DOMESTIC VIOLENCE: DETERRING PERPETRATORS

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Abstract

In recent years a coercive criminal justice response has been promoted as the appropriate response to control and deter perpetrators of domestic violence. In varying degrees, across western democracies, pro-arrest and mandatory arrest policies, no-drop prosecution, and tougher penalties have been proposed and implemented. However, recent literature and research on domestic violence has questioned the underlying assumption that the criminal justice system is always the most effective and appropriate response to domestic violence. This research raises two serious challenges, not only for the criminal justice system, but also for women's advocates, policy makers and researchers. First, how can the criminal justice system acknowledge and respond to the heterogeneous nature of domestic violence perpetrators? Second, whose goals, the system's or the victim's should be paramount in the control of domestic violence? In this paper each of these two challenges will be discussed and the implications of these challenges on the policing of domestic violence will be considered.

Introduction

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

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

Following these international trends there has been a shift across Australia to a more vigorous approach of bringing criminal proceedings against domestic violence offenders (Seddon, 1993). In Queensland, there have been considerable changes to the policing of domestic violence. Currently, the Queensland Police Service provides police officers with a wide range of training opportunities, both as part of recruit training and within ongoing professional development programs, in responding to domestic violence. A recent Criminal Justice Commission (1997) report examining police calls for service identified that calls in relation to a domestic violence matter took an average of two hours to complete, double that of a typical call. In 1997 over

13,000 applications were made for a domestic violence protection order. This represents a substantial increase in the use of protection orders since the introduction of the legislation in 1989. Furthermore, just under half of these applications were made by the police on the behalf of applicants (Department of Families Youth and Community Care, 1998). These figures reflect a substantial change over a period of 10 years in the Queensland Police Services response to domestic violence.

However, despite substantial improvements in policing, domestic violence is still very firmly on the agenda as a major social problem and there is little evidence of any reduction of domestic violence. One consequence has been increasing calls for a more coercive criminal justice response to domestic violence including, pro or even mandatory arrest, no-drop prosecution and harsher penalties. Campaigns have been focused on improving the police response which has come to mean more police powers, with the goal of higher arrest and prosecution rates. Current police policies on domestic violence are premised on the belief that laws and the efficient use of police powers can protect women from future violence. (Stanko, 1995). However, although there is some evidence to support this premise there is also some contradictory evidence.

While the importance of the role of police in managing domestic violence can not be minimised, police are generally the first and frequently the only agency to intervene in incidents of domestic violence, there are increasing concerns that a coercive criminal justice response is an extremely blunt instrument for complex social problem. In this paper two major challenges to researchers and policy makers are discussed. These challenges are; Firstly, understanding the heterogeneous nature of domestic violence perpetrators and secondly, developing system responses that are sensitive to victim's needs. Both of these have substantial implications, not only for policing, but also to the way we understand and conceptualise domestic violence.

Understanding of the heterogeneous nature of perpetrators of domestic violence.

Much early research examining domestic violence perpetrators has treated them as a homogenous group. However, there is increasing evidence that the differential effectiveness of criminal justice interventions can be explained by the characteristics of the perpetrator. Schmidt and Sherman (1993) reported that arrest reduces violence among employed people but increases it amongst unemployed people. A number of researchers (Buzawa, Hoteling, & Klein, 1998; Johnson, 1996; Holtzworth-Munroe and Stuart, 1994; Straus, 1996; Kantor & Jasinski, 1998; Gondolf, 1988; Shields, McCall & Hanneke, 1988) have developed typologies of male domestic violence perpetrators. In this section the research examining the development of typologies will be briefly reviewed. Following this the implications for policing different types of domestic violence offenders will be examined.

Holtzworth-Munroe and Stuart (1994) in a comprehensive review of the literature identified three descriptive dimensions along which domestic violence perpetrators varied (a) the severity of the physical violence and related issues such as frequency of the violence and the extent of psychological and sexual abuse, (b) the generality of the violence (i.e family-only or extrafamilial violence) and related variables such as criminal behaviour and involvement with the criminal justice system; and (c) the perpetrator's psychopathology or personality disorders. Using these three descriptive dimensions Holtzworth-Munroe and Stuart (1994) proposed three major subtypes of perpetrators; family only, dysphoric/borderline, and generally violent antisocial.

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

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

The third subtype of perpetrators, the generally violent/antisocial perpetrators, also engage in frequent moderate to severe domestic violence including psychological and sexual abuse. Furthermore, these men engage in high levels of extra-familial aggression and have the most extensive history of related criminal behaviour and legal involvement. They are most likely to have problems with alcohol and drug abuse and are most likely to have an antisocial personality disorder or psychopathy.

