responsibility for the marriage on the woman. If the home is not happy, it must be the woman's fault because women are 'home makers'. Because of this women are at a psychological disadvantage in marital conflict. Either consciously or unconsciously, a woman is likely to receive violence as punishment for failing to keep her partner happy. This is hardly surprising in a society which teaches people to see themselves as individually responsible for their situation, rather than as subjects born into social structures which they play a part in helping to reproduce.

Sixty-two (56%) of the III women studies by Gibbeson said they felt embarrassed or ashamed about the violence and expressed feelings of failure as wives and mothers. [24] Twenty-four (2I.4%) had at some time attempted suicide with tablets prescribed for sedation. In our own study, 73 women (50%) said they had told neither family nor friends of the attacks made upon them. Most of these women said they were too ashamed to talk about it, felt guilty or were so isolated they felt they had no-one to talk to. One woman wrote:

> 'You don't think anyone would believe you, unless you had some pretty obvious marks. Or they'd assume you were at fault yourself - that the guy must have been driven to it by some omission on your part. He would reinforce this of course by saying things like, "Such and such a person thinks you're neurotic", or by comparison of you with other women, mainly "happily married" with husbands who never seem to heavy them. When you spend half your time defending yourself and your child from irrational attacks, you start half believing what is being said.'

In addition to these psychological disadvantages the victim of domestic violence often suffers the added problem of isolation, which has direct links to her dependent status as wife and her nurturant role as mother.

We claim that continuing battering is most clearly associated with a woman's vulnerability as housewife and mother, and in this position any woman is to some extent at risk. We suggest that while many of us have, in our lives, experienced some form of domestic violence, however slight or fleeting, in order for us to explain why in some cases this degenerates into repeated and severe abuse, we cannot ignore the structural inequality built into male and female roles. This inequality, we argue, more adequately explains situations of continuing violence than do theories which emphasise the individual psychological peculiarities of the people involved.

Domestic Violence and Class

Research both here and overseas that has considered the issue of class in relation to domestic violence has found little if any difference between classes in their attitudes to and experience of this form of violence. [25]

Using the Congalton Scale, Table 6 examines the occupational ratings of the men involved in our own and two other recent Australian studies. [26] This scale bases an individual's class position on the status allotted to their occupation:

TABLE 6

Category	Gibbeson Study		N.S.W. Bureau of Crime Statistics & Research		Our Study	
	Number	%	Number	%	Number	%
A + B	I9	I7.2	30	I8.0	24	I6.5
C	34	30.6	93	55.7	58	40.5
C	38	34.2	44	26.3	62	42.5
Don't know	20	I8.0	-	-	I	0.5
	III	I00.0	I67	I00.0	I45	I00.0

Category Ratings: A+B (Professional, managerial)
C (Scales, small business, clerical, trades, skilled)
D (Unskilled)

Our findings show a higher proportion of working class or unskilled men than do the other two studies, possibly reflecting the lower socio-economi catchment areas served by the refuges from which much of our data was gained. However, all 3 clearly demonstrate that domestic violence is not an exclusively working class phenomena.

The fact that spouse abuse occurs through all sectors of society is further evidence to suggest that a woman's membership of a particular sex rather than a particular class is the prime factor in explaining continuing domestic violence. Indeed, the very act of assigning a class to a woman who is economically dependent on her husband is misleading in that it allots to her a position which in reality belongs to him. Research which has examined the question of class appears to have done so entirely in relation to the man's socio-economic status. Based on our conviction that it is a woman's dependent status which is crucial to domestic violence, we have examined the earning potential of the women themselves, rather than that of their husbands, as the latter fails to take sufficient account of their dependent status.

A phone-in conducted by the Royal Commission on Human Relations resulted in an over-representation of middle and upper class respondents who were victims of spasmodic violence, but who reported their conscious decision to remain in the relationship rather than risk their prosperous lifestyle which they recognised as being that of their husbands.

In order to discover whether a woman's earning potential appeared related to her remaining in the marital relationship, we asked our respondents their normal occupation outside the home, and whether or not they were currently employed in it. These responses were then correlated to the frequency of assault and the duration of the violent relationship, as well as to the existence of children. The Congalton scale was again used to determine class position. There was a poor response rate to this question, partly attributable to ambiguous wording, and partly to the fact that many women had had no paid work before becoming housewives.

TABLE 7

Category	Number of Women	Percentage
A	-	-
B	I8	I2.4
C	2I	I4.5
D	40	27.6
Student or Pensioner	I8	I2.4
Don't know	48	33.I
	I45	I00.0

Our findings demonstrated that those whose normal occupation might be classified as well-paid and of high status were more likely to be working outside the home (II of the category B women and I3 of the category C women) than the 40 respondents in the unskilled D category only 4 of whom were in paid employment. This suggests that unless for reasons of dire economic necessity such work is not sought.

In interviews, several of our respondents suggested that this was associated with the difficulty and expense of child care, the low pay and poor working conditions of unskilled workers, and the lack of job security in such areas of employment. Such factors would obviously have a bearing on any decision made to leave a violent relationship.

Associated with this was the fact that women whose class position came within the upper and middle categories tended to experience less frequent attacks and to remain within the relationship for a shorter period of time. This was true whether or not they had dependent children. The 40 women whose occupations fell within the unskilled category commonly experienced higher levels of violence over longer periods of time. It is probably important to point out that these 40 category D women were not all involved with men of a similar class position. Both sex and class inequalities, we would argue, play a major part in explaining why these 40 women remained with violent men, and both are associated with the economic problems they must face if they are to contemplate life as a single parent. In addition, there is the likelihood that these women will also have a low self-concept and lack confidence, and this has direct links to their sex and class socialisation.

Conclusion

Whilst sexual inequality is probably the major explanation of continuing domestic violence, class inequality makes some women particularly vulnerable. We argue that a woman's class should not automatically be regarded as the same as her husband's, as this gives an erroneous impression of her degree of power within the relationship and the society. Whether a battered woman can leave a marriage will depend not only on whether she has dependent children, but on whether she has the ability to support herself and those children. Whilst inbuilt sexual inequality in our society renders housewives with children particularly vulnerable to battering, it is clear that if women only have access to low paid work or face unemployment on leaving a relationship, then the likelihood of their being beaten frequently and for a prolonged period is greatly increased.

What is to be Done?

Given our findings we believe that individual psychology provides a totally inadequate explanation for the reasons for domestic violence, and that structural inequality in regard to the position of women in our society is the root problem. It is, therefore, essential to examine avenues for action.

1. Refuges: The growth of women's refuges over the past 5 years is the single most useful means of assisting battered women. They are almost always full and under-funded.

2. Genuine equal pay for women, not just lip service to the principle towards which, in times of economic growth, we may strive.

3. Recognition that the state has a responsibility to provide child care that is available at a cost which all can afford. This entails such things as alteration to the existing laws regarding child care, where a man can claim a housekeeper as a tax deduction, but a woman may not claim child care as one. These regulations have repercussions in other areas e.g. eligibility for legal aid precludes child care as a legitimate expense.

4. Work-based child care, and the introduction of legislation to protect part-time workers from the constant exploitation they have experienced historically as 'casual' labour.

5. Freely available, high quality legal aid with a realistic means test.

6. Realistic levels of pensions for single parents, who either choose to stay home with their children, or are unable to find employment. Currently such pensions are well below the poverty level.

7. Recognition that housing is a problem second to none for single parents, and that it acts as a deterrent to prevent women leaving a battering environment.

8. In order to gain a better idea of the incidence of violence hospital records and doctors' records could list suspected battering of women presenting to them, in the same ways as is now required in suspected child abuse cases.

9. Police, Chamber Magistrates and Social Workers should be made more aware of the structural inequalities which operate in the regard to domestic violence, as their training either ignores the problem entirely or concentrates almost totally on the psychological pecularities of individuals.

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TABLE 8

	18 Category B Women				21 Category C Women				40 Category D Women			
	Emp. No children	Unemp. No children	Emp. Children	Unemp. Children	Emp. No children	Unemp. No children	Emp. Children	Unemp. Children	Emp. No children	Unemp. No children	Emp. Children	Unemp. Children
Short Duration (Less than 5 years)												
Frequent Assault	-	-	-	2	-	-	1	3	2	2	-	3
Infrequent Assault	3	-	5	4	3	-	7	-	-	-	-	7
Long Duration (More than 5 years)												
Frequent Assault	-	-	2	-	-	-	1	2	-	1	1	9
Infrequent Assault	-	-	1	1	-	-	1	3	-	-	2	13

As can be seen from this table, D. category women who have children and who are unemployed tend to be most vulnerable to assault over a long period of time.

MARITAL MURDER

Tess Rod*

Murder is typically a family affair. In New South Wales about half of all victims were murdered either by the spouse or other close kin. The murder of spouses is the largest single category of relationship between murderer and victim: approximately a quarter of all the victims of men are their wives and 40 per cent of all the victims of women are their husbands. Spouse murder occurs so frequently in our society that it seldom receives much publicity. Unless there are unusual features in a case, these murders are generally relegated to the inside pages of the daily newspapers and, if mentioned at all on the news reports of other media, are regarded as being only of local, not national, interest. Yet murder statistics provide important cultural information. Recurring patterns in the relationships and circumstances of murder indicate 'weak points, or points of stress within the social organization of the group concerned'. [1]

This paper is based on an examination of all the cases of marital murder in the New South Wales police files for the period 1958-1967 and 1976-1978 (175 and 77 cases respectively). These include both lawful and de facto unions. The patterns in these murders have remained relatively unchanged for the two periods - the following remarks apply to both.

First I will point out the main characteristics of marital murder in New South Wales, illustrating these with a couple of typical examples. The in the latter part of the paper I will discuss the problem of marital murder as an outcome of previous assault.

Three-quarters of the spouse murders committed in New South Wales were committed by men; yet husbands were the most likely victims of female killers. Almost all the women who killed their husbands were living with them at the time. On the other hand 20 per cent of male spouse murderers killed women from whom they were separated or divorced (including former de facto wives). Later I suggest a possible reason for the difficulty some men apparently encounter in coping with the dissolution of their marital relationship.

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Murder in New South Wales is characteristically confined to individuals of low socio-economic status, as is the murder of spouses. Over half of the men involved in spouse murders were employed as unskilled or semi-skilled labourers, with another 30 per cent employed in skilled manual jobs.

Information on alcohol consumption before the murder is only impressionistic in the police files. No accurate assessment could be made as to the state of intoxication of the participants. The most I could extract was whether or not alcohol was present in the murder situation and which of the parties were drinking. In about half the spouse murders there was no evidence of alcohol consumption by either party. When alcohol was consumed the couple were either drinking together or the husband was drinking on his own - it was rare for the wife to have been the only one drinking. This appears to confirm the popular notion that the drunken male becomes a violent brute; yet there is no scientific evidence that alcohol causes violence. As MaxAndrew and Edgerton (I969) have demonstrated, alcohol intoxication affects sensorimotor abilities, but its effects on social comportment are determined by socialisation. One of the ways in which alcohol is used in our culture is as a 'time out', an acceptable excuse for temporary loss of self-control. In many non-Western societies intoxication does not result in such a 'change for the worse' behaviour. Alcohol may contribute to spouse murders by providing a sufficient excuse for violence in an already conflict-ridden situation, or it may even trigger a dispute when, for instance, a husband arrives home late in the evening after drinking and demands dinner which either has not been prepared or has been allowed to go cold.

An important feature in the murder of spouses is the history of assault between the couple. As is the case for alcohol consumption the information on assault in the files is imprecise - it is usually not made clear whether previous assault occurred on only one occasion or on a more regular basis. Evidence of previous assault comes from witnesses' reports and police records of previous charges. (I include here also the threat of assault as these were reported in the files only if they were serious - threats to inflict serious injury or to kill).

A history of assault was reported in approximately one third of the wife murders and nearly half of the husband murders. In all but three cases all the previous assaults were committed by the husband on the wife. In the three exceptions the husbands reported their wives' assaultive behaviour to police only after they had killed them; there was no other evidence to corroborate this. I think we are justified in assuming that the number of spouse murders with a history of assault is considerably greater than the files indicate, as the husband is unlikely to volunteer information about his wife-beating habits to police after he has killed her.

In the murder cases where there has been a previous history of assault the most frequent methods of killing are those requiring close bodily contact, such as hitting with fists or a handy object, kicking, stabbing and strangling. Nevertheless, for the sample as a whole, the most common murder weapon is the rifle or shotgun. In New South Wales no licence is required to own such a weapon, although since I975 a shooter's licence has been necessary if the weapon is to be taken off the owner's property. It appears that a large number of households have one of these weapons stored in the garage or on top of a bedroom wardrobe for the rare occasions when the owner goes 'rabbit shooting' - the usual reason given to police for the presence of the weapon in the home. It would be of some interest to discover just how widespread the practice of storing firearms in the home is, considering the fact that shooting is more likely to have a fatal outcome than any other form of attack. [2]

The mere presence of a firearm in a domestic argument may provoke more serious violence. An experiment conducted by Berkowitz and Le Page (I967) on the effect of weapons as aggression-eliciting stimuli showed that the presence of a rifle or gun stimulated a stronger aggressive response in already angry subjects than would have been elicited without the presence of these weapons.

85 per cent of the spouse murders occurred in the home. If the couple were separated then the murder occurred in the home of one of them, usually the victim's. The bedroom is the most likely venue for the murder of the wife, and the kitchen for the murder of the husband. Since these murders generally occur at home and often at night, there are usually no witnesses. Nevertheless there were a number of occasions when violent quarrels between spouses were overheard or even seen by adult witnesses (mostly male), without any attempt being made on their part to intervene. In one case a male lodger actually saw the husband severely wound his wife and leave her on the back porch to die, and yet made no attempt to go to her aid or call medical or police assistance. His attitude was that it was none of his business. There appears to be a general attitude of indifference to fights between married couples as well as some - not altogether groundless - fear of becoming a party to the violence. Indeed this may be the attitude towards any violent quarrels between a man and a woman. Three Michigan State University psychologists staged a series of fights on the street to be witnessed by unsuspecting passers-by. The researchers found to their surprise that male witnesses rushed to the aid of a man being assaulted by either another man or a woman, and helped a woman being hit by another woman, but not one intervened when a man was apparently beating a woman. [3] A man is obviously allowed to 'discipline' his woman with impunity.

'Motive' as the subjective meaning of a person's action has long been a major preoccupation of amateurs and professionals concerned with murder and suicide. The determination of 'motive' involves not only the seeking of a reason why a person killed another or himself, but also the consideration of the intent behind the action - did the individual mean to kill or not? It is generally considered almost impossible to accurately gauge the subjective meaning of the event for the persons involved and the term 'motive' as commonly used in connection with homicide does not imply knowledge of the underlying cause. Underlying cause would involve the intimate knowledge of the mental processes of the killer and of his perception of the situation, particularly his t e behaviour of the victim. This information is rarely available and is very difficult to obtain. 'Motive' is assessed from the collection of evidence which appear to be contributing factors in the murder situation gathered by police from witnesses and the murderer. The 'motive' is therefore nothing more than the precipitating cause of the crime; e.g. the focus of the quarrel immediately preceding the murder.

It comes as no surprise that the most frequent precipitating cause in the murder of spouses is tne marital relationship itself. It is in the area of the rights and obligations of this relationship that tension most often arises and quarrels frequently occur. Yet there are also a large number of cases of wife-murder where the precipitating cause is not clear - a quarrel is indicated but its exact nature is not stated. Marital quarrels, particularly in cases where there has been a long history of dispute, often cannot be pinned down to one or two specific issues. The couple have been locked into mutual dependancy and antipathy for some time, so that the most trivial circumstances can unleash animosity directed at points of greatest vulnerability in each partner. Quite apart from the understandable reluctance of an individual to detail his or her private affairs to the authorities, it is possible that the husband would not be able to recall accurately the cause of the argument which lead to his wife's death. If the quarrel was not overheard the police would have no way of ascertaining its probable origin.

The pattern of interaction between the killer and victim is also of considerable importance. In general the killer was also the person who initiated the physical aggression, although husbands, even when victims, were significantly more often the aggressors than were wives. Yet simply identifying the aggressor in the murder of spouses tells us little about the antecedent situation. Physical aggression is not commonly the starting point in the hostilities between husband and wife. There may have been a long history of dispute which may have had violent expression in the past. A wife may have attacked and killed her husband without any physical aggression on his part on that occasion, though her initiation of the attack was in order to prevent him from beating her as he had done at other times. A husband may have killed his wife because of her persistent nagging which he considered to be extremely provoking.

Of course there were a number of other precipitating circumstances of spouse murder which were not directly related to the marital relationship - for example arguments about money or personal deportment. There were a few cases of wife murder where the victim was completely inactive and was killed by her husband either to relieve her of her physical suffering (i.e. a mercy killing), or because of some delusional belief of the husband that he ought to kill her. In both these types of cases the killer usually committed suicide immediately afterwards.

Nevertheless, the most frequently occurring type of wife murder involves a dispute relating to the marital responsibilities and fairly hostile interaction between the couple (often with a previous history of assault). The following is a typical example: Martin O. returned home late one evening after drinking at the pub with friends. His wife Judy was angry at him for staying out so late drinking and the two started to quarrel. In the middle of it Martin accused his wife of being unfaithful. He produced a loaded rifle which he kept in the bedroom and threatened to shoot her if she did not tell him the truth. She refused to admit anything so Martin shot her in the chest, killing her instantly. Martin had apparently accused her on numerous occasions of infidelity and had also threatened her with a rifle. Police, however, could find no evidence that Judy had given Martin any grounds for his suspicions.

Most murders of husbands occurred because the wives reacted violently to the hostile and often violent behaviour of their husbands. A number of women killed their husbands in self-defence and some others killed them as a 'protective reaction' to avoid being assaulted. The following case is a typical example of a husband murder.

When Dawn and Kevin S. returned home from an evening out, Kevin demanded that his wife come to bed with him, which she refused to do. In his anger at her reply, Kevin hit her and pulled her hair. He then went to the bedroom to prepare for bed while Dawn got a knife from the kitchen and secreted it behind a cushion on the lounge. When Kevin came out of the bedroom and again demanded his conjugal rights, Dawn drew out the knife and plunged it into his side, killing him instantly. Kevin had assaulted his wife during violent arguments before so she had decided to protect herself on this occasion.

Spouse murders with a history of assault could be said to be the 'tip of the iceberg' of domestic violence. It is often simply a matter of chance whether or not an assault becomes a homicide. Investigations into assault in the United States have revealed that aggravated assault and criminal homicide are basically the same category of behaviour. [4] In the majority of cases I examined the murder situation appears to be similar to the assault situation.

In order to appreciate the distinctive features in the New South Wales patterns of spouse murders I will compare them briefly with English and American statistics. Australia has a homicide rate which is considerably lower than that of the United States but at least twice as high as the rate for England. (1969 figures given by Goldstein indicate that the rate for Australia was 1.6 per 100,000; for England 0.7 per 100,000; and for the United States of America 6.1 per 100,000.) [5] As well as differences in the rates of murder, there are important differences between these three countries in the patterns of relationship between murderers and victims.

The most authoritative sources of information on murder in England are the Home Office Reports on murder in England and Wales. [6] However, these are not detailed sociological studies and this limits the possibility of an extensive comparison of English and Australian patterns of homicide. Nevertheless, a very high proportion of murders in England and Wales are family murders, and a larger proportion of these are followed by suicide than is the case in either Australia or America. [7]

Much more detailed comparisons are possible with United States studies of criminal homicide. The pioneering work in this field was Wolfgang's study [8] in Philadelphia during the years 1948-53. The results have been confirmed by a number of subsequent studies in different parts of the United States. Wolfgang found that a quarter of the victims in Philadelphia were killed by a family member, a proportion only half that found in New South Wales. A much greater proportion of American criminal homicides occur during the commission of a felony such as robbery, arson, rape and kidnapping than is the case for either Australia or England.

Three-quarters of the Philadelphian family murders were spouse killings. [9] It is at this point that the most marked difference occurs from the English and New South Wales figures: In Philadelphia there were nearly as many wives who killed husbands as there were husbands who killed wives. Most of the offenders were Blacks of low socio-economic status (only 20 per cent were Whites), and among this category the number of wife and husband murders were exactly equal. This was not the case among the Whites - more men killed their wives than were killed by them. However, the proportion of White American women in Wolfgang's sample who killed their husbands was greater than the proportion of women who killed their husbands in the New South Wales sample.

Why are American women, particularly black American women, more likely to kill their husbands than Australian or English women? These figures suggest that American women are not as long-suffering in their relationships with violent husbands and are quicker to react aggressively to any attack on themselves.

Carol Stack (I974) has pointed out that in many lower class black American families individuals depend on a large domestic unit for emotional and financial support. [I0] Households are made up of women and their children and sometimes grandchildren, with adult men such as brothers, sons, fathers, husbands and boyfriends coming and going according to the availability of employment. The fluctuations of the male job market encourage women to be financially independent and they support themselves and their children (and sometimes unemployed male relatives) with welfare payments and casual work supplemented occasionally with their current lover's earnings. Women are quick to throw out a man who is a 'loafer' or who may be 'messing around' with another woman. [II] Lundsgaarde (I977), who studied criminal homicide in Houston in the year I969 has pointed out that a number of spouse murders occurred when the wife was throwing her husband out of their home or threatening to do so.

Other studies of domestic violence in America have indicated that as many American women hit their husbands as men hit their wives; though the outcome may not be as damaging physically to the husbands as it is to the wives. In fact many women even strike the first blow in a family altercation. [I2]

The high incidence of wife assault in Australia compared to the United States and the corresponding higher incidence of murder of the wife rather than the husband require explanation. Unfortunately there is insufficient substantial information on Australian family structure and child-rearing patterns to allow a complete and convincing answer to this question and an overall cultural explanation of murder statistics generally. But some indications of the direction of interpretation is possible.

Miriam Dixon (I976) has shown that Australia's historical development encouraged not only the segregation of sexual roles, but the myth of mateship placed greater value on manly aggressiveness and the early treatment of convict women encouraged passivity in Australian women. On the other hand during the early period of American settlement women took a much more significant and valued role. Social isolation and feelings of family privacy were also engendered by the rapid development of the suburban sprawl in the few large cities on the Eastern seaboard of Australia. [I3] Thus it is probable that the early history and subsequent development of Australia laid down a pattern of violence against females, particularly wives; it certainly ensured that women would be less likely to retaliate in similar manner when assaulted.

A possible approach to understanding spouse murders in New South Wales might focus on domestic violence as a characteristic of lower class families as these make up the bulk of the statistics. As yet no figures are available to indicate the distribution of domestic assault in Australian society; however, there is ample case history

evidence [14] that marital assault is by no means restricted to lower class families. Nevertheless, we are probably justified in stating that assault occurs more frequently and is more violent among such families; the New South Wales Bureau of Crime Statistics and Research found that assault in higher status families is usually in the form of 'manhandling' pushing, shoving, hair pulling, arm twisting and face slapping - whereas in lower status families the use of weapons and more serious forms of assault is much more frequent. [15] Middle and upper class families are perhaps better able to intellectualize marital conflict, [16] or to express hostility in ways other than physical aggression (e.g. psychologically destructive game-playing) or to 'regain their senses' more quickly after an assault because of a well trained sense of guilt and shame about violent behaviour. [17] They may also have more social resources available to them which may aid them to escape from a potentially violent situation either through legally terminating the union, or by enlisting the aid of outsiders such as solicitors, doctors and counsellors who are likely to be sympathetic and respect their privacy.

