

DOMESTIC VIOLENCE

AN EXPLORATION OF IDEOLOGY AND ITS IMPACT ON THE DOMESTIC VIOLENCE ACT 1996

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ABSTRACT

Domestic violence is a complex issue that has been the focus of much research and debate since it became a public and political issue in the 1970s. Since then, domestic violence has been synonymous with women in the sense that women are perceived to be the main victims. Feminist ideology interposes a model for understanding the root cause of this violence. It focuses on the concept of patriarchy as the underlying cause of men's violence towards women. This view has dominated research and policy to such a degree that research that did not fit this model was largely ignored or dismissed to the detriment of the analysis. Through an examination of international and national evidence, this thesis asserts that there are other forms of domestic violence and other victims to be considered, namely mutual violence and male victims. The limitations of the feminist paradigm are exposed through a critique of the Domestic Violence Act, 1996. This is an example of a one-sided analysis of domestic violence leading to flawed policy that discriminates against a section of society. The Act has come under increasing scrutiny, and commentators have suggested that it has been at variance with the rights and civil liberties of citizens, and that it is repugnant to the Constitution. This thesis is timely as challenges begin to be mounted to test the constitutionality of the Act.

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CHAPTER ONE - INTRODUCTION

In the last six years, over 12,000 Irish citizens have been removed from their homes and families by the Irish State. Approximately one-third of these people were removed on the basis of an allegation, and without being given an opportunity to contest it. These actions were taken without any presumption of innocence and these citizens were literally turned out into the streets without alternative accommodation being provided, effectively making many of them homeless.

The device used to infringe their rights under the Constitution was an Act of the Oireachtas, known as the Domestic Violence Act, 1996. The Minister for Equality and Law Reform, Mr. Taylor who oversaw the passage of the Bill into law described elements of his own measure as 'draconian' (D il Debates, 21/02/96:2116).

This mass eviction of citizens from their homes has not been witnessed since the time of landlordism in the last century for the non-payment of rent. Proponents have described the Act as a 'watershed' in family law. Indeed, it established two classes of people within many families, a perpetrator and a victim. How did this Act come into being? How did it come to be accepted by Irish legislators and tolerated by its citizens, largely without demur?

This thesis will attempt to answer these questions by examining the origins and background of current domestic violence policy, with particular emphasis on the circumstances that gave rise to the implementation of such an Act.

Chapter 1 highlights some of the tensions and concerns within current domestic violence policy and outlines the questions that will be addressed through the five chapters of the thesis; a brief synopsis of each chapter is given. The problem of defining domestic violence is discussed and a description of the methodology is given.

Chapter 2 outlines the main models of domestic violence, with emphasis on the feminist model, which has dominated policy and research. A review of the international literature examines the justification for this, and explores the wider spectrum of violence, which includes male victims and mutual violence between partners.

Chapter 3 locates Ireland within the international analysis. The impact of the women's movement on domestic violence awareness and the pivotal position the movement achieved in influencing policy is traced. A discussion of male victims and mutual violence, that challenges the feminist paradigm, is outlined.

Chapter 4 analyses the political debates that took place in the Oireachtas that culminated in the Domestic Violence Act 1996. Qualitative interviews are used to provide commentary on the passage of the Bill and the workings of the legislation. The chapter further examines the constitutionality of the Act.

Chapter 5 draws together the main conclusions and findings of this thesis.

Definitions of Domestic Violence

A multiplicity of terms is used, sometimes interchangeably, to describe domestic violence. Domestic violence, family violence, domestic disputes, spousal abuse, wife abuse, battered wives, battered women, intimate violence and domestic violence against women are examples. Many of these terms, however, concentrate on a marital relationship between the victim and the perpetrator, or are gender specific. The phrase domestic violence, on the other hand, denotes a much wider form of relationship between the victim and the perpetrator (Lockton & Ward, 1997:1). The term domestic violence is used in this thesis as it is the main term used in Irish legislation and social policy. It is important from the outset to establish the boundaries of the phrase for the purposes of this research. Domestic can signify a large number of interfamilial relationships, but the primary context of this thesis is the violence occurring, or alleged to have occurred, between married or cohabiting heterosexual partners. The term 'domestic violence' is gender neutral as violence is seen here as a problem of both sexes.

As there is no definition of domestic violence in Irish legislation, there has been much confusion in the past as to what constitutes domestic violence. The grounds for the granting of orders under the Domestic Violence Act, 1996, include provision, "for the protection of a spouse and any children whose safety or welfare requires it " (Government of Ireland, 1999:1). 'Welfare' is defined in the Act to include the physical and psychological welfare of the person in question. Physical violence may offer obvious proofs, but when one begins to evaluate the type of behaviour that would threaten the psychological welfare of a person the waters begin to muddy, and an analysis must be given of particular rulings in the courts. This problem, however,

will be dealt with in detail in chapter 4. The only statutory body in Ireland that has a working definition of domestic violence is the Garda in the 'Garda S ochana Policy on Domestic Violence Intervention' where it states that,

"Domestic Violence" is the physical, sexual, emotional or mental abuse of one partner by the other partner in a relationship which may or may not be one of marriage or cohabitation (Oifig an T naiste, 1997:141).

The above statement is accepted in this thesis as a definition of domestic violence.

However, the second part of the definition continues: "and includes abuse by any family member against whom a safety order or a barring order may be obtained by another family member". This segment is not accepted, since a definition of domestic violence should try to conceptualise the meaning of the term itself, rather than include an outcome as part of the original definition. To include a particular remedy of domestic violence in a definition is viewed in this thesis as greatly flawed. The use of the courts to obtain a safety or barring order, or indeed any of the orders available, should be a remedy that is used by family members in serious cases of domestic violence. The above definition ignores other possibilities such as counselling and mediation services, which may be more appropriate in some situations of domestic violence.

Psychological and sexual abuse is not generally addressed in this thesis as there has been very little research carried out in these areas. Therefore, it is not practical to include these types of abuse in the paper.

The absence of an official definition of domestic violence in Ireland has meant that many diverse formulae have been used to conceptualise the meaning of the term. One such definition is used by the Women's Aid federations who define domestic violence as comprising a range of types of abuse.

These include physical, sexual, mental and emotional, or psychological violence. Threats of violence are also included. The perpetrator may be a woman's husband, boyfriend, partner, lover, cohabitee, ex-partner, ex-husband, friend, son, father, brother, uncle or other close family member (Hague & Malos, 1998:5).

This definition deals exclusively with violence against women. This author acknowledges that this form of violence is a very serious problem, however it is not the main focus of this thesis. In drawing attention to other models of violence such as those that examine male victims or mutual violence, it is not the intention of this thesis to minimise the experience of women's violence at the hands of men.

This thesis is addressed from the point of view that both men and women can experience domestic violence and that there is also a dynamic of mutual violence that can be a factor in many violent relationships (Straus, 1993). However there are important differences in regard to the outcomes of women and men's violence. Women are more likely to end up more seriously physically injured, to be sexually assaulted and murdered in situations of domestic violence (Hansen & Harway, 1993:3). These are very important differences, although it does not imply that men are unaffected by domestic violence, and the general reluctance of men to seek outside help also needs to be taken into account (McKeown, 2002). The reluctance of men to report their victimisation has meant that the issue of domestic violence against men has only come into public view relatively recently.

Methodology

This thesis employs a qualitative methodological framework. Qualitative research, "seeks to construct representations based on in-depth, detailed knowledge of cases, often to correct misrepresentations or to offer new representations of the research subject" (Ragin, 1994:92). Using documentary evidence, a review of existing

literature is undertaken. Documentary research includes historical documents, not only laws, declarations and statutes but also secondary sources such as people's accounts of incidents or periods in which they were involved. Official statistics, ministerial records, debates, political speeches, reports and the content of the mass media are also included. These sources, "can tell us a great deal about the way in which events were constructed at the time, the reasons employed, as well as providing materials on which to base further investigations" (May, 1993:133). The analysis of documentary evidence in chapters 2 and 3 of this thesis provides an insight into the theories and ideologies associated with domestic violence, both in Ireland and internationally. In considering these ideologies, an attempt is made to link them to chapter 4, which examines the Domestic Violence Act, 1996, and to ascertain their significance in the implementation of this policy.

In the analysis of the Domestic Violence Act in chapter 4, qualitative unstructured interviews were used. "Qualitative interviews should be seen as interviews trying to achieve a dialogue. They do not aim to ask a series of questions of the respondent, but rather to engage them in 'conversation with a purpose'" (Stroh, 2000:203). An unstructured interview is open-ended in character. This is said to provide it with the ability to challenge the preconceptions of the researcher. It provides qualitative depth by allowing interviewees to talk about the subject in terms of their own frames of reference. This type of interview involves the researcher having an aim in mind when conducting the interview, but the person being interviewed has scope to talk about the topic.

Structure was provided in the interviews through the use of an interview schedule which acts as a prompt. "This prompt is a series of topics to be covered rather than a formal list of questions" (Stroh, 2000:207). Topics covered in the interviews are as follows:

- § General questions on the interviewee's profession and work in the field of domestic violence.
- § Experience of the Domestic Violence Act, 1996.
- § Perceptions of the Act.
- § General impact on society.
- § Operational problems with the Act.

Five interviews were undertaken in this thesis. As the issue of domestic violence is such a sensitive and highly emotive subject, the interviewees did not wish to be quoted unless confidentiality could be guaranteed. Names of interviewees were changed, in order to allow them to speak openly about the Domestic Violence Act, 1996, and its impact on society.

The first interviewee, Brian, is a legal expert who was a member of the legislature when the Domestic Violence Bill was being introduced. This interviewee was chosen for his valuable insight into the political climate and parliamentary debates during the passage of the Bill. The second and third interviewees, Peter and Roger, are solicitors, who work in family law. Both were selected for their expertise on issues experienced by those who go through the family courts system. The fourth interviewee, Sin ad, worked in the Courts Service and has a good working knowledge of the application of

the Act. The fifth interviewee, Kevin, is a barrister who has a particular interest in domestic violence.

