



# Domestic Violence

*Edited by*

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**ASHGATE**

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# Domestic Violence



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# Series Preface

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The family is a central, even an iconic, institution of society. It is the quintessentially private space said, by Christopher Lasch, to be a 'haven in a heartless world'. The meanings of 'family' are not constant, but contingent and often ambiguous. The role of the law in relation to the family also shifts; there is increasing emphasis on alternative dispute mechanisms and on finding new ways of regulation. Shifts have been detected (by Simon Roberts among others) from 'command' to 'inducement', but it is not a one-way process and 'command' may once again be in the ascendancy as the state grapples with family recalcitrance on such issues as child support and contact (visitation) arrangements. Family law once meant little more than divorce and its (largely) economic consequences. The scope of the subject has now broadened to embrace a complex of relationships. The 'family of law' now extends to the gay, the transgendered, 'beyond conjugality', perhaps towards friendship. It meets new challenges with domestic violence and child abuse. It has had to respond to new demands – from women for more equal norms, from the gay community for the right to marry, from children (or their advocates) for rights unheard of when children were conveniently parcelled as items of property. The reproduction revolution has forced family law to confront the meaning of parentage; no longer can we cling to seeing 'mother' and 'father' in unproblematic terms. Nor is family law any longer a 'discrete entity', but it now interfaces with medical law, criminal law, housing law etc.

This series, containing volumes on marriage and other relationships (and not just cohabitation), on the parent–child relationship, on domestic violence, on methods of resolving family conflict and on pluralism within family law, reflects these tensions, conflicts and interfaces.

Each volume in the series contains leading and more out-of-the-way articles culled from a variety of sources. It is my belief, as also of the editors of individual volumes, that an understanding of family law requires us to go beyond conventional, orthodox legal literature – not that it is not relevant, and use is made of it. But to understand the context and the issues, it is necessary to reach beyond to specialist journals and to literature found in sociology, social administration, politics, philosophy, economics, psychology, history etc. The value of these volumes lies in their coverage as they offer access to materials in a convenient form which will not necessarily be available to students of family law.

They also offer learned and insightful introductions, essays of value in their own right and focused bibliographies to assist the pursuit of further study and research. Together they constitute a library of the best contemporary family law scholarship and an opportunity to explore the highways and byways of the subject. The volumes will be valuable to scholars (and students) of a range of disciplines, not just those who confront family law within a law curriculum, and it is hoped they will stimulate further family law scholarship.

MICHAEL D. FREEMAN  
*University College London*

# Introduction

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Who'd be plagued with a wife  
That could set himself free  
With a rope or a knife,  
Or a good stick, like me?

*Punch and Judy, 1827*

This collection is about violence in the domestic setting, 'domestic violence', as I shall continue to call it, though reservations have been expressed about the appropriateness of the term. Domestic violence is primarily about violence against women, wives, cohabitants and others in close emotional relationships. Violence against women has always been with us, but only rarely in history – and then usually when there is a feminist ferment – is the objective condition interpreted as a problem worthy of attention and response.

One of the earliest of reported cases – certainly in England – concerns Margaret Neffeld of York who, in 1395, produced witnesses before an ecclesiastical court to show that her husband had once attacked her with a knife, forcing her to flee into the street 'wailing and in tears'. On another occasion he had set upon her with a dagger, wounding her in the arm and breaking one of her bones. He claimed that whatever he had done was solely for the purpose of 'reducing her from errors'. The court held that no cause for divorce *a mensa et thoro* (what we would understand today as judicial separation, divorce as such not then being available as a remedy) had been made out. Margaret was compelled to continue to live with her violent husband. Today's weapons are different and some of the language has changed, but otherwise the case rings true even today (Helmholz, 1974, p. 105).