There has been some suggestion in the literature that isolation of the family from social interaction with outsiders is related to the incidence of marital violence. Gelles (1972) found that the couples with whom he spoke who had experienced assault generally had little contact with their neighbours and had few friends and relatives with whom they exchanged visits. His impression was that the isolation was not a result of the embarrassment the violence may have caused, but that the isolation preceded the violence. [18] Evidence from other societies suggests that where marital problems can be aired publicly there is less danger of violence. In Northern Thai villages for example, married couples rush out of their houses onto the streets to continue an argument so that other villages will act as arbitrators in the dispute. [19]

There is also ample evidence that the experience of violence in childhood, whether as victim or spectator, is related, probably causally related, to the incidence of domestic assault in later life. [20]

An intriguing problem is posed by the number of men who kill their estranged wives. Most of these murders are carefully planned in advance and the women are often tricked into a rendezvous where they are killed. A divorce may not be sufficient protection for women from the murderous intent of their ex-husbands; nor is distance: one man pursued h. former de facto wife from Tasmania to Sydney, and lay in wait for her outside her home where he shot her as she came home from work.

The difficulty some men have in coping emotionally with the termination of a relationship and their inability to respond other than with violence is hardly peculiar to Australia. it is probably significantly related to expectation of the male role and male attitudes towards women. Surprisingly, there are few recent studies on the male psyche, although a considerable number of studies on female psychology are available. Nancy Chodorow (1974) however, had made an intersting suggestion concerning the development of masculine self-identity in Western societies in the context of a more general discussion of female socialization.

She observes that the socialization of boys in Western societies entails separation from the mother and identification with the father at an age when the boys are still dependent on their mothers. This distinct break results in strong ego-boundaries which girls, who continue to identify with their mothers, do not achieve to the same extent. [21]

However, these strong ego-boundaries do not necessarily mean that men have a secure self-identity. Chodorow points out that the boy's separation from his mother is really a forced independence and his identification with his father proceeds largely in negative terms.

There is an internal and external aspect to this.

Internally, the boy tries to reject his mother and deny his attachment to her and the strong dependence he still feels. He also tries to deny the deep personal identification with her that has developed during the early years. He does this by repressing whatever he takes to be feminine inside himself, and, more importantly by denigrating and devaluing whatever he considers to be feminine in the outside world. [22] Thus a man's self-identity may be vulnerable particularly in relation to women and within the domestic sphere. Women must be controlled, they must not challenge his vulnerable masculine identity. The frequent reports of jealousy and possessiveness of husbands who assault their wives (often without any evidence to substantiate their claims of their wives' infidelity) is a further indication of male insecurity and ambivalence towards women. On the one hand male authority and control over women bolsters the strength of male ego boundaries, but at the same time men's dependence on women is a potential threat to masculine identity.

Patterns of spouse murder indicate points of vulnerability in domestic arrangements in society as a whole or in large sections of it. It suggested earlier that spouse murders can be seen as extreme outcomes of a more general pattern of domestic violence. It is probably utopian to think that domestic violence can ever be completely eradicated, though the pattern of violence might change as women become more assertive in their relationships with men. Nevertheless there may be ways in which the severity of violence can be reduced. The limited evidence available to us suggest that the less private marital disputes are, the less the potential for disasterous outcomes. From this perspective, the Community Justice Centres planned for New South Wales in the near future, by providing an informal public arena for settling disputes, may prove to be a step in the right direction.

FOOTNOTES

1. Paul Bohannan, African Homicide and Suicide (1960, Princeton University Press, Princeton, N.J.), 235.

2. New South Wales Bureau of Crime Statistics and Research, Department of the Attorney-General and of Justice, Gun and Knife Attacks, Statistical Report No. 9 (N.S.W. Government Printer, 1973).

3. L.C. Pogrevin, "Do Women Make Men Violent?" (1974) 3 (5) Ms. 49-52, 55.

4. D.J. Pittman and W. Handy, "Patterns in Criminal Aggravated Assault" (1964) 55 (4) Journal of Criminal Law, Criminology and Police Science 462-70.

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8. M.E. Wolfgang, Patterns in Criminal Homicide (1958, John Wiley, N.Y.).

9. Ibid, 212-213.

10. Carol Stack, All Out Kin : Strategies for Survival in a Black Community (1975, Harper and Row, New York),at 114.

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12. R. Langley and R. Levy, Wife-Beating : The Silent Crisis (1977, Pocekt Books, N.Y.), 200.

13. Miriam Dixson, The Real Matilda (1976, Penguin Books, Ringwood, Victoria); see also R. Conway, The Great Australian Stupor (1971, Sun Books, Melbourne).

14. See e.g. newspaper reports, also Royal Commission on Human Relationships, Final Report (1977, A.G.P.S., Canberra).

15. N.S.W. Bureau of Crime Statistics and Research, Department of Attorney-General and of Justice, Domestic Assaults, Statistical Report No. 5 (N.S.W. Government Printer, 1975), 8.

16. Murray Straus, "Levelling, Civility and Violence in the Family" (1974) 36 (1) Journal of Marriage and the Family 13-29.

17. R.N. Whitesnurst, "Violence in Husband-Wife Interaction" in Violence in the Family (Suzanne K. Steinmetz and M.A. Straus, 1974, Harper and Row, New York).

18. R.J. Gelles, The Violent Home (1972, Sage Publications, Beverley Hills), 134.

19. Paul Cohen, Personal Communication.

20. See generally R.J. Gelles, op. cit.; Erin Pizzey, Scream Quietly or the Neighbours will Hear (1974, Penguin Books, Harmondsworth, U.K.); Jean Renvoize, Web of Violence (1978, Rutledge and Kegan Paul, London).

21. Nancy Chodorow, "Family Structure and Feminine Personality" in Women, Culture and Society (N.Z. Rosaldo and L. Lamphere, eds, 1974, Stanford University Press, Stanford, U.S.A.), 49-51.

22. Ibid, 50.

THE LAW

REPORTING CHILD ABUSE

Jane Connors*

Introduction

The maltreatment of children by their parents or other caretakers is not a modern phenomenon. Children have been the victims of physical abuse, neglect and emotional trauma since the beginning of history. They have been abused in the name of discipline and education, maimed to conform with ritual and set to work in horrifying conditions.

It has not been until recently, however, that parental child maltreatment has been recognised as being a problem of such importance that it deserves to be categorised as a 'syndrome' and as such an entity worthy of serious study. Indeed, although early medical descriptions of what later became known as the 'battered child syndrome' exist, recognition of the syndrome was delayed until the discovery of the X-ray and the development of the field of diagnostic radiology.

It was not until the middle of the 1940's that radiologists began reporting cases wherein subjural haematoma - bleeding below the duramater, the most superficial of the outer layers surrounding the brain - a phenomenon usually only present in cases of very violent trauma, was associated with long bone lesions in small children, yet no history of trauma was offered by the children's caretakers. Various explanations were offered by medical researchers to explain what appeared to be spontaneous trauma, but it was not until 1956 that John Caffey, an American paediatric radiologist, suggested that the condition was caused by parental neglect or abuse.

Despite the evidence that had been collected by Caffey and others to substantiate this theory, many found it impossible to believe that parents could be responsible for injuring their own children, particularly to the serious extent revealed by the paediatric radiologists. In 1961, therefore, C. Henry Kempe, concerned that the seriousness of parental child maltreatment was being underrated, arranged for an interdisciplinary presentation on the subject of child maltreatment at the Annual Meeting of the American Academy of Pediatrics. This presentation, which was published in the Journal of the American Medical Association in the following year, proved not only to be the landmark paper concerning the topic, but also gave the yet untitled condition of parentally induced trauma a name.

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The paper was entitled The Battered Child Syndrome, a term which was used by Kempe and his associates to 'characterize a clinical condition in young children who have received serious physical abuse, generally from a parent or foster parent'. The paper described the clinical manifestations of the syndrome, which ranged from very mild injuries such as bruising or mild failure to thrive to massive injuries such as subjural haematoma, ruptured organs and fractured bones. Kempe was of the opinion that the physical abuse of children by their parents and caretakers was a significant cause of handicap and death in children of any age, although children under the age of three were most commonly affected.

As a result of Kempe's paper, interest from many disciplines focused on the battered child. Numerous studies of the condition emerged from all parts of the world, documenting the occurrence of the syndrome, while much research was undertaken to determine the incidence and aetiology of the condition, the characteristics of the abused child, his family and the perpetrator of the abuse.

Since Kempe's paper, various studies of the child maltreatment syndrome have revealed that child abuse is a problem of sufficient incidence and with sufficiently serious effects both on the short and long term condition of the affected child that community intervention to protect the child is mandatory. Historically, child protective measures have been oriented as ex post facto intervention in family life, focusing on the punishment of the parents and the placement of the child outside the family group, an approach which takes no account of the possible rehabilitation of the family and fails to protect children who receive less serious abuse, which is often the forerunner of serious maltreatment.

Attempts at safeguarding a child from further maltreatment and at rehabilitating the family can only be made if incidents of maltreatment are brought to the attention of an agency equipped to deal with the problem of child abuse. However, maltreatment, is an aspect of the dynamics of a particular family and as such it is not conduct which is readily apparent to individuals outside the family. Children who suffer abuse are often too young or too frightened to articulate their needs, or if older, remain silent out of fear of reprisal or loyalty to their parents. Ultimately, therefore, it must be the responsibility of the community to act where the child is at risk by identifying and referring the child and its family to the helping agency.

The identification and referral of a child who has been maltreated depends on the discretion of a third party who becomes aware of an abusive situation. Quite clearly, the most common group of people who are likely to gain information of abuse in a particular family are medical and paramedical people to whom parents may take their children if their acts and omissions result in serious physical injury and who by virtue of their training are professionally qualified to evaluate their injuries. Others who are in a position to discern maltreatment are social workers who similarly may have the expertise necessary to recognise abuse. Beyond this, others such as neighbours or teachers may become

aware of the fact that a child is being abused because they discern a continuing pattern of abuse and neglect manifested in the child's condition. Again, counsellors such as lawyers and clergy may be told of maltreatment in the course of their confidential dealings with abusive parents.

Ideally, if the best interests of the child are to be promoted, identification and referral of the maltreated child, by means of a report to a child abuse agency, should be made by all persons who become aware of abuse, whether by virtue of their professional relationship with the child or his family or by virtue of their proximity and constant contact with the family. It remains a fact, however, that not all abused children are reported to any form of public agency.

Factors Hindering Reporting of Abuse

Individuals may be reluctant to report maltreatment to agencies outside the family for a number of reasons. Perhaps the most fundamental factor which affects all those who become aware of a situation of maltreatment is the attitude society has to the family. There are two aspects to this attitude. The first is a firm belief in the autonomy and privacy of the family and the second is the belief in the value of physical discipline in the upbringing of children. Both these attitudes have been enshrined in the legal principles which govern the conduct of the family. Thus family autonomy is subject to encroachment only where the parent performs an act or omits a duty which brings him within the definition of ordinary criminal law, or if his conduct, though short of criminality falls below the ordinary minimum standards demanded by the community which are set out by statute. Hence a child, if considered to be under threat may be charged as 'neglected' and either become subject to the supervision of the welfare department or removed from the custody of his/her parents and placed in a welfare institution.

Apart from these safeguards to ensure that the child receives at least a minimum standard of nurturem the family is a private institution. Potential reporters are affected by this attitude to the family and assume that a parent that they suspect is abusive knows what s/he is doing, simply by virtue of his parenthood. By intervening and reporting the reporter may see himself as meddling and questioning the parent's ability to perform his role as caretaker.

Potential reporters are affected by the fact that the vast majority of cases of abuse are not clear cut. Despite the amount of literature which describes the manifestations of the maltreatment syndrome, potential reporters are still unsure whether a child is a maltreatment victim. Lay persons such as teachers and neighbours do not have the expertise to determine whether a child is the victim of abuse, while even medical practitioners have difficulty in determining the cause of a child's injuries, particularly in the face of parental denials and the fact that there are other diseases which exhibit symtoms similar to abuse. Moreover, the medical practitioner's task in

diagnosis is hampered by the tendency abusive parents have of moving their child from hospital to hospital and doctor to doctor so that no pattern of abuse can be discerned.

Perhaps the greatest fear that potential reporters of child maltreatment have which prevents them from notifying cases of abuse is the fear the report will result in legal liability. Although certainly the abusive parent could proceed in defamation or, in breach of confidence, it is highly unlikely that any reporter who passed on suspicions of abuse without malice and on reasonable grounds to an appropriate agency would be held accountable in any legal proceedings. The defence of qualified privilege would apply in a defamation action, while the public interest exception would be extended to cover the situation in an action for breach of confidence. Still less likely is that a professional tribunal would find any professional who made report in good faith subject to discipline. Beyond this, it is very unlikely that where a reporter notified suspicions based on reasonable grounds and in good faith to an appropriate agency, the agency would refuse to reveal the name of the reporter, thereby halting the aggrieved parent in his search for a defendant. Indeed, it well may be that this information may not be ascertainable by the parents in a court proceeding.

Schemes to Encourage Reporting of Abuse

Various schemes have been introduced to overcome the reluctance individuals have to the reporting of child maltreatment. Some of these schemes have been legislatively enshrined while others remain a matter of administrative practice.

In essence, three approaches have been taken, the first two provide a legislatively enacted immunity from legal suit where reports are made in good faith and on reasonable grounds. One of these further provides that it is compulsory for certain groups, who are considered to be likely to come into contact with abuse, to report their suspicions to someone in authority, while the other leaves the question of reporting up to the discretion of the individual concerned. The third is an administrative scheme which encourages reporting on a voluntary basis to a 'central register' maintained by an agency such as a welfare department. No immunity is conferred by statute under this scheme. It will be convenient to examine the legislative schemes together and then proceed to an examination of the administrative schemes.

i. Reporting legislation

The plight of the abused child and the reluctance of individuals, particularly doctors, to notify cases of maltreatment to protective agencies, thereby leaving the child to further, perhaps fatal injuries attracted the attention of several national organisations in the United States in the early sixties. Soon after the publication of Kemp's paper, two national conferences were held in the United States to

discuss the measures which should be taken to protect the abused child. Both conferences, the first sponsored by the Children's Bureau of American Department of Health Education and Welfare and the other jointly by the Children's Division of the American Humane Association, the American Public Welfare Association and the Child Welfare League of America, were devoted mainly to the position of the doctor who faced with evidence of maltreatment in the course of professional confidential relationship with his patient as it was considered that his position was the most crucial as he was usually the first person outside the family to see the victim of abuse and he was possessed of the necessary skill to determine the cause of the child's condition.

Both conferences suggested that the doctor would be less reluctant to report any suspicions if he were assured of protection from legal liability and free from any consideration of the ethical position with regard to private communications between the doctor and the patient. To free the doctor from fears on both these heads, legislation granting legal immunity was suggested. Furthermore, as it was believed that a much higher level of reporting could be achieved if it were compulsory for doctors and related professions to report, it was advocated that such reporting should be mandatory as in the notification of gunshot wounds and other gross assaults.

Pursuant to the recommendations of both these conferences, guidelines for legislation and model statutes were issued by various interested bodies in the United States with the result that five different models for child abuse reporting laws were proposed between 1963 and 1966.

The first model was issued by the Children's Bureau in 1963. This suggested that any physician who had reasonable cause to suspect that a child within the jurisdiction of the juvenile court had received non-accidental injury from a caretaker should be required to report any suspicions to an appropriate police authority, or where being an employee of a hospital or other institution, the person in charge of the institution. Any physician who reported the suspicions in good faith was to be given immunity from any civil or criminal liability which may otherwise have arisen, while if he failed to report he would be guilty of a misdemeanour. The model also waived the two American evidentiary privileges of husband/wife and physician/patient privilege so that in child abuse proceedings a physician was able to testify without violating professional confidence and one spouse could testify against another.

A very similar guideline was issued by the Children's Division of the American Humane Association in 1963, the major point of difference between it and the Children's Bureau model was that the later model nominated the public or voluntary child welfare service responsible for child protection in the community as the recipient of the report, while the Children's Bureau advocated the police, mainly because the police were the one agency in the community open 24 hours per day. The Bureau later modified its guideline to allow reporting

to a child welfare agency, except in areas where this service was inadequate.

The American Medical Association was extremely critical of the approach taken by both these models. It thought that the guidelines discriminated unwisely against the medical profession in singling them out as the only group responsible for reporting maltreatment. It suggested that while doctors often became aware of abuse, visiting nurses, social workers, school teachers, marriage guidance counsellors and lawyers frequently became aware of cases before medical care was required. Further the Association expressed concern that parents would be disinclined to take their injured children to the doctor if they were aware of the reporting requirement.

The Association considered a broader range of reporters would blunt the impact of publicity which might otherwise stress the reporting role of physician and accordingly it issued its own guideline conferring immunity on any physician, teacher, nurse or social worker, who on reasonable grounds and in good faith reported the suspicions of child abuse to a welfare or police agency. In all cases notification was left to the discrimination of the potential reporter, rather than being compulsory.

The two final guidelines issued in 1965 and 1966 proved to be little different from the Children's Bureau draft. The first, issued by the Council of State Government amounted to a compromise between the recommendations of the Children's Bureau and the American Humane Association, in that reporting was made the duty of a physician or nurse who acted in the absence of a physician. The second was issued by the Committee on the Infant and Preschool Child of the American Academy of Pediatrics.

Unexpectedly, the Academy differed in opinion from the American Medical Association and suggested that physicians should be mandated to report as a widespread dissemination of the physician's mandate would reduce resentment of the parent. The Academy suggested that a state central registry should be established wherein notified cases could be documented, although provision for elimination of names included for insufficient reason was advocated.

During the period when the legislative models were being enacted and designed American parliaments began to enact statutes based on their recommendations. The preferred model was that issued by the Children's Bureau and as there was no dispute as to the merits of the legislation, during the five year period from 1963-1967 all American states, the District of Columbia and the Virgin Islands enacted reporting provisions. Similar pressure was felt in Canada so that by 1970,six provinces had amended their Child Welfare Acts to include reporting provisions.

Early Australian studies of the maltreatment syndrome had noted the reluctance of the medical profession to report cases of child maltreatment and suggestions were made that legislation on the lines of

the United States' should be introduced to mandate doctors to report to some agency. In accordance with the United States' legislation, the guarantee of legal immunity for reports made in good faith was advocated.

Our first reporting statute was enacted in 1969 in South Australia pursuant to the recommendations of the South Australian Social Welfare Advisory Committee. There was little public debate or interest taken in the enactment of the provision which has since been re-enacted and later revised.

It was not until the middle seventies that real interest in the maltreatment syndrome became apparent in Australia. States introduced ad hoc reporting schemes, but few reports of maltreatment were elicited from the community. Experts in the field placed pressure on state governments to manifest their commitment to the cause of the maltreated child by enacting compulsory reporting legislation similar to the North American provisions. All advocates of such schemes justified the introduction on the grounds that more reports would be forthcoming.

The feasibility of such legislation was considered by various committees in the states. Acting on their recommendations, Tasmania introduced a reporting provision in 1974, New South Wales in 1977, Queensland in 1978 and Victoria in 1979. Meanwhile, although there has been sporadic advocacy for the introduction of such a scheme in Western Australia, no such provision has been introduced, while the merits of such a legislative requirement have been considered only recently in the Australian Capital Territory.

ii. Current Legislation

During the period when Australia was enacting its reporting provisions the pioneer provisions in the United States were being revised in the first place to provide a more effective mechanism for the uncover of abuse and in the second place to come within the terms of the federal Child Abuse Prevention and Treatment Act which provides funding for states whose reporting provisions provide for the reporting of known or suspected cases of abuse and neglect if such reports attract criminal and civil immunity if made in good faith.

At present, five Australian states, six Canadian provinces and all fifty states of the United States, the Virgin Islands, Washington D.C. and Peurto Rico all have statutes which deal with the reporting of child maltreatment. Each statute has the same basic philosophy - the protection of the maltreated child by early state intervention secured by reporting. Nevertheless, there are some significant differences between the statutes which warrent mention.

The Australian reporting legislation shows no uniformity in its definition of reportable child maltreatment. South Australia defines the circumstances which warrant notification as being where a person having the care, custody and control of the child maltreats the

child or causes the child to be maltreated or neglected in a manner likely to subject the child to unnecessary injury or danger. Tasmania defines reportable maltreatment as 'injury through cruel treatment' which is further defined as any treatment notwithstanding the treatment was not intended to be cruel or result in injury to the child and the neglect or failure to perform any act for the welfare of the child. Queensland requires reporting where the child has been maltreated or neglected so that he is subjected to unnecessary injury, suffering or danger, terms which are undefined. New South Wales states that where a reporter has a compulsory duty he must report where the child has been ill-treated, assaulted or exposed, while in its permissive form it allows reporting where a child has been assaulted or is a neglected child within the meaning of the Act. Victoria defines reportable maltreatment as conditions which indicate a young person is in need of care within the meaning of the Community Welfare Services Act, which are when a young person is ill-treated or is likely to be ill-treated or the physical, emotional or mental development is in jeopardy or where the guardian of or person having custody of the child has abandoned the child, refuses to exercise sufficient supervision or control over the child or cannot be found.

It would appear that the Australian legislation limits reportable maltreatment to physical abuse and neglect leading to physical manifestations. Certainly, any sexual abuse where injury is inflicted would be reportable. This position can be contrasted with the wide definitions of maltreatment that exist in the United States where all states include non-accidental physical injury as reportable, 46 add neglect, 40 sexual molestation and 58 emotional or mental injury. It would perhaps be extremely useful if emotional abuse were added to the range of reportable conditions in Australia as it is well known that mental trauma is just as, if not more destructive for a child, than physical abuse.

Legislation in all Australian states except Victoria, 46 American states and the District of Columbia specifically provides that medical practitioners have a duty to report where maltreatment becomes evident to them in the course of their professional duties.

The trend has been to enlarge the group of persons mandated to make reports. It quickly became clear that many persons would inevitably come into contact with abused children before the doctor. Accordingly, Tasmania and South Australia include dentists, social workers, teachers, police and nurses in their list of nominated reporters. Similar extensions have been made in the United States statutes. In 22 states the mandate has been widened to include any person who has reasonable cause to believe that child abuse has taken place along with the nominated professionals.

Three Australian statutes provide for permissive reporting - encouraging, but not mandating, any person who has reasonable grounds to suspect that child abuse has occurred to make reports. In all circumstances, the permissive reports are to be made and attract the same rights as those made by mandated reporters. The Victorian legislation provides an interesting approach as it is a purely volun-

tary statute. No-one is mandated to make a report under the statute, although where such a report is made it is immune from legal suit as in similar legislation in other states.

Legislation which specifically mandates medical practitioners and no other persons to report may be criticised as being counter productive because it well may be that people will avoid notification by the simple expedient of not taking their child to the doctor. This objection, which is probably more intuitive than empirical is incapable of proper assessment, because the actual numbers of children who are not taken for medical assistance will never be known. It seems fairly clear that some parents would avoid taking their children to the doctor if they were aware of the fact that she had a duty to report and it well may be that this fear may extend to parents whose children have received perfectly innocent injuries.

Legislation which mandates a doctor to report may also be criticised because it takes away the doctor's discretion of whether or not to report in a particular circumstance. Nevertheless certain advantages may accrue where the doctor has the mandate. She is relieved of the responsibility of choosing whether or not reporting is appropriate in the circumstances and clients should be made more comfortable if they are aware that there is no choice in the matter. On the other hand, the continued expansion of the mandate of the reporting legislation increases the possibility that more cases will be detected and reported, although it may be suggested that the mandating of a large class of reporters may have the result of diminishing the impact and enforceability of the legislation. In the end analysis it is perhaps most logical to confine the duty to report, if such is to be imposed to classes of people who are likely to come in contact with cases of maltreatment and are able to diagnose the condition because they have some expertise. It would seem perhaps that the best approach is that where certain individuals who are particularly able to discern abuse are compelled to report, while others are protected and encouraged by a permissive statute.

