VIOLENCE AGAINST WOMEN: THE CHALLENGE OF DIVERSITY FOR LAW, POLICY AND PRACTICE

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Introduction

In this session of the conference we have been asked to examine the issue of research for policy. In my view there are three main challenges for the future development of policy in the context of violence against women. These are:

i) policy making in an era of shrinking public resources;
ii) inter-agency, inter-department and inter-sectoral cooperation - attempts have been made to enhance such arrangements but much is still to be achieved and
iii) diversity.

Here I don't want to delve into those debates about to what extent criminological research is in fact related to policy development, but rather to simply note that research can at times have a profound effect on policy. Research can inform each of the issues listed above. In this particular paper I want to concentrate on some research findings which relate to the latter issue, that of diversity.

By diversity I mean more than simply the recognition of differences across social categories such as culture, race, ethnicity, colour, language, class, age, religion, sexualities, physical and mental abilities, or immigration status, although such recognition is an important starting point. Much of the literature on cultural diversity, or other forms of diversity, pays little if any regard to the particular needs of women. Similarly until recent times much of the feminist literature was limited by a failure to recognise the diverse experiences of women. In the context of domestic violence, and in many other contexts, what is crucial is an examination of

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2 I'd like to acknowledge the work of colleagues with whom I have collaborated in much of the research which informs this paper: Julia Tolmie who has worked with me over a long period in developing our analysis of battered woman syndrome and its 'raced' underpinnings; Chris Cunneen with whom I worked on the research concerning violence against Filipino women in Australia; and Jo Travaglia, Lici Inge, Chris Cunneen and Janet Chan with whom I worked on a project concerning cross-cultural legal issues.
the nexus of such categories with that of gender. In the academic literature this nexus is sometimes referred to as intersectionality.

Feminist legal scholarship and feminist criminology have begun to develop an analysis of violence against women which recognises the significance of intersectionality, especially the intersecting categories of gender with race, ethnicity and or colour. Such scholarship is in its infancy in Australia. However, it has much to offer in aiding the analysis of women’s different experiences of violence and of their different needs and thus informing the development of policy and service delivery better targeted to meet those needs. The way in which women experience domestic violence, the options open to them in dealing with that violence and the extent to which they have access to services will be profoundly shaped by the intersection of gender with factors such as race, ethnicity, English language competence, cultural values, and immigration and or refugee experience. The life experiences and choices open to a person from any given culture or social group may differ profoundly according to gender - one only needs to examine the paid employment rates by gender and country of birth to appreciate the gender differentials which may exist within a given ethnic, cultural or linguistic group.

Some of the issues which emerge from the application of an intersectional analysis of domestic violence have begun to be given recognition. When we think about responding to the diverse needs of women from different ethnic, cultural, racial and or linguistic backgrounds we often focus on English language proficiency as our primary concern. To the extent that such diversity is taken into account in policy development and service delivery it largely means the provision of information in languages other than English, and or the use of interpreters where required. For instance it is now appreciated that women who have experienced sexual assault and or domestic violence, and who need an interpreter to assist them at various points within the criminal justice process may have good grounds for desiring a female interpreter. However, practice suggests there remains great room for improvement. Despite the development of policies concerning such issues, there is evidence from many sources of failures in the provision of adequate interpreter services. Women’s particular

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5 Antonios, Zita  Race Discrimination Commissioner, in Foreword to *Not the same: Conference proceedings for a strategy on domestic violence and sexual assault for non-English speaking background women* Office of the Status of Women, 1996.


10 The ALRC report *Multiculturalism and the Law* and *Equality before the law* found that [l]awyers and community workers report that there is a general impatience throughout the legal system when people from non-English speaking backgrounds are involved. Women who don’t speak English are often treated as non-entities, and/or patronised. This impatient tone has an intimidatory effect on women who are unlikely to be familiar with the Australian legal process and unconfident and therefore unable to effectively assert their needs (ALRC
concerns for privacy and confidentiality are often given little regard. Research indicates that some agencies such as the police are reluctant to use interpreters, and that the use of inappropriate people as interpreters, such as the children of victims or suspects, continues to be a frequent practice. It seems that the need for interpreters is recognised in some parts of the legal process, especially in criminal trials, but not in others - and that interpreters are particularly likely to be absent in the preliminary stages.

Other significant problems concerning the use of interpreters relate to the question of who assesses the need for an interpreter. Research indicates that people are frequently denied access to an interpreter on the basis of someone’s assessment that they are ‘fluent enough’ in English to forgo an interpreter. Such assessments are often ill-informed and fail to take into account that second language competency may decrease markedly under stress, and also ignores the complex, technical and often arcane language likely to be used in the legal process. Misunderstandings about the role of an interpreter also continue to be common place, such as expressed in insisting that interpreters provide a mechanical ‘word for word’ account, in ignorance of the fact that language and the concepts on which it relies are complex and embedded in a social and political world.

