

Moving beyond the criminal justice paradigm: a radical restorative justice approach to intimate abuse.

Journal of Sociology & Social Welfare - March 1, 2004

Peggy Grauwiler

Word count: 7593.

[citation details](#)

This article traces the history of the development of the treatment of domestic violence as a crime in the United States and the conceptual and practical limitations of this approach in addressing this important social issue. An extensive body of research on restorative justice practice suggests that restorative approaches may contribute to reducing and preventing family violence. Drawing on restorative justice principles, an alternative or supplement to criminal justice approaches is outlined for working with all parties involved in abusive relationships.

Key words: aggression, feminism, intimate partner violence, mandatory arrest, patriarchy, restorative justice

History

Public discourse and political debate influence the recognition and naming of social issues. Naming occurs through the assignment of language and the subsequent labels that define the social issue. The question always lingers: who has ownership of the issue? The battered woman's movement began over three decades ago, as a grass roots response, by women, to help other women escape male violence. Offering a theoretical concept of battering, women assumed ownership over the issue and moved it from a private family matter to one of public concern (Schneider, 2000). Their tireless efforts have influenced political agendas across the country, and even beyond. The social problem of intimate partner violence is now a political priority. In the process of defining domestic violence as a women's issue, it left behind the parallel needs of male and same sex victims, as well as children.

In the last ten years, the movement has been led by a powerful and dedicated group of mainstream feminists. Mainstream feminism is a term borrowed from others, and is not meant as a criticism but as a categorization of people who self-identify as "feminist" and adhere to the belief that the primary approach to domestic violence should be a criminal intervention (Satel, 1997). They would argue that criminalization is the only way to address the prevalence of male to female intimate abuse, insofar as such an approach takes, head on, the long

history of systematic patriarchal oppression of women in the criminal justice system.

The work of these mainstream feminists has resulted in the identification of domestic violence as a serious criminal justice and public health concern. Angered by the criminal justice system's long history of disregard for a woman's right to live violence-free, mainstream feminist advocates have lobbied for and won legislative reforms that have ultimately criminalized domestic violence through mandatory arrest and prosecution policies. Mandatory policies force police officers and prosecutors to pursue domestic violence cases to the full extent of the law, regardless of the victim's wishes. These legal outcomes have been enhanced by the efforts of mainstream feminists to frame the issue of domestic violence as stemming from patriarchy, insisting that the American public accept this interpretation of domestic violence as the only valid one (Mills, 2003). The passage of the Violence Against Women Act (VAWA) of 1994, signed into law by President Bill Clinton, reinforced this notion. VAWA 1994 appropriated 1.2 billion dollars for more effective criminal justice responses to victims and perpetrators. This allocation was part of a larger crime bill and, as such, took a criminal justice approach to domestic violence problem solving. Zero tolerance became the battle cry; mandatory arrest and prosecution policies were the strategies used to accomplish it.

Politicians across the country joined these mainstream feminists in support of VAWA legislation. VAWA demonstration projects offered politicians the opportunity to ally with a woman-centered political agenda, leaving behind more volatile debates about equal rights, equal pay and reproductive rights. Interestingly, in 2000 the National Violence Against Women Survey (NVAW) found that most intimate partner victimizations are not reported to the police. The NVAW Survey approximates that only one-fifth of all rapes, one quarter of all physical assaults and one half of all stalking incidents perpetrated against females by intimate partners were reported to the police. These findings suggest that victims of intimate partner violence do not consider the criminal justice system an appropriate locus for resolving conflicts with intimates (Tjaden & Thoennes, 2000). This chapter explores why battered women have so strongly resisted the criminalization of domestic violence and the opportunity offered by John Braithwaite's work in restorative justice to move beyond the criminal justice paradigm.

One explanation for women's reluctance to embrace criminal justice interventions might be the limitations of our concept of victimization that carries with it traditional gender stereotypes. Mandated arrest and prosecution policies foster the image of the passive battered woman, and the belief that overcoming such passivity necessarily involves leaving the male abuser (Mills, 2003; Peled, Eisikovits, Enosh & Winstok, 2000). This assumes battered women, whether aware of it or not, will ultimately choose to leave their abusers. Anything short of leaving is proof that the woman is being negatively influenced by her abusive

partner to stay. Yet a majority of prosecutors find that over 55 percent of the victims they represent are "uncooperative" when they attempt to indict and incarcerate their partners (Rebovich, 1996). The problem is that stereotypical images of the female victim, and our aspirations for her, have not incorporated the realities of battered women's lives. Perhaps as many as 50 percent choose to stay in abusive relationships for emotional, cultural or religious reasons (Griffing, Ragen, Sage, Madry, Bingham & Primm, 2002).

One insight might explain why women are ambivalent about engaging the criminal justice system. Two decades ago, battered women were not consulted on whether the batterer should be arrested. Now, with mandatory policies, their viewpoint is still considered largely irrelevant. Women in abusive relationships are placed in the untenable position of choosing between protecting their lovers or husbands from incarceration, or protecting themselves by relying on a criminal justice system that is unresponsive to their individual needs (Mills, 2003).