The only jurisdiction in Australia which provides a penalty where a mandated reporter, in this case, a doctor, refuses to report suspicions of maltreatment is New South Wales. This is to be contrasted with the United States where 40 states provide some penal sanction for failure to report. Opinions differ as to the value of such a provision, which although placed in the context of a civil statute should be regarded as seriously as any criminal law which subjects the citizen to the possible deprivation of any property. It may be argued that the concept of mandatory reporting is of little value as there is no means of enforcing the requirement and a penalty is valuable because a conviction even though the sentence would be slight would be a stigma that a potential reporter, particularly a professional would wish to avoid. On the other hand, the difficulties inherent in establishing conduct which would attract the penalty are numerous. The failure to report would have to be wilful and thus it would have to be proved that the potential reporter knew that the child had been abused. Indeed this problem was well appreciated in Illinois where a penalty clause was repealed shortly after its introduction because

the legislators were convinced that a prosecutor would have difficulty in determining whether a failure to report was based on intent or poor judgment. To date no prosecution has ever taken place under a penalty clause.

It would seem clear, however, that where a mandated reporter fails in the duty to report under the statute the penalty lies more in the civil liability he may incur if the child receives further injury. Certainly in the Californian case of Landeros v. Flood it was established that where a child receives further abuse following treatment by a physician who should have diagnosed and reported child maltreatment and the child suffers reasonably forseeable injury a case for damages will be made out. There appears to be little reason why this decision would not apply in Australia and such a possibility should prove to be sufficient encouragement for any person mandated under a reporting statute to notify abuse.

Each reporting statute in Australia, Canada and the United States provides immunity from liability in a legal action for those who report cases of maltreatment. Each Australian statute, except South Australia's spells out the civil and criminal liability to which the immunity applies, hence a report does not constitute a breach of professional ethics, defamation, malicious prosecution and conspiracy. It may be argued that a statutory immunity is not necessary to protect the informant, but it is beyond doubt that its existence has the effect of making some potential reporters more secure.

The only difficulty which may attach to the enactment of a wide statutory immunity is the possibility of malicious or groundless reports. Certainly, all statutes protect only those reports made in good faith and on reasonable grounds, but it is difficult to attack the good faith of a reporter or establish that there were no grounds for the report. It seems clear that the problem of the malicious reporter may never be overcome, although requiring reports to be lodged with some formality as in Australia may alleviate the problem to a certain extent.

iii. Central registries

No reporting legislation exists or has been seriously suggested in Western Australia where since 1968 one metropolitan division of the Child Welfare Department has specialised in the problem of the maltreated child. Similarly Britain has no reporting legislation, but it does maintain a network of registers to which notification of children at risk of maltreatment is made on a voluntary basis. Registers throughout Britain are not uniform, each use different criteria to determine whether a child should be included in the register, some including injured children only, while others include children at risk also.

Registers very like those maintained in Western Australia and Britain are maintained in North America as an adjunct to reporting legislation. Four Canadian provinces maintain such a register, while

in the United States, 48 states and the District of Columbia also have such a system. Unlike the registers in Western Australia and Britain these registers do not accept reports directly from individuals who recognise abuse, but rather, are furnished with their information by the agency which is nominated to receive reports of maltreatment.

The Merits of Reporting Schemes

In principle, any scheme which provides for the notification of child maltreatment to secure early intervention to protect the maltreated child from further danger is laudable. However, the schemes which have been set up have not met with as much success as their advocates anticipated.

The primary problem which faces the reporting scheme is the fact that there appears to be a serious problem of underreporting. For instance, in South Australia only 23 reports were recorded pursuant to such a system in 1972, 18 in 1973 and 24 in 1974, while a retrospective survey of 1974 and three months of 1975 revealed that doctors and hospitals and others knew of at least 273 cases of confirmed abuse and another 910 children at risk of abuse. A similar trend has been discerned in the United States, where despite expanded definitions of abuse and persons conferred with a duty to report there remains a significant level of underreporting.

New South Wales appears to be the only jurisdiction which boasts that its reporting legislation has resulted in an unprecedented number of reports. Certainly, in the first six months of its operation, 408 cases were notified, while 481 were reported in the second six months of its operation, figures which appear impressive in view of the fact that in the ten year period prior to the enactment of the legislation only 645 cases had been reported to welfare authorities. As at 31 May 1978 only 70 confirmed cases were being dealt with actively, a fact which suggests that many of the original reports were unfounded or perhaps the result of the intensive publicity campaign which not only stressed the duty of every individual to report, but castigated the perpetrators of maltreatment.

The Western Australian 'central register' scheme also suffers from underreporting as for example during the 1974-75 financial year only 97 cases were reported.

Research indicated that the highest failure to report in any notification scheme occurs among private physicians, the reason being unclear, but perhaps it may be explained in terms of the fact that the medical profession has traditionally resisted legislation which compels notification of some condition. It would seem that the same pressures against reporting in the absence of any specific scheme will apply here. Notification will still be regarded as 'meddling', diagnosis may be missed and reporting may be considered to be ineffective. Moreover, even where a statute exists granting legal immunity to reporters, some may still fear legal liability.

Both compulsory and voluntary reporting schemes are fraught with dangers. In the first place both schemes may make parents reluctant to take their children to doctors. In the second place, in schemes where a statutory immunity exists to cover every person who makes a report, large numbers of unfounded and vexatious notifications may occur. Certainly in the United States, private citizens make about fifty percent of the nation's reports, but only forty percent of these reports were found to be valid, many coming from spouses or relatives seeking to gain custody of the child.

Any reporting scheme is potentially hazardous in terms of confidentiality. This problem is well appreciated in the United States where the federal Child Abuse Prevention and Treatment Act denies funding to a state unless a method to preserve the confidentiality of all records retrieved pursuant to the reporting statute is maintained in order to protect the child, his parent or guardian. It would seem that any record of child abuse should be strictly confidential and available only to those who make decisions as to whether a child should be placed in a place of safety pending care proceedings. Thus, police, child abuse committees in hospitals and child welfare agencies should be granted access, but in the main, individuals should be denied perusal of such records unless they can establish an appropriate justifying argument.

As a matter of natural justice it would seem that persons on record should be advised as to what information is recorded and a process to achieve expungment should be introduced for unfounded and old records of abuse.

Conclusion

Despite the passage of the reporting statutes, current evidence suggests that most reporting schemes, whether they be legislatively enacted providing a mandate, an immunity and a penalty or merely an immunity for voluntary reports, or maintained administratively in the central registers, meet with little success. However, there has been no serious suggestion that they be dismantled.

In jurisdictions where statutes exist, the passage of time has resulted in the addition of a compulsion or a wider compulsion, the addition of a penalty and sharper definition. In the end analysis, schemes to encourage reporting, whether they be mandatory or voluntary lead to the discovery of some children who may remain undetected and do provide evidence of some commitment to the cause of the maltreated child. Certainly such schemes have an educative value, in that they bring the community's attention to the problem and its known ramifications.

It is clear that a scheme to protect the child at risk and break the cycle of abuse must be established. An effective reporting service coupled with appropriate child protective agencies is the most effective model to deal with abuse: the child is saved from an immediate peril and early intervention is provided so that steps may be

taken to rehabilitate the family. The provision of a reporting scheme must never be regarded as an alternative for appropriate services, and the establishment of reporting schemes should not become the focus of all child abuse programmes. It would seem that if adequate services are provided little difference will exist if a scheme for reporting is statutorily enshrined or administratively maintained. It is important that the dangers of a reporting scheme be appreciated. There must be some machinery to guard against malicious reports and machinery must be established to assure that reports remain confidential. In the final analysis, it must be acknowledged that reporting has a role to play as without notification, the child remains at risk and the problem of maltreatment elusive and undefined.

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LAW REFORM AND THE U.K. DOMESTIC VIOLENCE AND MATRIMONIAL PROCEEDINGS ACT, 1976

Penelope M. Stratmann*

It is trite in legislative and legal circles to warn that it is a waste of time making a law that is unenforceable. It is part of the debate, which will not be entered into here (although it is important in this context), about whether the law dictates or reflects social values. The legal response to domestic violence in Australia is a good example of the situation which arises when effective law enforcement is frustrated by ambivalent social attitudes.

Criminal Law

The laying of criminal charges is not actively promoted by police because:

- it is difficult to prove an assault in the domestic sphere (lack of independent witnesses, counter allegations and denials made in a highly charged emotional atmosphere, sometimes a lack of apparent physical injury);
- the victim so often drops the charges (from fear of retaliation, or fear of an uncertain future);
- it doesn't solve anything (she keeps on taking him back - she must like it that way);
- perhaps she provoked him (maybe she deserved it).

The helplessness of the police and/or their cynicism soon becomes apparent to the general public. Their inability to prosecute successfully is interpreted as virtual condonation, both by victim and offender alike.

Even if a charge proceeds to conviction, it may lead to a suspended sentence, and provide no effective protection to the victim whatsoever. In other words, the criminal law is only of benefit to women if it serves a deterrent function. If it fails,

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the most that is offered is financial compensation via criminal injuries compensation legislation.[1] In South Australia the maximum awarded is $2,000 and in assessing the amount, the Court may take into consideration the degree to which the victim contributed to the situation, and the victim's relationship to the offender.

Civil Law

The civil law offers four[2] potential remedies:-

a) civil suit for damages for assault;

b) peace complaint;

c) an equitable suit in the Supreme Court for an injunction;

d) injunction proceedings in the Family Court (only available if the parties are married to each other).

a) Civil Suit. It is possible to claim damages for a civil wrong (tort): the standard of proof is 'on the balance of probabilities' rather than the criminal standard of 'beyond reasonable doubt'. Having proved the offence one must then establish injuries for which financial compensation (for example, loss of earning capacity) can be assessed. This is a lengthy and costly process: if the action fails, the victim may have to pay the offender's costs. If the action succeeds, the victim must then enforce the judgement (that is, extract the money). Traditionally wives could not sue their husbands in tort. There may still be some jurisdictions where this is the case. In any event, for obvious reasons, this course of action is not a practical response to domestic violence.

b) Peace Complaint. The peace complaint is a common law remedy which is embodied in South Australia in Section 90 of the Justices Act, and is in New South Wales in S.547 of the Crimes Act. This can be effective if it is used by a woman in the context:

> 'O.K., I've had enough: I'm not putting up with this any more, I'll give you a second chance'.

The virtue of the procedure is that, unless contested, it does not require the services of a solicitor but may be commenced by the victim laying a complaint at the local magistrates court, alleging

in one or two lines a specific incident involving actual physical harm or the threat of it. The worst the offender can expect is a lecture from the magistrate and being required to enter a bond to keep the peace towards the victim, usually for 12 months, in default of which he is liable to forfeit $50 or $100. At common law there is no power to restrain the offender specifically from certain actions, such as coming onto premises. In South Australia at least, the police claim they cannot arrest for breach of the bond unless there is sufficient evidence to charge the offender with what would in any event be an offence. In most cases, therefore, it is up to the victim to lay a further complaint at the magistrates court alleging breach of the bond which, if proved, will result in the offender forfeiting his $50 or $100 and probably being required to enter into a further bond. Jocelynne Scutt in her paper Spouse Assault: Closing the Door on Criminal Acts [3] delivered at the Women and the Law Conference in 1978 quotes Detective Sergeant K.S. Morgan as saying that 'if a complaint is made to the police that a person on such a bond does the very thing the bond requires him not to do, the police have no hesitation in arresting him and charging him with the particular offence'. This at first sounds contrary to the practice in South Australia, but I suspect it amounts to the same thing: that is, there must be sufficient evidence that a specific offence has been committed before an arrest will be made. The fellow who hangs around terrorising a woman by his presence but doing nothing unlawful may be warned off by the police, but will not be arrested.

One may as well summarise the Peace Complaint in the same way as the criminal law: it is effective so long as it acts as a deterrent. Once the offender oversteps the limits, the victim has nothing much in the way of immediate protection (although the police may be more cooperative once she has taken steps herself to improve the situation, and the court has given its sanction). If she thinks the procedure will have a constructive impact on the situation, it is worth pursuing.

It should also be noted, that since the introduction of the Family Law Act (Commonwealth) in 1976, it is unlikely that magistrates have jurisdiction to entertain peace complaints between married people. I am aware that in fact such complaints have been entertained, but no doubt they would not have proceeded if the magistrate's jurisdiction had been challenged.

c) Equitable Suit for Injunction. An equitable suit for an injunction is rarely embarked upon for reasons of expense. It is necessary to allege that some financially compensable damage would continue if the injunction were not granted. The lower courts do not

have an inherent jurisdiction to grant injunctions. There would be no need for a married woman to take such action in view of the provisions of the Family Law Act, but an unmarried woman has no other means of obtaining an injunction (although in some states courts may make such orders in relation to ex-nuptial custody orders if the welfare of the child is threatened and the power is given by statute). Generally the roles surrounding equitable relief by way of injunction are too sophisticated to be readily applicable in this area. I know of no examples.

d) Injunction under Commonwealth Family Law Act 1975. The Family Law Act's injunction provisions are excellent as far as they go. They enable a restraining order to be obtained at short notice (in extreme cases) and ex-parte (that is, before the respondent has notice of the application - in cases of immediate threat).

The irony of the Family Court injunction is embodied in the constant complaint of many women that when they call the police to a scene of domestic violence, the police say they cannot do anything until the woman obtains a Family Court injunction: once she does so, and calls the police to another incident, the police are known to say they cannot do anything because she has a Family Court injunction: she must see her solicitor and have it taken back to the Family Court to have it enforced. Obviously some police feel that the Family Court's intervention lets them off the hook, ignoring the fact that if a criminal assault has occurred they have a duty to proceed under the provisions of the criminal law.

If the victim does see her solicitor the next day, with instructions to go back to the Family Court to allege her husband's contempt, the following procedures are involved:-

- the solicitor must draft and have typed an application and an affidavit of the wife setting out the particulars of the incident or incidents complained of, and possibly also an affidavit of a witness, and/or an affidavit providing medical evidence of injury;

- the papers are filed and a hearing time is requested; how soon the matter will be heard will depend on how urgently the court staff view the matter, and they will take into account the time required for the respondent to be served with papers and to allow him to obtain legal advice: if the time is too short, the respondent

> may successfully seek an adjournment to enable him to obtain proper advice or representation: sometimes if there is a dispute on the facts, the matter will be adjourned to enable sufficient time to be set aside for a formal hearing of the allegations and defence: in most cases if there is a fairly strong case on the face of it, the Court will at least make interim orders further restraining the respondent; if he is found to be in contempt he may receive a suspended sentence, (imprisonment at first instance is most unusual), but he is more likely to be severely reprimanded and referred to counselling. It is also possible for the Court, on finding that the respondent 'has knowingly and without reasonable cause contravened or failed to comply with an injunction' to:
>
> a) order that person to pay a fine not exceeding $1,000;
>
> b) require that person to enter a recognizance, with or without sureties, in such reasonable amount as the court thinks fit, that he will comply with the injunction or order, or order him to be imprisoned until he enters into such a recognizance or until the expiration of 3 months, whichever first occurs; ...
>
> d) make such other orders as the court considers necessary to enforce compliance with the injunction order. [4]

A further breach by the offender may result in imprisonment. But having undergone at least three crises, incurred over $1,000 in legal costs, and having made countless visits to the solicitor over a period of weeks, the victim may wonder what she is achieving.

It is important that both solicitor and victim are realistic about what they are trying to achieve and so far as possible, take into

account the personality of the husband (and indeed the personality and practical resources of the wife, since her ability to follow the matter through is crucial).

Typically frustrating is the following example: after considerable harrassment falling short of physical violence, Mrs Brown had obtained an injunction restraining her husband from assaulting, harrassing or molesting her or from coming onto the premises where she and the child resides; he breached this by coming round a bit drunk one night and calling out at windows and trying to force his way in to talk about a reconciliation. He was taken to the Family Court on his wife's application alleging his contempt: he was severely lectured, advised that if he breached the injunction again he ran the risk of imprisonment, and counselling was recommended. Immediately after the hearing he followed his wife to the Court cafe and slapped her (not very hard) on the face and walked off. From Mrs Brown's perspective, he had deliberately breached the injunction, and she instructed her solicitor to take him again to Court and insist on imprisonment. She doesn't see any point in counselling if that is her husband's attitude. The solicitor feels that Mr Brown's flick at his wife's face was due to wounded pride, and was in fact very trivial, hardly warranting imprisonment. Nevertheless, it was a deliberate flouting of the Court's order, and for that reason, should not be ignored. It will be difficult to persuade the legal aid funds to pay an additional $300-$400 in legal costs. Ultimately the husband will be further alienated and fustrated, and the probability of resolving other matters in the dispute is fast fading.

This example indicates not so much the inefficiency of the injunction procedure as the unsuitability of applying the whole Family Court process to what is going on between these two people. It has become an arena in which no points can be seen to be lost by either party nor by the Court. Once legal intervention is sought, different expectations are aroused in both parties; the process can become both self perpetuating and self defeating.

The most successful role of the Family Court injunction is to nip potential disputes in the bud, and deter continuing overt conflict. Many women are made to feel more secure, which is one of the most important goals. The court's ability to determine the use and occupation of the former matrimonial home is an immense advantage.

I believe, however, that there is a severe limit to what the Family Court can achieve in terms of real protection in a dangerous situation. Although I am aware that many Judges believe the Court deals effectively with the enforcement of injunctions, it is unlikely

that they are aware of the many cases which never reach them because of the sense of futility which may overcome both client and solicitor. In addition, the cost of such proceedings is not something which should be ignored.

Is there any legal response which can overcome the ineffectiveness of the remedies referred to above? In almost all cases I have commented that deterrence is usually the only thing to be hoped for in resorting to these remedies: enforcement tends to be ineffectual. Weak enforcement procedures undermine the deterrent value of the legal responses. Eekelaar [5] refers to Parnas' view that 'only the predictable application of punitive processes to the perpetrators of marital violence can lead to general awareness of the wrongness of such behaviour'. The dilemma which faces us is the trend, reflected in the Family Law Act, to remove the concept of fault from marital disputes, and to avoid the sanction of 'punishment' if possible.

I would say that the goals of any change in the laws relating to domestic violence are:-

1) to protect a person threatened with physical harm;

2) to demonstrate by strong law enforcement that society frowns upon the use of physical force as a means of resolving disputes, whatever the context.

The U.K. Domestic Violence and Matrimonial Proceedings Act 1976

This Act goes some way to achieving these goals by underlining the unacceptability of physical violence, and it offers some degree of immediate protection by removing the offender from the scene.

The novelty of its provisions in the U.K. was that it:

a) made it possible for married women to seek an injunction independent of instituting other procedures such as divorce;

b) extended the injunction procedure to de facto wives as well as to legally married women;

c) set out clearly, what has been resisted (with few exceptions) in English law - the ability of the Court to exclude a

person from a home regardless of the fact that that person might be a sole or joint owner (or lessee);

d) allowed a power of arrest to be attached to an injunction order in cases of actual violence.

In Australia, b) and c) (in so far as c) applied to de facto wives) and d) would be novel.

To what extent would it be possible to enact similar provisions in Australia?

State Law Reform

The Commonwealth Government has power to legislate with respect to marriage and divorce. No Commonwealth law can extend, in this context, to people living in de facto marriages. Each state would have to be moved to adopt legislation similar to the U.K. provisions dealing with de facto spouses.

The first principle that needs to be accepted is that de facto wives should be given a right to remain exclusively on property owned or part owned (or rented) by their de facto spouses. Bear in mind that there is nowhere in Australia (nor is there in the U.K.) any legal obligation on a man or woman to support his or her de facto spouse. There is an obligation to support children of the union. Clearly the right to exclusive occupation will have to be based on the needs and protection of children, and the lack of alternative accommodation for them.

An order for exclusive use and occupation may be more final in its application to de facto couples than to legally married couples, because there is no legally recognised forum, such as the Family Court, in which de facto couples may resolve and finalise the disputes arising from the termination of their relationship. The ordinary civil courts may adjudicate any dispute about joint property, but these courts cannot take into account such matters as the needs of children, the length of the relationship and non-financial contributions by way of house-keeping and practical services, whereas the Family Court is required by statute to consider such matters. The ordinary laws of property only look to financial contribution or to more remote equitable rights arising out of the law of trusts. An injunction allowing a de facto spouse exclusive occupation of a jointly owned home would have to be specifically stated to have precedence over or at least be taken

into account in any application the other spouse may make in the property jurisdiction for an order for sale or possession of the home. The property laws will have to be amended accordingly. Since the laws of property provide the backbone to the Anglo-Saxon political, economic and social structure, the proposal to introduce such an injunction power will have wider ramifications than appear on the surface, and any proposals for reform will have to set out the basis of a rational relationship between the two areas of law, and acknowledge their impact on each other. Nevertheless, the U.K. has had to face the same problem, and has made appropriate legislative adaptations. (In fact U.K. judges had already gone further than their Australian counterparts in recognising equitable rights to property arising out of cohabitation, and the concept may be rather more novel in Australia.)

Federal Law Reform

With respect to married people, the Commonwealth government is the law maker, and a joint parliamentary committee is in the process of reporting on proposed changes to the Family Law Act.[6]

I submit that the provisions of that Act are unable to offer adequate protection to women through prompt enforcement of injunctions. Police are frustrated by their inability to arrest on breach of Family Court injunctions. The attachment of a power of arrest to injunction orders would be a great boon.

The first difficulty which arises is that the Commonwealth police, who have jurisdiction to enforce Family Court orders, are far too few in number to be called to the scene of a domestic dispute to make an arrest. The state police are invariably called upon, but are not currently charged with enforcing federal court orders. If the Family Law Act were amended along the lines of the U.K. provisions, the appropriate federal and state bodies would have to come to a formal agreement to enable state police to act. The states would have to be willing to take on this quite significant additional burden.

In other respects, I cannot see any reason why the Family Law Act should not be amended so as to enable a power of arrest to be attached to injunctions in appropriate cases.

General Comments

From the administrative point of view, the Courts would have to arrange to roster the judges before whom offenders could be brought after hours.

The U.K. legislation does not specify how the offender is to be dealt with after the initial arrest and brief detention. Clearly, the intention of the legislation is to protect the victim by removing the offender from the scene. Less stress is placed on actually proving an offence and punishing the offender. Where the parties are married, the usual sanctions for contempt of Family Court orders could apply, and similar remedies could be set out in state legislation affecting de facto couples.

Much of what has been set out above applies to adapting the broad principles of the U.K. legislation to Australian law. Once that has been accepted as being desirable, there is still much to be debated about the actual provisions.

If such an injunction power supplants recourse to the criminal law, one objection to it is that it places the initiative on the victim. Even the criminal law can be criticised for the way in which police depend on the victim to pursue the matter. If she doesn't want to press charges, the police will not in practice proceed. If she presses charges but later wants to drop them, the police will give a sigh of relief and oblige (and use this as ammunition to deter other women from pressing charges in the first place). If there was an adequate social response to domestic violence, police would pursue prosecutions on the complaints of neighbours. There is no denying that, in a field where it is notoriously difficult to find any witnesses apart from the victim, it will rarely be feasible to proceed without her cooperation. But in cases where the violence is well corroborated by outsiders and injury is obvious, there is no reason why police should not proceed as they would with any other obvious breach of criminal law. After all, they are unlikely to drop a charge of fraud against a businessman just because his partner says: 'Please don't - it would ruin our relationship, and his going to gaol would cause havoc to our income'. The fact that injunction procedures or community justice centres are available should not absolve the police from responsibility for prosecuting criminal offences. Only thus is the unacceptability of violence reinforced.

