

The Evolution of Domestic Violence Theory and Law Reform Efforts in the United States

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Introduction

Criminal justice system intervention in domestic violence cases takes place in the context of more than two decades of organizing and legislative change. This history has repercussions for today's practice and informs contemporary reform efforts.

Overview of Early Organizing Efforts

1. Early organizing followed on the heels of the civil rights movement and the anti-war movement, in which women's participation led them to see political action as part of the solution to problems arising out of gender discrimination. Among other early activities, consciousness-raising groups served to focus women on gender inequalities, including their unique vulnerability to male violence.
2. The anti-rape movement was one of the earliest components of the women's liberation movement to address violence against women. Marital rape laws, which prohibited forced sex even within a marital relationship, was one of the legal reforms initiated and which acknowledged the existence of violence within intimate relationships.
3. Two groups shared the agenda of what became the battered women's movement; (1) the people (mostly women) who were being beaten; and (2) the people who interpreted their experiences for the rest of the world and framed the issue (advocates and friends of battered women). While this was initially a very culturally, racially and class diverse movement, it was primarily white feminists who wrote and published on domestic violence and, therefore, it was their interpretation and analysis of battered women's lives which informed law reform efforts.
4. Organizing took place in the context of the popular understanding of domestic violence as evidence of pathology in the offender (low self esteem, poor impulse control, inability to express emotion, or sadism) and in the victim (masochism, low self esteem).
- 5.

Early 1970s: Institutional responses were ineffective at protecting victims and holding offenders accountable

1. Laws required police to either witness a misdemeanor assault or to obtain a warrant in order to arrest. As a result, women were required to initiate proceedings by citizen's arrest or by imploring the prosecutor to bring charges days after an assault.
2. Few arrests were made, even in fairly serious assault cases. Calls to police resulted in inconsistent and mixed responses, and men of color were over represented in the group of men arrested for domestic violence-related crimes.
3. Police response was to either mediate with or separate the parties. Successful prosecution was seen as depending solely upon credible victim testimony.
4. Child Custody laws change in late 60s: "Best interests of the child" laws replaced the former "tender years" presumptions in favor of custody awards to mothers, but the new standards did not charge the court with taking into account the domestic violence implications for custody.
5. No civil relief was available unless it was through divorce court, which meant that there was no remedy for women who did not want to be divorced or for women not married to their abusers. There was, therefore, no clear legal or practical process for getting the abuser removed from the victim's home.
6. Shelters were formed and advocacy started. Focus was on changing the responses of the institutions which other crime victims could rely upon for assistance, with the overall goal of improving victims' safety. Because battered women themselves were doing and guiding the advocacy and because one of the influences on the advocacy was the women's liberation movement, battering was addressed as an outcome of the systemic and culturally based inequality of men and women.

Late 1970s: Grassroots activists, advocates and a few practitioners began to collaborate to make institutional change, beginning with legislation

1. Warrantless probable cause arrest laws passed and police training on implementation of the new warrantless probable cause assault laws was commenced. Criminal justice intervention was available in limited cases, that is those which fit the definition of criminal assault, although there evolved a number of terms used to describe the behavior which constitutes domestic abuse:

Criminal assault implies criminal intent, and at least one specific act. The assault may or may not be one part of an overall pattern of intimidation, violence and control of victim.

Self-defensive acts describe violent acts which are not criminal, as there is no criminal intent, as long as the act fits within the confines of the law of self-defense.

Battering describes a pattern of behaviors, only some of which may be criminal, but all of which are designed to intimidate and control the victim.

2. Civil Protection Order laws were passed and survived legal challenges to their constitutionality.
 - a. Forms of relief which were available varied (and continue to vary) across jurisdictions. Among the most common are orders which:
 - (1) restrain from further abuse and exclusive occupancy
 - (2) provide for custody and visitation
 - (3) provide for child and spousal support
 - (4) require batterer's intervention/treatment (sometime based on other theories about domestic violence, such as family systems, which would call for couples counseling as an appropriate therapeutic intervention)
 - b. Violations of CPOs were designed to have criminal law consequences, including arrest for violation.
 - c. Violations constitute a separate crime or criminal contempt of court.
 - d. Procedures were designed to be user-friendly in many states; ex parte relief is available and courts provide pro se forms and procedures.

Early 1980s

1. Intervention Projects begun (as in Duluth). In order to address problems with implementation of the new arrest and other domestic violence laws, battered women's programs and shelters formed legal advocacy projects and trained legal advocates. Advocates did both individual and systems advocacy.
 - A. Individual Advocacy
 - (1) Individual Advocacy Method: Work with individual battered women
 - (2) Goal of Individual Advocacy: to help a woman achieve her personal goals in the legal system or other systems.
 - (3) Individual Advocacy Activities:
 - a. helping a woman consider her options; and
 - b. assisting her in her pursuit of a course of action in the legal system or other systems
 - B. Institutional Advocacy
 - (1) Institutional Advocacy Method: Work with institutions, e.g. legal systems, law enforcement, child protection.