The 'private rod'<sup>1</sup> wielded by men (Tromp, 2000), the 'rule of thumb' (see Dobash and Dobash, 1979), has permeated a world in which patriarchy dominates (Freeman, 1984). Domestic violence was rediscovered in the 1970s. Erin Pizzey's *Scream Quietly or the Neighbours Will Hear* (1979) and the establishment of the first refuge in Chiswick did much to produce a profile for the problem. But striking parallels to contemporary interest can be found in the latter half of the nineteenth century (Doggett, 1992), and in the years preceding the First World War (Liddington and Norris, 1978). In the middle of the nineteenth century John Stuart Mill (1869) attacked the marital rape immunity – in England this survived until 1991.<sup>2</sup> In 1878 Frances Power Cobbe wrote of 'wife torture'. The early reformers saw the problem as the product of the degradation of working-class life (husbands wanted to return home to 'a comfortable arm chair, a singing kettle, a tidied room' (Kaye, 1856, pp. 249–50)). In the 1870s there was considerable anxiety about the prevalence of violence, particularly in such areas as Liverpool's 'Kicking District' (see McGregor, 1957, p. 22).

Legal responses had to be fashioned to tackle the problem. The judges in England favoured flogging offenders (*Report to the Secretary of State ... the Law relating to Brutal Assaults,*

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<sup>1</sup> The expression comes from Wilkie Collins, *The Woman in White*.

<sup>2</sup> See *R v. R* [1992] 1 AC 599.

1875). This was thought to be the answer in Maryland (see Steinmetz and Straus, 1975). Frances Power Cobbe sensibly argued against this expedient: 'After they had undergone such chastisement, however well merited, the ruffians would inevitably return more brutalised and infuriated than ever; and again have their wives at their mercy' (1894, 2, pp. 220–21). Instead, in her essay '*Wife Torture in England*', published in 1878, she argued for the concept of the separation order, and for jurisdiction to be given to magistrates' courts.<sup>3</sup> The pamphlet had immediate effect, and legislation in 1878 gave magistrates' courts the power to grant a separation order with maintenance to a wife whose husband had been convicted of aggravated assault upon her 'if satisfied that the future safety of the wife [was] in peril'. And this proviso was removed in 1895 by the Summary Jurisdiction (Married Women) Act 1895. For thirty or so years little more was heard of domestic violence, until the suffrage movement took the lid off it once again (see Liddington and Norris, 1978). And then the problem mysteriously disappears. It clearly didn't go away, but the public is no longer interested. Only in the 1970s do we hear about it again: first in England (the French Minister for Women's Affairs even dubbed it 'le vice anglais') and very soon worldwide (see Corrin, 1996; Smeenck and Malsch, 2005).

How is domestic violence to be defined? The Home Office in England recently offered the following:

Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality. (Home Office, 2005, para. 10)

The definition has widened considerably in thirty-five years. It was common to talk of 'battered wives', as if violence was only perpetrated in marriage. It was common to confine domestic violence to physical attacks: it is now accepted that 'abuse' embraces a range of behaviours. It was initially thought to be perpetrated only where people were living together. It has long been accepted that there is violence before cohabitation and there is post-separation violence (see Roberts, 2005). It is now accepted that women are violent to their male partners, though, as will be made clear, this cannot be considered to be the major social problem (Saunders, 2002). There is violence also in gay relationships (West, 1998). And there is also abuse against elderly people (Decalmer and Glendenning, 1993; Aitken and Griffin, 1996). Some abuse is not so regarded by the communities within which it is practised (see Ahmed-Ghosh, 2004; Panchanadeswaran and Koverola, 2005). Some arranged marriages, all forced marriages and all so-called 'honour killings' must be seen as forms of abuse – there can be no scope for the 'cultural defence' (see Renteln, 2006, but also Volpp, 1996; Razack, 2007).

