

Domestic Violence

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The term “domestic violence” refers to violence or the threat of violence perpetrated against an intimate partner, family member, or cohabitor (*see* VIOLENCE). The violence can take the form of simple assault, choking, restraining, threats with a weapon, verbal threats, and even homicide. It is often associated with other forms of abuse, including emotional and sexual. In many cases, perpetrators of domestic violence seek to isolate and control their victim by limiting their access to money, family, friends, and other means of support.

Some commentators have criticized the term “domestic violence” because the word “domestic” makes the violence seem ordinary and unthreatening (Fineman and Mykitiuk 1994). The normalization of violence in the home can leave victims invisible and the consequences uncorrected. To address these concerns, this violence is sometimes referred to as “private violence” or “intimate partner abuse.” Female victims of domestic violence are often referred to as “battered women,” although this term has been criticized for suggesting that the woman is defined by her victimhood. The term “domestic violence” continues to be widely used, however, and it has the advantage of indicating that those other than intimate partners, namely children in the household, are also victims (*see* CHILD ABUSE AND NEGLECT).

While domestic violence occurs in same-sex as well as opposite-sex intimate relationships, the majority of victims are female victims of male perpetrators. In the United States, approximately one in three women and one in four men have been victims of domestic violence (Black et al. 2010). But women are four times more likely than men to experience serious injury, rape, or stalking inflicted by an intimate partner. For these reasons, and because gender is a significant component of domestic violence, we refer to the abuser as male and the victim as female in the following text.

Prevalence and Harms

In much of the world, violence by an intimate partner is one of the common reasons for a woman to go to a hospital emergency room, accounting for between 4 and 15 percent of ER visits (Burnett 2011). A woman is more likely to be physically injured or killed by her husband or intimate partner than by any other potential perpetrator. The percentage of women who report a history of domestic violence varies significantly by country, but on average, between 29 and 49 percent of women have been a victim at some point in their lives. The rate is as low as 13 percent in Japan and as high as 61 percent in Peru (García-Moreno et al. 2005: xi–xiv). While there is no

general consensus on the permissibility of domestic violence under *shari'a*, many conservative Muslim governments in the Middle East have done little to curb intra-family violence (Hajjar 2004: 8–12).

Women who report a history of domestic violence are significantly more likely to be in poor or very poor physical health. These women are more likely to report problems such as difficulty in walking, chronic pain, and memory loss. Victims of domestic violence are also more likely to suffer from poor mental health, including symptoms such as depression, suicide ideation, and attempted suicide. Recent studies suggest that the physical and mental repercussions of domestic violence can last for years after the violence has stopped (García-Moreno et al. 2005: 15–16).

Intimate partner abuse also undermines the autonomy of abused women by depriving them of a basic sense of safety, limiting their options, and subjecting them to the will of another (Friedman 2003; *see* AUTONOMY). The harms inflicted by domestic abuse are considered by some to be so severe as to constitute a kind of terrorism (Card 2007, 2010; *see* TERRORISM). Claudia Card (1996, 2007) argues that domestic violence is an atrocity, albeit a ubiquitous and everyday one – an injustice sufficiently evil that it is a reason for condemning the institution of marriage, whether between same-sex or opposite-sex couples.

History

In Roman law, husbands were not permitted to lay hands on their wives. Cato the Elder said that, “the man who struck his wife or child, laid violent hands on the holiest of holy things” (Plutarch: 20.2). After the fall of the Empire, however, throughout Europe, it was both legally and socially permissible for the male head-of-household to physically assault his wife and children. In the fifteenth century, Friar Cherubino’s “Rules of Marriage,” which condoned wife-beating, was embraced by the Catholic Church (Browne 1987: 164–5). Later, under early British common law, a woman of age could earn money, own property, and engage in lawsuits; however, once she became married, the wife ceased to be a distinct legal entity separable from her husband, and it was permissible for him to “chastise” her (Blackstone 1769). This principle was known as “coverture.” During this time, if a husband killed his wife, it was the legal equivalent of killing a stranger, but if the wife killed the husband, it was considered as heinous as regicide as it was a blow to the entire social order (Blackstone 1769).