CHAPTER 2 - INTERNATIONAL PERSPECTIVES ON DOMESTIC VIOLENCE

Introduction

Domestic violence received little public or scientific attention until the 1970s and, although it has probably existed since the dawn of history, most commentators would agree that a significant influence on this new awareness was the re-emergence of the women's movement. The general perception in society at large is that men are most likely to be perpetrators of domestic violence, and that women are the most likely victims. But is it that simple? In fact, domestic violence is far from clear-cut, and researchers and academics are very divided as to its causes and remedies. It will be shown that society still doesn't fully understand the problem and, as a result, hasn't been able to come up with effective measures to tackle domestic violence.

This chapter will give an international perspective, and highlight some contrasting theories of domestic violence, focusing specifically on feminist theory and its limitations. Feminist theory has been put under considerable scrutiny due to increasing attention to the plight of male victims of domestic violence and by family violence researchers who draw attention to the concept of mutual violence.

Theories of Domestic Violence

A number of conceptual models of domestic violence have had an impact on the debate. These can be loosely classified into three general categories. Firstly, the individual psychopathology model, secondly, the family dysfunction model, and thirdly, the feminist model.

1. The individual psychopathology model examines characteristics, of the offender and, to a lesser extent, the victim, that increase the likelihood of domestic violence. Some researchers have argued that, "research on victim characteristics is an inappropriate focus and constitutes a form of blaming the victim" (Kaufman Kantor & Jasinski, 1998:16). As a result very little research exists which examines characteristics of victims that may be risk markers for abuse. This model examines factors associated with an increased likelihood of domestic violence.

These typically focus upon the individual stressors created by poverty and/or unemployment; deep-seated associations between love and violence caused by physical punishment from infancy; patterns of poor self-control and low self-esteem; immaturity, depression, schizophrenia, and severe character disorders (Buzawa & Buzawa, 1990:15).

Substance abuse is also included here, as it has been found that domestic violence offenders often use illegal drugs or excessive alcohol (Bergman & Brismar, 1992; Flanzer, 1993). The main limitation of this model is that it doesn't consider "the causes of the causes". An explanation of this suggests that, locating the cause of the problem with the individual means a lack of attention to socialisation effects and broader societal issues and pressures (Mignon, 1998:147). Much research on domestic violence has been within the individual psychopathology model (Straus & Gelles, 1990; Roy, 1977), which can be attributed to the variables being relatively easy to measure.

2. The family dysfunction model focuses on violence as learned behaviour and examines the history of the perpetrator's family of origin. This model highlights that many abusers either witnessed abuse as a child or were abused themselves. This has been described as the cycle of violence or the intergenerational transmission of violence (Mignon, 1998:147). According to Kaufman Kantor & Jasinski, the

primary mechanism believed to be involved in intergenerational transmission of violence is that of modelling the parental behaviours observed (1998:17). Where these effects exist, the mechanism may be that repeated attacks by parents can lead to damaged self-esteem and suppression of rage.

Debates on intergenerational violence are often frustrating because they imply an unbreakable chain of events. However, "few absolutes are found in social behaviour; what is transmitted is a vulnerability to victimisation or perpetration of aggression" (Kaufman-Kantor & Jasinski, 1998:18). Researchers point out that many adults, who have been abused as children, do not necessarily become abusers themselves (Kaufman & Zigler, 1993). An important conclusion of research on the cycle of violence in the family is that many of the risk markers identified in the individual psychopathology model are interwoven in the family-of-origin experience. Thus, in the view of many researchers (Kaufman & Zigler, 1993; Smith, 1989) the family dysfunction model provides only a partial explanation of domestic violence and should be seen as a contributing factor but not as the primary cause.

3. The feminist or structural conditions model is also known as "the patriarchal model". The key to this approach is the understanding of the historical subordination of women to men. Women were viewed as the property of men. From this perspective, the societal structure is designed to condone, perhaps encourage, and perpetuate the superordination of men over women (Jackson & Oates, 1998:148). Proponents believe that Christianity, Judaism, and other patriarchal religions have been said to affirm a male-dominated family structure (Buzawa & Buzawa,

1990:18). The patriarch of a family was given the right to use force against women and children under his control.

In addition, it is perceived that men have an innately greater capacity for violence than women, that there is a "culture of males in which violent acts may be valorized as signs of masculinity, male authority, power and control" (Dobash & Dobash, 1998:164). Moreover, the theory states that traditional institutions such as marriage perpetuate the dominance over wives by husbands through the structure of husband/wife roles. The husband's primary identity is that of provider and revolves around work - he enjoys a higher status and is the decision maker, while women perform the secondary role of domestic work, child-care, emotional and psychological support. "It is through such a system, coupled with the acceptance of physical force as a means of control, that, the wife becomes an "appropriate victim" of physical and psychological abuse" (Kurz, 1993:91). These roles reduce a wife's suitability for the labour market, which is a means of escape from the traditional family bind and a means of economic independence. The feminist model has also, "focused on the role of state agencies in responding to domestic violence and how patriarchal values are maintained and reproduced by these institutions" (Kelleher & O'Connor, 1995: 139).

More recently, however, this model has been criticised on its presumption that men have a greater capacity for violence. A growing body of research, which examines female aggression and women's capacity for violence suggests that the feminist notion and idealised views that women are inherently less aggressive than men should be abandoned. "Greenblat (1983) found greater tolerance for wives slapping husbands than the reverse because it is believed that women are less likely than men to do

physical harm" (Kaufman Kantor & Jasinski, 1998:7). Most of our perceptions of the social and cultural linkages between masculinity and violence derive from the fact that most of the socially approved use of violence is in jobs undertaken by men. This includes the police, the army, prison officers and other defence or correction agencies. It would seem that it is usually men and more rarely women who are trained to use violence and force in society.

It is possible in this context to reverse the assumed causal links between 'masculinity' and 'violence'. It could be that it is men's socially determined, systematic involvement in various forms of violence which constructs our notions of 'masculinity' as indissolubly linked with violence. The idea that what is at stake here is state violence in the hands of men (rather than, as many feminists believe, male violence in the hands of the state) is supported by reports of women's use of force and violence when they are placed in jobs analogous to men's (Segal, 1990:268).

Evidence which shows that there are parallels between women's and men's violence in areas where the use of socially approved violence is condoned can be seen in studies of female prison officers, women in the military and in accounts of women's behaviour when in positions of power (Segal, 1990).

The Women's Movement

In the 1960s, with the mobilisation of women, a new women's movement and a new feminism began to challenge what were perceived as old stereotypes and attitudes. The issue of men's violence against their partners and ex-partners exploded into public consciousness during the early 1970s when women's groups began providing refuge for battered women. When media attention focused on issues affecting women such as jobs, pay equity and childcare, the violence directed at women in their own homes came to public attention. The New York Times indicated an increase in articles on wife abuse from zero in 1970 to 44 in 1977. By 1978, battered wives had become a separate topic, distinct from reports on assaults and

murders (Barnett & LaViolette, 1993:xv). Chiswick Women's Aid, established in London in 1971, opened the first widely publicised shelter for battered women in 1972. In 1974, the founder of this refuge, Erin Pizzey, published a book, *Scream Quietly or the Neighbours Will Hear*, which brought the issue of domestic violence to the attention of both the legislature and the public. However Pizzey also noted that, "Almost immediately people working in the refuge with the women and children became aware that of the first hundred women coming into the refuge, sixty-two were as violent as the partners they had left" (Pizzey, 1998).

The women's movement "support their point of view with official crime statistics, data from the criminal justice system and hospitals, interviews with victims of battering and batterers, and historical evidence" (Kurz, 1993:89). The U.S. National Crime Victimization Survey of 1982 reported that 91% of all violent crimes between spouses were directed at women by husbands or ex-husbands, whereas only 5% were directed at husbands by wives or ex-wives. In their study of police records in Scotland, Dobash and Dobash (1979) found that when gender was known, women were targets in 94% and offenders in 3% of cases (Kurz, 1993:90). Schwarz (1987) found that 93% of those receiving treatment from a private physician for injuries in a domestic dispute were women (Mignon, 1998:144). Data from hospitals show women to be overwhelmingly the injured parties (Kurz, 1993).

Critics comment on the use of selective, one-sex studies that are carried out in clinical settings such as women's shelters. These are usually cited to show that it is only their male partners who are violent. Whilst these studies are useful in providing a greater understanding of domestic violence against women, they "rarely obtain or report

information on assaults by women, and when they do they ask only about self-defence" (Straus, 1993:71). Gelles asserts that such studies "cannot be used to generalize information on the frequency of factors associated with violence or the representativeness of the findings or conclusions " (1985:353). Proponents of these studies, however, emphasise the importance of this type of research as they are the best and sometimes the only way of obtaining detailed data on the most severely battered women (Dobash & Dobash, 1998, Hanson & Harway, 1993).

In the past, this research was often conducted by people who were driven by their belief in the women's movement rather than by professional researchers. Nancy Updike (1999), summarises that,

domestic violence research has been underfunded and conducted piecemeal, sometimes by researchers with more zeal for the cause of battered women than training in research methodology. The results were often ideology-driven. In 1994, Congress asked the National Research Council, an independent Washington D.C., think tank, to evaluate the state of knowledge about domestic abuse. The NRC report concluded that "this field of research is characterized by the absence of clear conceptual models, large-scale databases, longitudinal research and reliable instrumentation".

It should also be noted that, despite decades of research based on the assumption that domestic violence meant men hitting women, the number of women killed each year in domestic violence incidents remains distressingly high, and continues to rise, around the world (Hanson & Harway, 1993). Moreover, in view of the persistence of domestic violence, it indicates that feminist theory, when used as the primary tool for analysis, is providing an inadequate explanation and, more seriously, is providing no diminution in the problem of violence against women. It is therefore in the interests of feminists to question their own analysis and to seek a more searching model.

Feminism as an Ideology

George and Wilding (1994) outline what is understood by an 'ideology', concluding "that it is a view of the world; it offers a critique of existing socio-economic systems; it offers a vision of the future and draws some guidelines as how to achieve this ideal society" (Kennedy, 1999:233). There are many different strands of feminism. Fiona Williams (1989) categorises feminism into six different theories: Libertarian feminism, Liberal feminism, Welfare feminism, Radical feminism, Socialist/Marxist feminism and Black feminism. Sylvia Walby outlines an additional theory, Dual-systems theory, which "is a synthesis of Marxist and radical feminist theory" (1990:5). However it is common to identify three dominant approaches within contemporary feminism at the beginning of the twenty-first century: Liberal feminism, Socialist/Marxist feminism, and Radical feminism.