Other factors in the U.K. legislation which require debate include:-

- should the state provisions apply only to heterosexual cohabiting couples;
- is 24 hours the appropriate period for detention;

- should the injunction powers be wider than the U.K. provisions: injunctions granted under the Family Law Act go further in terms of the conduct they prohibit;

- are the conditions on which an arrest power may be attached too restricted or insufficiently restrictive.

In its first annual report in 1977 the Family Law Council rejected the suggestion that the Family Law Act should be amended along the lines of the U.K. Act. With respect I cannot agree with their complacence that 'when trouble /arises the police/ may arrest the husband for a breach of the peace or at least move him on'. This ignores the reality that the police will not arrest unless they are confident of upholding a conviction on the criminal burden of proof, whereas the U.K. Act allows police to arrest where 'he has reasonable cause for suspecting /a person/ of being in breach /of an injunction/ by reason of that person's use of violence or, as the case may be, of his entry into any premises or area'.

The Family Law Council continued that 'the existing legislation, if properly used by the legal profession, does afford some protection to women'. Once again, this ignores the cost of successive Family Court applications.

There is no doubt that legal remedies are not always the most appropriate recourse, but if they do exist and if they are to have any credibility, proper enforcement is essential. Without it the most useful and least traumatic aspect of the legal process, that is, deterrence, will not eventuate.

FOOTNOTES

1. For an outline of such legislation in Australian jurisdictions, see John E. Willis, "Compensation for Victims of Domestic Violence", post this volume.

2. There may be additional statutory remedies in some states, which I have not yet thoroughly researched.

3. To be published in the Australian Law Journal.

4. Section 114(4) Family Law Act (Cwth) 1975-1979.

5. John Eekelaar, Family Law and Social Policy, Wiedenfeld and Nicholson, London 1978, p. 77.

6. Joint Select Committee on the Family Law Act, proceedings published in Official Hansard, Canberra A.C.T., 1979.

APPENDIX

DOMESTIC VIOLENCE AND MATRIMONIAL PROCEEDINGS ACT 1976 (United Kingdom)

(1976 C. 50)

An Act to amend the law relating to matrimonial injunction; to provide the police with powers of arrest for the breach of injunction in cases of domestic violence; to amend section 1 (2) of the Matrimonial Homes Act 1967; to make provision for varying rights of occupation where both spouses have the same rights in the matrimonial home; and for purposes connected therewith.

Matrimonial injunctions in the county court

1. (1) Without prejudice to the jurisdiction of the High Court, on an application by a party to a marriage a county court shall have jurisdiction to grant an injunction containing one or more of the following provisions, namely, -

(a) a provision restraining the other party to the marriage from molesting the applicant;

(b) a provision restraining the other party from molesting a child living with the applicant;

(c) a provision excluding the other party from the matrimonial home or a part of the matrimonial home or from a specified area in which the matrimonial home is included;

(d) a provision requiring the other party to permit the applicant to enter and remain in the matrimonial home or a part of the matrimonial home;

whether or not any other relief is sought in the proceedings.

(2) Subsection (1) above shall apply to a man and a woman who are living with each other in the same household as husband and wife as it applies to the parties to a marriage and any reference to the matrimonial home shall be construed accordingly.

Arrest for breach of injunction

2. (1) Where, on an application by a party to a marriage, a judge grants an injunction containing a provision (in whatever terms) -

(a) restraining the other party to the marriage from using violence against the applicant, or

(b) restraining the other party from using violence against a child living with the applicant, or

(c) excluding the other party from the matrimonial home or from a specified area in which the matrimonial home is included,

the judge may, if he is satisfied that the other party has caused actual bodily harm to the applicant or, as the case may be, to the child concerned and considers that he is likely to do so again, attach a power of arrest to the injunction.

(2) References in subsection (1) above to the parties to a marriage include references to a man and a woman who are living with each other in the same household as husband and wife and any reference in that subsection to the matrimonial home shall be construed accordingly.

(3) If, by virtue of subsection (1) above, a power of arrest is attached to an injunction, a constable may arrest without warrant a person whom he has reasonable cause for suspecting of being in breach of such a provision of that injunction as falls within paragraphs (a) to (c) of subsection (1) above by reason of that person's use of violence or, as the case may be, of his entry into any premises or area.

(4) Where a power of arrest is attached to an injunction and a person to whom the injunction is addressed is arrested under subsection (3) above, -

(a) he shall be brought before a judge within the period of 24 hours beginning at the time of his arrest, and

(b) he shall not be released within that period except on the direction of the judge,

but nothing in this section shall authorise his detention at any time after the expiry of that period.

(5) Where, by virtue of a power of arrest attached to an injunction, a constable arrests any person under subsection (3) above, the constable shall forthwith seek the directions -

(a) in a case where the injunction was granted by the High Court, of that court, and

(b) in any other case, of a county court,

as to the time and place at which that person is to be brought before a judge.

Amendment of Matrimonial Homes Act 1967

3. In section 1 (2) of the Matrimonial Homes Act 1967 (which provides for applications for orders of the court declaring, enforcing, restricting or terminating rights of occupation under the Act or regulating the exercise by either spouse of the right to occupy the dwelling-house), -

(a) for the word 'regulating' there shall be substituted

the words 'prohibiting , suspending or restricting'; and

(b) at the end of the subsection there shall be added the words 'or requiring either spouse to permit the exercise by the other of that right'.

Order restricting occupation of matrimonial home

4. (1) Where each of two spouses is entitled, by virtue of a legal estate vested in them jointly, to occupy a dwelling-house in which they have or at any time have had a matrimonial home, either of them may apply to the court, with respect to the exercise during the subsistence of the marriage of the right to occupy the dwelling-house, for an order prohibiting, suspending or restricting its exercise by the other or requiring the other to permit its exercise by the applicant.

(2) In relation to orders under this section, section 1(3), (4) and (6) of the Matrimonial Homes Act 1967 (which relate to the considerations relevant to and the contents of, and to the jurisdiction to make, orders under that section) shall apply as they apply in relation to orders under that section; and in this section 'dwelling-house' has the same meaning as in that Act.

(3) Where each of two spouses is entitled to occupy a dwelling-house by virtue of a contract, or by virtue of any enactment giving them the right to remain in occupation, this section shall apply as it applies where they are entitled by virtue of a legal estate vested in them jointly.

Short title, commencement and extent

5. (1) This Act may be cited as the Domestic Violence and Matrimonial Proceedings Act 1976.

(2) This Act shall come into force on such day as the Lord Chancellor may appoint by order made by statutory instrument, and different days may be so appointed for different provisions of this Act :

Provided that if any provisions of this Act are not in force on 1st April 1977, the Lord Chancellor shall then make an order by statutory instrument bringing such provisions into force.

(3) This Act shall not extend to Northern Ireland or Scotland.

RAPE IN MARRIAGE:

THE SOUTH AUSTRALIAN EXPERIENCE

Duncan Chappell*

Introduction

Major changes in rape laws have occurred throughout the common law world during the 1970s. These changes have been stimulated by a variety of pressures, the most powerful of which has undoubtedly emerged from the women's movement. Rape laws have been seen as symbolic of the traditional control and power exerted by men over women. Rape laws, as such, have become an ideological issue in the forefront of the push for women's rights. This push commenced in the United States in the late 60s and has since spread to the United Kingdom, Australia and many other countries.

The pace of change in the United States has been particularly swift. In 1976 thirty-five States had effected major changes in their rape laws, and most of the remaining States were considering reforms. By far the most radical alterations were based upon the so-called Michigan model. This model largely abandoned the original concept of rape and substituted a neutrally defined crime of sexual misconduct, the gravity of the offence varying according to such objective factors as the degree of injury caused, use of a weapon etc. Less radical changes, typified by a State like Washington, involved dividing rape into degrees to which different penalties were attached according to the perceived gravity of the offence. The definition of rape was also expanded to incorporate what was formerly the separate crime of buggery, and also fellatio, cunnilingus and allied forms of sexual contact.

Changes were also effected in the procedural laws applying to rape cases, the most frequent of these being to place restrictions upon the cross-examination of rape victims concerning their prior sexual history; to abolish the cautionary instruction regarding the dangers of convicting an offender solely on uncorroborated testimony of the victim; and the provision of greater privacy for the victim both at the committal and trial.

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In Australia the changes in rape laws have not been nearly as extensive as those briefly mentioned above. As Deidre O'Connor has pointed out in a recent article in the Australian Criminal Law Journal,[1] most of the changes have been of a "band-aid quality". However, it should be pointed out that each of the Australian States has considered the need for rape law reform and four - South Australia, Victoria, New South Wales and Tasmania - have issued reports on the subject.

The most extensive change of Australian rape laws has taken place in South Austrlaia, following the recommendations of the South Australian Criminal Law and Penal Methods Reform Committee (otherwise known as the Mitchell Committee). This committee issued a special report[2] on rape in March of 1976, following a request from the Attorney General of the State. Most of the major recommendations made in this report was incorporated in legislation[3] which came into law in December of the same year.

By far the most controversial of the changes effected by this South Australian legislation related to rape in marriage.[4] The change involved abolishing the traditional common law rule that a husband was deemed to be incapable of raping his wife and permitting, in specified circumstances, spousal complaints of rape to be brought and adjudicated.

Other, less controversial, reforms of South Australian rape laws were:

(a) Substantive - the definition of rape was expanded to make it a unisexual offence i.e. to incorporate both homosexual and heterosexual behaviour between people of the same sex or other sexes as well as to include what was formerly buggery and fellatio within the concept of the crime.

(b) Procedural Changes - these included limiting the cross-examination of the victim about her prior sexual history; limiting the right of access to the victim at the committal hearings; and limiting the right to publicise information about both the victim and alleged offender; and

(c) Administrative changes affecting the way in which the criminal justice system handled rape. For example, a special unit staffed by women was established in the police force to assist with the interviewing of rape victims. A special unit was also established at a major metropolitan hospital in Adelaide to centralise medical examinations of rape victims while a rape crisis centre, funded by State monies, provided both advice and follow-up assistance to victims.

Examining the South Australian Rape Law Reform Experience

Having sketched the background to some of the changes in rape laws overseas and in Australia it is intended to concentrate discussion on the South Australian rape law reforms. How have they worked? Have they achieved a greater degree of justice for both the victim, society and the offender? Have they improved the quality of justice? These are important questions which are all too often ignored by lawyers who tend to become so immersed in substantive and procedural questions associated with law reform that they fail to perceive the impact, if any, such reform has upon society. No attempt is usually made to evaluate the effectiveness of any of these laws.

By examining the South Australian experience in the rape law reform area it is hoped that it may be possible to assist other jurisdictions to make more informed decisions when changing their rape laws, avoiding pitfalls that may emerge from this experience and building upon its strengths.

Methodology

The following comments about the South Australian rape law reform experience are based upon a small research project undertaken last winter in collaboration with Peter Sallmann of the Department of Legal Studies at La Trobe University. With the assistance of a $3,000 grant from the Australian Criminology Research Council, we undertook a series of semi-structured interviews in Adelaide with those persons directly concerned with the implementation and administration of the new rape laws. The principal focus of the study was the rape in marriage provision mentioned above but in the course of the investigation we moved further afield to examine the whole range of changes incorporated in the 1976 legislation. We conducted interviews with police, prosecutors, defence attorneys, members of the Mitchell Committee, politicians, women's groups who lobbyed for the changes in the law, victims of rape, and with various opponents of the new legislation. Discussions of the major findings to emerge from these interviews addresses first the issue of rape in marriage and then other significant areas of reform.

Rape in Marriage

At common law it was not possible for a husband to be prosecuted for raping his wife. [5] The justification for this rule was said to be that as part of the contract of marriage a wife agreed to submit to the sexual demands of her husband - the wife lost any bargaining power when it came to matters of sexual intercourse. The rule seems to have dated from a period when wives were viewed as chattels belonging to their husbands, possessing very limited rights to own individual property or to do many other things in the context of marriage. The rule epitomizes those aspects of rape laws which many women find so offensive and it has formed a special target for those who have been seeking reform in this area. As such it seems to have generated far more heat than almost any other aspect of rape law reform, presumably treading on many sensitive male toes.

The Mitchell Committee, in its special report on rape, considered the question whether spousal immunity should continue to be allowed in the area of rape. Having pointed out that under existing law it was possible for an assault charge to be brought if a man forced himself upon his wife, and that Under English law where an order of separation was in force the husband could be guilty of rape if he had intercourse without his wife's consent, the Committee took the position that it would not be proper to move a further step and abolish completely the present immunity of husbands in the field of rape. They said:

> 'The view that the consent to sexual intercourse given upon marriage cannot be revoked during the subsistence of marriage is not in accordance with modern thinking. In this community today it is anachronistic to suggest that a wife is bound to submit to intercourse with her husband whenever he wishes it irrespective of her own wishes. Nevertheless it's only in exceptional circumstances that the criminal law should invade the bedroom. To allow a prosecution for rape by a husband upon his wife with whom he is cohabiting might put a dangerous weapon into the hands of the vindictive wife and and additional strain upon the matrimonial relationship. The wife who is subjected to force in the husband's pursuit of sexual intercourse needs, in the first instance, the protection of the family law to enable her to leave her husband and live in peace apart from him, and not the protection of the criminal law. If she has already left him and is living apart from him and not under the same roof when he forces her to have sexual intercourse with him without her consent then we can see no reason why he should not be liable to prosecution for rape.'

The Mitchell Committee thus recommended against any change in the law, other than to recognise that it would be sufficient to indict a husband for rape where the act alleged to constitute rape was committed while the husband and wife were living apart and not under the same roof. This recommendation was one of several not accepted by the govement of South Australia when it received the report. The Attorney-General, Peter Duncan, introduced legislation which removed the immunity completely. An enormous outcry followed. [6] Those opposing the reform used the arguments mentioned by the Mitchell Committee, as well as suggesting that the police would be flooded with complaints by irate women. It was claimed that the sanctity of marriage was threatened by the proposal (a view expressed, among others, by the Anglican Archbishop of Adelaide) and that blackmail and other dire consequences would flow from the reform. Public opinion polls taken in the Adelaide community showed that a substantial majority of the population, both men and women, were opposed to the proposed reform.

Despite the opposition the government pursued it course. The legislation passed through the Lower House, where the government had a majority, but became blocked in the Upper House. Finally, a compromise was reached with the opponents in the Upper House and the law was placed on the statute books. The ultimate wording of the law is both complicated and confusing and may give rise to future legal problems. Briefly, the law reads that ;

> 'a person shall not be convicted of rape or indecent assault upon his spouse, or an attempt to commit, or assault with intent to commit, rape or indecent assault upon his spouse (except as an accessory) unless the alleged offence consisted of, was preceded or accompanied by, or was associated with: (a) assault occasioning actual bodily harm, or threat of such an assault, upon the spouse; (b) an act of gross indecency, or threat of such an act, against the spouse; (c) an act calculated seriously and substantially to humiliate the spouse, or threat of such an act; or (d) threat of the commission of a criminal act against any person.'

Some commentators [7] have indicated that it would seem that just about anything could be brought within the terms of this section and it would have been much easier to have simply removed the spousal immunity completely. However, politics gave way to rationality in this case and whilst the outcome may be a pragmatic solution it certainly is not a legally neat solution.

The Result of the Change in the Law

What has happened since December I976 in South Australia concerning spousal complaints of rape? Have the fears of those who opposed the legislation been justified? Our preliminary research findings suggest they have not. To date there have only been two official complaints made to the South Australian police concerning rape in marriage. The first of these was successfully prosecuted through to the conviction of the responsible husband. The fact situation was such as to not really test the scope of the new legislation. The wife had been living apart from the husband, several injunctions having been issued by the Family Court requiring him not to interfere with or to make contact with his wife. The husband in fact consistently breached these injunctions and sought to have intercourse with his wife, hitting her several times and breaking her jaw in the course of persuading her to submit. She did so and subsequently the matter was brought to the attention of the police who then prosecuted. The fact situation was similar to those circumstances which had already been viewed by the English Courts as ones in which they would extend the common law to protect a wife. Had this fact situation arisen in South Australia before the reform of the law it seems likely the courts would have been willing to

follow these English precedents and to have developed the South Australian law in the same direction. Nonetheless, the case was the first of it type to come through the full prosecutive process and that in itself seems to be a significant fact.

The only other complaint of rape in marriage made to the authorities involved a wife who was prepared to have normal sexual intercourse with her husband but her husband insisted on having anal intercourse to which she objected. Despite these objections he used force to overcome her objections and she subsequently reported the matter to the authorities. Thes case illustrates one of the dilemmas arising in this area of criminal prosecution since after going through the committal proceedings the husband and wife apparently reconciled, leaving the police and prosecutor wondering whether they should continue the proceedings or terminate the whole affair.

Overall, it is clear that there has not been a great flood of complaints by South Australian women alleging they have been raped by their husbands - vindictive wives have not been victimising their harassed spouses nor have there been any obvious cases of blackmail or fraud. The question remains - does this mean that there are no rapes in marriage or is it simply the case that women are not prepared to bring such complaints to the notice of the authorities?

We were very interested in this question since it is important to consider not only the nature of official criminal reports but also the extent of the behaviour generally in the community. We already know from other studies that there is a very large dark figure of crime - that is, much unreported criminality which for a variety of reasons never comes to the notice of the authorities. That there is a substantial dark figure of rape in marriage also seems to be fairly firmly established. In the course of our interviews we spoke with family lawyers, shelter workers and women in shelters about their experiences with spousal sexual violence, and particularly rape. It was clear from our interviews with the shelter workers that many women who seek refuge in these places do so because of domestic violence which incorporates forced, non-consensual, sexual intercourse and a range of other physical brutalities including broken bones and limbs. The true extent of domestic violence in the community has long been concealed. We are only just beginning to become aware how substantial this violence must be.

Why is it that if women are being raped in marriage they do not report the matter to the police? Our interviews suggest a number of reasons:

(i) Women are very distrustful of police and wish to have nothing to do with them. Certainly in the past there has been some justification for this view, police and prosecutors and the criminal justice system at large often being extremely unsympathetic towards women complaining of rape.

(ii) Women who have suffered this type of violence only wish to escape from it, seeking a divorce or separation from their husbands. They do not wish to become involved in the further unpleasant experience of going through a criminal trial.

(iii) Married women tend to perceive sexual violence not as rape but merely as one part of the general violence that they have to put up with.

This fact came out in some of our interviews when we asked whether any of the women had been raped in marriage - they indicated they had not. However, when we asked if they had ever had sexual intercourse against their will they relayed to us a series of tales about being hit and bashed in order to get them to agree to intercourse.

It was also clear from the family lawyers we talked with that they frequently heard about rape in marriage and dealt with it as one of the elements which might be relevant to reaching decisions on the custody of children. Of course, it is no longer a major element in the no-fault situation which we now live with in the divorce field.

What general assessment can be made of the rape in marriage law now that it has been in effect for two years? It's critics have not been justified in their major arguments but at the same time they may well indicate, and do so on occasions, that it seems to have been something of a fizzler with so few reports of spousal rape. The response made by proponents of the law is that they never expected there would be a flood of complaints but the symbolic aspects of the law are important. They stress that even if there are not many complaints, the fact that the law is on the statute book may deter some husbands from attacking their wives. In the long term the law may also help achieve a better understanding in the community of the true nature of the sex role of women and men.

The rape in marriage reform in South Australia demonstrates how an apparently highly contentious criminal law can, in practice, ultimately be implemented in society with scarcely a ripple. Most of the debate about this particular criminal law reform was about ideology rather than about substantive matters. Indeed, if people had looked further afield they could have forecast the likely outcome of the reform. Sweden, which introduced a rape in marriage law in 1965, has had very few prosecutions brought under its provisions, suggesting that South Australia is by no means unique in this regard. Thus other states which may be considering similar reforms need not fear the various dire consequences which have been pointed to by critics of the proposal.

FOOTNOTES

1. Deidre O'Connor, "Rape Law Reform : The Australian Experience" (1977) 1 Criminal Law Review 305.

2. South Australian Criminal Law and Penal Methods Reform Committee, Special Report - Rape and Other Sexual Offences (Government Printer, Adelaide, S.A., 1976).

3. Criminal Law Consolidation Act 1935-1976 (South Australia).

4. Further on this legislation and its implications, see Jocelynne A. Scutt, "Consent in Rape : The Problem of the Marriage Contract" (1977) Monash University Law Review 255; John E. Willis, (1976) Legal Service Bulletin 31; Peter Sallman, "Rape in Marriage" (1977) Legal Service Bulletin 202; Parliamentary Debates (South Australia, October 1976), at 1612; National Times 27.9.1976-2.10.1976.

5. For a refutation of the alleged common law position, see Jocelynne A. Scutt, op. cit.; Jocelynne A. Scutt, "To Love, Honour and Rape with Impunity : Wife as Victim of Rape and The Criminal Law", to be published in proceedings of the Third International Symposium on Victimology (forthcoming); Comment, "The Common Law Does Not Support a Marital Exception for Forcible Rape" (1979) 5 (2/3) Women's Rights Law Reporter 181.

6. See sources cited at fn. 4 ante.

7. See Jocelynne A. Scutt, op. cit.

COMPENSATION FOR VICTIMS OF DOMESTIC VIOLENCE

J.E. Willis*

Introduction

The establishment of formal systems of compensation from public funds for victims of crime is a recent development. These systems have either prohibited or restricted the payment of compensation in cases of injuries resulting from domestic violence. This paper briefly describes the principal system of compensation and the approaches taken to compensating people injured as a result of criminal domestic violence. It examines the reasons and justifications for these approaches and argues for the extension of the compensation to victims of domestic violence.

Victim Compensation Programmes

The first victim compensation programme was established in New Zealand in 1963. Since then, victim compensation schemes have been established in the United Kingdom, all Canadian Provinces, many of the States in the United States, a number of European countries and various other jurisdictions. All jurisdictions in Australia, save the Commonwealth and the A.C.T. now have victim compensation schemes.

Australian Victim Compensation Schemes

There are two basic models for victim compensation in Australia: the court-based system, which is used in New South Wales, Queensland, South Australia and Western Australia, and the tribunal based system which is used in Victoria and Tasmania.

The Court-Based Model

The first of the court-based schemes was developed in New South Wales. In effect it was an extension of compensation provisions already existing in the New South Wales Crimes Act, which authorised the court, on the conviction of an offender, to order the offender to pay compensation up to a fixed statutory limit to any person who has suffered personal injury and/or property loss as a result of the commission of the offence. These compensation provisions had been in the Crimes Act since 1900 but had rarely been used, mainly because most offenders had no means.

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The Criminal Injuries Compensation Act 1967 provided that where a court made a compensation order for over $100 against an offender in favour of a victim for injury (which was defined to mean 'bodily harm' including 'pregnancy, mental shock and nervous shock'), the victim could apply to the Under Secretary of the Department of the Attorney-General and of Justice for payment of the amount from consolidated revenue. The Act also provided that where an alleged offender was acquitted, the court could still grant a certificate to a victim stating the amount of compensation it would have ordered if the accused had been convicted, and the victim can apply to the Under Secretary for payment.