In a 30 month follow-up study of extensively and severely abused women whose male partners were in batterer treatment programs, Gondolf (2002) found that women who felt the need for more assistance were deterred as much by negative views of battered women's programs as they were by barriers to service access. The decision to stay with an abuser is rarely understood as a choice, a statement of commitment to the relationship, knowledge of the limitations within helping systems, or an expression of self-determination and self-sufficiency (Lempert, 1996). The question of whether we can address the needs of those women who continue to turn away from advocates, police, prosecutors, judges and shelters, seeking to end the violence but not the relationship, is addressed in more detail below.

Feminist support for mandatory interventions and willingness to engage the state as a partner in ending violence against women reflects a significant shift away from the feminist movement of the 1960s--a time when the state was viewed as a system that maintained, enforced and legitimized violence against women (Schneider, 2000). This shift embraces the parity model of feminist jurisprudence that argues that women should be given legal equality (with men) that is genuine and not nominal (Routledge, 2000). While mandatory arrest offers the appearance of parity (intimate and stranger violence crimes are handled similarly), it does so at the expense of individual women. Mandatory policies offer only the illusion of true gender equality by enforcing criminal justice recognition of intimate abuse crimes. There are unintended consequences of mandatory policies that should not be ignored.

The question remains: Is criminalizing domestic violence helpful or harmful? Social scientists, feminist lawmakers, victim advocates and policy makers too often give in to the power of law, without thinking critically and creatively about what role the criminal justice system can really play in eradicating violence against women. Criminal justice reform can only be meaningful when the agents

of that reform commit to the iterative process of social change and continue to acknowledge, evaluate and revamp ineffective policy. We must consider what shifts are needed in the battered women's movement as it moves forward; critical analysis and reflection about the role of movement politics in the current flood of domestic violence initiatives is overdue (Kanuha, 1999). The compelling work of John Braithwaite challenges us to consider what possibilities restorative justice practice might offer the feminist movement against domestic violence.

An exploration of the governing assumptions that underpin mandatory arrest and prosecution policies help clarify the 'arrest avoidant' actions of most victims of intimate abuse and offer some insight into how to begin to address their legal, emotional, and safety needs.

Governing Assumptions

There are four primary assumptions that underpin the mainstream feminist explanation of intimate abuse. First, men batter women because they are privileged, physically, financially and socially; implicit in this assumption is the belief that we need not understand men's violence beyond the patriarchal explanation provided (Schechter, 1982). Second, women stay in abusive relationships because of patriarchy. They fear their abusers and lack the material resources to leave. Women who stay do so out of weakness, lack of consciousness, and an inability to act decisively by leaving. If given the appropriate political, financial, legal and emotional support, women would always choose to leave their abusive partners. Third, the criminal justice system is sexist. Police officers, prosecutors, and judges minimize the problem of domestic violence, deny women's agency, and discredit women's accounts of their abuse. Fourth, only extraordinary measures will counteract men's patriarchal power and violence, women's weakness, and the justice system's sexism. Specifically, it is assumed that the history of denial of violence against women justifies treating all domestic violence as the equivalent of violence between strangers. Mandatory measures are necessary to overcome the state's sexism and men's hopelessly uncontrollable violence. In this view, it follows that jail or prison terms are the only appropriate response to intimate abuse.

These assumptions have formed the ideological foundations of American domestic violence practice and policy making. The movement has persuaded citizen and lawmaker alike of the indisputable veracity of these assumptions, which are so significant to the movement to end violence against women that they have become markers for feminism. As they have become so deeply ingrained in our political culture, few have questioned them. If you do question them, you have abandoned the movement (Mills, 2003).

Yet each assumption can be challenged on the basis of recent work in social, cultural, and gender studies. The first assumption that underpins mandatory policies states that domestic violence is caused by and restricted to patriarchal

governance. This however, does not resonate with many men and women who enter the system. For example, men and women of color often don't agree with the dominant rhetoric that all men are "patriarchs". Many men and women of color see the white power structure as representing views that oppress not only women, but also communities of color. Lesbians, gays, bisexual and transgendered people often find mainstream explanations of intimate violence completely irrelevant to their experiences of violence (Mills, 2003). For women who choose a religious lifestyle, patriarchy is a foreign and irrelevant concept. Similarly, immigrant women steeped in traditional cultural values may not identify their experiences of violence with patriarchy. Their explanations include the realities of their lives: the difficult migration challenges that their families, and especially their husbands, often face.

If we limit our investigation into intimate abuse to patriarchal explanations, then we ignore the voices of women and men whose lived experiences do not comport with this analysis. Violence is never as simple as men's power over women, although it may be a feature of some relationships. Empirical research supports the assertion that men and women abuse each other (Mills, 2003). Patriarchy as the principal explanation for men's abuse ignores the fact that violence exists in gay and lesbian relationships.