The first legal prohibition of domestic violence occurred in the Massachusetts Colony in 1641. The Massachusetts Body of Liberties declared that a wife should be “free from bodilie correction or stripes by her husband.” The Body of Liberties was suspended in 1684, however. Chastisement remained legal everywhere until 1850, when Tennessee became the first US state to formally outlaw assault by a husband against his wife. Other states soon followed suit, and the United Kingdom updated the Matrimonial Causes Act by 1878 to do the same (Foyster 2005).

The United Nations reports that 89 countries have adopted legislation addressing domestic violence; but enforcement of criminal provisions has often failed to keep

pace (Ertürk 2005). Police officers have historically primarily focused on calming the parties down rather than enforcing domestic violence laws. In Western countries, serious enforcement of laws prohibiting intra-family violence did not begin until the women's liberation movement in the 1970s (*see* SEXUAL EQUALITY). Different countries have attempted to address police under-enforcement and victim under-reporting in different ways. For example, countries such as India and Brazil have instituted women-only police stations.

The first shelter established for women fleeing violence was Haven House in California in 1964. The concept spread quickly across the United States and to Australia and England. The original purpose of the shelters was to provide a safe place for a wife to spend the night when her husband was intoxicated or enraged. Over time, the purpose of these shelters changed to providing women with short-to-medium-term housing while leaving a violent relationship.

In 1994, the United States passed a landmark piece of legislation called the Violence Against Women Act, or VAWA. The so-called civil rights provision of VAWA declared that all women had the right to be free from gender-motivated violence and gave victims the power to sue batterers in federal court. The civil rights provision of VAWA was declared unconstitutional by the US Supreme Court (*U.S. v. Morrison* 2000).

Public/Private Distinction

For centuries, the argument that the state had no business criminalizing acts of spousal violence was predicated on the idea of a public/private distinction (*see* CRIMINAL LAW; PRIVACY). Legal scholars argued that what happened outside of the home was the public arena, and that all avenues of public life were potentially subject to governmental regulation. The home, on the other hand, was private, and thus the sovereign domain of the man of the house. Except in cases where one of the spouses violated the legal duties imposed by marriage, the state had no business intruding on the private matters of the home. The legal recognition of the public/private distinction served as the basis for failing to criminalize acts of domestic violence for centuries.

In recent decades, feminist philosophers and political and legal theorists have undermined the public/private dichotomy, arguing that gender-based power imbalances within the family lead to injustices that are the legitimate concerns of the state (Okin 1989; Dalton and Schneider 2001; Hirschmann 2003; Cudd 2006). Although domestic violence typically occurs in private between intimate partners and has, thus, been considered personal violence, its political dimension is increasingly recognized (Herman 1992; Brison 2002; MacKinnon 2006). Like sexual harassment, which was once not considered to be an actionable harm, but just part of life for women in the workplace, violence against women in the home was once considered not a crime, but just a fact of life in the domestic sphere. The women's movement revealed the public side of this typically private violence as not only criminal, causing serious harms similar to the symptoms of trauma produced by war and torture, but also as a violation of women's civil rights to liberty and equality (Herman 1992; Dalton and Schneider 2001; MacKinnon 2005; *see* EQUALITY; LIBERTY).

“Why Doesn’t She Leave?” – Coercion and Consent

Since domestic violence typically involves repeated instances of abuse, a common reaction to a battered woman is to question why she stays in the abusive relationship, rather than leaving after the first instance. It is assumed that, if she does not leave, she is voluntarily remaining in the relationship and is thus consenting to the abuse. In that way, the victim of domestic violence is blamed for it. Furthermore, if one accepts the legal principle of *lex volenti non fit injuria* (one cannot be harmed by that to which one consents) in addition to assuming the woman’s consent, the harm of domestic violence may be considered to be nonexistent (*see* COERCION; CONSENT).