The Under Secretary does not make the payment; his function is to assess what compensation or damages the victim could receive if he pursued all other legal remedies available to him, and to give the Treasurer this information. The Treasurer, who makes the payment, then has a discretion as to whether or not to make a payment. If he thinks a payment is justified, there is a further discretion as to the extent to which he should take into account what compensation the victim has received or might receive from other legal action. The Act states explicitly that any payment 'shall be made ex gratia and not of right'.[1]

The process is cumbersome, and in most cases inevitably slow. No compensation order can be made until the alleged offender has been brought to trial, and this could be well over a year after the alleged offence occurred. Further delays must then occur while the Under Secretary is pursuing his enquiries and the Act specifically states that the Under Secretary may defer reporting to the Treasurer "for as long as he considers it necessary to do so".[2] Moreover, no compensation order can be made unless the alleged offender is brought to trial. Victims of offenders who are not apprehended, who die before trial or who are mentally unfit to be tried, are outside the ambit of the scheme. This serious gap in the scheme was recognised and provision has been made for ex gratia payments to such victims after an administrative investigation into the offence.

The West Australian and Queensland schemes are essentially similar, except that the legislation itself contains provision for compensation certificates in cases where the alleged offender is not tried. The original South Australian Scheme was also much the same, but it was considerably altered in 1978. Under the new scheme which is still court-based the application for compensation is made independently of any trial or criminal proceedings against the alleged offender, and any compensation order made is an order that the Crown, not the offender, pay the victim. To overcome some of the delays under the former legislation, the Attorney-General is required under the Act to pay the victim within twenty-eight days from the date of the compensation order.

The Tribunal-Based Model

The Victorian scheme introduced in 1972 established a special

tribunal, the Crimes Compensation Tribunal for making compensation orders. The Tribunal is constituted by one person who must be a barrister and solicitor of at least seven years' standing. A person who has suffered injury (which is defined as in the court-based schemes) as a result of a criminal act must normally apply to the Tribunal within one year after the injury, but can apply immediately after the injury. The Tribunal is required by the legislation to "expeditiously and informally hear applications",[3] and can proceed without regard to the legal rules relating to evidence. The Tribunal is given power to obtain any information it requires, such as police and medical reports, and proceedings are normally to be held in private. The Tribunal in determining the cause of the injuries and the compensation to be awarded is to act on the civil standard of proof, "on the balance of probabilities". Compensation orders are to be paid to the victim out of Consolidated Revenue; payment is not at the discretion of the government but a matter of legal right.

The Victorian scheme, which has been largely adopted in Tasmania, avoids the delays that are inherent in the court-based systems, and the Australian Law Reform Commission has stated it is preferable to the court-based schemes.[4]

Maximum Awards Payable Under Compensation Schemes

The maximum amount of compensation payable has been gradually increased as the schemes have gained acceptance. The following table sets out for each state the original maximum and the year of commencement of the scheme, and the present maximum.

Table 1

Maximum Awards Payable Under Compensation Schemes

State	Original Maximum and date of commencement of scheme	Current Maximum
N.S.W.	$2,000 (1967)	$10,000
Queensland	2,000 (1968)	5,000
South Australia	1,000 (1969)	10,000
Western Australia	2,000 (1970)	7,500
Victoria	3,000 (1972)	5,000
Tasmania	10,000 (1976)	10,000

The current maximums are still far below the amounts that would be awarded for damages for equivalent injuries in civil actions for negligence. The United Kingdom scheme which operates like the Victorian scheme has no maximum, and in 1976-7 made an award of $55,000 to a woman who had been blinded by a shotgun. The present low maxima can be attributed to government concern at the possible costs of the scheme, their comparative novelty and general uncertainty as to the role the government should play in the compensation of victims of crime. However, the schemes are now firmly established and it seems very probable that the maxima will continue to rise as with increased community and government acceptance of the scheme.

Volume of claims and amount of compensation awarded

What statistical information there is tends to indicate that the Victorian scheme is more successful in compensating victims of crime. In New South Wales for the year 1977, 151 claims were made resulting in the payment of compensation of $306,052. In Victoria, for the year ended 30th June, 1978, 987 awards were made totalling $1,049.014. For the year ended 30th June 1979 there were 1377 awards made totalling $1,346.052. The much higher volume of cases in Victoria is attributable to the simpler, more informal procedures and also to the efforts being made to publicise the scheme. In its Report for the year ended 30th June, 1976, the Tribunal stated:

> 'It is apparent that many people with an entitlement to compensation have not lodged applications. In an effort to correct this situation four thousand application forms have been distributed through the office of the Chief Commissioner of Police to appropriate police stations throughout the State. Police co-operation in the assistance of applicants and in the provision of reports for the Tribunal's use has been excellent'.

In its Report for the year ended 30th June, 1978, the Tribunal noted that:

> 'The Education Department has printed and distributed to secondary schools and other institutions about 450 copies of an article on the Tribunal. The Law Department is in the course of preparing a similar brochure for public distribution'.

Approaches to Compensating Victims of Domestic Violence

Most Australian schemes have special provisions for cases where offender and victim are related or were at the time of the injury living in the same household.

(a) Court-based schemes

The New South Wales legislation states that in determining whether or not to make a compensation order:

> '... the Court or Judge shall have regard to any behaviour of the aggrieved person which directly or indirectly contributed to the injury or loss sustained by him, and to such other circumstances as it or he considers relevant (including whether the aggrieved person is or was a relative of the convicted person or was, at the time of the commission of the felony or misdemeanour, living with the convicted persons as his wife or her husband or as a member of the convicted person's household) and shall also have regard to the provisions of the Criminal Injuries Compensation Act, 1968'.[5]

The South Australian scheme contained a similar provision until 1978, and the Western Australian scheme still has the same provision.

The interpretation of this section has caused considerable difficulty. Some courts have held that the court must consider the matters mentioned in the section in determining whether or not to make an order, but has no discretion to reduce the amount that would otherwise have been ordered.[6] Other courts have held that the section confers a discretion to reduce the amount of compensation awarded.[7] The Queensland scheme makes it clear that the court has a discretion to reduce the amount of compensation because of the victim's conduct or relation to the offender, and the South Australian legislation was amended to achieve the same result.

The matters which the court is required to consider under this section need discussion. The extent to which the victim contributed to his injuries by his own behaviour is obviously a matter of relevance. However, the court is also required to have regard to any other circumstances it considers relevant:

> '... (including whether the aggrieved person is or was a relative of the convicted person or was, at the time of the commission of the felony or misdemeanour, living with the convicted person as his wife or her husband or as a member of the convicted person's household)'.

Strictly speaking, it is not clear whether the court is required to consider these matters as relevant, but the phrasing of the section suggests strongly that the court should do so. Here, what is to be considered is not behaviour, but status. In Brown v. Ween Jacobs J. speaking of this part of the section stated:

> 'It is not easy to discover the intent which underlies this parenthetical elaboration, unless it points to the possibility of collusion, in the sense that the

> convicted person may be in a situation in which he himself could derive some indirect benefit from the award'.[8]

Insofar as the legislation intends that the offender should not benefit from the compensation awarded to his victim, the relationship of victim and offender is clearly relevant, and, with respect, Jacobs J. need not have limited the legislative intention to situations where there was a 'possibility of collusion'. However, the vagueness of the wording could well create a general, undefined notion in courts that the fact of being related to the offender or being a member of his household is, of itself, a reason for refusing or lessening the amount of compensation. Such a result is clearly undesirable. The legislation should require in general terms, that the court take into account the probability that an offender might benefit from a compensation. It should exclude discriminating references to the domestic situation.

In South Australia, the legislation was changed in 1978 and references to the relationship of victim and offender and to the same household were omitted.[9] There was no discussion in parliament of the reason for these changes, but the amendments were apparently made because it was felt that focusing on the fact of a relationship in the statute would serve only to emphasise a matter which may well not be relevant in every case. Similar amendments are needed in the New South Wales, Queensland and West Australian legislation.

(b) Tribunal based schemes

Paradoxically the Victorian scheme, which is, in most respects, superior to the court-based schemes, rigidly excludes compensation for domestic violence. S.14(2) of the Criminal Injuries Compensation Act 1972 states:

> 'The Tribunal shall not make an order for compensation under this Act -
> (a) ...
> (b) ...
> (c) if the victim was, at the time when the injury was sustained, living with the offender as his wife or her husband or as a member of the offender's household.'

The Inter-departmental Committee, set up to advise on a victim compensation scheme for Victoria, recommended the inclusion of s.14(2) (c) because of the difficulties of guarding against fraudulent or undeserving claims arising from domestic situations, of ascertaining shares of responsibility for conflict in such situations and of ensuring that compensation should not benefit the offender.[10]

These considerations, while clearly relevant to the determination of compensation, do not justify the blanket exclusion of a large class of victims. The possibility of fraudulent claims exists in

other situations, particularly where the offender is not known or apprehended. Likewise, there are many situations other than domestic where the victim could have contributed to his own injuries. Moreover, in many cases, presently excluded from compensation by s.14(2)(c), there is no risk that the offender will benefit from a compensation order. Such is the case where the offender is serving a long prison term, where the couple are divorced or are plainly not going to live together again as man and wife, or where a battered or sexually assaulted child has been made a ward of the state. In other cases, particularly those involving injured children, money under a compensation order can be put in trust until the victims are adults or supporting themselves.

It is tempting to explain away the crudity of the blanket exclusion by seeing it simply as an easy solution to what were perceived as difficult evidentiary and administrative problems. But such a view denigrates the detailed and thorough work done by the Inter-departmental Committee, and takes too little account of the ambivalent attitudes towards domestic violence that still exist among the community, police and courts. Public awareness of the extent and seriousness of domestic violence is very limited, and the attitude that the criminal law has no place in the home is still prevalent. Mr. R.J. McLennan, when discussing s.14(2)(c) in Parliament, gave clear expression to these attitudes:

> 'I do not know that it is a useful inquiry to take into domestic situations. For example I do not think it would be a good thing if the tribunal had to come to the conclusion that a father had been guilty of a criminal act against members of his family. This is best left as a family area rather than for society to intrude. It is uncomfortable enough when members of the police force are asked to attend a household to quieten things down. All honourable members are glad that only minor charges arise from domestic brawls. This area is not one in which compensation would be appropriate.'[11]

The victim compensation schemes can be seen as one side of society's response to criminal behaviour. The criminal law deals with the offender: the criminal compensation scheme provides for the victim. The uncertainty about the appropriateness of the criminal law in dealing with domestic violence, is reflected in the exclusion of victims of domestic violence from compensation. The result is that the victims of domestic violence (generally but by no means always, women and children) lose both ways. Victims don't press charges, and, if they do, courts frequently will not punish offenders because the application of criminal sanctions is seen as being counterproductive and likely to cause further harm to the victims. At the same time, victims of domestic violence are excluded from compensation, in part, because the offender might benefit.

In the context of the Victorian victim compensation scheme, the exclusion of victims of domestic violence can almost be read

as implying that domestic violence is not a crime. The statute which set up the scheme is called the Criminal Injuries Compensation Act and is described as 'An Act to provide for the Compensation of Persons injured by Criminal Acts...'. For the purpose of compensation, the Act extends the meaning of criminal act to cases where the offender is not legally liable 'by reason of age, insanity, drunkeness (sic) or otherwise'.[12] The clear implication is that injured persons who are ineligible for compensation under a statute which defines a criminal act very broadly and whose aim is to compensate victims of criminal acts, have not been the victims of a criminal act.

Reforms

The exclusion of victims of domestic violence which is found in many compensation schemes has been trenchantly criticised, and a number of jurisdictions have responded to these criticisms. The Tasmanian compensation scheme, introduced in 1976, which is based on the Victorian model, has omitted any reference to the domestic situation. The Master of the Supreme Court, who is responsible for making the orders, is required to:

> '...have regard to any behaviour, condition, attitude, or disposition of the victim that appears to him to have directly or indirectly contributed to the injury or death...'.

However, the words 'condition, attitude or disposition; seems unnecessary and their vagueness and uncertainty could well mean that persons injured in domestic situations are, in fact, disadvantaged in claiming compensation - for example, is pregnancy a 'condition'?

The United Kingdom scheme, which had excluded victims of domestic violence, has recently been amended,[14] to allow them compensation. Paragraph eight of the Scheme states:

> 'Where the victim and any person responsible for the injuries which are the subject of the application (whether that person actually inflicted them or not) were living in the same household at the time of the injuries as members of the same family, compensation will be paid only where:-
>
> (a) the person responsible has been prosecuted in connection with the offence, except where the Board consider that there are practical technical or other good reasons why a prosecution has not been brought; and
>
> (b) the injury was one for which compensation... of not less than $500 would be awarded; and
>
> (c) in the case of violence between adults in

> the family, the Board are satisfied that the person responsible and the applicant stopped living in the same household before the application was made and seem unlikely to live together again; and
>
> (d) in the case of an application under this paragraph by or on behalf of a minor, i.e. a person under 18 years of age, the Board are satisfied that it would not be against the minor's interest to make a full or reduced award.
>
> For the purposes of this paragraph, a man and a woman living together as husband and wife shall be treated as members of the same family.'

In his report for the year ended 30 June 1978, the Victorian Tribunal called for amendments to s.14(2)(c):

> 'A significant number of cases have emerged where the infliction of the injury has meant the end of the matrimonial relationship, but the severely injured victim (usually the wife) can receive no compensation.
>
> Again, children who are the victims of parental violence, including sexual assault cannot be compensated where the provision applies...
>
> The choice appears to be between a widening of the Tribunal's powers (with the attendant difficulties) and the continued exclusion of a significant number of meritorious cases'.

As yet the Victorian government has not responded to the Tribunal's call for reform.

Conclusion

The exclusion of victims of domestic violence is clearly anachronistic and seems likely to be changed, especially in the light of growing community and government concern over 'battered wives' and 'battered children'. The compensation schemes could prove a significant factor in the control of domestic violence. If victims of domestic violence can receive compensation, battered women will be able to have some initial financial independence, and, knowing this, be better placed to make a choice of whether to continue or to cease a relationship. More generally, a campaign to have victims of domestic violence eligible for compensation provides a powerful focus for the whole issue of

domestic violence. The inclusion of victims of domestic violence in compensation schemes is itself an important statement of the rights of individuals in a family situation. At the more practical level, if the scheme were amended to include domestic victims, wide publicity about the availability of compensation could lead to a large number of claims and a considerable increase in the costs to the government of administering the scheme and compensating the victims. Such a tangible demonstration of the extent and seriousness of the problem could prove a significant factor in changing community attitudes and awareness and in generating constructive approaches and programmes that are so urgently needed.

FOOTNOTES

1. Section 5 (2B).

2. Section 6.

3. Section 11 (1).

4. Australian Law Reform Commission, Sentencing : Reform Options, Discussion Paper No. 10 (A.G.P.S., Canberra 1979) 55.

5. Section 8 (3) and (4) Criminal Injuries Compensation Act 1967 (N.S.W.).

6. e.g. Re Hondros [1973] W.A.R. 1; R. v. Backo; In Re Hand [1977] 16 S.A.S.R. 541.

7. Brown v. Ween [1979] 21 S.A.S.R. 72.

8. [1979] 21 S.A.S.R. 72, 75.

9. Section 7 (9) Criminal Injuries Compensation Act 1977-1978 (S.A.).

10. Para. 6.3 (iv), Report of the Inter-Departmental Committee established to consider factors involved in the matter of compensation for victims of crimes of violence (Government Printer, Melbourne Victoria 1971).

11. Parliamentary Debates, Legislative Assembly (Victoria) 30th November 1972, 2798-2799.

12. Section 3 (4).

13. Section 5 (3) Criminal Injuries Compensation Act 1976 (Tasmania).

14. 1 October 1979.

THE AGENCIES

SPECIALIST UNITS IN THE IDENTIFICATION AND MANAGEMENT OF CHILD ABUSE - A SOCIAL POLICY APPROACH

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There exists a fairly general assumption in modern technical societies that with progressive accumulation of knowledge in a given field, the problem solving process should pass from 'status' to 'expertise' - i.e. from the generalist to the specialist. This assumption finds expression in many institutionalised practices in our society - e.g. in the practising of obtaining referrals to specialists in medicine, and obtaining a Barrister's services through an instructing solicitor. The conclusion to which this assumption inevitably leads is that 'today in any particular problem situation, the generalist is simply the more ignorant person! [1]

Such a conclusion may hold validity in some areas of knowledge and practice. Reviewed more critically however, it may also lead to fragmentation of service networks, wrong perceptions on the part of helping persons and agencies as to their potential contribution in a given problem setting, and ultimately to a society's failure to provide adequate services on the sheer grounds of cost of highly specialised services, particularly where a relatively powerless client population is concerned.

It follows that in approaching a given problem, the overt and hidden costs and benefits of various mixes of specialist and generalist services must be carefully and critically assessed. In the field of social problems such as child abuse, the rapidly changing social context may require equally rapid and frequent shifts in policy and practice as to resource allocation and emphasis on specialist and generalist services respectively. The position is further complicated by the dynamic sequence which seems to follow in modern technical societies once the reality of child abuse has been accepted, as Kempe has point out.[2]

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Thus the current definition or conceptualisation of the problem as distinct from the social context in which it emerges will also have particular implications for the strategies adopted to meet it, espectially as regards governmental services. The latter will apply not only to the specialist/generalist service dichotomy, but also to other considerations such as the agency which will be given community and to the primary focus of management techniques and philosophy. The perceived role/image of that agency is thus inevitably in issue also.

The New South Wales experience over the past decade or thereabouts amply illustrates the preceding assertions and is detailed in the present paper from the author's own involvement in both policy and practice situations over this period. Discussion is limited by design to the child and family welfare services, and focuses particularly on the statutory authority in New South Wales - the Department of Youth and Community Services and its past, present and proposed strategies as the authority with ultimate statutory responsibility for management on the problem of child abuse in this State. In general, Kempe's historical sequence [3] appears to be holding good for this State and developments are therefore related to this sequence.

I. The 'Decade of Denial": I966-I975

The publication of the Birrells' work [4] late in I966 led to various authorities being confronted with the probability, if not the certainty, that a serious physical child abuse problem existed in Australia. The response by a late former Director of the Department (then known as Child and Social Welfare) denying that New South Wales had a problem and projecting it on the Victorian climate [5] led to a virtual decade of denial of a significant social problem in this State.

There was however, a grudging acceptance of the fact of the narrowly defined 'battered child syndrome", [6] and from I968 a statistical record was maintained from case records roughly approximating the Kempe definition. Some 645 situations were recorded over the 8! years to June I977.

In I970, consideration was given to enactment of reporting legislation modelled on the Canadian Bill C2I0, introduced into the Canadian Commons in May I970. It was concluded that such was unnecessary as the general neglect provisions of the Child Welfare Act were adequate and the generalist field staff of the Department 'respons promptly' and 'takes appropriate action in the interests of the children involved.'

Also during I970, the author collaborated with the Department's present Director in preparation of a paper [7] which asserted, inter alia, 'we already have an appropriate organisation...to tackle, with the Police, the problem of the battered child'; and that 'I am sufficiently confident of the situation to deny that reported cases simply represent what has been loosely referred to in the press as "just the tip of the ice berg"' - this latter on the strength of some 26 cases over a 2 year period.

The commitment to existing generalist services at this time must be seen in the context of a traditional residual welfare authority with its historic origins in the English Poor Law, and characterised by last resort intervention to remove children more or less permanently and/or prosecute the alleged perpetrator of abuse.

The underlying concept of child abuse and its origins at this time was one of either deviance or illness, with the focus in consequence entirely on the failures/inadequacies of the individual. Intervention was based on the concepts of deterrence, punishment, and/or control, and the maintenance of a minimal standard of physical care for the children concerned. Overall staffing and resource allocation to the Department reflected these underlying assumptions/values. There was moreover no capacity for specialised service development in this or any other area of the Department's responsibility at this period in time.

From the early I970's, concerned professionals began to group together in groups scattered throughout the metropolitan area to share insights, provide mutual support and consultation in cases of abuse and neglect, and generally promote professional and community awareness. These were inter-disciplinary bodies of varying size, composition and self-determined function. Then (as now) they had no statutory basis for their operation.

Following the model of the first such group (set up at the Royal Alexandra Children's Hospital) these groups became known as 'Children at Risk Committees' - a title clearly aimed to reflect a concern for non-judgemental, primarily preventive and supportive services to children and families. From the outset, these bodies tended to become involved with a range of situations including clear-cut cases of statutory neglect and abuse, but also extending to a range of situations which were seen as beyond the threshold of Departmental intervention, both as regards the needs of the families concerned, and the capacity of the Department to become involved. The dominant focus nevertheless was still in the area of (potential) physical abuse.

The historical concept of child protection in New South Wales as a residual provision was broken by the enactment of the Youth and Community Services Act of I973. This legislation was notable in that it set down particular objectives for the Minister and specifically linked all functions with a concept of the rights of the individual to optimal as distinct from minimal services and opportunities.

Around this time, pressure began to be applied to the Department for a more definite commitment to services in the child abuse field through the Children at Risk Committee at the Children's Hospital, and in I974 the first reports of project teams and consultants on review of the I939 Child Welfare Act recommended statutory provisions similar to those enacted some three years earlier in South Australia, including the mandatory notification of cases of child abuse.

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Concern over a particular tragic situation at this time also led to the formation of 'Prevention', a specialised voluntary support service focusing on the needs of abusive and 'at-risk' parents, and providing a 24 hour counselling, intervention and referral service.

These several developments led to a greatly increased awareness of the fact of child abuse throughout the Department and in I975 a social worker was deployed full-time to work with the Children's Hospital staff on child abuse cases and to provide a consultancy service generally to Departmental staff in such cases. It is a matter of history that recorded cases in the Department during the first year of this secondment increased by something over 200%. Needless to say, additional personnel had to be deployed in this area and the Department's first specialised child abuse team evolved in the Stanmore District Office during I975-76.

2. The 'Battered Child" phase I975-76

With the gradually increasing awareness of the fact of physical abuse of children in New South Wales, there was an entirely predictable response by the media in all its forms, and indeed by many helping persons who were increasingly aware of cases within their own workload. The typical response was a focus on the more glaring physical injuries and a standard reference to the 'battered child' and there was considerable pressure from various sources for the establishment of specialised services to deal exclusively with the problem of 'non accidental physical injury'. This was linked to a concept of non accidental physical injury to children as being a distinct entity in itself, and not related to the broader area of harm to children. Again, the influence of the medical or illness model and its emphasis on some inadequacy or problem within the individual was evident.

Late in I975, proposals for mandatory notification legislation came before the then State Government, with opposition to mandatory notification being mounted by a number of significant community groups including the New South Wales Privacy Committee, itself a statutory body. [IO]

During this time there was a considerable development of the Children at Risk Committees and also an extension of the specialised services within the Department of Youth andCommunity Services by the placement of a specialised social worker/district officer at the Fairfield District Office late in I976 as the first staffing for what was intended as a second specialist team. First signs of a concentrated effort by the Department to intervene at an earlier stage in such cases also became evident. Additionally there was within the Department of Youth and Community Services, in this same period, an awareness that there were major defects in the substitute care system and a systematic search began for ways of avoiding the removal of children from their natural families wherever possible.

3. The Child Abuse and Neglect Legislation Phase I977

Following on the change of Government in I976, the incoming administration determined that specific child abuse legislation should not be deferred until finalisation of the review of the I939 Child Welfare Act and introduced legislation as an urgent measure in the first session in I977. [II] Simultaneously, a three person task force of Departmental Officers with wide experience in direct service provision, community organisation, and research and administration in the general child welfare field was established to introduce appropriate policy and programme proposals to support the legislation before the Parliament.

A review of experience throughout the world in the child abuse services suggested to the working party that a maximum impact on the problem would come about if three key components could be simultaneously brought into operation and held in an appropriate balance. These were as follows:

(i) Legislation requiring notification of (suspected) cases,

(ii) systematic education of professionals and the community at large, and

(iii) an embodiment of the community's concern in publicly funded treatment services specifically linked to the problem of child abuse and its dynamics.