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

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

Distinguishing between high risk perpetrators and perpetrators of less severe types of violence provides a bridge between the two predominant models of appropriate intervention, the feminist model and the family therapy model (Johnson, 1996; Straus, 1996). The feminist model assumes the fundamental cause of domestic violence is the patriarchal social order, including a patriarchal family structure, where men are the offenders and women are the victims. This intervention model stresses empowering women, criminal prosecutions of men and separate treatment programs for both men and women. From this perspective, any

intervention which involves jointly working with the perpetrator and the victim, such as couple therapy and victim-offender conferencing, is not only inappropriate but exposes women to further victimisation. The second intervention model, the family therapy model, assumes the fundamental cause of domestic violence is a lack of interpersonal skills and dysfunctional relations. This leads to an escalating pattern of frustration and anger, which may lead to violence. Consequently, this model emphasises the improving of interpersonal skills, including negotiating skills and the correction of dysfunctional relationships which includes the inequality of power.

While police are more likely to encounter perpetrators from the two high-risk groups, with increasing use of the criminal justice system as a response to domestic violence, they will also encounter perpetrators from the family-only group. Perpetrators from each of these three groups are likely to respond differently to criminal justice intervention. Perpetrators from the high-risk groups are the least likely to be deterred by current criminal justice interventions, even if rigorously pursued. These are men already immersed in a criminal subculture, are likely to become increasingly violent if thwarted and are likely to seek out other victims if cut of from their current relationship. The coercive control exerted by the criminal justice system is necessary to try and manage these serious repeat violent offenders. However, it is naive to think that this intervention will reduce these men's offending behaviour and it is imperative that the possible negative consequences, such as displacement of the behaviour and increase use of violence, are acknowledged and managed. Most importantly, in these subtypes conjoint therapy is contra-indicated (Straus, 1996).

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

It is important that professionals within the criminal justice system and also family therapists are able to identify cases involving high risk and tailor perpetrator interventions suited to the level of violence and risk. To this aim Straus (1996) has commenced development on an inventory for use by these groups that will enable the identification of the level of risk the perpetrator poses to those around him.

The role of the victim in the criminal justice system

A second and not unrelated challenge to the criminal justice system when policing domestic violence is the role of the victim in the criminal justice process. Unlike other crimes, the unique feature of domestic violence is that the victim has had, and may still have, an intimate relationship with the offender. Victims of domestic violence are also not a homogenous group, they do not all experience the same severity or frequency of violence, they do not all define what is happening to them as a crime, they have varying levels of resources for managing the violence and they have different needs of and expectations from police.

The biggest predictor of the police response is the victim's complaint rather than the existence of evidence and of an offence. Victim support is a necessary precondition to arrest in both domestic and non-domestic disputes. Even if there is substantial evidence of a crime being

committed police are unlikely to arrest and charge unless the victim is committed to the prosecution process. (Hoyle, 1998; Stanko; 1995; Cretney and Davis; 1995). Furthermore, Hoyle, (1998) identified that in the majority of situations the police get called to it was not the intention of the victim to have the perpetrator arrested. When an arrest occurs the majority victims did not wish to proceed with prosecution.

A number of advocates have argued for limiting the victim's role in the criminal proceedings. Policies such as mandatory arrests, no-drop prosecution and the compellability of witnesses have all be raised and introduced as mechanisms not only to limit police discretion but also to reduce the victim's role in criminal procedures. There are two arguments for limiting the victim's role in the criminal justice process. The first is that by removing the victim's role in the process the perpetrator will not blame the victim and therefore a criminal justice intervention will not escalate the violence. The second argument for limiting victim's discretion in criminal justice decision making is that the role of the criminal justice system is to send out a message that domestic violence is a crime and will not be tolerated. Consequently, a victim's personal preference of non-criminal intervention is in conflict with the general deterrence goals of the criminal justice system.

There is a significant tension between the general goals of the criminal justice system and the use of the system by victims. This tension is most obvious when there is sufficient evidence of a crime but the victim does not wish to proceed with the prosecution. In this section some of the reasons why women may not wish to use the full criminal justice process will be explored, then women's expectations of the criminal justice system will be examined and finally the dilemmas created by the role of the victim in the criminal justice system will be outlined.

Many of the domestic violence incidents police respond to are not notified by the victim but by the victim's family, friends and neighbours (Stewart, 1998). Hoyle (1998) interviewed women in this situation and found three interrelated reasons why women did not call the police; firstly, they wanted their relationship to continue, secondly, they feared retaliation and thirdly, the outcomes of a criminal justice prosecution were not worth the costs to the victim.