1. Liberal feminism views women's oppression as resulting from sex discrimination and sex-biased laws. "Liberalism insisted that social status should be determined by individual ability and skill, and this could be measured by the achievement of the individual competing with others in the market place" (Williams, 1989:44). Liberal theorists deny the relevance of any differences between men and women and while child-bearing often prevents women's access to opportunities and rights, the state as a vehicle for reform should help women to achieve their rights to abortion, contraception, maternity leave and child-care. This will create conditions where women can be free to compete and use their skills and abilities and will minimise the role of biology in women's lives.

Liberal feminist theory and practice has been most criticized, particularly for underestimating the structural forces limiting women's equality and for reducing the causes of inequalities to discriminatory ideas and attitudes (Williams, 1989:49).

The women's liberation movement of the 1970s with its demand for equality legislation could be said to reflect the ideological views of this strand of feminism.

2. Socialist / Marxist Feminism considers gender inequality to derive from capitalism. "Men's domination over women is a by-product of capital's domination over labour" (Walby, 1990:4). The family is considered to benefit capital by providing a cheap means of providing the day-to-day care of workers and for producing the next generation of workers. "Women form the reserve army of labour and women's low pay reinforces women's dependency within marriage" (Kennedy, 1999:236). Critics of this strand of feminism allege that "this analysis misreads the extent to which women have made and are capable of making, real strides within capitalist society and renders equality dependent on the utopian dream of a socialist revolution" (Fitzpatrick, 2001:141). Women's activism in the trade union movement reflects many of these principles of this strand of feminism.

3. Radical Feminism is generally viewed as holding an extreme view. Radical feminists see gender inequality in terms of a system of domination called patriarchy. Sylvia Walby defines patriarchy as "a system of social structures and practices in which men dominate, oppress and exploit women" (1990:20). Two ways in which patriarchy exercises power and control over women are in the areas of sexuality and biology, namely through their reproductive capacity (Williams, 1989). It has also been asserted that rape and wife beating are forms of social control and the threat of violence serves to perpetuate male domination over women by force. To this analysis the state is also implicated, where on two levels it refuses to intervene effectively to

protect women, in welfare provision and also in the criminal justice system. As a result the state is seen to systematically condone male violence against women.

Firstly, the welfare state does not provide the resources a woman needs to remain independent from a violent man; she is pushed into economic dependence. Secondly, the refusal of the state to intervene in all but the most extreme cases of violence contributes to the situation (Walby, 1990:135-136).

This analysis has been influential in campaigns over male violence, war and pornography. Radical feminism views the private and public spheres as linked and it stresses that the personal is political. The main problems that critics have raised about radical feminism are,

a tendency to essentialism, to an implicit or explicit biological reductionism, and to a false universalism which cannot understand historical change or take sufficient account of divisions between women based on ethnicity and class (Walby, 1990:3).

Services, which have developed in line with this radical thinking, would include Women's Aid Refuges which have strict policies which largely exclude men and boys from the organisation (Kennedy, 1999).

While each of the three strands of feminism outlined above have different approaches in the analysis of male violence to women, it is important to recognise that it is the third strand, radical feminism, which is most influential and dominates policy relating to domestic violence in Western societies.

Challenging the Feminist Analysis

The feminist ideology, "concentrates on domestic violence as integral to assigned gender roles wherein women become the main victims of abuse by their male partners" (European Women's Lobby, 1999:9). It would seem that societal attitudes to violence are so clear on these assigned gender roles in heterosexual relationships that

it is hard to accept that women are also beating other women. "That domestic violence is not some fatality inscribed in the male-female relationship is apparent if we look at the different family forms which have generated violence" (Segal, 1990:262). The recognition of lesbian-battering in the US has meant that women's violence in relationships is slowly coming into the public arena, so then why is it so inconceivable that women can also be violent towards men on a large-scale in domestic relationships? Emerging evidence would suggest that if there were an acknowledgement of women's violence to any significant degree by feminist theorists, then the whole basis on which feminist ideology stands, that is the power of men over women, would no longer hold true.

The false universalism of feminist theory that claims that men have all the power in society is questioned in the following anecdote which describes that when a man was asked who makes the decisions in his family, he replied that his wife makes all the little decisions and she lets him make all the big decisions. Pressed to clarify, he explained,

My wife decides what neighbourhood we live in, what schools are best for the children, how to budget our money, where we should go on a vacation and things like that. But I decide the big issues, like whether we should trust the Russians, whether the government is doing a good job and what we should do about the economy (Rohr, 1996:42).

This story illustrates the complexity involved in the male/female power structure. The truth is that most people have little power. People work under supervision, regardless of the level of management; men and women are both paid for what someone else wants done. They do not really control their own lives. They are at the mercy of market forces or somebody else's deadlines. When this universal 'powerlessness' is

understood, it may be possible to see the fallacious nature of gender conflict and thereby elevate the discourse.

Radical feminists believe that the most common characteristic of female victims of male violence, apart from their gender, is their lack of resources to escape relationships that are violent. This economic dependence on men is seen to result from the patriarchal structuring of the workforce. However, the feminist notion of the structure of power within the household is rapidly proving inadequate as societies restructure their labour markets. Many regard Sweden as a society in which there is a relatively high degree of equality between women and men.

This goes, for instance, concerning women's representation in Government (50 per cent), in Parliament (40 per cent), County Councils (48 percent) and in Municipalities (41 per cent). Swedish women also have a relatively high employment rate (70 per cent) and thereby good possibilities to support themselves (Swedish Government Offices, 1998).

Despite several measures in recent years, such as the establishment in 1993 of a Government Commission into violence against women and the inclusion of domestic violence in 1998 as a general indictable crime to be introduced into the Swedish Penal Code (Nyl n & Heimer, 2000), the number of reported assaults against Swedish women has increased markedly. "According to the statistics collected by women's shelters a women is battered every 20 minutes " (Swedish Government Offices, 1998). This evidence would seem to disprove the feminist ideology; that increased economic independence means a reduction in violence against women. In Ireland, in the first quarter of 2002, "the number of employees increased by 30,400 in the year This comprised an increase of 29,200 female employees and 1,100 male employees" (Central Statistics Office, 30/05/02). Females accounted for 80% of the increase in full time jobs. This occurred during a period when there were 50,000 males and

30,000 females unemployed, representing annual increases of 11,100 and 3,300 respectively (Central Statistics Office, 30/05/02). These statistics indicate that the balance of power is shifting in employment. If feminist ideology accepts that power is the genesis of violence and abuse (Stitt & Macklin, 1997) then it must also accept that women are likely to become as violent towards male partners if they increasingly hold the power in the relationship? Clearly, as evidence from Sweden and Ireland shows there is a dimension missing from the feminist analysis. It would seem obvious then, that there is a need to rethink the strategies that are being used to combat domestic violence.

Erin Pizzey, founder of the refuge movement, had a vision that strategies could be adopted that would be 'holistic', and would include men and women working together to eradicate the problem of domestic violence. She resented attempts by the English feminist movement to 'hijack' the refuge movement.

By the end of 1974, I was aware that the English feminist movement could get no generous support for their radical hatred of family life and of men. I knew they were looking for a legitimate cause to justify their hatred of men and for a source of financial support. They hastily produced slogans such as, "all women are innocent victims of men's violence" and proffered false figures to legitimise their successful attempts to hijack the domestic violence movement (Pizzey, 2000).

Pizzey saw, as others have seen, that this radical feminist analysis of domestic violence excluded the experiences of others suffering from violence. It could not explain adequately women's propensity for violence towards men, children, siblings, elderly or other women. It appeared that its advocates could tolerate only one victim. This had a tendency to translate into one-sided legislation and the creation of further victims.

According to Whiston, as the evidence of violence towards men has emerged, feminists groups do everything in their power to undermine data that supports evidence of women's violence.

Women's groups and their advocates have consistently denied that there is any significant level of female domestic violence or abuse against men, and any evidence which has contradicted this has either been ridiculed or suppressed. To admit a female capacity for violence would immediately undermine and negate their political platform that all women are victims (2002:2).

Richard Gelles describes this type of denial more accurately, in saying that the feminist analysis focuses so intently on the problem that it is unable to see the wider picture.

The limitation of feminist theory is the other side of the coin of the theory's strength. Although the "gendered lens" provides a clear focus on violence towards women, the lens is a telephoto lens not a wide-angle lens. It does not provide a useful theory to explain the complex nature of family violence (Gelles, 1993:42).

When policy is completely based on this ideology, it becomes a matter of great concern, as the interests of all family members are not being considered.

Male Victims of Domestic Violence

An intense debate about the gender division among the perpetrators of domestic violence was sparked off by two publications by Suzanne Steinmetz in 1977 and 1978. Her work was the first real acknowledgement that men could also be the victims of domestic violence. "She wrote of a battered husband syndrome and claimed that 250,000 American husbands were battered by their wives each year" (Johnson, 1995:108). Steinmetz offered a review of empirical data from her own work as well as her work with Straus and Gelles in the 1975 National Family Violence Survey. She emphasised findings that reflected, that not only the percentage of wives

having used physical violence often exceeds that of husbands, but that wives also exceed husbands in the frequency that these acts occur (Mignon, 1998:138).

Steinmetz offered several reasons why wife battering has been given much attention and husband battering so little: lack of empirical data; selective inattention on the part of researchers and the media; more serious and visible physical injury to women and the reluctance of males to admit their victimisation to women. Steinmetz concluded that her work was not meant to de-emphasise the importance of providing services to beaten wives, but to increase our awareness of the pervasiveness of all forms of family violence (Mignon, 1998:138).