A fundamental assumption in the implementation of such an integrated programme was the social problem model of child abuse as distinct from the sickness or deviance model which had dominated the earlier stages. Properly communicated and comprehended, such a model was seen as a unifying principle to draw together a range of diverse interest groups in treatment services; to be used creatively to establish a safer community in which individuals might feel free to seek help with problems before lasting damage occurred; and to be used to effectively counter and even negate the ethical objections most frequently raised against legislation requiring notification of cases.

The overall objective was to provide help to families at risk, and particularly those families whose previous encounters with the helping agencies had been less than satisfying or satisfactory and who had few basic skills with which to approach helping agencies. Given that many of these clients had in fact had long term and less than positive experiences with the statutory welfare system, it was considered necessary for a new approach to be adopted to working with these families. This implied a new goal, namely that of bringing about significant change rather than the mere control and containment of unacceptable behaviour as had been the traditional welfare response. This approach was reinforced by the fact that the Department's image with many helping professionals in other agencies was one of a basically authoritarian, residual, last resort agency aimed at control rather than basic change and/or support for vulnerable families.

With these considerations in view, the working party strongly recommended the development of a range of specialised services extending beyond traditional casework services to a range of therapeutic and support programmes consistent with the dynamics of child abuse as understood from the social problem perspective. Further support for the establishment of a specialised programme was found in some of the more classic manifestations of child abuse such as the role reversal phenomenon, the intensity of emotional damage, and the exceptionally distorted social learning found in many abused children.

Finally, the working party reviewed and identified a range of evident shortcomings in the existing generalist services, including the following:

(I) Workload considerations which made it difficult, if not impossible, to provide intensive support and/or be available when most needed,

(2) Lack of special training and support systems for generalist staff working with child abuse cases,

(3) Lack of the necessary specialist professional status for generalist staff in the context of highly professionalised multidisciplinary teams in which the Department, would of necessity, have to give a lead,

(4) The lingering presence of the 'child welfare authority' image of generalist field staff,

(5) Confusion of roles inherent in the situation where generalist field staff working in geographically defind areas were required to function simultaneously as treatment workers and provide meaningful support both to the abusive parent and to the abused child,

(6) Lack of continuity of supportive casework relationships occasioned by generalist field staff being confined to a limited geographical area, and also the high degree of mobility found in abusive families.

There was, moreover, a strong view in the working party which saw responsiveness on a 24 hour day seven days per week basis as being a fundamental both to the Department's statutory responsibilities in the new legislation, and to conveying a strong message to vulnerable families that the community did indeed care about them and their problem. A proposal was accordingly made for the establishment of specialist facility to be known as a Child Life Protection Unit, to operate on a seven days per week, 24 hours per day basis, and incorporating a range of supportive services aimed particularly at the more vulnerable families in the community whose capacity to use existing resources was most limited. The proposals included crisis nursery accommodation, accommodation for families requiring assessment and/or special help, and a day programme facility aimed at primary resocialisation of children to their parents and vise versa.

This led to a situation where both Departmental and agency staff felt highly insecure and unready to accept responsibility for the rapidly increasing number of cases coming under notice, with the consequence that an expectation, and indeed a pressure, emerged for the Child Life Protection Unit to in some way fully service the great majority of cases coming under notice. Clearly, this was utterly unrealistic. However, media coverage and other public statements repeatedly reinforced this view, while the overall issue was considered sufficiently sensitive as to deny Unit personnel access to the media to present a more appropriate picture. The end product was a very real problem in communication as between specialist and generalist personnel within the Department, and as between the Department and outside agencies, in so far as agency expectations were that all cases notified by them would be handled by the specialist personnel at the Child Life Protection Unit and not referred out to generalist field staff, as was clearly essential in many, many situations. Some of the problems which emerged in consequence of this mode of establishment of the Child Life Protection Unit have persisted to the present time, and current proposals for change reflect an acceptance on the part of the Department that the pressure thus created are counter productive in every respect.

Not withstanding these apparent difficulties inherent in the establishment of the Child Life Protection Unit, it is clear from the appended statistics that the combination of legislation, and a limited programme of professional and community education, together with the establishment of the Child Life Protection Unit, successfully tapped a far greater number of abuse and at risk situations than had emerged at any previous period since records were kept in the Department.

A particularly significant feature of these statistics is th number of families seeking assistance in their own behalf rather than being notified or referred from some other source. Another highly significatn feature of the statistics is the high proportion of cases coming under notice directly as a consequence of the work of the Department's generalist field officers. This, together with other research evidence [12] would suggest that contrary to earlier belief, the phenomenon of child abuse at least in its physical sense, is not equally distributed across the community, and that external stress factors which operate reflectively on more vulnerable families in the community do indeed play a significant part in the etiology of child abuse. This is an important consideration when reviewing the cost and potential benefits of establishment of a specialised programme such as that proposed originally for the child Life Portection Unit.

The attached organisation chart of the Unit in its current form represents a salary commitment approaching $300,000 per annum and the premises currently housing the Unit represent an investment approaching $I million. There is, in addition, a current renovation proposal to provide purpose-built residential and day programme accommodation at a further cost of some $350,000. Against these overt

costs, there may be advanced the hidden costs of successive generations of abused children and generally dysfunctional multi-problem families, who are generally resistant to change at any time, and singularly incapable of positive adjustment given only the traditional control-oriented residual welfare system. A revealing study of the hidden costs of such families to the community at large was undertaken in Tasmania some little time ago. [13]

4. The Child Abuse-Neglect Continuum : 1978-79

At least two particular factors seem related to the movement into this stage of coping with the problem in New South Wales, viz:

(i) initial experience both at the Child Life Protection Unit and elsewhere in the Department and the growing awareness that there was not a great distinction between the so called non-accidental injury case and the situation where a child suffered a harm in consequence of an act of ommission or basic lack of foresight by a caretaker.

(ii) A closer collaboration between helping agencies and in particular the health and welfare appartus, in consequence of the statutory provisions in child abuse and the establishment of the Child Life Protection Unit.

The problem of a clear definition of child abuse continues to be a significant area of concern to workers, as indicated by the fact that no less than nine papers at the Second International Congress on Child Abuse and Neglect dealt with conceptual problems in definition.

In the writer's view, even the commonly accepted concept of 'non-accidental physical injury' is not adequate in so far as in the great majority of cases, the harm done was in no way intended by the person concerned, and to this extent, the descriptive 'non-accidental' is quite inappropriate. Moreover, clear evidence of the implication of external stress factors further detracts from the inference of casuality and individual culpability implicity in the term.

Taken together, these several considerations and the conferring of statutory responsibility for child abuse on the welfare authority rather than on the criminal justice system make a compelling case for accelerating moves to decriminalise child abuse as a social problem and avoiding recourse to the criminal justice system as far as it is possible, consistent of course, with the formal responsibilities of other authorities. The submergence of child abuse within the broader field of child protection in its broadest sense (including neglect and other aspects) clearly assists in pursuit of this goal. For pragmatic reasons however, it has not been possible to include all cases of alleged neglect within the central register at the Child Life Protection Unit at this point in time.

Notwithstanding the generally positive and forward looking provision contained in the child bause legislation, health and welfare professionals

remain concerned that all legislation is essentially reactionary in that there is no formal mandate to intervene in a situation until some harm has taken place. The development of an earlier threshold of intervention on a preventative and supportive model, particularly by the welfare apparatus, has therefore been a pressing matter of concern since the establishment of the Unit. In the course of developing more positive links between health and welfare agencies, a working philosophy has been developed which recognised child abuse in its broadest sense as 'those acts of ommission or commission which deprive a child of the opportunity to fully develop his unique potential as a person either physically, socially or emotionally'. [14]

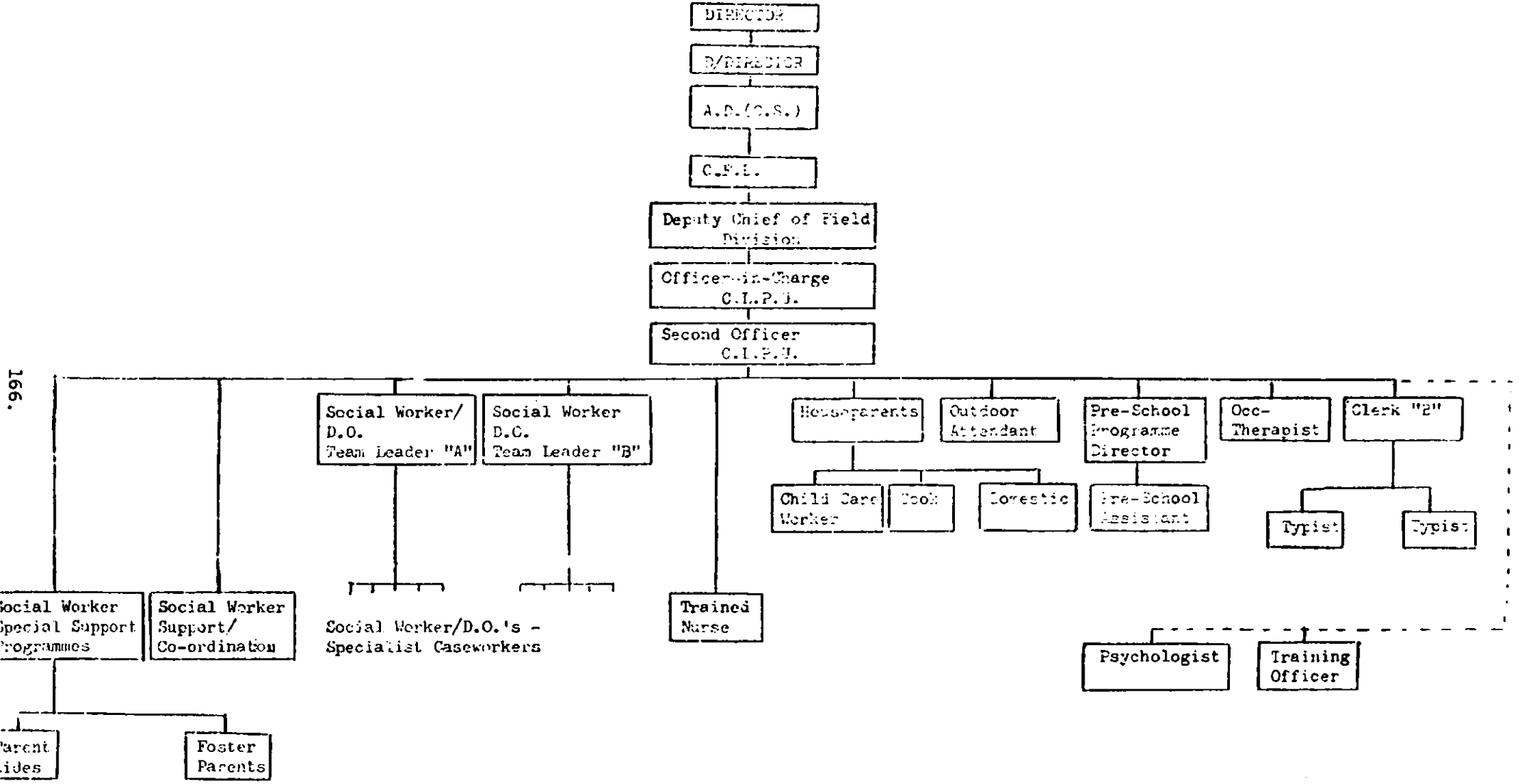
The end result of this movement through four of the six stages Kempe had identified has been a much increased awareness of the potentially harmful effects of dysfunctional family situations on children, an awareness of the harmful effects of delaying intervention until the situation is irretrievable, or intervening only on the basis of control and containment and not with a view to fundamental change.

Given these beginnings of a fundamental move away from residual welfare approaches throughout the Department and the overall volume of cases now coming to light, a decision has now been taken to have the great majority of identified cases of abused and at risk children coming to the Department's notice handled through the generalist field services with the specialist Child Life Protection Unit providing supportive, consultative and crisis back-up facilities, together with special day programmes and residential assessment programmes for appropriate cases. Specialist social work personnel are being transferred from the Unit to District Offices to strengthen the local resources in this connection.

In keeping with this general trend, the specialist Child Life Protection Unit currently in operation and also additional Units currently proposed for Newcastle and Wollongong are being planned as integrated crisis intervention Units capable of responding not only in support of generalist field staff in child abuse matters, but also of filling a gap in services for families experiencing other problems particularly those involving family violence. This is fully in keeping with the proposition advanced by sociologists such as David Gil [15] that the problem of child abuse will never be adequately addressed until as a community we address the problem of institutionalised violenced in all its forms.

In summary, the present situation with respect to child abuse services in New South Wales is one of considerably dynamic change, set in motion by the combination of legislation, professional and community education, and a range of special support services aimed at confronting old assumptions and less than effective service structures and procedures. It is proving responsive to a changing social context, to the changing image of the welfare authority and hopefully to more supportive and less punitive community expectations. In this overall process, the specialist Child Life Protection Unit is an active participant and a continuing catalyst.

CHILD LIFE PROTECTION UNIT - ORGANISATION CHART - MARCH 1979



	1.7.1977 - 30.6.1978	1.7.1978 - 30.6.1979
Notifier status :		
Social worker, hosp.	72	103
Doctor, hospital	125	117
Police	11	9
Community Health Ctr.	108	69
Child car/Baby Health clinic	49	36
Y.A.C.S.*	170	200
Doctor, private	47	33
School	51	35
Self (potential or abusing parent)	63	66
Anonymous	5	15
Neighbour	55	75
Relative	28	42
Parent	17	14
C.L.P.U. WA/C.L.P.U. Qld.	6	4
Other	17	83
Community nurse	65	10
Child	0	0
Doctor, Public authority	0	1
TOTAL	889	912

Annual Figures for Notifications

1968	16	1974	47
1969	17	1975	160
1970	22	1976	179
1971	23	1977	519
1972	43	1978	929
1973	27	1979	829 as at 27.11.1979

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3. Ibid.

4. R.G. Birrell and J.H.W. Birrell, "The Maltreatment Syndrome in Children" (1966) 24 (2) Medical Journal of Australia 134.

5. Quoted in the Daily Mirror (Sydney, New South Wales daily newspaper) 21 March 1968.

6. C.H. Kempe et. al. "Young Children who have Received Serious Physical Abuse, Generally from a Parent or Foster Parent" 181 (17) J.A.M.A. 161.

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10. Subsequently formalised in Mandatory Reporting of Child Abuse (N.S.W. Privacy Committee, 1976, B.P. 25).

11. Child Welfare (Amendment) Act 1977 (New South Wales).

12. L.H. Pelton, "Child Abuse and Neglect : The Myth of Classlessness" (1978) 48 (4) American Journal of Orthopsychiatry 608.

13. L.Davies and E. Cunningham-Dax, "The Criminal and Social Aspects of Families with a Multiplicity of Problems" (1974) 7 (4) A.N.Z. Journal of Criminology.

14. D.H. Lightfoot and J. Gavaghan, Inner Metropolitan Health Region - Services for at risk and abused children and their families (February 1978, Mimeo).

15. David Gil, "A Socio-Cultural Perspective on Physical Abuse" (1971) 50 (7) Child Welfare 390.

SOUTH AUSTRALIAN CRISIS CARE UNIT

Andrew Paterson*

Establishment

In I975 conversation began between the South Australian Department for Community Welfare and the South Australian Police Department to investigate the possibility of establishing a co-operative structure to deal with the problems encountered by the Police that had a specific welfare nature. Both departments agreed that it would be to their mutual advantage if skilled crisis intervention workers were made available on a 24 hour day basis to work in liaison and in co-operation with the Police Department. It was further decided that the service would be extended to members of the general public who had particular needs in crisis situations.

In mid I975 State Cabinet funded the proposal and later in the year the Department for Community Welfare appoint a Supervisor who began immediately working with the Police Department towards the establishment of mutual guidelines for the operation of the service. A great deal of time was spent by the Supervisor travelling with Police Patrols in Port Adelaide and Elizabeth/Salisbury Police Regions. In November the final guidelines were drawn up. Following their appointment, Crisis Care Workers undertook training, concentrating on crisis intervention specialist skills. The Unit began operation on February I6, I976, and has continued to operate since that date, seven days a week, 24 hours a day.

The Unit

The Crisis Care Unit consists of I6 Crisis Care Workers and one Supervisor who are rostered to cover the full duty period outlined above. Crisis Care Workers are academically qualified in the areas of social work and psychology. Trained volunteers maintain the Unit's base operation during the evening and/or weekends when Crisis Care Workers are out working in the community. The Unit operates from a central office base and has direct telephone contact with the Police Department and four lines available for the general public. The Unit is also responsible for general after-hours community welfare contacts

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* Supervisor, Crisis Care Service, Department for Community Welfare, Adelaide, South Australia.

and receives after hours calls from Department clients and others who need emergency assistance. The telephone number of the Unit is 272 I222. The Unit is highly mobile and employs a sophisticated communication system between its headquarters and mobile cars that are equipped with two-way radios.

Operation

The Crisis Care Unit's work is based on Crisis Intervention Theory which suggests that the best time to intervene in personal crisis situations is at the time they are happening. In such situations, the people involved are more able to make the necessary changes in their life pattern so as to enable them to overcome their immediate problems and continue a growth process.

Crisis Care Workers are trained to enter situations where there is great stress and tension and to work with the people involved towards resolving that stress and redirecting people's energy towards creative gorwth. The mobility of the Unit enables Workers to attend people in crisis in their own environment. In the majority of calls attended, the Worker travels to the person's own home or situation and works through the problems there in some cases utilising other community resources to make immediate referrals to other agencies or organisations that will be of benefit.

In general terms, the Crisis Care Unit is set up with sufficient flexibility to meet any immediate crisis situation or welfare need at any time of the day or night. Common problems that the Unit deals with are:-

* domestic disputes with or without violence,
* alcoholics in need of treatment,
* accommodation,
* parent/child disputes,
* bereavement,
* vehicular accidents (helping the bereaved, placing children),
* attempted suicide,
* overdose and drug reaction,
* migrants in unfamiliar surroundings,
* runaway children
* violent assaults on children by parents or guardians,
* emergency financial assistance,
* rape counselling.

Since its inception the Unit has had close co-operation with the Police Department from whom approximately 60 per cent of the calls originate.

In September of 1977 the Crisis Care Unit was invited by the Queen Elizabeth Hospital, Victims of Sexual Assault Clinic, to provide counselling resources to aid such victims. Crisis Care Workers now interview each assault victim and have frequent contact with them for a varying period of time after the assault. The Crisis Care Unit's working relationship with the Police Rape Enquiry Unit has also been greatly enhanced by our involvement in this area.

Summary

The Crisis Care Unit supplements the already broad service of the Department for Community Welfare in South Australia. From public response it is obvious that the Unit fulfills a need that has been previously unmet within the community.

The workload of the Unit has steadily increased and this will further grow with the Unit's integration into the community as an essential service. Other than from the Police, many referrals come from hospitals, voluntary agencies, Family Court, adult probation, schools and doctors.

The Crisis Care Unit has already become involved in the educational processes of the Police Force, Universities, Institute of Technology, Colleges of Advanced Education and Flinders Medical Centre.

Crisis Care has been well accepted by the community as an effective resource. Crisis Care Workers see family and other crises, not as potential disasters, but as real opportunities for creative change.

CRISIS INTERVENTION

Andrew Paterson*

Introduction

Crisis intervention has become a priority amongst professionals working in the mental health and social work field during the last 25 years. In the United States of America beginning with suicide prevention programmes in the early I900's, attention was focused on the particular possibilities that resulted from being involved with people at the time when their stress levels were highest. In the I940's and early I950's Erich Lindemann and Gerald Caplan pioneered the foundations of crisis intervention theory. The effect was to begin a process of de-institutionalisation of counselling and therapeutic intervention, refocusing helping professionals into the community. Often such a focus involved conditions of higher stress than did the controlled calm of a professional office or clinic. It became possible to talk of 'short term intervention' as a substitute for the longer term clinically oriented watch dog role that had been traditionally played by health professionals. In the United States this has culminated in the establishment of mental health centres in many states which offer not only a clinical service but also a 24 hour crisis in ervention programme. Often such clinics are closely linked with large mental hospitals and similar institutions in order to provide not only client referrals but also an alternative to hospitalisation.

In Australia the Life Line movement in most capital cities has often supplemented these days by walk-in services and some limited mobile counselling services. There has also been an enormous amount of attention given to the problem of child abuse. This has resulted in the establishment in most states of Child Protection Units that operate out of a crisis intervention model. In most capital cities teams of specialist counsellors and social workers in this area are available 24 hours a day to immediately respond to requests for help. Mental health authorities in Australia are also showing interest in crisis intervention and several programmes are underway. Rape Crisis Centres are an important part of crisis services in Australia and are having a significant effect on legislation, law enforcement and community attitudes toward sexual assault.

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Defining 'Crisis'

A crisis is best described as a sudden event or change in a person's life that he or she is unable to cope with. There are three main components to such an event:-

(i) It is hazardous, either an external trauma such as rape, grief, separation, natural disaster or radical change in physical circumstances, including illness, or it is internal, caused by the dynamics of a relationship or a personality, for example domestic violence, parent/child arguments, child abuse, runaway children or suicide attempts. It may also be a normal developmental crisis such as any change in life, even a change that is classified by society as being good, for example, adolescence, starting/leaving school, marriage, parenthood etc.

(ii) Stress - is the natural response to a hazardous event and has two components:-

(a) biological (muscle tension, pupil dilation, sweating, release of adrenalin to blood stream, etc.) i.e., the body is geared up for a 'fight or flight' response.

(b) emotional, for example, extreme anxiety, fear, anger, shame, guilt, depression, in any combination.

(iii) The third major component of a crisis situation is the ability to cope, which depends on:-

(a) previous experience of the situation,

(b) the person's own personality and stance in the World,

(c) knowledge of resources available in such situations and a willingness to use them.

A person in crisis may express feelings of helplessness and hopelessness, may be unable to think clearly about the situation and consider options. He or she may feel frightened and anxious. Possible behaviours include violence, suicide/homicide, withdrawal, extreme distress and deep depression. In terms of community education it is important to emphasise that a crisis is not a sign of madenss or weakness, rather it is an event that can happen to anybody at any time. It is also important to note that a crisis is time limited, being anything from a few hours to a few weeks. As well, the person in crisis will do something to reduce their level of anxiety and stress, to resume functioning either at a lower level of functioning than before, at the same level of functioning as before, or at an improved level of functioning.

People in crisis are by definition upset emotionally. They are in a situation where their normal problem solving techniques are inadequate and therefore they are unhappy and desperate. This desperation can express itself in terms of motivation which leads to an increased achievement level and a greater feeling of satisfaction about 'life' than pre crisis.

Theories relating to change are integral to analysing the crisis state and its resolution. People generally resist change and find the prospect of even a small permanent change in the circumstances somewhat threatening. Crisis theory indicates that a person is more likely to make positive changes to his or her life during a crisis than at any other time, first, because of the imminence of the stress producing event itself, and second, the painful nature of stress motivates them to reduce the pain by engaging in change oriented activity. The higher level of stress in itself creates a great deal of energy which can be used to create positive change, if skillful assistance is available.

Aims and Structure of Crisis Intervention

The primary aim of crisis intervention is to restore a person's sense of autonomy and the ability to take control of his or her life. Crisis intervention further aims to restore the person to functioning at preferably a higher level than previously. The final aim is to lay the foundations for a more creative response to a similar crisis in the future should such a crisis occur.