- (2) Goal of Institutional Advocacy: to change an institutional practice (policy, procedure, protocol) which works against the interests and needs of battered women as a group.
 - (3) Institutional Advocacy Activities:
 - a. educating systems about the impact of practices on battered women and their children: and
 - b. encouraging systems to change their practices.
 - C. Most advocates were external to the system, working for shelters or battered women's programs. Few were within institutions, such as prosecutors' offices or law enforcement agencies. The roles of internal (governmental) and external (independent) advocates can be quite different but both begin to make substantial contributions to the movement to end violence against women.
2. Batterer's Intervention Services/Education/Treatment Programs begun, in some cases as a way to convince the criminal justice system that arrest and prosecution was not an unduly harsh reaction to domestic violence. Understandings about the cause and origin of domestic violence evolved into the social learning and social construction theories. Rising to prominence was the theory that battering is a system of power and control by which the offender, aided by norms which support men's dominance over women, exercises over the victim.
 3. Mediation laws were proposed and passed in some states. Just as legal reforms created new legal remedies in cases of violence against women, there were efforts launched to create private, non-adjudicatory venues for resolving family disputes outside the legal system. Alternative dispute resolution methods such as mediation, which require battered women and batterers to negotiate face-to-face for child custody, support or, in some cases, over whether assault was committed (in lieu of criminal proceedings against the abuser).
 4. Battered women's movement expanded and changed. As institutional practitioners joined the battered women's movement
 - (a) more institutional change was possible; and
 - (b) the focus tended to shift from the liberation of women and victim safety to the profiles of the victims and offenders; and
 - (c) victim services became more mainstreamed.

Mid 1980s

1. Civil protection order laws were amended to respond to problems with implementation and enforcement.
 - a. More states made their procedures accessible to victims without attorneys.
 - b. Increasingly, states set limits on courts' powers to grant mutual orders.
 - c. States increased the list of forms of relief available; most now include
 - (1) personal property use

- (2) orders for batterer's intervention services
 - (3) restitution
 - (4) longer terms for orders
 - (5) firearms provisions
2. Suits against police departments were brought, many successfully, to force reluctant police departments to eliminate practices such as treating domestic violence crime as less than criminal behavior.

Late 1980s

1. Child Custody Laws were changed in some states to require the court to consider the impact of domestic violence in custody and visitation decisions.
2. Backlash against laws protecting women were seen for the first time: men are alleged to be victims of as much violence as are women.
3. Law enforcement agencies were required by state statute to adopt policies on response to domestic violence.
 - a. Most adopted either mandatory arrest or "pro-arrest" or "preferred- arrest" policies.
 - b. Recent experiences lead to the realization that the impact of either policy on different communities of victims and offenders must be considered, including the implications of institutional beliefs and biases, the differing experience with the justice system which different cultural groups might have had, and other access to justice issues.
 - c. Law enforcement responses directed at victims were improved, including policies which mandated:
 - (1) Notices of the availability of civil protection orders and services be provided; and
 - (2) Notices of rights under the Criminal Justice System be provided; and
 - (3) Transportation for medical help purposes; and
 - (4) Notices in commonly spoken non-English languages.
4. Funding for battered women's programs were increased in some states as legislatures heeded the call for public support for programs serving battered women.

Early 1990s

1. Prevention became the focus of many efforts, including programs for school children and public education efforts.

2. The Model Code on Domestic and Family Violence was adopted and promoted by a committee of the National Council of Juvenile and Family Court Judges. Some of its provisions are adopted in many states and the effort represents a major leap of justice system professionals into the group of those working to stop domestic violence.
3. Mutual arrests become a problem, undermining efforts to stop repeat offenders. The problem is addressed by primary aggressor laws and self defense laws; training for law enforcement is common.
4. Prosecution training and Policies are increasingly required by law and by good practice notions.
5. Firearms laws are passed in many state legislatures and in Congress:
 - a. Some states passed CPO provisions allowing courts to prohibit respondents from possessing guns, others adopted criminal code provisions permitting criminal courts to order firearms forfeitures, including pending trial.
 - b. Federal amendments to the Gun Control Act prohibit firearm possession by (1) a person subject to a valid final civil protection order or (2) a person who has been convicted of a domestic violence misdemeanor (the latter not subject to the official use exemption and therefore applying even to law enforcement officers and military).
6. Other federal laws passed
 - A. Federal Crimes
 - (1) Crossing state lines or Indian Country borders to commit a crime of violence against a family member
 - (2) Crossing state lines or in or out of Indian Country to violate a protection order
 - (3) Crossing state lines or moving within territory to stalk.
 - B. Gun Control Laws
 - (1) Possession while subject to a restraining order
 - (2) Possession after conviction of misdemeanor domestic violence crime
 - C. Violence Against Women Act (VAWA) and other funding increased federal government contribution to victim services and criminal justice intervention efforts.

Current Issues

1. Intervention or treatment programs for women who use violence are being sought for women convicted of domestic violence related crime; new programs and approaches are being created.

2. Restorative Justice principles and practices are being applied to domestic violence cases, with mixed results; new attention is being paid to the practices which might be useful in the domestic violence context and which are dangerous and inappropriate.
3. Non-gendered analysis is common; however, a race, class and gender analysis is seen by many people as a necessary component of any intervention effort.
4. Interstate enforcement of civil protection orders is now possible because of new federal laws which require that Full Faith and Credit must be accorded valid protection orders issued by a court which had personal and subject matter jurisdiction and where the restrained party had reasonable notice and opportunity to be heard, although FFC not provided to mutual orders.
5. Increased focus on Coordinated Community Response and Batterer's Intervention Services.
6. Range of prosecution responses varies widely and new approaches are evolving, especially to issues related to pursuit of cases in the face of victim disinterest or noncooperation.

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