Steinmetz's breakthrough was critical to achieving a more balanced view of domestic violence. An incident occurred in Canada that ably demonstrated the dangers of presenting a partial analysis and using incomplete or inaccurate statistics. In a 1987 study of 705 men and women in Alberta, researchers Leslie Kennedy and Donald Dutton found that 67% of women questioned said that they initiated severe conflicts and that 52% of women and 62% of men reported that both partners were violent (Evenson & Milstone, 1999). However when the study was published in 1989, it was only reported how often males hit their spouses. Although the original researchers asked women the same questions as men, their answers were not published.

This one-sided version of the Kennedy-Dutton study was taken by feminist groups in Canada as evidence of the epidemic of violence against women. The study,

was cited extensively in a 1990 Canadian House of Commons committee report *The War Against Women*, which ultimately led Brian Mulroney, the former prime minister, to call a two-year, \$10 million national inquiry into violence against women (Evenson & Milstone, 1999).

The findings from the 1987 Alberta study were again published in 1999, however this time the full picture was revealed. The study says that while the need to stop violence against women is obvious, violence against men is being ignored.

Our society seems to harbour an implicit acceptance of women's violence as relatively harmless. Furthermore, the failure to acknowledge the possibility of women's violence jeopardizes the credibility of all theory and research directed towards ending violence against women (Evenson & Milstone, 1999).

However, the recognition of women's violence as well as men's violence still does not provide a full analysis of domestic violence. There is another group of researchers who examine the reciprocity of assaults between partners.

Mutual Combat / Partner Violence

Family Violence researchers who examine violence to both men and women seem to favour a description of domestic assaults as mutual combat and of women as equal to men in their violent acts. Straus, Gelles & Steinmetz, in their book, *Behind Closed Doors: Violence in the American Family*, note that of the couples in their study reporting any violence, in 49% of cases both the man and the women in the relationship were violent. When a comparison was made, of the number of couples in which only the husband was violent with those in which only the wife was violent the figures are shown to be very close: 27% violent husbands and 24% violent wives (1980:37). However in comparing specific violent acts, there is an over-all similarity but there are also some interesting differences.

The number of wives who threw things at their husbands is almost twice as large as the number of husbands who threw things at their wives. The rate for kicking and hitting with an object is also higher for wives. The husbands on the other hand had higher rates for pushing, shoving, slapping, beating up, and actually using a knife or gun (Straus et al. 1980:38).

In another study of partner violence in Dunedin in New Zealand in 1996, it was found that about 37% of women and 22% of men said they had perpetrated the violence. The authors of the study concluded that the possible explanation for these findings was that:

Most men know that if they hit their partner, she is likely to be injured, the police may be called, and the police are now likely to act swiftly against male perpetrators. As a result, young men whose self-control is compromised by enormous social stress, mental illness, or intoxication will be most likely to risk the consequences of hitting their partner. However, women know that they are unlikely to injure the partner, he is unlikely to call for help, and the police are unlikely to intervene (U.S. Department of Justice, 1999:10).

Thus, there is little to deter a woman from hitting her partner. As such, women in all sorts of situations may be apt to hit their partners, not just women whose judgement is clouded by stress, mental illness or intoxication.

Descriptions of domestic violence as mutual combat have resulted in an extremely contentious debate. The two principal existing surveys, conducted by Murray Straus in the USA, use the Conflict Tactics Scale (CTS), which his team developed as a way of measuring incidents of violence. Three different tactics are measured: reasoning, verbal aggression and violence. Straus and his colleagues reported that male partners in intimate relationships are physically abused at least as often as are their female counterparts. " The resulting overall rate for assaults by wives is 124 per 1,000 couples, compared with 122 per 1,000 for assaults by husbands as reported by wives" (Straus, 1993:68). Feminist researchers point to several concerns regarding the CTS itself and the attention given to its findings. "In the 1975/76 National Family Violence Survey it does not measure the purpose of the violence, such as in whether it is in self-defence, nor does it measure injuries resulting from assaults" (Straus, 1993:69). The

fact that assaults by women produce far less injury is also a critical difference. There can also be,

unfavourable shifts, or a 'backlash' in public perception of the abuse of women produced by negative media characterisations of women as a result of misinterpretation or misrepresentation of CTS findings, such as the tendency to blame women who engage in violence for their own subsequent victimisation by their male partners (Morse, 1995:252).

Straus, however, believes that the attacks on the CTS are examples of blaming the messenger for the bad news. "Like all tests and scales, the CTS is not perfect.

Nevertheless, numerous reviews by scholars agree that the CTS is the best available instrument" (Straus, 1993:83). Straus argues that it is almost beyond belief that certain critics can dismiss the many studies that have data on samples that are representative of the general public, studies that, without exception, find nearly equal rates of violence by women in favour of clinical samples. "Perhaps even more serious is the implied excusing of assaults by women because they result from frustration and anger at being dominated" (Straus cited in Cook, 1997:117). Straus believes that there seems to be an implicit cultural norm permitting or encouraging minor assaults by wives in certain circumstances. This, it has been suggested, is because female aggressors are far less likely to do physical harm. "It is painful to have to recognise the high rates of domestic violence by women but to do otherwise obstructs a painfully important means of reducing assaults by husbands" (Straus, 1993:79). Efforts to prevent assaults by husbands must include attention to assaults by wives.

Conclusion

During the past thirty years, the phenomenon of domestic violence has been progressively politicised into a presumption of only female victims and only male perpetrators. This has occurred particularly in western democracies, despite the social

and cultural imperatives towards equality in these societies. This process has its roots in the women's liberation movement of the 1960's and 1970's.

The political distortion of the issue of domestic violence by feminist ideology has resulted in the issue being claimed to be and generally regarded as a 'women's issue'. Radical feminism - with its analysis of the state's role and culpability for institutionalising violence, its recognition of the need to develop services in line with this radical thinking, such as Women's Aid Refuges, its methodology of operating through the welfare and criminal justice system and its view of the private and public spheres as linked - became the dominant model internationally.

Radical feminism has certainly brought domestic violence to the forefront of Western society. However, this has been to the detriment of other analyses, which would offer a fuller insight into the complexity of domestic violence. Family violence research that recognises mutual violence and research by those who study 'men as victims' of domestic violence, clearly establishes that the current analysis upon which policy is based is seriously flawed. Indeed, it is the argument of this paper that Ireland, almost unquestioningly, has adopted this feminist analysis of domestic violence and that it forms the basis for much of the country's policy formulation.

CHAPTER THREE - OVERVIEW OF DOMESTIC VIOLENCE IN IRELAND

Introduction

This chapter sets out to examine whether Irish experience reflects the international picture that has emerged regarding domestic violence. The international experience would suggest that policy is driven by ideology rather than by evidence. When one examines this at the micro-level, it is more likely that specific factors can be identified that help explain why this is so.

Domestic Violence Pre-Independence

Between 1853 and 1920 there were 1,012 appeals by men recorded who were convicted of beating their wives, mothers and sisters in the Criminal Index Files in the National Archives in Dublin. Although people could read almost daily reports of incidences of abuse of women, there was virtually no outcry against wife-beating and domestic violence in Ireland. There was no demand to extend the English 1853 Aggravated Assaults on Women and Children Act to Ireland.

It was not until *The Irish Citizen*, Ireland's first avowedly feminist newspaper, began to publish articles condemning domestic violence in the first decade of the twentieth century that the reality of many women's lives was brought home to a largely middle class and largely urban public (Steiner-Scott, 1997:126).

However, these articles were submerged among the greater public concerns of the First World War and the struggle for national independence. A few temperance campaigners did attempt to raise public awareness on the issue, but their emphasis was on the benefits that sobriety would bring to the family. Many Irish feminists believed that when suffrage was extended to women, their status would guarantee

them new respect from their fellow Irish men. Following the foundation of the Irish Free State in 1922, reports of wife beating declined in the press.

Interestingly, during this period the same Criminal Index File noted,

There are a total of fifty-six cases of women appealing for mitigation of their sentences. Seven cases involved women who had assaulted their husbands; seven involved the murder, either of husbands or children; three involved women who had assaulted their mothers-in-law, brothers-in-law and sisters. The majority of cases concerned women who had either assaulted or ill-treated their children." (Steiner-Scott, 1997: 136).

Although the number of cases of female violence is small compared to the number of male incidences of violence, it indicates that female violence in Ireland is not simply a phenomenon of recent years, as some have suggested.

The Women's Movement in Ireland

Domestic violence in Ireland was rediscovered by the Women's Movement in the 1970s. Some commentators attribute this to developments taking place internationally.

The civil rights movement in the USA, anti-Vietnam protest, student rebellion in America and Europe, the strengthening of radical protest generally in the West during the 1960s were influential in generating a climate of change and protest in Ireland (Smyth, 1993:246-247).

The birth of the refuge movement abroad did not go unnoticed in Ireland. The refuge movement began in Chiswick, outside London, where Erin Pizzey opened the first shelter for battered women in 1972. "Sometime later Ms Pizzey requested that a refuge be opened in Ireland, as numbers of Irish victims were travelling to England to avail of shelter there" (Casey, 1987:7). In response to her appeal, the first Irish refuge was opened in Dublin in 1974.

Many groups emerged at this time and these included the Irish Women's Liberation Movement (IWLM), which was established in 1970 and Irishwomen United (IWU), which was formed in 1974. These groups sought to raise women's consciousness about the role of women and adopted new ways of organising. They were involved in direct action tactics such as illegally bringing back condoms through customs from Belfast (kelleherassociates, Nov. 2001:12). These organisations gave rise to a new questioning on previously taboo issues with the result that, "radical feminism of the 1970s spawned a proliferation of self-help groups and organisations, dealing with health, pornography and male violence" (kelleherassociates, Nov. 2001:12).

By far the most significant development in Ireland at this time was the setting up of the Council for the Status of Women (CSW) in 1972 (known today as the National Women's Council of Ireland (NWCII)).

The Council for the Status of Women increased its base of support throughout the 1970's, a major indicator of social movement advance. From the outset the Council worked closely with the State, employed a hierarchical structure, had several affiliate members and was a mass based, umbrella social movement organisation (Connolly, 1997: 555).

It is important for this thesis to review the Council's origins and strategy, in order to comprehend the circumstances that gave rise to feminist ideology dominating public policy in the area of domestic violence in Ireland.