Less well recognised are the particular needs of refugees, especially those women who have experienced torture and trauma. Culture shock and experiences prior to immigration may each have negative consequences for a refugee’s ability to communicate, causing them to appear nervous, confused, fragmented or otherwise unconvincing in their dealings with authorities and or suspicious. Official interviews, or court hearings may resemble past experiences of interrogation, may impair communication and prevent the “whole story” from submission to the Department of the House of Representatives Standing Committee on Community Affairs Inquiry into Migrant Access and Equity, 1995, submission no 57 at 7.)

11 Ethnic Affairs Commission  Police and ethnic communities at 39.
12 Attorney General’s Department 1991 Access to interpreters in the Australian legal system
14 “The view of language and translation that underlies this attitude, though widely held (and at times by otherwise intelligent and sensitive people), is primitive in the extreme. Different languages are different worlds. Transferring messages from one such world into another is not impossible - but far from being a simple technical operation it is a difficult and sophisticated art. To be done well, it requires not only linguistic sophistication and sensitivity to ‘minor’ linguistic details (which may be correlated with vast differences in conceptualisation), but also an intimate knowledge of the cultures associated with the language in question, of the social and political organisation of the relevant countries, and of the world-views and life styles reflected in the linguistic structure. (Dixon, R Hogan A and Wierzbicka ‘Interpreters: Some basic problems (1980) 5 Legal Service Bulletin, 162, 163, 166 as cited by Bird 1993 at 217).
15 The international response to the horrors of systematic sexual abuse in Bosnia- Herzegovina has brought some limited recognition of the particular needs of survivors of such abuse (Filice I, Vincent C, Adams A and Barjamovic F ‘Women refugees from Bosnia-Herzegovina: Developing a culturally sensitive counselling framework’ (1994) 6 (2) Int J of Refugee Law 207.)
emerging and also may be at odds with accepted narrative forms in some languages and cultures. Refugees may also be ashamed of revealing their experiences. Great sensitivity is required of interpreters who work with women refugees who have suffered physical and or sexual abuse.

Interpreters are clearly of huge significance in ensuring that women from culturally and linguistically diverse backgrounds have access to justice. However, I would like to raise other issues which arise when we attend to women’s diverse interests, needs and experiences in the context of domestic violence, issues which are more difficult, and which offer a more profound challenge to law and legal practice. In particular I am concerned to identify the unarticulated assumptions underpinning law, policy and practice which may operate to the disadvantage of those whose experiences are not reflected in such assumptions. My first example relates to the construction of reason in the criminal law. My second relates to the unintended consequences of gender neutral legislation and mainstreaming in service delivery.

**Battered woman syndrome: A white, middle-class standard?**

The battered woman syndrome was first introduced in the United States more than two decades ago as a feminist defence strategy, primarily in circumstances where a woman resorted to killing an abusive partner. Evidence concerning battered woman syndrome was introduced in an attempt to overcome the difficulties women had in demonstrating that, given the circumstances of violence in which they found themselves, their perceptions and actions were reasonable for the purposes of the various defences available to them, and especially to assist in establishing self defence. Feminist legal analysis had demonstrated that defences to homicide had developed historically on the basis of male experience and did not reflect the circumstances in which women resorted to homicide. The gendered patterns of homicide should be well known and understood by this audience.

The various legal tests which women were being required to meet were based on a gendered understanding of what constituted reasonable behaviour based on assumptions about conflicts between men. Those who have promoted the use of battered woman syndrome as a defence strategy have argued that it represents a means of challenging gender bias in the courts by introducing evidence of the effect of on-going domestic violence on women who have suffered such violence. Further, they argue that without such evidence courts are unable to understand the experience of a battered woman who resorts to committing a criminal act, and

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18 See the ALRC report *Equality before the law*; see also Stubbs J, Travaglia J, Inge L, Cunneen C and Chan J *Cross-cultural awareness for the Australian Institute of Judicial Administration*, Melbourne.
that her act might be reasonable given the circumstances. 21 Evidence on the battered woman syndrome is traditionally given by a psychiatrist or psychologist.

Recent scholarship concerning battered woman syndrome has raised a number of questions about whether the use of such evidence has challenged gender bias in the law and legal practice. 22 Among the many questions which have been raised about the use of battered woman syndrome is a concern that the syndrome is based on white, middle class standards which do not represent the experiences of ‘Other’ women. 23 It has been argued by some critics that there is a risk that the existing stereotype of defensive behaviour will be replaced by a new stereotype - that of the ‘reasonable battered woman’ - with the danger that women who fail to meet this new stereotype may be doubly disadvantaged. Non-white women, and working class women may be at particular disadvantage.