Domestic violence is much more common than is perceived by the public. It is, of course, underreported. Sixty-one per cent of women questioned said they could envisage their partners using violence against them (see Mooney, 2000). The NSPCC recently found that 16 per cent of teenage girls questioned (average age 15) had been hit by their boyfriends (NSPCC, 2005). A further 6 per cent had been forced to have sex by them – that is, had been raped by boyfriends. A recent Unicef report suggests that up to 1 million children in the UK are living in a domestic violence environment (Unicef, 2006). The British Crime Survey found that nearly

<sup>3</sup> It is of interest that she argued also for injunctions to restrain husbands visiting wives without their consent.

one in four women (26 per cent) and nearly one in six men (15 per cent) had been or will be physically assaulted by a current or former partner at some point in their lives (Mirrlees-Black and Bayron, 2000). Domestic violence is the single largest category of violent crime (25 per cent of all assaults) (Mirrlees-Black, 1999). About 150 people a year are killed by a current or former partner (Home Office, 2003, p. 8): one-third of all female murder victims are killed by a partner or by someone who has been a partner (Women and Equality Unit, 2006).

A study of ten European countries found that one in four women will experience domestic violence in their lifetime, and one in eight annually (Council of Europe, 2002). There are an estimated 635,000 annual incidents in England and Wales (81 per cent of the victims being women) (Home Office, 2001, 2002). A national 'Day to Count' in 2000 revealed that the police receive a call for assistance every minute from domestic violence victims (85 per cent of these calls are from women assaulted by men) (see Stanko, 2001). Domestic violence often starts during the victim's pregnancy (see Gelles, 1975; also Bacchus, Mezey and Bewley, 2006). It often occurs during contact visits: indeed contact may be used as an opportunity to continue harassment or abuse (Kaye, Stubbs and Tolmie, 2003).

Can domestic violence be explained? There are myths which can easily be disposed of (Steinmetz and Straus, 1975, pp. 6–17). Thus, it has frequently been hypothesized that it is a working-class phenomenon and is attributable to a subculture of violence thought to reside in such a population. But domestic violence crosses all social class barriers.<sup>4</sup> It is also said that violence in sexual relations is directly related to violence against wives because marriage is the main outlet for legitimating sexual intercourse. But there is little biological linkage between sex and violence, though the two may be linked in particular cultures. There is also the 'catharsis myth', discredited elsewhere but occasionally still resurrected to explain domestic violence. This suggests that severe violence can be reduced if 'normal aggression is allowed to be expressed' and 'tension is released'. Myths are a form of defence mechanism: the family is an important social institution, and the myths have grown up as shields to protect it.

Domestic violence has been explained in a number of ways. The earlier interpretations emphasized pathology:<sup>5</sup> the men were sick, suffered from mental illness, were alcohol<sup>6</sup> or drug abusers, or had inadequate personalities. But this interpretation just individualizes the problem: it treats it as 'exceptionalistic' (see Ryan, 1976). Nevertheless, the UK government has sought opinions on whether there should be a register of domestic violence abusers (Home Office, 2003, p. 36).

Another interpretation attributes domestic violence to frustration, stress and blocked goals.<sup>7</sup> It locates the source of such violence in social-structural factors: poverty and unemployment are commonly cited.<sup>8</sup> Violence is said to be 'an adaptation or response to structural stress'

<sup>4</sup> There is ample evidence of this in Pizzey (1979), n. 5. See also Solokoff and Dupont (2005).

<sup>5</sup> See, for example, Erin Pizzey's (1974–1985), Evidence to the House of Commons Select Committee on *Violence in Marriage*, HC 553, p. 2. Or see Pizzey (1974).

<sup>6</sup> An early example is Gayford (1975), p. 194. Domestic violence may lead women into substance abuse: see Burke *et al.* (2005).

<sup>7</sup> The influence of Robert Merton may be detected: see, for example, his 'Social Structure and Anomie' (1938).

<sup>8</sup> An early example is the Discussion Document of the British Association of Social Workers Party on Home Violence (1975).

(Gelles, 1972, p. 185): this produces frustration, which is often followed by violence. Violence may be an adaptation to stressful structural conditions, but the causal relationship (if any) between economic conditions and domestic violence is not explained.

Some try to explain abuse by blaming the victim. Pizzey and Shapiro (1982) even suggested that victims are addicted to violence, so that they seek out violent relationships. Women who are bad housekeepers and women who 'nag' are said to provoke violence, even perhaps to deserve it.