The second structuring assumption--that women stay in abusive relationships out of weakness, fear, or lack of adequate feminist consciousness--has also been challenged. Research with women from a variety of cultural backgrounds suggests the need to examine choices made by women within situational constraints rather than within a prescriptive scenario held by members of the dominant culture (Mehrotra, 1999; Peled, Eisikovits, Enosh & Winstok, 2000; Yoshihama, 2000). Many advocates and scholars believe that focusing on the woman's return draws attention away from the batterers' abuse, but not to focus on the return neglects women's voices and concerns. The woman may be in an abusive relationship, but she is also quite possibly a mother, a lover, a friend, a family member, or part of a church or a tradition that has competing claims upon her decision to stay or leave.

While it is true that violence between intimate partners has been systematically overlooked by the criminal justice system, we should not assume that it be treated like stranger violence, which is distinctly different. When the victim does not know the perpetrator of the violence, it is relatively easy, psychologically-speaking, to criminalize his or her acts. Criminalizing intimate abuse on a model that has been derived from stranger violence ignores the fact that the parties have, at one time, shared their intimate lives together, including children, or they share the experiences of marginalization through migration, race, or sexual orientation. Violence that occurs in intimate relationships is not conducive to a paradigm that assigns all the blame to one party while wholly exonerating the other. Like all intimate relationships, even violent ones have an underlying dynamic that can help illuminate the origins of the violence (Mills, 2003). Ignoring

the significance of a woman's agency by ignoring her desires in relation to the arrest or prosecution leaves her both without insight into the dynamic of abuse and without protection should the prosecution be unsuccessful or once it comes to a close. And finally, by criminalizing domestic violence, the racism that is endemic in the criminal justice system is underscored. Men of color are likely to be arrested and prosecuted for intimate abuse crimes at disturbingly disproportionate rates when compared with their white counterparts, an experience so devastating that their female partners will be reluctant to reinforce it (Sherman, Schmidt, Rogan, Smith, Gartin, Cohn, Collins & Bacich, 1992).

These assumptions point to the need for inclusion of individual definitions of violence, cultural differences in the abuse experience and its relationship to intervention and prevention strategies. Inclusion of individual expressions of abuse helps develop a different set of assumptions that permit us to develop a more inclusive strategy--a restorative justice model--that does not excuse abusers or blame victims, but instead reflects the total psychic experience of intimate abuse. Before we describe such a model, it is helpful to understand what assumptions would underpin it.

A Different Set Of Assumptions

If we begin to allow ourselves to think critically about the limitations of a patriarchal analysis of intimate abuse and a criminal justice response, we may be able to move beyond the polarization of intimate abuse as just a "woman's issue". In turn, we might then be better positioned to understand why women are choosing to avoid the criminal justice system, and develop interventions that comport with their needs and desires. Our responsibility as a society is to address the entire problem. The women that are currently being served by the criminal justice system represent a small portion of the population that need their problems addressed.

Perhaps the most sacred of the assumptions--violence runs one way from men to women--is the key to changing how we think about intimate abuse. In 1974, Straus, Gelles and Steinmetz reported that husbands and wives committed nearly equal amounts of physical violence in intimate relationships. According to these findings, 12.1 percent of husbands reported that they committed violent acts against their female partners, and 11.6 percent of wives reported acts of violence against male partners. Ten years later, their results were essentially confirmed: 11.3 percent of husbands reported violence against their wives, and 12.1 percent of wives reported violence against their husbands (Straus & Gelles, 1986). In these studies, women and men in equal numbers report being the sole victim of violence in the intimate relationship (Billingham & Sack, 1987). These studies do not suggest that women's violence is a reaction to men's violence. More than one hundred studies have since confirmed these or similar findings (Straus, 1999).

Researchers have found that when they inquire into "physical violence" rather than "injury", they are more likely to elicit admissions by women that they too have been violent. In one study, 37 percent of the women admitted that they had perpetrated physical aggression against their male partners, compared with 22 percent of men who admitted perpetrating physical aggression against their female partners (Magdol, Moffitt, Caspi, Newman, Fagan & Silva, 1997). Severe physical aggression by women also measured at significant rates. Nineteen percent of women, versus 6 percent of men, reported using such behaviors as kicking, hitting, biting, hitting with an object, using or threatening the use of a knife or gun, and beating up. In this same study, 95 percent of women and 86 percent of men reported at least one act of verbal aggression against a partner (Magdol et. al., 1997).

Violence in lesbian relationships also sheds light on the issue of female aggression. Bowman and Morgan (1998) who studied verbal and physical abuse in homosexual and heterosexual college students, found that in same-sex relationships, lesbians reported statistically significant higher levels of violence in all instances than women in heterosexual relationships. Lockhart and colleagues found that 90 percent of the lesbians they surveyed had experienced verbal aggression over the previous twelve months, and 30 percent reported one or more incidents of physical violence (Lockhart, White, Causby & Isaac, 1994). According to Lie and Gentlewarrior (1991), more than half of the 1,099 lesbians in their study reported that they had been physically abused by a female lover or partner. Rohner (1976) evaluated the effect of gender and culture on aggression and found that culture predicts or modifies aggression more than gender does. Studies in Canada, Venezuela, and Mexico also support the finding that women are engaged in aggressive acts towards their partners at least as often as are men (Fry, 1992; Cook, 1992; Leschied, Cummings, van Brunschot, Cunningham & Saunders, 2001).