To illustrate, my colleague Julia Tolmie and myself have conducted a detailed analysis of several cases involving Aboriginal women charged with a homicide offence, and in which evidence concerning battered woman syndrome was admitted. We found common themes in these cases which suggest a failure to recognise the realities of the defendant’s lives as Aboriginal women in their particular circumstances. In the case of Cynthia Hickey24, we found:

...a disjunction between stereotypes of battered women and the defendant’s experiences as an Aboriginal woman... her acts of agency were given less weight than the psychologist’s construction of her as dependent and predisposed to BWS....There was a particular failure to place her behaviour in the context of the community in which she lived, and in the broader social and political context, including the racism of the wider society. Her poor education, unemployment, and history of welfare dependency were presented as individual failings and were not examined in the context of the colonial and post-colonial policies which have contributed to the exclusion of many Aboriginal and Torres Strait Island people from the education system and from the labour market. Great weight was placed on psychological testing with no acknowledgment of the cultural biases inherent is such tests. In numerous ways the race of the defendant was obscured in the legal construction of her behaviour, and yet race was always present in the form of racist and ethnocentric

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24 (unreported) Supreme Court NSW, 14 April 1992
assumptions through which her behaviour was presented and interpreted. A reading of the transcript in Hickey also suggests that the Court was not attentive to the issue of appropriate forms of communication with Aboriginal English speaking witnesses. The examination and cross examination of several key defence witnesses suggest fundamental misunderstandings occurred through the use of forms of questioning at odds with accepted speech forms for Aboriginal English speakers. (References deleted)  

In the context of defences to homicide the failure of the courts to understand a woman’s behaviour can have damaging consequences since it is a precondition for an acquittal on the grounds of self defence that the defendant’s behaviour is determined to have been both necessary and reasonable. In the Western Australian case of Gilbert evidence was given of the concerted attempts that the defendant had made to protect herself and her children from her violent partner. The defendant and her partner lived in a remote Aboriginal community with few resources or services. Her evidence was supported by the testimony of an Aboriginal police aide, by medical records and by other witnesses. Despite this evidence the judge found that the accused woman was ‘apathetic’ and exhibited ‘learned helplessness’. The jury did not accept that her recourse to violent self help was reasonable in the circumstances and she was convicted of manslaughter26. In the South Australian case of Buzzacott a young Aboriginal woman was convicted of manslaughter after the judge rejected both self-defence and provocation and commented "I do not think that any situation of battered woman arises in this case. There was not sufficient battering."27

Law and legal practice are replete with unarticulated assumptions based on raced and gendered experiences. While the illustration provided above has concentrated on the legal construction of ‘reason’, such assumptions are not confined to technical legal constructs but also arise in the legal understandings of apparently simple concepts such as ‘family’, ‘property’ ‘marriage’ or divorce’. Narrow assumptions based on Anglo-Australian experience, and or male experience alone, risk diminishing the prospects that many Australian women have of finding legal assistance to deal with domestic violence.

**Gender neutral legislation and culturally blind service provision: Violence against Filipino women in Australia**

Filipino women living in Australia are 5.6 times over-represented as victims of homicide as compared with other Australian women. In the cases of homicides examined for this research almost all of the perpetrators were former or current spouses or fiances of the women, and none of the men responsible were Filipino.28

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26 Unreported, Supreme Court of Western Australia, 4 November 1993.
27 1993 unreported Supreme Court of South Australia, Sydney Morning Herald, 11 August 1993 at 12.
Filipino migration to Australia is largely gender biased in the favour of women, which is the reverse of the pattern for migrants from most other immigrant groups. Approximately 70% of women migrating from the Philippines to Australia are the fiancées or spouses of Australian men. In part this patterns reflects the conditions operating in the Philippines which promote the migration of women throughout the world as wives or workers. However, this pattern also reflects the consequences of Australia’s gender neutral immigration policy. Such policies reveal a profoundly gendered understanding of categories of skill which might qualify a person for migration. By undervaluing women’s skills, such policies have had the effect of qualifying a woman for migration on the basis of her relationship with a male partner. Despite higher levels of educational qualifications and skills than other Australian women, many Filipino women do not meet the test for immigration to Australia independently and can only qualify by means of their relationships with men who sponsor them. While many such relationships are successful and committed ones, those women who find themselves in a relationship with a violent partner are rendered very vulnerable when their immigration status relies on that relationship.