In order to trace the origin of the Council, we must examine the role of The United Nations (UN), which had been laying down the blueprint for these Councils in a series of World Conferences, culminating with Mexico City 1975. Women's groups,

in response to a UN Directive which encouraged all non-governmental women's organisations to lobby their respective governments to set up a National Commission on the Status of Women (Connolly, 1997: 555).

In 1970 the Commission on the Status of Women was set up by the Irish government. Its terms of reference were to examine and report on the status of women in Ireland and to make recommendations on the steps necessary to ensure the participation of women on equal terms with men in the political, social, cultural and economic life of the country. By 1972 it had issued its recommendations in a report to the Minister of Finance.

Following the report on the Status of Women in 1972, an ad hoc committee of ten women's organisations formed itself into a council and asked other organisations interested in raising the status of women to become affiliated with a common objective of ensuring the implementation of the recommendations of the Commission's Reports. The new organisation called the Council for the Status of Women now acts as an umbrella organisation for the many women's groups. The organisation received almost its entire funds from the state through the office of the Minister for State for Women's Affairs in order to assist its activities (Department of the Taoiseach, 1987:18).

By 1987 the government was required to report back to the United Nations. The report was prepared by the Department of the Taoiseach and was a statement of progress over the previous fifteen years. What it stated was very revealing. The activities of the Council, it said, were to liaise between government departments and women's organisations; to press for the implementation of the Report of the Commission; to consider any legislative proposals of concern to women and to examine and contest cases of discrimination against women (Department of the Taoiseach, 1987). What the report reveals is that through the activities of the Council, women's groups have been placed at the very heart of government, with a mandate to press for the implementation of their agenda by targeting legislation. The downstream effect of this will be seen in Chapter 4.

In the report there was also a detailed list of "ongoing activities" of the Council. These are now listed, item by item, to indicate the comprehensive nature of what was being put in place.

1. Provides an information service for women throughout the country,
2. Monitors legislation, particularly affecting women
3. Submits proposals for amendments and conducts political lobbying on behalf of women.
4. Highlights women's issues in the media,
5. Publishes quarterly Newsletter
6. Organises courses for women in assertiveness training and sexuality,
7. Provides meeting facilities for women's groups
8. Organises and assists in the organisation of special conferences relating to women's issues.
9. Funds and facilitates the National Women's Talent Bank to ensure the participation of women at policy making level
10. Represents women at home and abroad through International contacts
11. Gives advice and financial help through the European Community Funds to member organisations who wish to organise conferences, seminars etc. on subjects relating to the E.C.
12. Accesses the consultative body to the Curriculum and Examination Board of the Department of Education (Department of the Taoiseach, 1987:18).

An analysis of the above indicates that the UN's plan was to form a Council that would draw together all women's groups under one leadership and one voice. The Council would have access to funds upon which the women's groups depended. Control of funds meant control of the agenda, and the Council could decide which groups should be granted membership. Through a programme of International Conferences and contacts, through training and seminars, women would be empowered, instructed, and leaders would be selected to go forward for election and to influence policy. Through the various constituent groups, other women could be recruited and trained. By targeting the media, promoting the interagency work of feminist based organisations, producing extensive reports on women's rights issues, and vociferous campaigns, pressure could be exerted on legislators to deliver not just a policy to deal with violence, but a wider international programme of change.

Some commentators, who might have considered themselves mainstream at that point, were able to spot the seismic shift that was about to take place in Irish society. Soon society would be

engulfed by a demand for, 'legislative and attitudinal change' in which the Council for the Status of Women, part of the powerful and extensively institutionalised international women's movement in Ireland - is active and vocal. Faced with the feminists' unremitting demand for "equality" and with the relentless highlighting of injustices that accompanies it, how do we keep our balance? Do the demands expressed through the CSW in pursuit of this "equality" represent those of the majority of Irishwomen? A glance at the Council's aims and structures suggests that it was established and funded not so much to represent our views but more as an agent for changing our way of life (Talpa, 1992).

The Council's work in lobbying for radical change was reinforced through its organisational structure. Each affiliated organisation, be it the (then) 23,000 strong Irish Countrywomen's Association (ICA) or the various separately affiliated Rape Crisis Centres, was allotted one vote (Talpa, 1992). "The Council for the Status of Women operated out of the Taoiseach's office, its access to power was guaranteed and its representative status totally skewed to sideline the mainstream and to advance a particular ahistorical alien agenda" (Holmes, 2002:1). It was clear that there was very little room in the Council for groups with more conservative ideas.

It seems difficult to comprehend that the UN should be advancing a radical agenda within nation states such as Ireland. The fact, that the radical feminist agenda and that of the UN bureaucracy are almost synonymous, is now widely understood and has been commented on by one US observer as follows:

these (UN) committees are pushing an agenda that counters traditional moral and social norms regarding the family, marriage, motherhood and religion. The advice that these agents of the UN give individual signatories often violates the language of the UN's own founding documents and undermines a nations sovereign right to determine its own domestic policy. The policies and laws they push also promote behavior that ultimately will

cause greater harm to women and children, increasing family breakdown and the many problems associated with it (Fagan, 2002).

The success of UN strategy and its acceptance at the very highest level within Irish institutions may be gauged by the following remark made by a third-level educator, describing the Irish women's movement, "We have the best organised institutional movement in Europe; it constitutes a state within a state, and the state is convulsed with us inside it" (Jackson, cited in Holmes, 1999:4).

The convulsion spoken of is evident in our society. Columnist Breda O'Brien referred indirectly to this convulsion when she wrote on the occasion of the launch of the National Plan for Women, designed to implement the Beijing Platform for Action framed at the UN Conference on Women in 1995,

the underlying ideology is that women by their nature are oppressed and that their oppressors are men. In this view, the answer is to ensure economic independence for women and that means participation in the paid workforce
Can we say Mary Harney is oppressed because of her gender more than an unemployed man from Dublin South West is affected by poverty and lack of access to the structures of power? I believe the answer to that is No.

She summed it up by saying that, "adherence to a certain strand of feminist ideology is woefully inadequate as an explanation of the complexities of peoples lives" (The Irish Times, 20/10/01).

Women's Aid

In Ireland as elsewhere, as we saw in the previous chapter, feminist organisations, such as Women's Aid, Refuges and Rape Crisis Centres, working with women experiencing abuse, support the "fundamental tenets of the women's movement that male violence against women is about power and control, and therefore ongoing

feminist analysis of existing patriarchal structures is critical to appropriate action" (NWCI, 2001a): 3).

This brings us to look at one such component within the NWCI, Women's Aid. Women's Aid is not merely concerned with women who have experienced domestic violence. It is much more than that, as can be seen from its own definition. Set up in 1976, it defines itself as, "a feminist, service based, political and campaigning organisation committed to the elimination of violence against women by effecting political, cultural and social change" (kelleherassociates, Nov. 2001: 93). Initially, the organisation concentrated on the gradual setting up of refuges around the country, staffed by its own members. When in the 1980s the rationalisation of the refuge service took place and the State began to fund refuges, Women's Aid, adhering to the wider brief that had been handed down by the UN to its umbrella body, the Council for the Status of Women, began to work towards political change and became a key player in lobbying for legislative change and policy reform. Its work included targeting Garda S och na Policy on Domestic Violence, and legislators, in an awareness campaign that would produce the Domestic Violence Act of 1996.

At an early stage the organisation understood the value of publicity and research. Findings from a national survey commissioned by Women's Aid in 1995, *Making the Links*, revealed that the prevalence of violence against women in the home is extensive. "The majority of Irish Women (59 per cent) know a woman who has been subject to violence by a partner and 11 per cent of women experienced actual violence and/or sexual violence" (kelleherassociates, April 2001:5). 'Knowing someone' was suitably vague, and produced the required high percentages. The reality was that no

comprehensive Irish research existed prior to that time, and Ireland had no National figures on the incidence of domestic violence. The Women's Aid study would prove to have the desired effect by influencing the media and public at large and ultimately legislators. McKeown (2002) comments on these types of studies,

I also want to question the value of studies like this which, by virtue of focusing exclusively on the victimisation of women, give a quite partial view of domestic violence by excluding the experiences of men, either as perpetrators or as victims (The Irish Times, 08/02/02).

At the ideological level, these feminist organisations strongly challenge, "therapists and academics who presented violence against women in gender-neutral terms, or presented women as agents of their own victimisation" (NWCI, 2001a):9). *Making The Links* clearly shows that Women's Aid had closed itself to any other model of domestic violence that offers an alternative to the one that targets men as oppressors. "Reconciliation services which attempt to provide impartial reconciliation while ignoring the fact that the violence is symptomatic of men's dominance have been challenged" (O'Connor, 1995:3-4).

In 2001, the NWCI launched a new paper on violence against women and used the opportunity to condemn information being disseminated, "through certain media columns and by so-called men's groups" (O'Hanlon, 2001). The columnist pointed out that what seemed to be so threatening to the NWCI was that people were debating the issues. The publication of this paper, *Violence Against Women: An Issue of Gender* by Women's Aid and various affiliated organisations of NWCI in April 2001 attempted to discredit research on male victims of domestic violence and mutual violence. This reaction by the women's movement through its parent body, the NWCI, to the widening of the analysis of violence mirrors the international experience commented

on by Gelles, that feminist theory is limited when it comes to explaining the complex nature of family violence. Branding groups that highlight other forms of violence as 'anti-feminist men's groups,' may be what Gelles describes as feminism's 'telephoto lens' (Gelles, 1993:42). Another factor, however, might well be the privileged position that women's groups enjoy in relation to funding. "The Government has increased funding to NGOs working in the area of violence against women from 3.8m in 1997 to 11.5m in 2002" (Wallace, 2002). One can understand their wish to protect this funding, especially at a time of cut back in public spending.

AMEN

In 1997, a voluntary group called AMEN was set up for male victims of domestic abuse. It provides a confidential help line and in 2000, the group opened a refuge for men and their children (AMEN, 2000). As a result of constant lobbying and media attention, the issue of male victims of domestic violence is slowly gaining recognition in Ireland. The group has encountered resistance from both government and the women's movement. The acknowledgement of male victims would undermine the structures on which feminist ideology dominates the discourse on domestic violence in Ireland, and would challenge the basis for existing social policy.