Some researchers have found that traditional gender roles influence how girls and eventually women express their aggression. Passive aggression or "indirect" methods are common expressions of female anger (Bjorkqvist, Lagerspetz & Kaukiainen, 1992). Because boys and men are often larger and stronger and have higher levels of physical activity, their aggression may be more physical. Girls and women draw on their well-developed emotional strength to express anger (Fraczek, 1992).

Bjorkqvist, Lagerspetz & Kaukiainen (1992) describe indirect aggression as an attempt to hurt another while avoiding detection. In a study of indirect aggression, Bjorkqvist (1994) found that the purpose of the indirect approach was to find a strategy as effective as violence, while at the same time exposing the nonviolent aggressor to as little danger as possible. Verbal strategies, too, put distance to the opponent, and therefore are less dangerous than physical aggression. As a result, when verbal skills are developed, verbal means of aggression tend to replace physical ones whenever possible.

Another distinct feature of women's aggression is that it is most likely to occur in the context of family. In a large longitudinal study of more than forty-five hundred high school seniors and dropouts in California and Oregon, Ellickson, Saner, and McGuigan found that girls were more likely to be engaged in hitting family members than they were to be involved in gang violence. Twenty-six percent of both boys and girls reported that they hit members of their families (Ellickson, Saner & McGuigan, 1997).

In direct opposition to a strict patriarchal analysis of intimate abuse, psychologist Donald Dutton reports that there may be a critical link between verbal abuse inflicted by the mother on her male child and the likelihood of the boy becoming abusive once he grows up and becomes intimate with a female partner (Dutton, 1996). Dutton's finding that verbal abuse by a mother may cause a man to have extreme anger responses toward his female partner only underscores the importance of recognizing all forms of abuse--physical and emotional, male and female, parent and child--in the violence dynamic.

Mainstream feminist activists and researchers have consistently argued that women's aggression against men is irrelevant because it inflicts so much less harm than the injuries men inflict on women. These scholars argue that psychological or even physical abuse inflicted by women is irrelevant compared with other forms of violence expressed by men (Hamberger & Potente, 1994). However, there is strong evidence to suggest that psychological abuse can often predict physical aggression. In a study of engaged and newly married couples, Murphy and O'Leary (1989) found that "psychologically coercive behavior precedes and predicts the development of physical aggression in marriage". They also report that both partners "may contribute to the escalation of conflict tactics during the early stages of the relationship." (p. 582). These findings are important for two reasons. They suggest that if feminists' overriding goal is to reduce incidents of violence against women, reducing psychological aggression in both partners (and not just the man) is likely to reduce injurious physical abuse against women. This is important for another less obvious reason. Though Hamberger and Potente (1994) argue that emotional abuse should count less in terms of the hierarchy of violence because it has less potential to oppress, there is evidence that, in fact, this is not true; some women experience emotional abuse as much more significant than physical forms of violence (Holzworth-Munroe, Meehan, Herron & Stuart, 1999). To limit our understanding of abuse by women as a necessary reaction to men's violence, we impede our capacity to connect with both parties and to develop interventions that go beyond safety from violence to include healing.

There is no doubt that men are more likely to injure their female partners. However, we also know that less than 30% of abused women are turning to the criminal justice system (Tjaden & Thoennes, 2000). How do we empower a woman who chooses to remain with an abusive partner if we cannot assist her in exploring her feelings of responsibility for aggression or violence because we

dismiss these feelings as irrelevant? If she has been aggressive, even violent, it is important to ask the question: Do we encourage denial because we have not developed strategies to address her complicity? By investigating women's use of aggression and the dynamics of intimate partner violence, we can develop interventions that are responsive to both parties.

The extent to which women are viewed as helpless and submissive is apparent in feminist research, as well as in the minimization of men's accounts of women's aggression. Women's aggression, according to the patriarchy model, can be summarized in three simple principles: the man is in control; the man is in denial of his control; and the man is without insight into the violence he inflicts and feels entitled to express it. In effect he is solely responsible for the violent dynamic (Mills, 2003).

But what if men really do feel that women cause them to become violent because "women complain too much and nag and harass them for no good reason" (Dobash, & Dobash, 1998 p. 155). Researchers Eisikovits and Buchbinder (2000) confirm that these feelings are present in the abusive relationship and also represent an important feature of the dynamic of intimate abuse. Although, on the surface, the male partner appears in control, and the female partner appears under his control, the reality is much more complicated. His "attempts to control [her] may lead the woman either toward managing the violence or taking on a violent identity" (p. 91). Complaining, nagging, and harassing may be learned reactions to his control or a feature of the dynamics in her family of origin. They might also be the female partner's way of not being able to ask for what she wants from the relationship. This in turn, can lead the male partner to experience what Donald Dutton calls "abandonment anxiety."