Basic necessities for a crisis intervention programme are therefore:-

(i) The crisis intervention team should operate on a 24 hour availability basis.

(ii) There should be at least a possibility of mobility in order that crisis intervention counsellors can become involved with people in their own environment and social situation rather than forcing them to operate in a clinical environment that is not their own.

(iii) Crisis intervention programmes should liaise with other statutory and voluntary authorities in order that they can have maximum access to people in need and also in order that they can provide an effective referral process where considered necessary.

In South Australia planning for the present Crisis Care Unit commenced in I974. After negotiations between the Department for Community Welfare and the South Australian Police

Department an initial team of eight social work and psychology trained people was recruited and involved in a one month training programme. Crisis Care in South Australia began operating on I6th February, I976 and has continued since that date to provide a round-the-clock Crisis Intervention/afte hours welfare service to the people of Adelaide. Crisis Care tends to operate out of the theory that the shortest distance between two points is a straight line, and therefore offers a service to the community that is as available and lacking in red tape as possible. When people in Adelaide contact Crisis Care they have immediate contact with a worker, there being no switchboard in operation. As the conversation between the worker and the person calling continues, a basic decision is made as to whether or not the Crisis Care Worker will attend. If the caller is requesting information or access to another relevant service then it is unlikely that the Crisis Care Worker would travel to the location from which the call is being made. If however, there is good reason for face to face counselling at that time, then arrangements will be made for the Crisis Care Worker to attend immediately. The Crisis Care Unit uses vehicles equipped with two-way radios and hand-held radios and is thus able to deploy its worker with a maximum of efficiency. Because of the occasional hazardous nature of the counselling situations the radio equipment is considered a necessity from the point of view of security.

One of the outstanding features of our experience in South Australia has been the level of co-operation and communication that has developed between the South Australian Police Department and Crisis Care. An indication of the Police perspective on this is evident from a recent paper presented by Inspector John Murray, officer in charge of Policy Section, Research and Development Group of the South Australian Police:-

> 'As I suggested in my introduction, a young inexperienced policeman is a meagre tool for resolution. Most studies on this subject identify this inadequacy and suggest that senior police or specialists perform this duty. In South Australia we employ what seems to be a unique system of policing in this area. A 'mixed patrol' comprising one male and one female uniform officer respond to most radio taskings involving any family conflict. Women's groups applaud this principle, and suggest (as we also find) that the woman, who is usually the aggrieved party, relates more easily to another woman. These crews are particularly skilled, through specialised training and continual on the job experience, to police the domestic dispute by arrest if appropriate, but more usually by mediation and the proffering of advice.
>
> But this is only part of the answer to the comparative success we seem to enjoy in South Australia. The best possible relationship exists between the police and the Department for Community Welfare through their Crisis Care Unit. This Unit operates on a 24 hour basis and liaises directly with the police communications room. Where police are unable to resolve the situation and are unable to leave the home because of a fear of renewed aggression, the Crisis Care Unit is summoned.

Commencing in February 1976 as a joint Police and Community Welfare initiative, the Crisis Care Unit now employs 16 graduates in the social sciences, who are assisted by volunteer workers. Since its inception, members of the Unit have attended 7,000 family conflicts, on request from either police or a participant in the dispute.

Andrew Paterson, Supervisor of the Unit, is a psychology graduate with a substantial background in community welfare work. He explains that the role of the Unit is based on Crisis Intervention Theory which suggests the best time to intervene in personal crisis situations is at the time they are happening. The mobility of the Unit enables Crisis Care Workers to communicate with people in their own environment, and the Unit has the accessibility to remedial resources such as emergency housing, women's shelters etc.

The following example illustrates the inadequacy of police as the sole intervenor, and highlights the benefit of a Crisis Intervention Unit as a supplementary service:

A husband and wife have been arguing continually for some months. Occasionally she is assaulted but has never brought this to the attention of anyone outside her own family. She calls the Police to her home one night when her husband has assaulted her, as she is fearful of continued assault and serious injury.

When the Police attend they speak to both parties. The wife complains of assault and the husband denies it, making counter allegations of assault against his wife. She has no outward signs of injury nor are there any other factors which corroborate her account. Unable to resolve the situation, either by appeasement or direct Police action through removal of the source of the trouble, the Police are frustrated. They, like the woman gain the impression that there is a real danger of her being assaulted when they leave....

Pausing at this point: the dilemma of the Police is evident. There is insufficient evidence to justify an arrest and if they leave the situation at this stage there is a real danger of the woman being seriously injured. This is the position in which Police find themselves if they do not have the assistance of supportive agencies; and it is for that reason that intervention cannot be left solely with the Police. In the case cited, Adelaide Police have a trump card - the Crisis Care Unit.

> Using a two-way radio the Police would contact the Unit and request the attendance of a Crisis Care Worker at the scene, and as they are a 24 hour service they would arrive with little delay. Initially they would try to ascertain the cause of the conflict and then lead into general counselling. If the Unit is unable to resolve the situation and share the same apprehension that there is a danger of continued violence, they will organise and assist the wife in alternative housing for at least that night. Follow up service either by counselling or referral to appropriate agencies is arranged if necessary.
>
> The real benefit of the Crisis Care Unit is that it overcomes the lacuna between potential danger and circumstances falling short of legal remedy.
>
> There is a growing awareness of the effectiveness and esteem of the Unit and Police are sometimes by-passed by direct contact to the Unit by a participant in a dispute. In one month they attend in excess of 200 disputes.'

Crisis Care and Child Victims.

The above conveys accurately the level and quality of co-operation achieved, and this has direct effects, particularly in areas of stress and crisis involving children. Crisis Care often acts as a first contact point for the Child Protection Panels that exist in a regionalised basis in South Australia. It is not unusual for child abuse cases first contacted by Crisis Care to be referred quickly and effectively to the Child Protection Panels, which then arrange for support, treatment and follow-up of the people involved. Often the Police Department's reaction as far as prosecution is concerned is entirely governed by consultation between the Unit, the Child Protection Panels and their officers. Crisis Care also has a great deal of contact with children who are abandoned, or about whom neglect allegations are made. On some such occasions the Police are called because neighbours suspect that children have been left alone in premises for long periods of time. At such times Crisis Care normally enters the premises with the Police and if it is considered necessary children are temporarily taken into care whilst the situation is evaluated.

We are also acutely aware of the effects of marital stress and violence on young children. Often when we attend domestic disputes the children involved are as traumatised as any of the adults, and less likely to be involved in any form of therapy or counselling. On such occasions we take extreme care to make sure that Education Department School Counsellors as well as family therapy units in the State are used to maximum effectiveness. Quite often we are able to involve young children in the crisis invervention interview with their parents, and positive results can often be seen from such involvement.

Crisis Care is also frequently involved in disputes between parents and teenage children who are showing signs of running away from home. Particularly in recent times there has been much pressure on the Department for Community Welfare in South Australia to take strong action in such situations where teenagers, particularly girls, are seen to be at risk as a result of their unsupervised movement through the community. We therefore interpret the Community Welfare and Children's Protection and Young Offender's Acts in order that we might be relevant in the statutory sense in such situations, and also in order that the participants (both the child and parents) are given adequate opportunity to express themselves and retain what power they can. Often the crisis nature of such situations facilitates communication as we observe a high degree of commitment both on the parent and the child's part towards some resolution. Often departmental or voluntary short term accommodation facilities are used when for various reasons the child can no longer remain at home. Sexual abuse of children is also an area in which Crisis Care has been involved, particularly in recent months with the formation of a working party on the subject in South Australia. This working group consists of representatives of the Children's Hospital, Child Protection Panels, the Police Department, Mental Health Services, and the Department for Community Welfare District Offices. Existing legislation regarding child sexual abuse has been considered as has possibilities for improved liaison between the many agencies already involved in this area.

Conclusion

Crisis intervention programmes should have a strong emphasis on prevention. Because of our wide and intensive experience in various kinds of crises we in the Crisis Care Unit are committed to a programme of constant communication and consultation with other professionals. It is important that conversations continue between ourselves and the Education Department as well as the medical profession, the women's movement and others involved in educational and preventative programmes. A good example with regard to domestic violence is our involvement in the Women's Advisor to the State Premier's Committee on domestic violence. This is a multi-faceted committee with membership not only from the Premier's Department but also the Police Department, women's agencies, Crisis Care and others involved in this area. It is hoped that this committee will make some radical suggestions as to the present legislation both at the federal and state level as far as domestic violence is concerned. In such situations Crisis Care brings a wealth of primary examples of the adequacy or otherwise of the present situation. In my opinion primary prevention includes education, consultation and the active practice of crisis intervention in the community. Thus we reduce the occurrence of the kinds of crises that have been described above. I would also use the term secondary prevention to describe the process of reducing the actual time that a person is under stress owing to a precipitant crisis. By taking timely and relevant action, including crisis counselling and effective referral, the time span can be considerably reduced.

The Crisis Care programme in South Australia has been enormously interesting in terms of what we have learned about the effectiveness of crisis intervention. As a multi-department/disciplinary activity this has proved to be effective in increasing access to counselling welfare services at times and in places that are most relevant to those in need.

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SEXUAL ASSAULT REFERRAL CENTRE

Lee Henry*

The Sexual Assault Referral Centre at Sir Charles Gairdner Hospital is Australia's first hospital based sexual assault referral centre and Western Australia's only Sexual Assault Centre. It has been in existence since January, 1976.

It provides a 24 hour per day service for female and male victims who have experienced any form of sexual assault.

Functions of the Centre

1. To provide treatment and care for the physical, emotional and social needs of victims of sexual assault. This treatment and care is available until the resolution of any problems arising from the assault.

2. To assist the Police and Crown Law Department, at the victim's request, by the collection of relevant data and presentation of evidence.

3. To promote greater community understanding and involvement in the problems of sexual assault.

The Centre has no geographic area of its own. It functions out of the Emergency Department and the Social Work Department and has the back up from all other hospital departments.

Staff

The Centre is staffed by a team of female counsellors and a panel of female doctors.

The counselling staff consists of one full time social worker who co-ordinates the counselling team. This social worker has the back up from other social workers from the Social Work Department. The other counsellors of which there are four, work on a sessional basis. They are on call and cover out of hours rosters. These counsellors do not have formal qualifications, they are chosen for their warmth and caring approach to people, and are given in-service training in crisis intervention, and counselling rape victims.

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* Social Worker, Sexual Assault Referral Centre, Sir Charles Gairdner Hospital, Nedlands, Western Australia.

The doctors who work on the panel are given special training especially in the forensic aspects of their work. All the doctors work in other areas of medicine, almost all outside Sir Charles Gairdner Hospital, and are called in when a case presents.

Medical Issues During Initial Contact

(a) Physical examination and treatment of any injuries.
(b) Collection of evidence - if a person has or is planning on reporting the assault to the police, then certain medical evidence can be taken.
(c) Discussion and treatment of pregnancy and venereal disease.

Medical follow-up occurs at varying intervals for up to 12 weeks depending on what issues arise.

Counselling Service Offered

The aim of the counselling contact is to assist the victims and their families with any problems that occur as a result of the assault, these may be practical, social, emotional, or psychological. The aim of the Centre is not to take on the person's life problems, but just the problems related to the sexual assault.

During the initial contact the counsellor always encourages a first follow-up within 24 hours. Then follow-up is based on the needs and requests of the victim and her/his family. The counsellor also accompanies the victim to court hearings and other legal consultations if the victim wishes.

All contact with the Centre is strictly confidential and is the victim's choice. This also applies to police involvement which is discussed with the victim, then left up to them to make a decision regarding whether the police are involved.

Not only does the Centre provide this crisis service but also accepts referrals related to a past sexual assault. These people are usually just requesting counselling and are only seen by a counsellor.

Referrals

Anyone can refer to the Centre, e.g. police, parents, self.

How to contact the Centre

Telephone Sir Charles Gairdner Hospital on 3801122, and ask for the Sexual Assault Referral Centre. A time for the victim to be seen will be arranged immediately or when convenient for the victim.

Education

Community and professional education is an increasing area of involvement for the Sexual Assault Centre. The Centre is involved in lectures with the uniform and CIB branches of the W.A. Police Force. Training of social workers, doctors, nurses, and other professional groups that may at some time come into contact with a victim. Also the Centre runs lectures and discussion groups in schools, and with community groups.

CHILD SEXUAL ABUSE AND SELF KNOWLEDGE

Biff Ward* and Robin Batterham**

At the Canberra Women's Refuge we have been exploring and deepening our self-awareness in relation to the subject of child sexual abuse, in a group which has been meeting weekly since July.

As I write 'exploring our self-awareness' I flinch on both sides. I can hear the attacks, denials and projections from the vast body of people who will be threatened by that and try to convince us that it's wrong: we already have guidelines and methods for dealing with child and adult victims of child sexual abuse. "What's wrong with you? You kinky or something? You want to revel in it?"

And on the other side I can hear some of my feminist sisters saying, "That's wasting time. Exploring your own navel is a cop-out."

All I can say is everything. I and my sister-workshoppers believe deeply in what we are doing. It feels right; it's changing us and all the people we come in contact with; it's changing the parameters of many interventions and conversations around Canberra. Our process is our action. Our action is as follows....

A Personal History of Our Child Sexual Abuse Workshop[1]

These workshops were initially commenced because Biff became interested in the subject. The catalyst was Biff's involvement with a woman who had left her husband and come interstate to the Refuge because her two daughters had been sexually abused/raped by her teenage stepson. The girls were eleven and six and the eleven year old in particular had obvious behavioural and developmental problems. She was carrying a lot of fear in her body.

We experienced difficulty in coming to terms with what it meant to us and how to cope with a child incest victim in a 'counselling' situation. So we all began to look at the ways in which we were responding to the problem. We realised that until we had looked at our own sexual development we would be in danger of responding by projecting our sexual hangups, and especially our fear, onto the person we were supposed to be 'helping'. We all recognised a desire to avoid

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** Refuge Worker, Women's Refuge, Kingston, A.C.T.

the problem: we could relate to adult rape victims, but rape of a child was too painful and horrific and difficult.

Biff lead a discussion at our local Interagency Meeting and it became clear that the professionals from health and welfare areas were experiencing similar difficulties. So Biff offered to run a series of workshops, for women only, to look at incest and our role as 'helpers'. A group of I8 was formed.

The group has consolidated at I2 members. We have been meeting for approximately five months, and have gone through three stages.

The first stage, a series of four meetings, was very much initiated and lead by Biff. The exercises which Biff set up served the function of building up a high level of trust within the group by sharing information about ourselves in dyads and triads. We also did exercises which got us in touch with our own bodies and how we felt about them and about our sexuality in general. We looked specifically at our childhood sexuality and found/'recalled' the ways in which it was repressed or abused by adults.

Biff also obtained a film about father/daughter incest/rape which we watched and then processed. The feelings which this brought up in the group were intense and varied. (I got in touch with the sexual nature of the relationship with my father, especially during adolescence, and the way in which this affected my interactions with men well into the early years of my marriage.)

At the end of Biff's series of workshops we decided that we wanted to continue but that more of us would take responsibility for leading and facilitating. A group of four of us then prepared a series of four more workshops. We now began to look more explicitly at our own sexual experiences. Topics such as 'first fuck', masturbation', 'body image' and so on were discussed in pairs and then in the group. Sometimes we added a 'technique' whereby the two people in a pair would 'feedback' their partner's story in the first person with the rest of the group sitting around them in a close circle. Hearing somebody else tell of your experience as if it were her own provoked very strong and powerful feelings. All the sharing of feelings in the group got us in touch with long forgotten memories through telling, hearing reactions and also through the natural(?) process of identifying with other women's experiences. We also did some role plays of men and women in a sexual or potentially sexual situation. We found that many of us had similar gut-reactions to these experiences, the most common being sadness and anger and horror(fear?)

By this time the group had become very close and committed to continuing. There were some women 'outside' who expressed a desire to join the group and we decided to allow them to come in and close the group again.

The third stage has been one in which there have been no official leaders; we have all taken responsibility for ourselves and for the group as a whole. We decided that we all wanted the opportunity to share, in the group, our complete sexual herstories from our earliest memories to the most recent.

The process has been that we start each two hour session by going around the circle sharing some recent, good experience, sexual or otherwise. This serves to bring us together, and to focus our attention on ourselves and each other. Then someone nominates to do her story. This does not take the form of a monologue as people comment and ask questions throughout. Afterwards we all give feedback to the person who 'did it', about how her story affected us.

This process is still going on and we have found that although the individual experiences have been very varied, our responses at an emotional level have been similar. The pain, and the ways in which we women have repressed our sexuality and allowed our bodies to be abused and our needs to be ignored, are things which at some level we all share.

However, our coming together has meant that the feelings of rage, resentment and self-pity which we have all felt at some time are being converted to feelings of excitement and courage, in the knowledge that we are not different or at fault. That as women we can change and take responsibility for our sexuality. We need not see ourselves as men see us (maybe we can change the way they see us) and we need not and should not depend on their ability to fulfill us.

The changes have, in fact, been tremendous, and almost weekly someone shares a new discovery she has made about herself.

For some it has been the beginning of a completely new self-awareness and acceptance: one 'middle-aged' woman who had never experienced orgasm and had never touched her own body with a view to giving herself pleasure, now with pride and humour shares her discovery of her sexuality with us. This woman is blossoming and growing at an amazing rate: her acceptance of her body has given her a whole new life. She has become more confident, more outgoing and more assertive. This is only one, though perhaps the most outstanding to date, of the ways in which our group has changed and enriched all our lives.

It seems too, that in opening our minds to our own sexuality and to the effects of sexual abuse on us and on young children, we have opened the mouths of those around us; in the Refuge, socially, and even within our own families.

Several of us have been asked by people outside our group to share the pain and the trauma of their negative sexual experiences. More and more, women at the Refuge are telling us of incest experiences and looking at the ways in which this has affected their sexuality and their personal growth.

We will soon be at the end of the third stage of our workshops and I am looking forward to entering a fourth stage in which more focus will be put on the sexual abuse of children.

I feel that we need to go through a process of sorting out which childhood (parent or adult administered) sexual experiences we found most harmful to our self-image and to our sexual development.

For me, any treatment which caused me, as a child, to have negative feelings about my body could, in broad terms, be called abusive. Perhaps we will be able to find a pattern of adult treatment which causes negative child responses. Only then, I think, can we begin to really discover together, when and how sexual relations between adults and children do most harm, how best this can be dealt with, and hopefully, come the revolution, prevented!

Thoughts on the Experience of Our Group to Date [2]

When I first suggested the formation of the Child Sexual Abuse Workshops, it was because I wanted to work out why I found this topic so difficult. I have developed considerable listening skills; I have been involved in women's groups and problem-sharing for nearly a decade; I had worked with rape crisis victims; and I had been a teacher for twelve years and knew a lot about relating to children and young people outside the formal education structures.

So I apparently had all the ingredients for being a good 'helper' for a child rape victim. But I felt paralysed and impotent; and not very effective as a caring woman 'helper'.

And, as Robin recounts, when I shared this situation with the Refuge collective members, and further afield in the professional 'helping community', I found everyone saying 'Me too'.

When we formed the group, eighteen women came to the first session. Amongst us there were women with lots of rape crisis experience, radical feminists from the women's movement, professional counsellors from the A.C.T. Child and Family Guidance unit, the mother of an incest victim, and women who came because they were interested.

Amongst us we had a wide range of group skills; we spanned from age twenty to fifty-three; we had widely divergent lifestyles and (apparently) widely divergent sexual experience; some had been in many self exploring groups, some never; and we were all fairly nervous about what we were embarking upon.

What We Have Found

The enormous leaps in personal awareness and changed lives that Robin highlights are significant in that none of us were 'cases for treatment'. We were ordinary women, functioning well by this society's standards. We ourselves have been/are being amazed at how much we have repressed of our own experiences and memories. I think this is particularly useful information when we consider the widely-held belief that most incest victims do not suffer trauma because they (appear to) lead normal lives.

A case in point from our group could be the 'first fuck' memorisation and sharing. Out of the twelve members, for four this experience was rape in some form: two of them violent rapes involving more than one man. Another four women found the memorisation of their 'first fuck' extremely unpleasant: it produced intense feelings of sadness, distaste or anger at being used. For the remaining four women, the memory of the experience was basically pleasant.

The amount of pain experienced in this session rocked us all: many had conceived of it as probably a fun thing to do, with expectations of gaucherie at the worst. The reality of the degree of pain that had never before been shared presumably pales considerably by comparison with that of an incest victim.

Another syndrome we have uncovered is that nearly everyone has found in this process (unknown to us as individuals before) that our relationship with our father (or a big brother) was highly significant in terms of our sexuality. None of us fantasised about our fathers sexually; none of us was raped by our fathers. And yet we have nearly all discovered a degree of what I shall call 'incest tension' emanating from our fathers, especially around the age of puberty. For some that meant withdrawal of affection by the father; for others an overt appreciation of them as sexual beings (women) which was very rarely open - there were a couple of pleasant memories of this, but many more of acute discomfort and confusion.

One of the women who has written to me describes feeling sexual 'vibes' from her father, which were never overtly acted upon, and she goes on to say:

> "...the danger and threat is not just in the physical act.
> In a situation where the father, or whoever, is in an all-powerful position, where he dictates whether or not you may speak, breathe or be upset or quiet; and where you listen to him 'fucking' your mother after he's come home again abusive....then any 'vibes' translate as a threat, or as abuse.

> "Because obviously he wasn't 'making love' with my mother, technically it wasn't rape, I don't know what to call it, so there was no way that I was going to view his sexual responses or reactions to me as being 'natural' or 'good'....I see it as having been 'sexually used'.

This woman, who had no 'trauma' note, says that by age seventeen she felt 'freaked out'. She goes on to say:

> "I don't know how to describe what I was feeling except that one part of it was a feeling of complete terror whenever I saw or had to walk past a male person..."

The point I am belabouring here is that the Freudian oedipus-elect theory has built up a huge pattern of expectations of behaviour, specifically that daughters desire their fathers. I believe that it is only by women talking, exploring, recalling their own experience, that we are going to establish the truth, which is the contrary; that men often desire their daughters in this patriarchal society ('a man's home is his castle': the other people in it are therefore his serfs, his property, his playthings), and that women hate and loathe being sexually used or humiliated by <u>anyone</u>. And the father is a special 'anyone'.

The third important proposition which our group has found is that childhood is throbbingly alive in all of us. We have found that in a highly supportive, validating group, we can 'return' to incidents we had 'forgotten' and feel very powerful sensations: both the sensations of the past and the meaning they have for us now.

This seems very important because it is only by <u>doing this ourselves</u> that we are getting in touch with the <u>intensity</u> of childhood feelings. This society, especially the professional 'helpers', spends untold brainpower and money constructing theories about child development, stages, thinking processes. While doing this, most adults seem closed to children living now, and closed to their own rich storehouse of knowledge about children which every one of them contains within them. And this knowledge can give us essential information about the very different processes of growing up female or male.

<u>Conclusions</u>

I. Our original proposition that people who wanted to be in a position to cope with child sexual abuse (75% or reported cases of which are within the family), should thoroughly work through their own feelings and attitudes (that is, their own experiences) first, has been confirmed to a resounding degree.

Many of the child sexual abuse units (of various kinds) in the United States have been through a similar process.

2. Our group has demonstrated the enormous potential for growth in all of us; new self-knowledge, deepened understanding of other women, an awareness of a wide range of experiences, more knowledge from which to analyse the impasse of many sexual relations in this society.

3. The 'feedback technique' I have already emphasised. In many cases it seemed to unlock a deeper level of (repressed) feeling: when I heard back my own story of my 'first fuck' it was infinitely more upsetting than my own telling of it, where I was in control. Hearing it uncovered the extent to which I had 'coped' by not letting myself feel. (I am not suggesting this here as a technique to use with children; only in the context already outlined: for ourselves.)