An important outcome of AMEN's work has been that it counters the assertion by many researchers and commentators which, "suggests that women's physical violence (towards men) is less injurious and less likely to be characterised as motivated by attempts to dominate or terrorize the partner" (Kaufman Kantor & Jasinski, 1998:10). It has been suggested that there is no evidence of a comparable system of victimisation for men in intimate heterosexual relationships. However AMEN, in its

day-to-day running and in a survey of 40 male victims in Co. Monaghan, has explored the nature of violence experienced by male victims and found that the effects on men are broadly similar to the effects on women (AMEN, 2000a)).

The Monaghan study is based on a small sample but, nevertheless, it outlines the types of abuse experienced by men and the impact this has on them. In relation to physical abuse, "55% of the respondents had been hit with heavy objects, 57% had personal and other property damaged while 22% had been threatened with being killed" (AMEN, 2000b):4). Mental abuse was the most predominant form of abuse used by female perpetrators (100%), with 82% of the men having unsubstantiated allegations made against them. The impact of the abuse on men included factors such as low self-esteem (82%), depression (62%) and insomnia (77%). Many men stated that their children had also been abused by their partners, with 50% of their children experiencing physical abuse. In terms of disclosing the abuse, men did not report particularly positive experiences. Of the 45% who had contacted the Garda , 97% felt they were not taken seriously. Interestingly, "out of the 72% who sought legal advice, only three men were advised to seek a safety order" (AMEN, 2000b)). All the men stated that it is about power and control with one person trying to bully another (AMEN, 2000a):54). Similar findings have been reported by other researchers, (Stitt & Macklin, 1997), "with women abusing their spouse/partner in a manner which is felt to be not markedly different to that of husbands abusing wives" (Lewis & Sarantakos, 2001:4).

Mutual Combat / Partner Violence

Two recent Irish surveys exist which are gender neutral in that they question both partners in a relationship about domestic violence. These are a study carried out for the Marriage and Relationship Counselling Service (MRCS) and a study conducted for ACCORD. In the MRCS study, research indicates that domestic violence occurs in many relationships between individuals who present for counselling. The self-reports of men and women indicate that violence has occurred in about half of all relationships.

Moreover, the vast majority of women (80%) and men (78%) agree with their partners response to the question, suggesting that the self-reported prevalence is quite reliable. Where it occurs, domestic violence within couples tends to be mutual in a third of all cases (33%), female perpetrated in four out of ten couples (41%) and male perpetrated in a quarter of couples (25%) (McKeown et al, 2001a):52).

In other words, women are more likely to be the perpetrators of domestic violence among MRCS clients. The findings in the Accord study were very similar to the MRCS study; again violence tended to be mutual in approximately half of the cases, and violence, "was female-perpetrated in about four out of ten couples (30%) and male-perpetrated in about two out of ten couples (23%)" (McKeown et al, 2001b):53).

It is worth noting,

that these results do not tell us anything about the severity of violence involved, the context, reasons or initiation of the violence or the extent of injuries resulting from it. Nevertheless, as far as they go, the results are consistent with the bigger picture of domestic violence revealed by gender-neutral prevalence studies in other countries (McKeown et al, 2001b):53).

Both these pieces of research have found that women and men perpetrate domestic violence almost equally. A major difference between men and women is that women end up more seriously injured physically and are more likely to be the victims of sexual violence. Women are also more likely to require and seek outside help. That is

a very important difference, although it does not imply that men are unaffected by domestic violence, and the general reluctance of men to seek outside help also needs to be taken into account (McKeown, 2002). These studies indicate that domestic violence is 'asymmetrical', in the sense that "its outcomes are considerably more injurious to women, but it is 'symmetrical' in that it is equally likely to be perpetrated - and indeed initiated - by men and by women (McKeown, 2002).

The findings from these studies point to the need for a larger and more inclusive paradigm of domestic violence than is currently allowable within the existing consensus in Ireland. Findings such as those mentioned above, "make it extremely difficult to sustain credibly a perspective on domestic violence that, in the vast majority of cases, men are its only perpetrators and women its only victims" (McKeown, 2000:101). A more inclusive approach to domestic violence should not create competition between victims by minimising the experiences of men at the expense of women or vice versa. It should simply be that where services are needed, they are provided (McKeown, 2002).

Conclusion

Ireland reflects the international pattern, in that feminist ideology has dominated the field of domestic violence and has heavily influenced policy. With the emergence of the women's movement in Ireland in the 60's and 70's and the feminist organisations that grew out of this movement, public policy and research has tended to focus on female victims of domestic violence to the detriment of other family members.

Despite the growing body of reliable evidence, which indicates that men can also be

victims of women's violence, and the findings that mutual violence is the most predominant form of violence, the focus has remained on women as victims.

To understand why public policy is at variance with international and Irish evidence, one must take into account the ideology of international bodies, such as the UN which, through its influence on the women's movement, became a major player in domestic policy. An examination of the passage of the 1996 Domestic Violence Act through the legislature will reveal how the women's movement and indeed feminist ideology influenced the implementation of this legislation.

CHAPTER FOUR - THE DOMESTIC VIOLENCE ACT 1996

Introduction

To understand the political environment at the time of the passage of the Domestic Violence Bill, it is necessary to examine the various debates in both houses of the Oireachtas (Parliament) - Seanad Éireann (Upper House) and Dáil Éireann (Lower House). In addition, excerpts from five interviews (*in italics*) are included as a commentary.

The Domestic Violence Bill

At the time of the Domestic Violence Bill, there was the general feeling in the Oireachtas that domestic violence was becoming a very serious problem.

The mood was, something must be done about this and something must be done quickly.

BRIAN

The opening words of the Minister for Equality and Law Reform, Mervyn Taylor, convey this. "Violence in the home is an abomination" (Dáil Debates, 04/07/95: 1098). The Minister quickly followed with remarks that reveal the confusion that has marked domestic violence policy to date. "The problem is complex and the causes are many and varied. The perpetrators are normally men and the victims women and children" (Dáil Debates, 04/07/95:1098). The first part of the statement is accurate, for domestic violence is, indeed, a complex issue. He then applies a simplistic analysis as though the issue is not complicated at all. This is classic feminist analysis.

The purpose of the Bill was clear. It was, he said " to best protect and support victims and to provide that the perpetrators can be dealt with quickly and effectively

under the law" (Seanad Debates, 31/01/96:19). This otherwise reasonable statement of purpose does not appear to countenance the possibility of mutual violence.

I don't think there is much long-sightedness about changing legislation. It's only about fitting one particular situation. It doesn't look at every situation or scenario, and it tends to say we will define protection for a certain class of people and not for others.

SIN AD

Prior to the passage of the Bill, Women's Aid had released a report, *Zero Tolerance: A National Strategy on Eliminating Violence Against Women*, outlining recommendations for the forthcoming domestic violence legislation. Women's Aid anticipated that many of the recommendations, which they had campaigned and lobbied for, would be included in the forthcoming legislation. For example, in the section on barring orders it was stated:

The need for evidence of physical abuse under the current statute is a problem for many women seeking an Order who may be subject to emotional and mental cruelty. At present Orders are only for twelve months and many women find this period provides insufficient time for them to make major decisions about their lives, such as whether or not to apply for a Judicial Separation (Women's Aid, 1996:6).

In the event, both these problem areas were successfully incorporated into the Act. The barring order could, in fact, be granted for up to three years.

Since, by its own admission in the Report, there were no national statistics, Women's Aid proceeded to fill this vacuum with selective one-sex studies from other countries such as Britain, where it was reported that "Twenty-five per cent of women have experienced physical abuse by their husbands/partners" (Women's Aid, 1996:2). Speaker after speaker in the Oireachtas commended the Zero Tolerance Report and quoted Women's Aid statistics, in a debate that was largely unquestioning, uncritical and somewhat one-sided. Frances Fitzgerald, TD, a former chairwoman of the

Council for the Status of Women, quotes directly from the report, " in Canada 39% of women are reported as having been sexually assaulted we have a serious problem that needs a wider holistic approach " (D il Debates, 04/07/95:1125). In the event, no such holistic approach would be the outcome of the debate since the model of domestic violence under discussion precluded deeper analysis. Senator Dan Neville, a member of the Oireachtas Joint Committee on Women's Rights as part of his contribution, stated, "In 1994 alone the Women's Aid board fielded 6,000 cases of women reporting violence and it was estimated that in the Dublin area between 10,000 and 15,000 assaults on women take place every day" (Seanad Debates, 31/01/96:36). These estimates, if true, suggested levels of domestic violence of epic proportion in the Dublin area alone. There were some voices cautioning the need for balance, Mr Kenneally, TD, comments on this:

We, the legislators, can and should empower the courts to move swiftly, decisively and effectively to protect family members at risk while being cautious not to repeat the mistakes made in Cleveland and elsewhere. Hysteria must not take the place of facts and logic (D il Debates, 04/07/95:1132).

The problem was that nobody brought the necessary 'facts' with them to the debates. Had the members known, there was a body of international evidence pre-dating these debates in which, "findings are based on self-reports of victimisation and perpetration by men and women - which is the only effective way of ascertaining the true prevalence of domestic violence" (McKeown & Kidd, 2000:64). There is no citation of this evidence, no indication that people in the House had carried out research or had been properly briefed.

Willie O'Dea, TD, a solicitor by profession, warned of the dangers to the legal process:

Drafting legislation which is based on proposals that are designed to deal with a small, narrow area but which extends them to apply generally can often lead to an imbalance in the law. While I have not had time to study this Bill in great detail, a cursory glance suggests that there are serious defects (D il Debates, 04/07/95:1134).

This was a key observation. Mr O'Dea had grasped the danger of applying a narrow lens to the legislative process. When this limited focus is understood, one is not surprised by the following contribution to the debate by Helen Keogh, TD, "My view is that if we are to err, we should err on the side of being overprotective of women" (D il Debates, 21/02/1996:2119). The purpose of the legislature was to legislate for all of its citizens, not to favour one sex over another. However, the Minister set the tone, whereby this guideline did not apply, in the following statement that incorporates aspects of radical feminist ideology.