Hoyle's (1998) finding, that women do not contact police because they wish to remain with their partners, has been confirmed by other research (Caputo, 1988). Reasons why women are unprepared to leave their partners include financial security, children, hopes that their partners will change and stop being abusive, and lack of affordable accommodation (Mooney, 1994). In reality, if a woman chooses to stay with her partner it is extraordinary difficult for the criminal justice system to afford them with ongoing protection from further abuse (Hoyle, 1998).

The second reason why women did not contact the police was that they feared retaliation from the perpetrator. This is a realistic fear. There is evidence that in some situations violence can increase after a police intervention, regardless of whether this intervention was supported by the women (e.g. Dunford, Huizinga & Elliot, 1990). These findings present a strong argument that a woman's wishes, expressed in the context of her understanding of her own situation, should be considered above the general deterrence goals of the criminal justice system.

The third reason women did not contact the police is that the sentence was not worth the process (Hoyle, 1998). Women considered that sentences for assault were lenient, and were often unhelpful and inappropriate. Most women wanted help and support for the perpetrators

as well as themselves and they realised this could not be provided through the penalties available through the courts. Fines were inevitably paid for out of the household budget and prison sentences were likely to make men more aggressive and embittered. This lack of sentencing alternatives has been identified by other authors including Dutton and McGregor (1991) who argued for more treatment alternatives through the courts.

The question which remains is what do women want when they contact the police? Ferraro and Pope (1991) argued that when women contacted the police they wanted help in managing the violence in their lives but were not necessarily ready to end their relationship. Hoyle (1998) interviewed women about their expectations of the police. With regard to the perpetrator, she found that in a third of cases the women wanted immediate protection, in a third of cases the women wanted the situation defused and the offender calmed down without recourse to criminal law, and in less than a third she wanted the man arrested. Regardless of the outcome of the situation the majority of women wanted information and support, and they wanted control over the process.

Women who have separated or are in the process of separating are more likely to use the criminal justice system as a strategy for assisting in the process. In this situation the criminal justice system can provide more protection for the individuals. However, even it the situation where a women wants the man arrested many do not want to proceed with the prosecutions. This is supported by substantial research which shows between 50% (Hoyle, 1998) and 70% (Ford, 1983) of cases are dismissed because the victim withdraws the charge. This sometimes leads to police perceptions that women are 'uncooperative' and 'hostile'. However, there is some evidence that they very process of arresting has secured the outcomes the women wanted, that is reduction in the violence, and that the process of prosecution is unnecessary (Ford, 1991).

Many of those women who did not want arrest and prosecution expected police to provide an immediate response to the violence which included removing the perpetrator for a period of time. The reasons provided for this are to give the perpetrator a chance to 'sober up', 'cool down', and 'come to his senses'. Hoyle (1998) found a third of women wanted the police to tell the man off. They felt that a warning from the police would deter the offender from future violence. However, she reported that although police did caution offenders they felt that it was not part of their job to chastise adults.

Researchers have found that most women who came into contact with the police wanted advice and/or information about their short-term and long-term needs (Hoyle, 1998; Brownlee, 1990). They wanted someone who would listen to them and talk to them about their problems. Police did not feel comfortable or adequately trained to provide this role, frequently stating that they are not 'social workers'. A second requirement of these women was that police do not insist on taking action that they were not ready for (Hoyle, 1998). Ford (1991) argued that these women use the criminal justice system, file and then drop charges, as a "rational power strategy". The threat of intervention by the criminal justice system has the potential to empower victims by providing criminal sanctions to prevent further abuse. McGillivrary (1987) also indicated that women employ various strategies to gain the protection of the state without ending their relationship. Women want control over the criminal justice process.

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

Implications

A 'one size fits all' criminal justice response is an inappropriate response to domestic violence because of the variability in the expectations of victims and the different types of perpetrators. On arriving at a domestic violence incidence police often confront an extraordinary heated and complex situation. Regardless of the situation they have to make a range of decisions about what is the appropriate action. Rather than limiting their use of discretion in these situations they must be supported and trained in using a wide range of possible alternatives. The criminal justice system needs to have the flexibility to be able to respond with a range of strategies that women can use to address her and her families' particular needs.

The concentration of effort on the criminal justice system's response to domestic violence has dramatically improved the policing of domestic violence. However, even a perfect criminal justice response is not going to solve a complex social problem such as domestic violence. Researchers and policy makers need to acknowledge the limitations of a criminal justice response in preventing domestic violence. We need to start looking for more innovative solutions for the prevention of domestic violence such as early intervention programs, more effective perpetrators programs, family therapy, and also the underlying structural changes that need to be made to make our society less violent.

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