Leaving an abusive relationship can be rendered extremely difficult, however, by a variety of factors. The battered woman may be financially dependent on her batterer for her own support and that of her children. Her self-esteem may have been so affected by the abuse that she may not think she deserves any better treatment. She may blame herself for the batterer’s actions (Walker 1979; Herman 1992). In addition, she may, with good reason, fear worse abuse, including death, should she attempt to leave. The batterer may react to her attempts to leave the relationship with the escalated violence of “separation assault” (Mahoney 1991). Women who leave a violent relationship are more likely to become victims of domestic violence homicide than those who stay (Wilson and Daly 1993: 8–9).

If a battered woman does succeed in leaving her home, she may then be homeless and still at risk of abuse. Should she attempt to receive protection for herself and her children by legal means by obtaining a protection order, she may be subject to “retribution assault” (Rosenfeld 2008). Some argue that, instead of asking why women stay in abusive relationships, thus implicitly blaming them for their own victimization, we should be asking “Why do men abuse women?” (Friedman 2003). Others, pointing out the unfairness of expecting a battered woman to move out of her home *and* get a protection order (because moving out is not enough to guarantee her safety), say the question we should be asking is “Why doesn’t *he* leave?” (Rosenfeld 2004).

The Battered Woman Defense

In the face of repeated and brutal abuse if she stays and threats that she will be killed if she attempts to leave, a battered woman sometimes resorts to killing her abuser when he is asleep or is otherwise not an imminent threat. Traditionally, the legal doctrine of self-defense has been available to defendants only when their lives were in immediate danger and there was no possibility of retreat (*see* SELF-DEFENSE). Because it is assumed that battered women who kill their abusers could have attempted escape rather than resort to deadly force, the traditional self-defense doctrine has been unavailable to them. Since the 1970s, however, a new legal strategy has emerged, called the “battered woman defense” (Browne 1987). Those employing the battered woman defense argue that women who have been subjected to prolonged and severe abuse may strongly believe that attempts to escape would unquestionably

fail and may lead to death. Women in these situations may feel that the continued abuse is inevitable unless they resort to killing their abusers.

In the United States in the 1980s, expert testimony on the so-called “battered woman syndrome” began to be admissible in trials of women accused of killing their batterers. While some feminist legal theorists hailed the use of expert testimony in such cases, claiming that it helped to overcome sex bias in the law of self-defense, others argued that it reinforced the very sex stereotypes of women’s helplessness and passivity that women’s self-defense work had tried to overcome (Schneider 1989). An alternative to attributing a “syndrome” to women who kill their batterers is to expand the concept of self-defense to include what has been called “preemptive self-defense” (Hartline 1997).

Legislative Reforms and Law Enforcement

In the past several decades, many countries have passed legal reforms aimed at combating the low arrest and prosecution rates for perpetrators of domestic violence. Countries including New Zealand, the United Kingdom, and many US states have adopted pro-arrest strategies that encourage police officers to make arrests rather than simply attempting to mediate the situation. Almost half the states in the United States have passed mandatory arrest statutes that require police officers to make an arrest any time there is probable cause that domestic violence has occurred. Mandatory arrest statutes have been criticized on a number of grounds including that they can lead to the arrest of the wrong party or both parties and that they may escalate situations that have been already largely resolved prior to police arrival.

Law enforcement is also sometimes frustrated in its attempt to prosecute perpetrators of domestic violence, because victims often drop charges or refuse to testify for the state. Some criminal prosecutors, wary of victims being coerced into dropping charges, have attempted to continue cases against suspected abusers even without the help of the chief complaining witness. These so-called “no-drop” policies were popular during the 1990s and 2000s; but the current trend has been to abandon this practice. Critics of the no-drop policy argue that it violates women’s autonomy and that successful convictions are nearly impossible without the victim’s testimony (Hanna 1996; Corsilles 1994; *see* PATERNALISM).