Recent studies also indicate that the primary causes of domestic violence are the power and control which a perpetrator needs to feel over the victim (this) often stems from traditional social mores governing the relationships between men and women. Traditionally women were seen as inferior to men and, therefore, subordinate to them (D il Debates, 04/07/95:1136-7).

So strong was this undercurrent that, with a few notable exceptions, female violence was rarely mentioned. In the Senate, Mr Farrell, asked, "Much has been said about men abusing women. Are people living in the real world? Many men are abused but they are afraid to talk about it. I travel quite a lot and I have seen a great deal of this type of violence" (Seanad Debates, 31/01/96). Obviously there was some knowledge in the Oireachtas that men could also be victims, but people were choosing to ignore this aspect.

Minister and members were more concerned with sending a message out to the public at large that they would not stand for women and children being abused. One of the interviewees reflects on this dual dynamic between the public and the legislature:

As often as not in the D il and Senate, we tend to react to public mood and public opinion and the pressure of public mood or media comment of one form or another or interest groups. I'm not saying these aren't legitimate. I'm simply saying we tend to do that and the consequence then is that sometimes we don't give sufficient consideration to what it is that we are doing and we may sometimes go too far or leave open the possibility that certain fundamental principles of law and constitution may be overlooked.

BRIAN

A legislature that was so vulnerable to public opinion could easily be the target of a well orchestrated and financed 'awareness' campaign, designed to implement the interests of a powerful pressure group.

I think the way things get changed in any country seems to be on the basis of lobbying. It doesn't matter what the ideology is. Whoever lobbies the longest and strongest, and most articulately, wins out.

SIN AD

Previous Legislation

The Family Law (Maintenance of Spouses and Children) Act 1976 "for the first time conferred jurisdiction on the courts to provide by way of a specific family law remedy protection against spousal misconduct by enabling the courts to grant barring orders" (Shatter, 1997:841).

This legislation was amended by the Family Law (Protection of Spouses and Children) Act, 1981. The Act introduced the protection order which provided immediate protection from the date of the institution of the barring proceedings up until the determination of the proceedings by the court (Horgan, 1998). The length of the barring order was extended from 3 to 12 months and the Garda were granted statutory powers of arrest without warrant for breaches of orders.

The Concept of Welfare

In considering the criteria applicable for the making of an order, where the court is of the opinion that there are reasonable grounds for believing that "the safety or welfare of an applicant or any dependent child so requires", it may make an order against the respondent. The 1976 and 1981 Acts define what is meant by the word 'safety'. In O'B v O'B [1984] IR, O'Higgins CJ stated that, "The use of the word "safety" probably postulated a necessity to protect from actual or threatened physical violence emanating from the other spouse" (O'Herlihy, 2002:8). Reference to "welfare" however is more problematic. As these Acts did not contain a definition of welfare, there was often considerable divergence of judicial approach.

In O'B v O'B, members of the Supreme Court emphasised the serious consequences of making a barring order in that such an order can exclude a spouse from the family home and may result in prison if contravened. The Supreme Court accepted that in granting barring orders there must be misconduct by the respondent which is over and above that which every spouse bargains for in accepting the other for "better or for worse" and that "the ordinary wear and tear of married life" is not sufficient (Shatter, 1997). "For some considerable time after this case it became very difficult to ground an application to bar based solely on mental cruelty" (Horgan, 1998:7).

The 1996 Act

Section 1 of the 1996 Act states that "welfare" includes "the physical and psychological welfare of the person in question" (Irish Government, 1999:2). The

definition of welfare now contained in the 1996 Act may facilitate a different judicial approach being adopted.

It may be that with greater judicial understanding of the psychological impact of domestic misconduct, behaviour that the majority in *O'B v O'B* regarded as tolerable and not sufficiently serious to require the making of a barring order will be dealt with differently (Shatter, 1997:866).

One of the interviewees comments on the implications of the expanded definition of welfare and the element of subjectivity now introduced to the courts; largely weighted in favour of the applicant, and therefore discriminatory in practice.

A feature of the Act is that orders can now be granted on purely verbal violence. It was always well established that there had to be ongoing physical violence, not just one off. Now that s been changed on two levels, as far as I can see, verbal abuse and it s a subjective opinion. It s the woman or man's idea of what is verbal abuse. What is a normal row, from week to week, can suddenly become abuse, and the only person that decides when that turns into abuse is, in fact, the applicant.

ROGER

The Act prescribes two principal forms of protection - the barring order and the safety order. A safety order "prohibits a person from further violence or threats of violence. It does not oblige that person to leave the home. If the parties live apart, the order prohibits the violent person from watching or being in the vicinity of the home"(O'fig an T naiste, 1997:49). A barring order directs the person against whom it is made (the respondent), "if residing at a place where the applicant" or a dependent child resides "to leave such place" (Irish Government, 1999:4).

Two other orders available for the protection of the applicant are the protection order and the interim barring order. The Act specifically empowers the court to make these orders "*ex parte* without the service of any documentation on the respondent" (Shatter, 1997: 846). The orders are also made "until such other time as the court shall

specify". A protection order has the same effect as a safety order. It is obtained, usually to provide some protection against assault or other acts by a respondent pending the full hearing of an applicant's case. "Where the court in exceptional cases considers it necessary or expedient in the interests of justice, an interim barring order may be made " (Government of Ireland, 1999:6). The interim barring order has the same effect as a barring order and lasts until the full court hearing of the application for a barring order. The District Court has the power to grant a safety order for a period of up to five years and a barring order up to three years. These orders are renewable and if broken, the Gardai can arrest and charge that person. Penalties for breach of orders under the Act have been increased substantially.

Analysis of the 1996 Act

In the years 1996-2001, 12,813 citizens were barred from their homes. A further 3,814 people were served with interim barring orders (Courts Service, 2002b):5). The author of this study was unable to obtain a breakdown of these orders by sex because the data is not compiled by the District Court, and is privileged information. However, in a Women's Aid study, *Safety and Sanctions* (1999), the authors obtained permission to examine court files in three research sites throughout Ireland. It was found that 96-97% of respondents for all orders were male. This gender breakdown does not reflect national or international figures on domestic violence. In 2000, men accounted for 16% of complainants to the Garda in domestic violence incidents (Government of Ireland, 2000:127). This could mean a bias in the legislation or it could simply reflect reluctance on the part of men to avail of court orders. Alternatively, one can understand a certain reluctance on the part of judges to apply the full rigours of the law to women. This is an area that requires further research.

A number of interviewees comment on this discrepancy,

There is an element of physical violence against men, but I certainly think there is psychological violence towards men, to a very large extent, which is covered by the Act. And if men were able to say, I go out to work all day, I come in, and she goes on at me from the minute I get in. She threatens me and says she is going to take the children. If they actually thought that this was something the court would listen to, I think they would take some steps to do something about it. But they don't know that it is, because there is no evidence that it is.

KEVIN

They're not going to be listened to. They can go in there and say all they want but no one is going to believe them. You ask me why this happens, because there is an underlying trend in the system which spills over into believing a woman as to why she should get a barring order and a man can't, because she needs to be protected because she's the one who is looking after and protecting the children.

ROGER

The protection order is a temporary safety order. "A court may make a protection order when a person applies for a safety and/or barring order" (Courts Service, 2002a):4). Legal practitioners interviewed stated that these orders tend to be overused and given out quite freely.

They are used far more than are actually needed. While there are obviously cases in which they are needed, it should be in extreme situations. For a start, the other side isn't legally represented. Once the protection order is granted it tends to colour the attitude towards the barring order.

PETER

The 1996 Act states that the interim barring orders can only be made in 'exceptional cases'; the experience of the family courts shows otherwise. In 2001, there were 1,159 applications of which 1,007 were granted (Courts Service, 2002b):5).

If you're talking about the immediate prospect of physical violence to somebody, then obviously you must do what you have to, to protect them, whether it's a man or a woman. But if you're talking about an ongoing nagging campaign, that's not something in which somebody should be put out of their home and one would have thought that the availability of protection and safety orders would ensure that very few interim orders would be granted.

KEVIN

It is also quite extraordinary that while the Act places a limit on the actual barring order, there is no limit on the interim barring order.

The principles of justice are long since established in our Constitution; they are being literally ignored here.

BRIAN

An interim barring order can be made 'ex parte', this means without the other side being there.

One of the most fundamental principles in our Law is Audi Alterem Partes, which means to hear the other side. You have to hear both sides and there must be a presumption of innocence.

BRIAN

There are many leading cases on this. One such case is 'In re Haughey'. In 1971, an appeal was taken by Mr. P draic Haughey in the Supreme Court. The High Court had found Mr. Haughey guilty of an offence certified by the Committee of Public Accounts of D il Eireann. Mr. Haughey, "had been accused of conduct which reflected on his character and good name and that the accusations made against him were made upon the hearsay evidence of a witness " (Lloyd-Blood, 1973: 262).

Mr. Haughey's complaint was that his rights under s. 3 of Article 40 of the 1937 Constitution were being disregarded. Article 40, s. 3, provides as follows:

1. The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.
2. The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.

The counsel's submission was that in all circumstances, the minimum protection that the state should afford his client was,

(a) that he should be furnished with a copy of the evidence which reflected on his good name; (b) that he should be allowed to cross-examine, by counsel, his accuser or accusers; (c) that he should be allowed to give rebutting evidence; and (d) that he should be permitted to address, again by counsel, the Committee in his own defence (Lloyd-Blood, 1973:263).

In the case, O'D laigh C.J. states that,

Article 40, s. 3, of the Constitution is a guarantee to the citizen of basic fairness of procedures. The Constitution guarantees such fairness, and it is the duty of the Court to underline that the words of Article 40, s. 3, are not political shibboleths but provide a positive protection for the citizen and his good name (Lloyd-Blood, 1973:264).

While the principles in the above case arose in different circumstances, it laid down four basic principles that must be applied in every case:

First was the right to be present, which is true enough, we're not in Soviet Russia, we must be there. We must have the right to be represented by legal counsel and then to cross-examine, and then the right to protect your good name, because that s in our Constitution.