The Department of Immigration and Multicultural Affairs has responded to this issue by introducing specific provisions to apply in matters where a woman has applied for permanent residency but is forced to leave the relationship because of domestic violence. While such measures promise some measure of assistance to women who find themselves in violent relationships but who do not have permanent residence the provisions are poorly understood in the Filipino community and in any event do not apply to those who entered the country as fiancées but have not yet married their sponsoring partner.

In addition to the issues related to immigration law and policy, the research referred to above identified a number of barriers which operated to limit the access of Filipino women in Australia to legal and other services. Such barriers in large part reflected the failure of mainstream service providers to recognise and provide adequately for the particular needs of immigrant women.

As other research has demonstrated the strategies adopted by legal service providers to disseminate information concerning domestic violence to culturally and linguistically diverse communities have often been poor and ineffective. There is a dearth of multi-lingual material available especially beyond the metropolitan areas. Training for workers often fails to extend to those people within a given community to whom women from non-English speaking backgrounds are likely to turn for assistance. Knowledge and training with respect to legal issues also tends to be segmented, for instance some lawyers and other workers may be skilled with respect to immigration issues but fail to understand domestic violence issues or the reverse. Some Filipino women may be unfamiliar with the language used to discuss

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29 In fact the Philippines economy is heavily reliant on the foreign exchange sent home by way of remittances by Filipino nationals living and working abroad. It is reported that they remit in excess of A$1 billion to the Philippines annually earning more than any of the commodity export industries: see Boer, C (1988) Are you looking for a Filipino wife?: A study of Filipina- Australian marriages General Synod, Anglican Church of Australia, Sydney; see also Pettman, J J (1996) Worlding Women: A Feminist International Politics Sydney, Allen & Unwin at 71 citing Asian Migrant 1991).

30 Fincher, Ruth, Foster, Lois and Wilmot, Rosemary (1994) Gender equity in Australian immigration policy Bureau of Immigration and Population Research, Canberra: AGPS.

31 Women’s Legal Resources Centre (1994) Quarter way to equal WLRC, Sydney.

32 Ibid.
domestic violence in Australia, and unaccustomed to seeking advice or help outside the family. Research indicates that many Filipino women in Australia are ill informed about their legal entitlements and other options for dealing with violence and have little knowledge of services which might be available.  

Previous research and consultations undertaken with the Filipino community in Australia also indicate that many services which do exist to respond to violence against women were perceived to be culturally inappropriate and in some instances racist. Some of the consultations raised concerns about the prevalence of racist stereotypes of Filipino women and their marriages in Australian society as reflected in popular culture through films such as ‘Priscilla, Queen of the Desert’. Some Filipino women were particularly reluctant to use services which do not employ Filipino workers, and several submissions called for cross-cultural awareness training for those working in a range of legal and social service agencies.

The way forward?

The US Violence Against Women Act (the VAWA) which was introduced in 1994 provides one important model of how law, policy and service delivery can be shaped to become more responsive to the diverse needs of women. While there are aspects of the US act which remain controversial, features of the act make a significant contribution towards ensuring that experiences and needs of women from diverse racial, ethnic, cultural and or linguistic backgrounds are recognised and responded to. The act provides explicit recognition that ‘women of color’ may have different needs and experiences, and culturally based concerns, than those of other American women.

The VAWA and associated funding provided by the Federal government places conditions on the award of grants to states such as requiring that plans address the needs of women arising from ‘ethnic, racial, cultural, language diversity or geographic isolation’. Law enforcement and prosecution grants are provided for “developing or improving delivery of victim services to racial, cultural, ethnic, and language minorities. Amendments to the Immigration and Nationality Act (US) were introduced to make it possible for women and children to apply for legal status on their own without relying on an abusive spouse. Grants for other specific services such as telephone hotlines were also required to demonstrate their commitment to servicing the diverse needs of women. In addition, the VAWA has specific provisions aimed at improving research and data collection. The Act requires that in the development of data

35 Submission by Deborah Wall.
37 Rivera 1996 at 493-496.
collections and research agenda that experts on services to minority communities are included.

We don’t have the benefit here of the ongoing commitment to funding of several hundred million dollars per annum as is provided for in the US under the auspices of the VAWA. Our approach to ensuring that policy development is sensitive to the diverse needs of women therefore must be a more modest one. It is pleasing to note that National Domestic Violence Forum held in September of last year has produced a list of principles, a framework for policy, and specific recommendations which include, inter alia that the
determination of a response to domestic violence should involve appropriate and effective consultation with Indigenous, rural and non-English speaking background communities, and people with disabilities\(^{38}\)...

and that there should be a genuine commitment to the implementation of appropriate responses. The challenge remains for us all to ensure that these commitments are more than rhetorical.