From Dutton's (1995) research, we learn that men who experience abandonment, either because the women pulled away emotionally or could not move closer for one reason or another, often became aggressive against their female partners in reaction to their experiences of abandonment. According to Dutton: "For assaultive males, the psychological and behavioral result of the perceived loss of the female produces panic and hysterical aggression" (p. 68). Taking these findings one step further, it becomes apparent that when a man experiences abandonment in the face of a woman's complaints and nagging, this may initiate his violence. If men feel women create the conditions under which they become violent, we need to hear them out and evaluate whether their complaints may have some merit, without blaming women for men's abuse. Letting women take responsibility for whatever aggression they bring to the relationship can only serve to strengthen their position of insight, action, and power in the relationship overall.

This is not to argue that women in abusive relationships are responsible for the beatings they receive, that they are to blame for the violence inflicted on them. But rather, accounting for the dynamic of abuse that includes how women and

men participate in abusive relationships serves multiple goals of helping each of us understand intimate violence, without minimizing the effect of women's aggression on others. This, in turn, helps individual women make more informed decisions about their intimate relationships (Mills, 2003).

As the studies reviewed here suggest, male and female violence does not happen in a vacuum. Violence is a dynamic that includes more or less significant forms of emotional and physical abuse. Attempts to separate men's and women's aggression, even for the goal of protecting physically abused women, only serves to reinforce violence rather than address it. Because female aggression is part of a dynamic of intimate violence, it is time to take the very important step of examining that dynamic (Mills, 2003).

Under current practice, rather than encouraging insight, we reinforce in women their perception of themselves as victims. Mandatory arrest and prosecution policies affirm that women have no role in addressing the violence in their lives. We believe that if we took time to discover how women and men understand their own aggression in the context of their intimate relationships, we not only could help them gain insight but also help them manage the violence--both physical and emotional.

Giving Voice To New Ways Of Thinking About Intimate Abuse

John Braithwaite's work in the area of restorative justice offers some compelling opportunities for practitioners in the area of intimate abuse. Restorative justice practice, in a practical sense, involves conferences between victims and perpetrators of a crime. Each brings to the conference a care community of friends and family that can support them individually, while they address the violence that has occurred. As a group and by consensus, a contract is developed to restore to the victim what has been lost (e.g. dignity, property etc.). This contract must be agreeable to both sides and is prepared only after two events have occurred: First, there has been a full examination of the impact of the violence on those most affected; and second, violent offenders express remorse for their actions. Conferences can only be formed with the consent of both parties and the participation of their care communities. Care communities offer localized support and enhanced safety for victims.

Braithwaite (2002) provides a comprehensive analysis of the empirical evidence generated during the last decade, about the effectiveness of restorative justice. Braithwaite hypothesizes that restorative justice restores and satisfies victims, offenders and communities better than existing criminal justice practices. This careful review of the existing research suggests a high level of victim satisfaction with their restorative justice experience. Braithwaite argues that victims feel empowered by their participation in the conferences and their individual determination of what is meaningful restoration. Similarly, the offender's apology for the offense committed offers symbolic reparation, as well as enhanced

empathy for the offender. Both these conditions positively influence victim healing. The research also shows substantially higher levels of compliance with restorative justice contracts than with court orders.

Offenders also express satisfaction with the fairness of the conference process. There is some evidence that suggests that the conferences reduce reoffending. In addition, members of the community beyond the offender and victim tend to come away with high levels of satisfaction; the very collaborative nature of the conference process may increase the chance of mutual investment in finding solutions that can promote healing on both sides--not just "victory" for one side of the equation. This suggests the possibility of reducing intimate partner violence at the micro or family level that may in turn reduce the intergenerational transmission of violence--while also reducing violence at the macro or community level (Braithwaite, 2002). All of this is a compelling argument for further research into restorative justice models for family violence.

Currently, the appropriateness of restorative justice and family violence practice is a hotly debated topic (Strang & Braithwaite, 2002). Arguments against restorative justice often turn on many of the reasons explored earlier and are related to the patriarchy model. Essentially, the argument against restorative justice in domestic violence cases is that all battered women are disempowered by the violence and their safety is threatened whenever they are in the presence of their abusers. The certainty of this power to silence her is asserted as a fundamental reason to reject conferences that address intimate abuse (Busch, 2002). This is despite the reality that thousands of men are arrested each day for domestic violence crimes, in which they often serve little jail time and return quickly to the home and or the community (Smith, Davis, Nickles, Davies, 2001). In addition, women testify in court with the support of prosecutor's preparation in the presence of their abusers and travel to and from court with friends and family (and even, sometimes, the abuser).