BRIAN

Regarding an interim barring order, it isn't a question of the respondent not being able to cross-examine, as in the above case; the situation is that the respondent may not be present nor aware that the case is taking place.

All of the principles of the law are not only being breached, they are being trodden underground in this case.

BRIAN

One could argue that the interim barring order does not affect one's good name because the matter is held *in camera*.

But imagine, for example, a person is living with his family and suddenly is not there anymore because of an interim barring order. Has this an impact on his good name? Of course it does.

BRIAN

It could also be argued that *ex parte* orders are not unknown in other areas of the law in Ireland, for example in relation to injunctions. A person can go to court and, without the other person being present, can apply for an interim injunction.

The position with the interim injunction is to maintain the status quo, until the matter is heard. In other words, to prevent someone from changing the status quo. But in this instance, its not a question of maintaining the status quo, it changes it, without really having any knowledge about it and puts the person under criminal sanction.

BRIAN

Section 12 of the Act refers to the appeal of orders. Regarding a safety or barring order;

Normally if you appeal, until such time as the appeal is heard, the original order is stayed. It is not put into effect because the appeal would be what would determine the outcome.

BRIAN

However, Section 12(2) states that, "An appeal from a protection or an interim barring order shall not stay the operation of the order" (Government of Ireland, 1999:11).

Pending the appeal, which might take four, five or six months, meanwhile he's still out and this goes on.

BRIAN

All of these factors, combined with the lack of repercussions if the applicant is found to be making false allegations, result in a system that is left wide open to abuse.

Now I can understand that it could be a situation of extreme urgency. However, I think that an applicant should have pretty serious grounds to justify an order. Of course there should be penalties if one is found to be lying. It's just really become a home and dry situation and that's the way it's being operated.

PETER

Some members of the Judiciary have been critical of certain aspects of the Act. In a talk given by Judge Gerard Haughton on Human Rights and Family Law in February 2001, he states that in relation to interim barring orders, "there can be no argument with the proposition that to order an individual out of his family dwelling is almost as serious and far reaching as taking children into care." Section 4 of the Domestic Violence Act places no limit on the period for which an Interim Barring Order can be

granted. Neither are there any provisions within the District Court Rules governing this aspect of Interim Barring Orders. According to Judge Haughton, the average period in 2001 for which an Interim Barring Order was granted was in or around 46 days.

In this context the question must arise as to the constitutionality of Section 4 itself. I am personally amazed that there has been neither challenge to the section or any judicial review of the granting of Interim Barring Orders for such lengthy periods. It seems to me that the granting of such orders on an *ex-parte* basis for more than 7 to 14 days at the maximum is not defensible on constitutional grounds alone (Haughton, 2001:9).

Judge Haughton states that he has no doubt that the present practice will also amount to a gross violation of Article 6 and Article 8 of the European Convention of Human Rights when it is ultimately incorporated into our law. The breach of Article 6, which requires a fair and public hearing within a reasonable time is twofold,

- a) It cannot be said that a return date for an Interim Barring Order is reasonable if it exceeds 7 to 14 days and
- b) How can a respondent who is subject of such an order have either a fair trial or indeed fair procedures when he is not served with a copy of the information on foot of which the Interim Barring Order was granted, and indeed the District Court Rules do not provide for such a service (Haughton, 2001:9).

Article 8 states that, "Everyone has the right to respect for his private and family life, his home and his correspondence." Judge Haughton further adds,

Picture the situation where a guard is knocking on your door, with a court order putting you out of your house for up to four months, without you having been heard on the application and finally without being told the reasons why. I strongly suggest that in these circumstances your rights under the European Convention on Human Rights have gone out the door with you.

In recommendations in a report by The Law society's Law Reform Committee (1999) *Domestic Violence: The Case for Reform*, which echoes the concerns of Judge Haughton, it is proposed, "that the District Court Rules be amended to provide an automatic early return date for interim barring orders." It is also recommended that,

the District Court Rules be amended to require that *ex parte* applications for a protection order or an interim barring order be made on affidavit and that the respondent automatically be provided with a note of all evidence given at the hearing. Also, personal service of the barring summons should be required in all cases or, at least, where the respondent is barred *ex parte* (1999:15).

Judge Peter Smithwick, President of the District Court, speaking in 1999 also outlined some of his concerns. He stated that, " we have to be on guard for false allegations or the exaggerated applications that are made." He went on to state that applications can be made in cases that range from the very serious to the relatively trivial. "A barring summons is sometimes applied for by the wife if she is fed up with her husband who isn't taking his fair share of the household duties or spending too much time in the pub " (Smithwick, 1999).

The Law Reform Committee recommends, "that further statutory guidance be provided regarding the standard of proof necessary to establish abuse" (The Law Society, 1999:22). One interviewee corroborates the need for proper standards of proof. The Act is deficient in that it opens up the courts system to misuse.

The more ruthless element of barring orders is in fact an Irish solution to an Irish problem. All the elements of separation can be done at the same time it s a very fast, short-circuited, de facto separation.

ROGER

It would seem that the Domestic Violence Act, which had been intended as an instrument of protection, is being used increasingly as a weapon of abuse, and as a tactic to get a quick one-sided separation or divorce.

In the case of Keating versus the Attorney General in July of this year (2002), a challenge has been brought in the Supreme Court to the constitutionality of the Domestic Violence Act. The challenge was brought by a man whose wife had

obtained an interim barring order against him on the basis of her unchallenged evidence.

Michael O' Kennedy SC, who acted on behalf of the appellant, argued that the man's personal constitutional rights had been infringed because the court had come to a decision which had immediate effect without hearing the evidence of both sides (Wood, 2002).

The judgement of this case, expected in October and the proposed relaxation of the *in camera* rule could result in major changes in the area of Family Law in the Irish courts.

Conclusion

An examination of the debates on the Domestic Violence Bill reveals the extent to which ideology, rather than hard evidence, exercised the minds of Irish legislators. By and large the recommendations of Women's Aid, a campaigning feminist organisation, were incorporated within the Act. Through the influence of this lobby, the legislature accepted that "normally the man" was the perpetrator of violence.

To be barred from one's home for a lengthy period of time, on the basis of an allegation, without being present at the hearing or being given a copy of the evidence, is an extreme measure. The expansion of the definition of 'welfare' to include psychological as well as physical violence, meant that orders intended to be granted in 'exceptional' circumstances could now be given for 'trivial' reasons, potentially placing every relationship at risk.

Through the interviews conducted and by reviewing criticisms made by judges, the picture that emerges after six years of implementing legislation based on a partial

analysis, is one of citizens' rights being flouted, the setting aside of principles of justice, and the general erosion of constitutional rights.

CHAPTER 5 - CONCLUSIONS

Current policy on domestic violence has entered a cul de sac, in which the most recent legislation enacted, the Domestic Violence Act 1996, is discriminatory, both inherently and by its implementation. It seems barbaric, wasteful and cruel to treat citizens in this fashion. As we have seen, in the years since it was introduced, over 12,000 citizens have been barred from their homes; the controversial interim barring order has also been served on nearly 4,000 people and the majority of those barred have been men.

The central role accorded to the women's movement in Ireland and abroad and the acceptance of 'a state within a state' has led to a disproportionate influence on social policy being exercised by this group and to a particular and partial analysis of domestic violence. At the heart of this analysis is radical feminist ideology, or the 'patriarchal model', in which it is asserted that domestic violence serves to perpetuate male domination over women by force, and that women are almost exclusively the victims of domestic violence. This is not corroborated in the main by empirical evidence.

The evidence of mutual violence and male victims of women's violence are ongoing reminders of the need to seek more inclusive models of violence than that which was considered by the Irish legislature in 1995-6. In the introduction to the thesis, two questions were posed as to how this Act came into being, and how it came to be accepted by Irish legislators and tolerated by its citizens, largely without much objection. The legislature in Ireland at the time of the formulation of the Domestic Violence Bill effectively only considered evidence of domestic violence against

women and children. That they did not know the full truth, tells us much about campaigning and consciousness raising. It is a lesson in the old adage: that the end does not justify the means, no matter how worthy the cause appears to be. The legislation, whatever the noble intent of its proponents, had too many unforeseen consequences, not least the infringement of people's Constitutional rights, attendant costly litigation and the introduction of greater arbitrariness into the family courts.

Alternative models and paradigms of violence are needed, to examine the dynamic of violence that can exist within a relationship. Perhaps new models are required that designate violence of any kind in the home as "a family in crisis"; then provide the appropriate support services needed. The main focus should be on the widest possible analysis that includes all forms of family violence and the support of the dysfunctional family. Models that focus on prevention must also be considered. However, this is often a controversial approach since it calls for changes in the behaviour of both parties, not just the assumed perpetrator. This approach would challenge the currently accepted feminist analysis and lead to a more inclusive paradigm of domestic violence.

As it stands, the issue of domestic violence is a minefield of preconceived ideas about gender, violence, and relationships. It is therefore necessary to depoliticise this field of human relations. This may require government policy that is prepared to remove certain lobbies from their central position at the heart of the state. Organisations with responsibility for dealing with domestic violence could be brought into the mainstream by expanding their links with government departments, by being staffed by trained men and women, open to victims of both sexes and free from competitive

tensions and ideology. Domestic violence is an issue that is too important to be dominated by gender politics. It must not be used as a vehicle for one section in society to gain power over another.

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Appendix 1- Interview schedule

The first interviewee, Brian, was interviewed in D il ireann on the 13/08/02.

Brian is a legal expert and was a member of the legislature when the Domestic Violence Bill was being introduced. This interviewee was chosen for his valuable insight into the political climate and parliamentary debates during the passage of the Bill.

The second interviewee, Peter, a solicitor from Cork was interviewed on a visit to Dublin on the 16/08//02. The third interviewee, Roger, is also a solicitor, who works in family law. Roger was interviewed in Dublin on 13/09/02. Both Peter and Roger were selected for their expertise on issues experienced by those who go through the family courts system.

The fourth interviewee, Sin ad, worked in the Courts Service and has a good working knowledge of the application of the Act. She was interviewed in Dublin on the 03/09/02.

The fifth interviewee, Kevin, is a barrister and has a particular interest in domestic violence. Kevin was interviewed on the 18/09/02 in Dublin.