What all these explanations ignore is patriarchy (see Hanmer, 2000; and also Freeman, 1979, pp. 141–48). Domestic violence is about power. It is not, any more than is rape, an 'explosion of testosterone' (Wilson, 1983). Thus understood, violence by men against women in the home should not be seen as a breakdown in the social order. Seen thus, domestic violence is not dysfunctional; on the contrary, it appears to be quite functional. And, it should be added, the law has played a part, perhaps even a major part, not just in reproducing this social order, but in actually constituting and defining that order. As I have argued:

The legal form is one of the main modalities of social practice through which actual relationships embodying sexual stratification have been expressed. Law defines the character and creates the institutions and social relationships within which the family operates. The legal system is constantly recreating a particular ideological view of relationships between the sexes, best expressed as an ideology of patriarchalism. (Freeman, 1984, p. 55)

Thus, the law at one time not only permitted a husband corporally to chastise his wife, but expected him to do so. The liberty to chastise was only finally judicially disapproved in 1978.<sup>9</sup> And the marital rape immunity survived even longer, until 1991.<sup>10</sup> John Stuart Mill, in 1869, had been savagely critical:

A female slave has (in Christian countries) an admitted right ... to refuse to her master the last familiarity. Not so the wife ... her husband can claim from her and enforce the lowest degradation of a human being, that of being made the instrument of an animal function contrary to her inclination. (1869, p. 32)

In a patriarchal society 'male dominance must be maintained at all costs, because the person who dominates cannot conceive of any alternative but to be dominated in turn' (Figs, 1972, p. 52). As Bell and Newby explain: 'the belief on the part of many wives that not only do their husbands possess greater power but in the last analysis, they *ought* to do so, is the kind of belief that occurs in other highly stratified social situations' (1976, p. 154). Deference derives from power but in time becomes a moral position. Sex-role socialization and the ideologies associated with the home are sufficiently effective strategies to have turned might into right in marriages. Nevertheless, 'might' remains 'very close to the surface' (Bell and Newby, 1976, p. 164). As Bell and Newby point out, 'Two sorts of power form the constant background to the deferential dialectic between husbands and wives. These are the power of the hand and the power of the purse' (1976, p. 164).

<sup>9</sup> In *Davis v. Johnson* [1979] AC 274.

<sup>10</sup> *R v. R* [1992] 1 AC 599.



The Dobashes argue that men who use violence are merely conforming to cultural norms that endorse dominance as well as the enforcement of that dominance (Dobash and Dobash, 1979, pp. 22–24).<sup>11</sup> Violence often occurs when women do not fulfil their expected traditional roles. Then violence may be used to reassert authority. Burton and Kitzinger found that almost one in four young men thought it was right to hit a woman who slept with someone else. Forcing a wife or girlfriend to have sex was also deemed acceptable, and ‘disrespectful’ women were also thought to deserve ‘punishment’ (Burton and Kitzinger, 1998). In Hearn’s research male violence is seen by perpetrators as ‘being a man’ and symbolically showing ‘being a man’ (1998, p. 37).

There is domestic violence against men. How much we do not know, though estimates suggest that in perhaps 20 per cent of incidents men are the victims. But it must be stressed that the social problem is domestic violence against women. The most accepted description of what makes the use of force ‘battering’ encompasses ‘the dynamics of a relationship where one partner, who is usually the male in a heterosexual relationship, uses coercive controlling tactics along with systematic threats and use of violence to “exert power, induce fear, and control another”’ (Osthoff, 2002, p. 1522; see also Worcester, 2002). Miller and Meloy point out that ‘the cumulative effects of such battering and the desired consequences (i.e. does the victim live in fear of her safety?) are inextricably related’ (2006, pp. 90–91).