It is therefore inaccurate to assume that a woman participating in her abuser's prosecution is any more autonomous or safe than she might be with a care community in a structured setting designed to verbalize her abuse experience. Ironically, the shame and stigma associated with the criminal justice system may cause some women to feel the need to hide their involvement in an abusive relationship from friends and family, preventing rather than facilitating support at the community level. Conferences offer the kind of non-threatening and healing-oriented intervention that women seek and which the criminal justice system cannot provide.

Llewellyn & Howse (as cited in Edwards & Haslett, 2002) describe restoration as the creation or re-creation of relationships of meaningful social equality. The offender claims responsibility for his choices, actions and consequences of his actions; these are essential components of restorative justice. One Canadian study of family group conferences that addressed child maltreatment and

domestic violence found a reduction in indicators of child maltreatment and domestic violence, an advancement of children's development and an extension of social supports (Pennell & Burford, 1998).

Family decision making conferences were introduced in the Miami-Dade Juvenile Court in 1998. An evaluation study of this project in cases of child maltreatment, found an increase in parent and participant satisfaction with the court process, empowerment of families as decision makers, improved relationships between the Department of Children and Families and a reduction in the amount of time children spend waiting for permanency (Gatowski, Dobbin & Litchfield, 2001). This raises an important question about conferencing: If they can improve relationships within families and between participants within outside agencies, can they address violence between partners while also improving community relations? As Kay Pranis (2002) so eloquently documents:

A very important value in restorative justice is that of empowering unheard voices. That is most often and most powerfully accomplished through personal narratives. Listening respectfully to someone's story is a way of giving them power--a positive kind of power. (p. 30).

Restorative justice practice in the area of domestic violence can be rooted in a clear set of values and principles that coincide with the interests of mainstream feminists in serving the needs of battered women: Victim safety, victim choice, offender accountability, and system accountability (Edwards & Haslett 2002). Restorative conferences as part of a continuum of ongoing services and even criminal justice intervention in some instances, can help address the violence between individuals, within families, and also can facilitate community-wide healing through the participation of friends and community leaders.

Historically, intervention in the area of domestic violence has always started at the grass roots level--through experimentation, advocacy and respect for a diversity of views. The movement has succeeded in getting the attention of the criminal justice system. It is time to expand our efforts to include the needs of those who avoid the criminal justice system or otherwise reject it, by developing effective community-based interventions that are not dependent upon criminal intervention. The irony is that mandated arrest policies were developed following a small study in Minneapolis suggesting the effectiveness of arrest in reducing domestic violence crimes. Despite increasing evidence that this initial study may have been only partially accurate, mandated arrest became the battle cry of mainstream feminists (Mills 2003). We suggest similar experimentation stemming from early indications that restorative justice can reduce family violence. Ongoing empirical research should accompany each of these efforts.

Modifying Restorative Justice for Intimate Abuse

Intimate Abuse Circles (IAC) draw on many restorative justice principles already described, and also incorporate the set of different assumptions described earlier. IACs are a culturally sensitive alternative to the criminal justice system response to domestic violence as the content of the conferences is tailored to the parties involved. They are a method of intervention following an arrest or in cases where no arrest has been made. The IAC is specifically designed for couples who choose to stay together even when violence has occurred in their relationship and who seek to understand the violence rather than lock it away. Intimate Abuse Circles are especially helpful to immigrant, minority, and religious families where it is more likely that the family will remain intact (Griffing et. al., 2002; Snyder & Scheer, 1981) IACs may also be used in cases where the partners have children together and would like to separate in a more amicable fashion.

The IAC recognizes as a guiding principle that intimate abuse involves more than just an offender and victim. This is different from how conferences have been imagined thus far. The IAC process recognizes that the abusive relationship probably involves a dynamic that both parties must acknowledge in order to improve how they relate to each other. The process does not involve victim blaming, but rather the recognition that even the more victimized party maintains some power in the relationship. It provides a forum for the more violent party to take full responsibility for the violence committed in the relationship, while also validating that intimate relationships involve two people with their complex and sometimes conflicting needs.

The IAC will enable both parties to choose members of their care communities to participate in the Circle process. Members of the care community help develop concrete and measurable methods for addressing the violent relationship. The role of the care community including family members and community leaders, will be to participate in creating effective solutions, but also to help monitor and, in turn, reduce the violence.

Drawing from principles of restorative justice and family group conferencing, the Intimate Abuse Circle model seeks to honor the partners' choices to remain together despite the violence. The IAC model achieves this goal by establishing circles of support within the couple's community that foster healing within their cultural context. The IAC model addresses the underlying dynamics of abuse while fostering safety for the affected parties through a formalized network of family and community supports; this can be utilized in conjunction with or instead of criminal justice interventions.

This model acknowledges the reality that many people seek to end the violence--not the relationship. The circle conferences will be facilitated by professionally trained domestic violence experts who will recognize oppressive dynamics and ensure they do not get reproduced in the Circle process. These professionals will guarantee that all parties speak and that the feminist value of parity is actually realized.