4. A women-only group has undoubtedly produced more sharing of common experiences. We have been able to share and explore the depth of fear and anger about men, in particular, in a healthy growth-oriented way, where a mixed group would have got stuck on confronting.

   I believe that single-sex groups are the way forward, precisely because of the depth of recall and feeling that can be reached when sharing is about common experiences.

   About I0-I5% of 'reported' child sexual abuse concerns boy victims. Male-to-male rape is concerned to humiliate the victim by using him like a woman, and reducing him to the status of a female. (See the well-known Philadelphia study on male rape in jails.) The power components of being male or female are integral to all negative sexual experiences under patriarchy: therefore men (male professional helpers?) who want to work in this field should, I belive, first work in male-only groups, creating their own proces of self-knowledge, as we have.

5. At the moment we have no end-point. Right now most of our energy is going into what we are doing, part of which is working out where to go next. We hope eventually to offer our process in written and experiential form to others; but maybe by the time we get there, we will be doing something else, like running our own child sexual abuse unit.

But as I said at the beginning, this process is action: it changes the group members and all they do. We encourage you to do the same, in your place/time/space, with yourself and the people around you.

FOOTNOTES

1. This section was written by Robin Batterham.

2. This section was written by Biff Ward.

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CHILDREN AND FAMILY VIOLENCE : REFUGES

Vivien Johnson*

> "You've only to watch the boys in the house to see that they are the next generation's potential batterers. Many of them are extremely violent by the age of three. By eleven they are potential criminals. Where ordinary children would have a tussle or just shout in annoyance, they fight to kill. It's just as the Jesuits said, 'Give us a boy until he is seven, and we will give you the man.'
>
> Violence goes on from generation to generation. All the men who persistently batter come from homes where they watched violence or experienced it themselves. They saw their fathers beating their mothers or were themselves beaten as children. Violence is part of their normal behaviour. They learned, as all children do, from copying what they saw, and what they experienced.
>
> ....The answer is simple - rescue this generation of children from learning violence." [1]

It is appropriate to quote Erin Pizzey in this context as an exponent of the 'cycle of violence' theory of the transmission of wife bashing from father to son down through the generations. It is largely her advocacy of this view as a basis for claiming a preventative (as well as recuperative) role for women's refuges in dealing with domestic violence that has secured it consideration in forums on family violence. It is thus important that we identify the origins of this assertion about the determinants of domestic-assaultive behaviour, along with the rest of the myth about psychopathic wife bashers, in the early struggles of the women's refuge movement to secure adequate funding through the recognition of domestic violence as a serious social problem.

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When the refuge movement began in Australia in 1974 (and similar remarks presumably apply to England three years before), public consciousness of domestic violence was at the level of the centuries old joke about the peasant woman who complained that her husband didn't love her any more because he hadn't beaten her for a week. Today violence and abuse in the family is not an unknown quantity: rather its very familiarity has bred contempt - the kind of contempt which has made wife beating the butt of sexist jokes for many years. Meanwhile, women and their children remained trapped in intolerable situations, and so long as domestic violence could be written off as part of the normal wear-and-tear of married life, there seemed no hope for getting public support to establish refuges to give them a way out of their privatised prisons.

In this situation, refuges adopted the dramatic terminology of 'wife bashing' and began publicising the severity of the assaults and resulting injuries suffered by the 'battered wives'. Verbal abuse, a slap across the face, even a few bruises might be joked about, but attempted strangulations, stabbings, shootings, broken arms and legs, internal injuries are not laughing matters. Tales of horror were designed to shock people into taking domestic violence seriously. To a point they did achieve this effect, but not in the way the refuges had intended.

The original objective of the refuge movement was the indictment of what contemporary feminism identified as the cornerstone of female oppression under patriarchy: the institution of the family. Its strategy was to establish crisis accommodation centres for battered women and children which would expose the dark underside of the institution's attitudes to women by demonstrating the continued prevalence within it of the most brutal and direct form of the victimisation of women: wife abuse. In terms of this objective, the recital of assaults and injuries reads as an exercise in the tactics of shame, familiar to students of political history from other struggles of the powerless. The mandatory middle class case histories were intended to drive home the point that wife bashing could not be relegated to working class brutes, and to play on the guilt arising from bureaucrats' unacknowledged sense of identification with the male point of view in domestic violence, in a bid to win financial concessions for refuges.

However, evidence brought forward by the refuges was so horrific that the point the refuges were trying to make by separating out extreme cases from a continuous spectrum of domestic violence ranging from pushing and shoving to fatal injury was lost. People refused to identify such brutality with their own experience of marital discord and concluded that this 'wife bashing' the refuges were talking about must be a horse of a different colour from everyday domestic argument. Occasional violent incidents at the refuges confirmed the impression that these were not your ordinary enraged husbands but violent and dangerous men. The media predictably responded to the sensationalism, and has been a key influence in disseminating the new public image of wife bashing as sustained and pathological violence against their wives on the part of a group of social deviants, in no way to be confused with the petty

squabbles with which nearly all couples relieve the monotony of their conjugal harmony.

Along with this new public image of wife bashing has come a broad acceptance of refuges as places where the unfortunate victims of these men can find support and protection, which is undoubtedly expedient in terms of the refuges' immediate practical need for funds to keep operating. The bureaucrat's anxiety that he might somehow be implicated in these deplorable lapses from the societal ideal of harmonious marriage was allayed. As a "normal" member of society, he could confidently dissociate himself from the activities of a sick minority and direct his energies to the humanitarian task of helping their victims: by 1978 there were 26 refuges in New South Wales alone receiving public funding, assisting in that year 2,681 women and 4,480 children. Refuges escaped the inaccurate and counter-projective label of 'marriage wreckers': it was not women's refuges but these psychopathic wife bashers who were subverting the institution of marriage by making it impossible for their families to stay together.

If this sounds like a conspiracy on the part of the refuges, let me hasten to add that refuges themselves were as much taken in by the myth of the psychopathic wife basher inadvertently created by their propaganda as anyone else. To help extricate themselves from their attachment the majority of women coming to the refuges will construct an image of their husband or de facto accentuating all his worst aspects and ignoring their economic and emotional dependencies on him. This image sustains them in their decision to leave. This monster is the soulless brute of all the dark memories of their relationship - or of any intimate relationship which has not devolved into vegetative symbiosis. In response to the women's depiction of vicious drunken bullies, refuges took elaborate security measures, viewed men callers with fear and suspicion, and were in constant contact with the police to warn of impending attacks from estranged husbands or de factos.

On occasion, these precautions served a practical purpose in avoiding violent incidents, but their major usefulness was in providing the women with a sense of physical security which, like the provision of basic material comforts for which the woman previously depended on her husband, is part of the refuges' basic function in supplying her with a viable, if temporary, alternative to her unhappy domestic situation. However it is not part of this function to enter into the self-justifying phantasies which the woman uses to counteract the feelings of guilt and shame that go along with society's attitudes to her action of leaving. The necessary reassurance is already available to her from the presence of the other residents, in the knowledge derived from being at the refuge that there are many others in the same plight. The practice of women's refuges which considered themselves'feminist' of defending not just the woman's interest but her 'side', frequently had the effect in the early days of refuge operation of making her ashamed to face the refuge again if she did as a result of the economic and emotional dependencies which we had neglected to acknowledge, go back to the monster she had depicted. We became aware of the destructive effects of our early concept of women as harrowed refugees from domestic strife long

before we were able to recognise it as the corollary of the myth of the psychopathic wife basher, and more importantly, to realise that by our participation in the myth we were reinforcing instead of dismantling the role of innocent victim of the aggression of others which is the feminine assignment under patriarchy.

The effects of the myth on the early attitude of the refuges to their residents were not confined to women, they extended also to the children. They found expression in the embellishment of the wife basher mythology referred to earlier as the 'cycle of violence' theory, which depicted the children as depraved monsters of destruction and violence, conveniently overlooking their genuine grounds of discontent with their situation at the refuges. In the initial fervour of our concern with the women and their needs, it was for a long time overlooked that more than half the refuge residents were children - except, that is, when they were being singled out as the main factor in producing the chaos of the physical environment. Child care at the refuges consisted originally in getting this noisy nuisance factor out of the way of the women and the workers. Treated as appendages to their mothers, their separate needs ignored just as their mothers' had been ignored in the family situation, it is hardly surprising that as an expression of the upheaval in their lives, in an attempt to attract adult attention, or out of sheer boredom, they often became violent and destructive. This does not make them 'the next generation's potential batterers', any more than their fathers' behaviour is attributable to violent childhood models. Dr John Gayford's study of 100 severely battered women from Chiswick Women's Aid, on whom the cycle of violence generalisation is allegedly based, found that the commonest factor among the men who turned into violent husbands was a childhood in which their mothers had spoilt them!

So disruptive to the refuge community did the children eventually become that we were forced to abandon the disastrous example of their fathers as a convenient rationalisation of their protest and confront our failure to understand or meet their needs as a distinct category within the refuge population:

> 'We must include the oppression of children in any program for feminist revolution or we will be subject to the same failing of which we have so often accused men: of not having gone deeply enough in our analysis, of having missed an important substratum of oppression merely because it didn't directly concern <u>us</u>. I say this knowing full well that many women are sick and tired of being lumped together with children: that they are no more our charge and responsibility than anyone else's will be an assumption crucial to our revolutionary demands. It is only that we have developed, in our long period of related sufferings, a certain compassion and understanding for them that there is no reason to lose now; we know where they're at, what they're experiencing, because we, too, are still

> undergoing the same kind of oppressions. The mother who wants to kill her child for what she has had to sacrifice for it (a common desire) learns to love that same child only when she understands that it is as helpless, as oppressed as she is, and by the same oppressor: then her hatred is directed outward, and 'motherlove' is born. But we will go further: our final step must be the elimination of the very conditions of feminity and childhood themselves that are conducive to this alliance of the oppressed clearing the way for a fully 'human' condition.'[2]

One of the most important lessons we learned when we did let the children 'speak their needs' was how radically their perceptions of the domestic situations their mothers had fled could differ from the women's unmitigatedly hostile view. Many children saw their fathers as all-too-human and still lovable figures, and expressed their desire to re-establish the family unit. At the same time they did not want to betray their mothers for the action they had taken in leaving it. This point is illustrated by the transcript of an interview with a three year old girl whose mother had spent her days locked in a house by a violent and jealous husband, not even allowed to hang her washing on the line except under his supervision:

> '"Would you rather be at your old house or would you prefer to be here?"
>
> "I'd much rather be here."
>
> "With your mother?"
>
> "Yeah."
>
> "And with Nicholas, Helen, Joey and Dina - yeah?"
>
> " - and my FATHER."
>
> "And your father? But your father isn't here is he?"
>
> "He's at the factory, working."
>
> "Do you think you'll go and see him one day?"
>
> "Yep!"
>
> "But would you want your mum to live with him?"
>
> "Yeah."
>
> "You would? But doesn't he hurt your mum?"
>
> "No! He drinkin' around with her. Me mum drinkin' around with him?"
>
> "But wasn't your mum unhappy when she was living with him?"
>
> "NO!"
>
> "I thought she was Vick. Didn't you notice anything?"
>
> "No."

"When are you going to school, Vick?"

"Next year. That's a lot."

"What's going to happen when you go to school and Joey and Dina have to stay home?"

"I'll bash someone up for my mummy."'

The refuges' attempts to work out a viable practice for dealing with the really fundamental conflicts of interests and need between women and their children will one day add a new dimension to feminist analysis of motherhood. However, my concern here is with the significance of the children's perception of their fathers for moving refuges out of their early absorption in the psychopathic wife basher myth and its attendant fictions. They drew our attention to the fact that the vast majority of the women's husbands or de factos are men who confine their assaultive behaviour to their intimate relationships with women, outside of which they give the appearance of non-violence, even amiability, in interpersonal relationships. They do not fit Erin Pizzey's description of the psychopathic wife basher as a man who uses violence and intimidation to gain his ends in all aspects of his life including his dealings with women because that is the only behavioural response of which he is capable. Men of this type who are involved with women at the refuges occupy a disproportionate amount of their time and energy, since they create most of the security problems. However - and this in spite of the fact that one would expect if anything an over-representation of women with husbands or de factos of this type at refuges, given their need for physical protection - they represent a numerically insignificant minority within the refuge population. Other research in the field of domestic violence confirms the indistinguishability of the average 'wife basher' from the man-in-the-street for example, the N.S.W. Bureau of Crime Statistics and Research 1975 on Domestic Assaults, or Dennis Marsden's research with battered wives in Kent which yielded a Jekyll and Hyde profile of their assailants. No explanation of domestic violence which neglects this peculiarity of the vast majority of offenders will be adequate.

It is beyond the scope of this paper to offer any such explanation. More to the point, there is no research available either from refuges or among the considerable body of research work into domestic violence which has grown up in the wake of the refuge movement that conclusively - or even mildly convincingly - establishes determinants of this type of assaultive behaviour on which to base such an explanation. Sexist humour apart, 'when did you last beat your wife?' is not without reason the archetypal sociological clanger. The problem of access in this field of research raises seemingly insurmountable obstacles in the way of samples large or representative enough to permit decisive answers to any of the multitude of questions posed by domestic violence. I shall therefore confine myself to offering a possible solution to the access problem based on the refuges' original perspective on domestic violence, and some schematic remarks about the theoretical framework on which such a research programme might be based.

The foregoing remarks about the origins of the psychopathic

wife basher stereotype have I hope succeeded in re-opening the question whether the brutal hostility of some wife bashing is really qualitatively distinct from the brawling most couples engage in at different times in their relationships. Suppose the distinction is in degree only, and that the turn which the domestic violence debate has taken arbitrarily separates out the extreme cases and treats them as a separate phenomenon explicable in terms of the pathology of the individual offenders when they arise from the same causes and are not more nor less 'pathological' than the marital squabbling which is condoned as 'normal' behaviour? If this supposition is accepted, then the new public image which the refuges have inadvertently helped to fashion for wife bashing by publicising sensational physical abuse is worse than the old one, which at least made no bones about the universality of domestic brawling.

The problem of access in the field of domestic violence research would solve itself if the refuges' original perspective was adopted. All we have to do is stop regarding violent marriages as theoretical anomalies which have to be explained away by locating additional causes (madness, alcoholism, poverty) to which their deviance from the bourgeoise ideal of married bliss may be attributed. If we started treating non-violence as the anomaly and turned our efforts in the empirical domain to discovering what distinguishes the minority of authentically non-violent marriages from the average experience of matrimony, the access problem would disappear. As I intimated above, all we need now is a theory of marriage as an inherently violent institution on which to base such a research programme.

From the variety of theoretical perspectives available within the feminist analysis of this issue, I have selected the psychoanalytic viewpoint, for whatever its ultimate shortcomings for feminism as a liberation movement, the Freudian approach is peculiarly apt in this context. If we can upstage vulgar neo-Freudian explanations of violent marriages as sado-masochistic collusions which the couple can be educated out of by a personalised course in behaviour modification by pointing out that in Freudian terms the violence is endemic to the institution of marriage itself, we shall have made up some of the ground lost by the refuges to the myth of the psychopathic wife basher. More significant for the purposes of discussion as to children and family violence is the Freudian view of marriage as representing the fulfillment of infantile desires. To quote one of the first Freudian feminists, Karen Horney, writing about 'The Problem of the Monogamous Ideal':

> 'What drives us into matrimony is clearly neither more nor less than the expectation that we shall find in it the fulfillment of all the old desires arising out of the Oedipus situation in childhood.'

The marriage partner's demand for a monogamous relationship - which Horney interprets broadly to include not only grudging the partner any other erotic experience, but also being jealous of his or her friends, work, interests - is a revival of the infantile wish to

monopolise the father or the mother. This claim is indissolubly connected with destructive tendencies and hostility to the object because of the frustration and disappointment which it met within its original form. Even if the partner makes a reciprocal demand on his or herself, it is only as a strategy in psychic economics to restrain the critical function which would otherwise expose the claim for permanent monopoly as unjustifiable, representing the fulfillment of narcissistic and sadistic (possessive) impulses far more than the wishes of genuine love.

We can now begin to make sense of the curious findings of Gayford's research[3] into the contribution of early socialisation to this type of assaultive behaviour. A component of the claim made by men socialised in patriarchal society on their wives which figures prominently in marital hostilities is the expectation that they will take over from their mother in providing for all their physical needs. 'Lost a mother; gained a wife', as the marriage manuals say. Women are also socialised in patriarchal society to cater to these expectations on the part of their husbands. Unless there is complementarity on the conditioned expectations of both partners to the marriage, it follows from Horney's analysis that so long as men are brought up to adopt an infantile perspective in their relationships with their wives, some degree of violence - physical or psychological- is the inevitable result. The opinion of the Chiswick women that their husbands had been spoilt by their mothers can now be interpreted as an expression of the serious discrepancy in these cases between the man's and the woman's ideas of the nurturance due to a husband. It is the 'not as good as mum used to make' line exacerbated to the point of physical conflict.

In conclusion, a challenge that we take the pathology of the patriarchal institution of marriage as a starting point in the study of domestic violence which, perhaps more than anything else I have said here, discloses the underlying reason for the general reluctance to test this perspective: dare we risk laying the wife basher identification on our own husbands and de factos, knowing that under the influence of the very socialisation we criticise, they may be just as likely to act it out to the full as to fall in with our aspirations to break the spell that binds us both? After all, they have so much more to lose.

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1. Erin Pizzey, Scream Quietly or the Neighbours Will Hear (1974, Penguin, London), "The Child is Father to the Man".

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APPENDICES

SUMMARY OF HIGHLIGHTS OF THE SEMINAR ON CHILDREN AND FAMILY VIOLENCE : AUSTRALIAN INSTITUTE OF CRIMINOLOGY 26-30 November

Stewart Towndrow*

Marie Coleman

The issues surrounding family violence (against women and children) are now coming into public focus. Such issues are leading to diversity of opinion on the nature of the problem and also on the policies and programmes designed to treat the problem.

Lincoln Day

The family is the only institution offering a 'haven of rest' for the ego and the satisfaction of human needs. As the Australian population moves toward zero population growth families will have fewer siblings and so it may be necessary in the future to share adults and childern who are not related - how to provide opportunities for such contacts?

Anna Yeatman

The democratic consensual authority between spouses in marriage is gradually replacing patriarchal authority of men over women and the custody of children as chattels. The State has moved to intervene and assume authority over the physical entity of the child - however this may be leading to paternalistic tutelage which does not necessarily recognise the will of the child.

Jean Hamory

The source of violence in the family may derive from -

(a) stress
(b) culturally accepted acts of aggression
(c) character/personality disorders
(d) severe mental illness

The passive role or responsibility of women in child sexual abuse needs to be changed into a responsibility of both women and men for the behaviour of men involved in such abuse. There is a case for a child advocate to relieve stress on young children appearing in court and to protect the right of the child where instances of competition occur between agencies with vested interest in winning court actions.

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* Office of Child Care, Department of Social Security.

Radda Gorgon and Kimberley O'Sullivan

Child sexual assault is child rape which includes any sexual molestation of any kind. Most cases of rape are perpetrated by close male relatives, not strangers, and the blame lies with men, not with women.

The concept of 'rape-in-,arriage' is a new concept which may mean that many people do not yet recognise it as illegitimate behaviour - the aim should be the deligitimising of rape within the family (marriage).

Maureen Kingshott

Children may experience a very real fear of being defenceless against sibling aggression within the home environment and act out such fears in pathological and delinquent behaviour.

Impulsive behaviour is common in sibling aggression as distinct from adult aggression which usually involves a more premeditated act.

Society's view of sibling violence as being a normal part of growing up may lead to reinforcement of violence as a natural way of responding to stress in mature age.

Carol O'Donnell

It is recognised that among the factors that are associated with violence in the family are unemployment and alcohol, but what are the factors which cause women to stay with battering husbands?

Emily Steel

There may be a strong psychological effect on children who witness or are involved in family violence and so the cycle of family violence needs to be broken to prevent reinforcement of violent attitudes in children. By what means can the cycle be broken?

Tess Rod

Marital murder is frequently the culmination of a series of violent acts between spouses. In many cases wives kill husbands who have in the past expressed resentment and aggression towards them in violent acts. In many cases husbands murder wives who have left them, frequently folloiwng them from place to place.

Similarities between marital murder as it occurs in the United States of America and in the United Kingdom occur in relation to that in Australia.

Jane Connors

Non-reporting of child abuse cases derives from the prevailing attitude of family autonomy and the general approval of corporal punishment - reporting requirements may be seen as meddling or a judgment on the capacity of parents to adequately care for their children.

Adequate support and counselling services must be provided along with a reporting or notification scheme and is probably the most practical approach at this stage.

Penny Stratmann

It is often difficult to obtain objective evidence in family violence because there may not always be any apparent injury as well as no independent witness/es. The long and involved procedure associated with court action to prosecute family violence does not really provide a deterrent to such acts and indeed is no deterrent at all unless both parties are convinced before hand that the legal process can be a deterrent.

John Willis

There is a diffiuclty in arranging compensation for children as victims of unreasonable corporal punishment amounting to assault. The problem lies in obtaining proof and in the 'right' of parents to maintain control over children. Is there a problem in training children to accept corporal punishment and hence to accept family violence as legitimate?

Rather than referring to children's 'rights' it should be a matter of establisihing 'consultation' with children when setting down the legal framework for dealing with children.

Darryl Lightfoot

The effort to achieve child protection (intervention before the act of child abuse has occurred) is preferred to that of responding to child abuse after the act has occurred.

Clients of specialist units tend to be multi-problem families with limited resources and are generally dysfunctional. The repetition and severity of child abuse is seen more often in multi-problem poverty stressed families.

The Child Abuse Unit (Montrose, N.S.W.) is moving toward child protection and a family crisis centre function rather than simply a child abuse unit. Also the aim now is to use Montrose more as a tertiary level specialist treatment centre in support of primary level generalist personnel operating at district officer level.

Andrew Paterson

With pressure from the bureaucracy for evidence of usefulness of the Crisis Care Service there developed a strong bond of co-operation between the police and Crisis Care for survival. This has also led to an acceptance by the police of crisis intervention in cadet training courses and actively involves staff from the Crisis Centre.

The unit has sixteen professionals and fifty volunteers as back-up support as well as 4th and 5th year medical students in for training and as support staff in emergency. Perhaps there is a need to encourage a diversity and extension of volunteer community involvement in crisis intervention.

Biff Ward

There is a need to return to the original views of community and to rethink the arguments relating to the development of childhood fantasies and sexual victimization in childhood. Rape results in an overwhelming sense of impotency - a sense of powerlessness over one's body. These feelings are likely to be overwhelming where the victim is also placed in a position of impotence due to youth, and where the aggressor is placed in an automatic position of power and authority due to a familial relationship with the victim.

Vivien Johnson

Marriage is a violent institution. Research efforts might better be directed not at the 'violent family', but at the nature and distinguishing characteristics of the anomaly - the non-violent family. Violence in the family is not psycho-pathological but is inherent in the nature of the institution and the society supporting it.

There may be a need to change society's attitude to the inviolable right to privacy within the family. Perhaps by living in a more communal setting it may be possible to reduce the stresses commonly found in the nuclear family.

The stereotype of sex roles leads to conflict of expectation and likelihood of violence where confusion as to real abilities and requirements of sex roles is not resolved. The needs of human beings as individuals would be enhanced by a greater degree of overlap of roles - both sex and age oriented roles... 'role diffusion' is vital to a society without violence.

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