There are, Johnson (1995) argues, four patterns of intimate partner violence. There is ‘common couple violence’: both use violence, it is of low frequency, is not intended to control and is unlikely to escalate or involve serious injury. There is ‘intimate terrorism’: violence is used by one, it is a controlling tactic, it may be frequent and may escalate and it can result in serious injury. There is ‘violent resistance’: this is used primarily by women and is not intended to control. Controversy has surrounded cases where ‘resistance’ has led to the death of the violent man.<sup>12</sup> This has focused on what is considered a reasonable response when provoked. There are also relationships where there is ‘mutual violent control’: both partners are violent and each is vying for control. Women are rarely ‘intimate terrorists’: where they engage in violence it is almost always in response to ongoing battering.

Violence against men in the domestic setting thus exists, and it is no longer denied. But differences according to gender are significant. Women are more likely to be repeat victims, to be seriously injured, to be assaulted or harassed post-separation. Men are not usually fearful of being at home. The gendered nature of the problem is thus undeniable. Legislation, however – and rightly – tends to be gender-neutral.

## Definition

The first two essays in this collection are concerned with definitional problems, the second (by Russell Dobash and Rebecca Dobash) with the ‘puzzle’ of violence against men.

In Chapter 1 Malcolm Gordon stresses the importance of definitional issues in describing the epidemiology of violence against women and in planning surveillance systems to monitor its incidence. He points out that our understanding of violence against women has developed from ‘the influence of two traditions’: advocacy movements for victims, and social and

<sup>11</sup> There is a similar finding in Audrey Mullender *et al.* (2002), pp. 70–74.

<sup>12</sup> In particular as to the availability of the defence of provocation.

behavioural research. Advocates have seen domestic violence as acts to achieve domination and control so that the proper referent should be a pattern of behaviour and experiences of abuse within a relationship. Researchers, by contrast, traditionally, have focused on acts of perpetrators. Straus and Gelles are given as examples of this approach. Gordon advocates situating intimate partner violence into an 'overall framework of understanding violence from an empirical scientific perspective' (p. 6). This is, he indicates, a perspective that 'views aggression between intimate partners as a type of abusive behavior that shares much in common with other types of interpersonal aggression, but also has some unique features' (p. 6).

If, as some allege, there is as much violence by women as against them, we would have to look at the problem differently and policies might be different. Chapter 2, by Dobash and Dobash, thus unravels the 'puzzle' that this dilemma purports to reveal. For Dobash and Dobash the question of who are the most usual victims and perpetrators is dependent on 'what counts' as violence. They address the question of whether men and women are equally likely to perpetrate violence by focusing on concept formation, definitions, forms of management, context, consequences and approaches to claim-making. The essay contains the results of a study: it offers quantitative and qualitative findings from 190 interviews with 95 couples in which men and women reported separately upon their own violence and that of their partner. The findings suggest – as would be expected – that intimate violence is primarily an asymmetrical problem of men's violence to women, and that women's violence does not equate to men's in terms of frequency, severity, consequences and the victim's sense of safety and well-being.

## **Research and Violence Against Women**

Part II of the book focuses on theorizing and on research on domestic violence. Sylvia Walby and Andrew Myhill in Chapter 3 compare the research methodologies employed in a range of countries, including those in the USA, Canada, Australia, Finland and the Netherlands, as well as the British Crime Survey. There are three types of surveys, and these report very different rates of violence against women. First are the generic crime surveys. Second are the dedicated domestic violence surveys: these find much higher rates of domestic violence than generic surveys do. The third type of survey is dedicated to a range of violence against women: it locates domestic violence in 'a context so as to ascertain its meaning and impact' (p. 72). These surveys look at rape and other forms of sexual assault, stalking and other forms of harassment. This form of survey is considered 'state-of-the-art', and it is this type of survey that uncovers the most domestic violence. But all the surveys, Walby and Myhill point out, only explore prevalence of violence. There are, they conjure, many important theoretical questions that could be more fully addressed if the surveys were 'deeper ... richer' – for example, questions about the relationship between domestic violence and poverty and social exclusion. We need to be able, they say, 'to analyse separately any correlation between the possible economic stressing of a perpetrator from that of the economic dependency and entrapment of a victim' (p. 85). In Iceland, for example, a research finding suggests that increases in women's employment and other changes in women's position in society reduce domestic violence. We need to find out whether this finding is generalizable. What produces 'desistance'? Is the intervention of a range of outside agencies as central to desistance in the