This radical new model moves intimate abuse beyond the narrow parameters of mainstream feminism, allowing for the possibility of reconceptualizing the issue to incorporate its nuances and dynamics. Doing so provides the opportunity to address the problem more holistically and directly. It also provides a more culturally specific response that addresses the unique gender dimensions of the problem, including violence by both men and women in heterosexual and homosexual relationships. With a new conceptualization such as this one, John Braithwaite's path breaking work in restorative justice provides a model for rethinking how we address this problem in a more sensitive, compassionate, and empowering manner. It allows for the people who actually own the issue--the parties themselves--to claim their stake in healing it.

References

- Billingham R.E. & Sack, A.R. (1987). Conflict tactics and the level of emotional commitment among unmarrieds. *Human Relations*, 40, 69-78.
- Bowman, R. & Morgan, H. (1998). Comparison of rates of verbal and physical abuse on campus by gender and sexual orientation. *College Student Journal*, 32, 43-52.
- Bjorkqvist, K., Lagerspetz, K.M.J. & Kaukiainen, A. (1992). Do girls manipulate and boys fight? Developmental trends regarding direct and indirect aggression. *Aggressive Behavior*, 18, 117-127.
- Bjorkqvist, K. (1994). Sex differences in physical, verbal and indirect aggression: A review of recent research. *Sex Roles*, 30, 177-188.
- Braithwaite, J. (2002). *Restorative justice and responsive regulation*. Oxford and New York: Oxford University Press.
- Burford, G. & Pennell, J. (1998). *Family group decision making project: outcome report volume I*. St. John's, NF, Memorial University of Newfoundland.
- Busch, R. (2002) Domestic violence and restorative justice: Who pays if we get it wrong? In H. Strang, & J. Braithwaite (Eds.), *Restorative justice and family violence* (pp. 223-248). New York NY: Cambridge University Press.
- Cook, K.H.B. (1992). Matrifocality and Female Aggression in Margeriteno Society. In K. Bjorkqvist & P. Niemela (Eds.), *Of mice and women: Aspects of female aggression*. (pp. 144-62). New York: Academic Press.
- Dobash, R.E., & Dobash, R.P. (1998). Violent men and violent contexts. In Dobash R.E. & Dobash, R.P. (Eds.), *Rethinking violence against women* (pp. 141-164). Thousand Oaks, CA: Sage Publications.

Donald D.G. (1995). *The domestic assault of women: Psychological and criminal justice perspectives*. Vancouver: University of British Columbia Press.

Edwards, A. & Haslett, J. (2002) *Domestic violence and restorative justice: Advancing the dialogue*, [On-line]. Available: www.sfu.ca/cfrj/fulltext/haslett.pdf

Ellickson, P., Saner, H., & McGuigan, K.A. (1997) Profiles of violent youth: Substance use and other concurrent problems. *American Journal of Public Health*, 87, 985-91.

Eisikovits, Z., & Buchbinder, E. (2000). *Locked in a violent embrace: Understanding and intervening in domestic violence*. Thousand Oaks, CA: Sage Publications.

Fraczek, A. (1992). Patterns of aggressive-hostile behavior among adolescent boys and girls. In K. Bjorkqvist & P. Niemela (Eds.), *Of mice and women: Aspects of female aggression* (107-112). New York: Academic Press.

Fry, D. (1992). Female Aggression among the Zapotec of Oaxaca, Mexico. In K. Bjorkqvist & P. Niemela (Eds.), *Of mice and women: Aspects of female aggression*. (pp. 187-99). New York: Academic Press.

Gatowski, S., Dobbin, S. & Litchfield, M. (2001). *The Miami Model Court Family Decision-making conference program: Evaluation results*. National Council of Juvenile and Family Court Judges: Reno, Nevada. [On-line] Available: www.pppncjfc.org/html/TAbull_miami.html

Gondolf, E.W. (2002). Service barriers for battered women with male partners in batterer programs. *Journal of Interpersonal Violence* 17(2), 217-227.

Griffing, S., Ragin, D.F., Sage, R.E., Madry, L., Bingham, L.E., & Primm, B.J., (2002). Domestic violence survivor's self identified reasons for returning to abusive relationship, *Journal of Interpersonal Violence* 17, 306-319.

Hamberger, K. & Potente, T. (1994). Counseling heterosexual women arrested for domestic violence: Implications for theory and practice. *Violence and Victims*, 9(2), 125-137.

Holzworth-Munroe, A., Meehan, J.C., Herron, K. & Stuart, G.L. (1999). A typology of male batterers: An initial evaluation. In X.B. Arriaga & S. Oskamp (Eds.), *Violence in intimate relationships* (pp. 47-52). Thousand Oaks, CA: Sage Publications.

Kanuha, V. (1996). Domestic violence, racism, and the battered women's movement in the United States. In J.L. Edelson and Z.C. Eisikovits (Eds.), *Future*

interventions with battered women and their families (pp. 186-200). Newbury Park, CA: Sage Publications.