Intimate partner murder remains one of the most common types of nonpremeditated homicide in the world (Campbell et al. 2007: 246–8). In order to attempt to identify the highest-risk cases of domestic violence, police officers in some areas have begun to use threat assessment questionnaires to determine the risk that the batterer might attempt to kill the victim. Threat assessments have been embraced as a critical tool in combating domestic violence homicides because the batterers who constitute the greatest risk often follow a predictable pattern of escalation (Wnuk 2010).

As new laws and enforcement tools are utilized in an attempt to prevent domestic violence, some scholars argue that the state may have gone too far. Some argue that tools such as civil restraining orders and GPS tracking jeopardize fundamental freedoms of persons who have not yet been convicted of any crime. For example, some

states in the United States issue restraining orders even in cases where the victim does not request it. Some scholars argue that such programs could undermine relationships that might otherwise have been mended. They also worry that, as law enforcement becomes more proactive in attempting to prevent domestic violence, it can threaten fundamental privacy rights and become an overwhelming presence in the bedrooms of couples (Suk 2011; *see* PRIVACY).

Multiculturalism and Global Women's Rights

Over the past few decades, cases have arisen in which immigrants to Western countries have committed acts of violence that are illegal in their new country but would have been permissible in their land of origin (*see* MULTICULTURALISM). Examples that have occurred in the United States and Europe include marital rape, killing an adulterous wife, or simple "chastisement" (Coleman 1996). When charged for the crimes they have committed, some defendants in these cases have adopted a legal strategy called the "cultural defense." The cultural defense argues that the defendant is less culpable than he otherwise would have been because he was simply acting in a manner consistent with his cultural beliefs. While the cultural defense is not intended to completely excuse criminal acts, it has been successfully employed to reduce sentences or to secure convictions on lesser charges. Many legal scholars condemn the acceptance of the cultural defense because, they argue, it legitimizes dominant cultural practices that condone violence against women and children and fails to recognize women's universal human rights (Okin 1999; MacKinnon 2006). Others argue that the view that some "other" cultures, especially non-Western ones, are particularly prone to or accepting of violence against women is based in stereotypes about those cultures (Narayan 1997).

A recent trend in combating domestic violence internationally has been to argue that private acts of violence constitute a human rights violation (*see* CIVIL RIGHTS). Supporters of this position argue that while the violence may be private, the repercussions of the violence are widespread and political. Women who have been subjected to violence may lose their full autonomy and are often no longer capable of exercising their political voice. Recognizing this fact, the United Nations has specifically recognized domestic violence as a human rights violation. The UN has also declared that the failure of a state to adequately respond to allegations of domestic violence may further constitute a human rights violation (United Nations 1980).

In the United States, the Supreme Court rejected Jessica Gonzales' claim against her local police department after its failure to respond gave her estranged husband time to murder their three children. After failing in the US court system, Ms. Gonzales filed a petition with the Inter-American Commission on Human Rights. In 2007, the Commission declared that the petition alleged adequate facts to support a claim of a human rights violation (*Castle Rock v. Gonzales* 2004; *Gonzales v. U.S.* 2005). Domestic violence – once considered a matter too private and too trivial to warrant serious attention – is now viewed, at least by some, as an urgent problem of global magnitude involving the infringement of fundamental human rights.

See also: AUTONOMY; CHILD ABUSE AND NEGLECT; CIVIL RIGHTS; COERCION; CONSENT; CRIMINAL LAW; EQUALITY; LIBERTY; MULTICULTURALISM; PATERNALISM; PRIVACY; RAPE; SELF-DEFENSE; SEXUAL EQUALITY; TERRORISM; VIOLENCE

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