UK as it appears to be in the USA? Or are the range of support services and the nature of the criminal justice system too different to support such an analysis? Is desistance the result of reintegrating the men back into society, or is it more likely to be achieved by excluding them from the home? It is manifest that these questions could fruitfully be explored by further research work: we might be able to further understand domestic violence and ultimately eliminate it if such work were done.

In Chapter 4 Angela Moore Parmley reviews the impact of the watershed US Violence Against Women Act 1994 and calls for an overhaul of research infrastructure. This is yet another call for more – and better – research, and for more resources to conduct research studies. She stresses the importance of establishing the efficacy of the services targeted at domestic violence.

Elizabeth Stanko in Chapter 5 offers us insights into three areas in particular: the fact that violence is not hidden, as is usually said to be the case, that the meanings of violence are gendered, and that people's accounts of violence matter. As she points out, in relation to this third observation, 'What violence means is and will always be fluid. It is this fluidity that provides the space for disrupting violence, altering its impact on people's lives and on the way in which we give meaning to it in society at large' (p. 114). Like Walby and Myhill, Stanko emphasizes the importance of not separating what we can learn about domestic violence from what we have learnt over the years about sexual and violent assault against women outside the domestic context.

## The Justice Response

The central part of this collection focus on justice responses: first generally, then discussing the criminal law, the civil law and the relation to human rights issues. Many years ago I hypothesized in an essay that the law was unlikely to provide a solution for domestic violence when it itself was part of the problem (Freeman, 1980). We know that the law was slow to respond to domestic violence, that a necessary precondition is that someone 'blows the whistle'.<sup>13</sup> Different approaches have been tried. The police were initially most reluctant to get involved in what they euphemistically dubbed 'domestic disturbances'.<sup>14</sup> Not surprisingly, therefore, the option preferred by policy-makers in the 1970s was to widen the scope of the civil law to respond to the needs of victims of domestic violence.<sup>15</sup> Two types of injunction were developed: the 'non-molestation' injunction<sup>16</sup> and the exclusion injunction, which was considered by some (including the courts) as 'draconian'. The civil law has many limitations: in particular there is the difficulty of enforcing civil orders. Pizzey in *Scream Quietly* (1979,

<sup>13</sup> Becker calls such people 'moral entrepreneurs' (1963, p. 162).

<sup>14</sup> The Association of Chief Police Officers Evidence to the House of Commons Select Committee on *Violence in Marriage* is often quoted as exemplifying this. 'We are ... dealing with persons "bound in marriage", and it is important, for a host of reasons, to maintain the unity of the spouses' (p. 336, n. 41). None of these reasons was specified!

<sup>15</sup> In England this was through legislation in 1976 and 1978, discussed in Freeman (1979, pp. 199–211).

<sup>16</sup> 'Molestation' is wider than violence, a recognition as long ago as 1976 that the problem went beyond 'battering'.

p. 119) told us of ‘Joan’ who took her husband before judges on eleven occasions before he was committed to prison. And Margaret Gregory wrote of one case where a man ‘contrived to avoid being served with the warrant for breach of injunction for six months, continuing all the time to commit further breaches’ (in Borland, 1976, p. 117). It was because of these difficulties that legislation in England in 1976 provided courts with the power to attach a police power of arrest to an injunction, provided there was proof that the perpetrator had caused harm to the applicant or a child and was likely to do so again. The Family Law Act 1996 widened the law in scope and focused more on the needs of the victim. A police power of arrest must now be attached where it appears to the court that the perpetrator has used or threatened violence against the applicant or a relevant child, unless the court is satisfied that they will be adequately protected without it.<sup>17</sup>