Lempert, L. (1996). Women's strategies for survival: Developing agency in abusive relationships. *Journal of Family Violence*, 11, 269-290

Leschied, A.W., Cummings, A.L., van Brunschot, M., Cunningham, A. & Saunders, A. (2001). Aggression in adolescent girls: Implications for policy, prevention, and treatment. *Canadian Psychology*, 42, 200-215.

Lie, G. & Gentlewarrior, S. (1991). Intimate violence in lesbian relationships: Discussion of survey findings and practice implications. *Journal of Social Service Research*, 15, 41-59.

Lockhart, L. White, B., Causby, V. & Isaac, A. (1994). Letting out the secret: Violence in lesbian relationships. *Journal of Interpersonal Violence*, 9, 469-92.

Magdol, L., Moffitt, T.E., Caspi, A., Newman, D.L., Fagan, J. & Silva, P.A. (1997). Gender differences in partner violence in a birth cohort of 21-year-olds: Bridging the gap between clinical and epidemiological approaches, *Journal of Consulting and Clinical Psychology*, 65, 68-78.

Mehrotra, M. (1999). The social construction of wife abuse: Experiences of Asian Indian women in the United States. *Violence Against Women* 5 (6), 619-640.

Mills, L.G. (2003). *Insult to injury: Rethinking our responses to intimate abuse*. Princeton and Oxford: Princeton University Press.

Murphy, C.M., & O'Leary, K.D. (1989). Psychological aggression predicts physical aggression in early marriage. *Journal of Consulting & Clinical Psychology*, 57(5), 579-582.

Peled, E., Eisikovits, Z.C., Enosh, G., and Winstok, Z. (2000). Choice and empowerment for battered women who stay: Toward a constructivist model. *Social Work*, 45(1), 9-24.

Pranis, K. (2002). Restorative values and confronting family violence. In Strang, H. & Braithwaite, J.(Eds.). *Restorative justice and family violence* (pp. 23-41). New York, NY: Cambridge University Press.

Rebovich, D.J. (1996). Prosecution response to domestic violence: Results of a survey of large jurisdictions. In E.S. Buzawa & K.G. Buzawa (Eds.), *Do Arrests and Restraining Orders Work?* (pp. 176-191). Thousand Oaks, CA: Sage Publications.

Rohner, R.P. (1976). Sex differences in aggression: Phylogenetic and enculturation perspectives. *Ethos*, 4, 57-72.

Routledge Press. (2000). *Concise routledge encyclopedia of philosophy* (pp 278-279). London & New York: Routledge.

Satel, S. (1997). It's always his fault. *Women's Quarterly*. Independent Women's Forum, summer [On-line] Available: www.iwf.org/pubs/twq/su97a.shtml

Schechter, S. (1982). *Women and male violence: The visions and struggles of the battered women's movement*. Boston, MA: South End Press.

Schneider, E.M. (2000). *Battered women and feminist lawmaking*. New Haven and London: Yale University Press.

Sherman, L.W., Schmidt, J.D., Rogan, D.P., Smith, D.A., Gartin, P.R, Cohn, E.G., Collins, D.J. & Bacich, A.R. (1992). The variable effects of arrest on criminal careers: The Milwaukee domestic violence experiment, *Journal of Criminal Law and Criminology*, 83(160),137-69.

Smith, B.E., Davis, R., Nickles, L.B. & Davies, H.J. (2001). Evaluation of efforts to implement no-drop policies: Two central values in conflict, Final Report. DOJ Doc. No. 18777. American Bar Association.

Snyder, D.K. & Scheer, N.S. (1981) Predicting disposition following brief residence at a shelter for battered women. *American Journal of Community Psychology* 9, 559-565.

Strang, H. & Braithwaite, J. (2002). *Restorative justice and family violence*. New York, NY: Cambridge University Press.

Straus, M.A. (1999). The controversy over domestic violence by women: A methodological, theoretical, and sociology of science analysis. In X.B. Arriaga & S. Oskamp (Eds.), *Violence in Intimate Relationships*. (p. 19-44) Thousand Oaks, CA: Sage Publications.

Straus, M. & Genes, R. (1986). Societal change and change in family violence from 1975 to 1985 as revealed by two national surveys. *Journal of Marriage and the Family*, 48, 470-71.

Tjaden, P. & Thoennes, N. (2000). Extent, nature, and consequences of intimate partner violence: Findings from the national violence against women survey. NCJ Doc. No.181867 at 51. [On-line]. Available: www.ojp.usdoj.gov/nij

Yoshihama, M. (2000). Reinterpreting strength and safety in a socio-cultural context: Dynamics of domestic violence and experiences of women of Japanese descent. *Children and Youth Services*, 3(4), 207-229.

PEGGY GRAUWILER AND LINDA G. MILLS

New York University

Citation Details

Title: Moving beyond the criminal justice paradigm: a radical restorative justice approach to intimate abuse.

Author: Peggy Grauwiler

Publication: *Journal of Sociology & Social Welfare* (Refereed)

Date: March 1, 2004

Publisher: Western Michigan University, School of Social Work

Volume: 31 **Issue:** 1 **Page:** 49(21)