As can be seen what was being created was hybrid: civil remedies with quasi-criminal enforcement procedures. This ambivalence was reinforced when the Protection from Harassment Act was passed in 1997. ‘Harassment’ can, as a result, be dealt with either as a criminal offence or as a tort. It can be punished with criminal sanctions or restrained by an injunction. The 1997 Act was passed ostensibly to tackle the problem of ‘stalking’.<sup>18</sup> The distinction between the civil and criminal justice systems had been blurred already: the 1997 Act merged the two. Further legislation – for example-making breach of a non-molestation order a criminal offence<sup>19</sup> – exemplifies the recognition of the ‘public nature’ of the act of ‘private violence’ (see Fineman and Mykitiuk, 1994).

Pro-arrest and ‘no drop’ policies took root more slowly in Britain than in the USA or Canada (see Morley and Mullender, 1992). A report in 2004 found that from crime report to conviction there was still a 50 per cent drop-out rate at every stage in the criminal process. Only 11 per cent of domestic violence reports which were recorded as crimes resulted in convictions (HM Inspectorate of Constabularies, 2004). The main obstacle remains that of the ‘fearful witness’ (see Edwards, 2000). The 2004 study found that victims sought to withdraw their complaints in 44 per cent of the cases received by the Crown Prosecution Service (HM Inspectorate of Constabularies, 2004). Even so, government policy is to emphasize the criminal nature of domestic violence. For example, common assault was made an arrestable offence<sup>20</sup> and, as already indicated, breach of civil orders is now a criminal offence subject to a severe penalty.

Carol Jordan takes up some of these themes and issues in Chapter 6. Victims of domestic violence (‘intimate partner violence’) encounter unique problems as they enter the court system. Proceedings give little control to the victim and expose her directly to the perpetrator. Victims fear retaliation, a fear which the evidence suggests is reasonably held. Because the perpetrator knows the victim, the defence may have more ‘ammunition’ available to discredit the victim’s testimony during the trial. Jordan offers a review of the research on both criminal justice interventions in cases of intimate partner violence and on the efficacy of civil protective orders. She offers some optimism: both arrest and civil protective orders are associated with reduced experience with subsequent violence. However, she also observes

<sup>17</sup> Family Law Act 1996 s. 47 (2).

<sup>18</sup> First perceived as a ‘problem’ in the USA. See Meloy (1998).

<sup>19</sup> Domestic Violence, Crime and Victims Act 2004 s.5.

<sup>20</sup> By the Domestic Violence, Crime and Victims Act 2004. But all crimes are now arrestable offences.

that ‘not all arrest studies show significant findings, and even those studies ostensibly showing success of protective orders report a 20% to 40% violation rate’ (p. 136). Who the offender is is a significant variable.

In Chapter 9 Judith Herman examines justice from the perspective of the victim. The wishes and needs of victims are often, she notes, ‘diametrically opposed’ (p. 202) to the requirements of legal proceedings. They need ‘social acknowledgment and support’ (p. 202), but the legal system requires them to face a public challenge to their credibility. If we were to set out ‘to design a system for provoking symptoms of traumatic stress’ (p. 202), we would arrive at something very like a court of law. Is it possible to make victims ‘key stakeholders’ when now they seem like ‘footnotes in the justice process’? These are some of the questions Herman addresses. She uses in-depth interviews with 22 victims of violent crime. Into what model of justice (if any) do their views fit? What she argues is that victims’/survivors’ views of justice do not fit well into either standard model, the retributive or the restorative. What then did they want? Validation from the community. Some wanted an apology. A few – the minority – wanted to make the perpetrators suffer. A few also had fantasies of killing the perpetrator. The priority was safety, for themselves and others.

Renée Römken in Chapter 7 focuses on the ‘paradoxical, contingent and even contradictory implications’ (p. 147) of the recognition of rights in this area. Her essay looks at the ‘flip side’ of rights as ‘trumps’.<sup>21</sup> She draws on examples from the USA and the Netherlands. She argues that the provision within American welfare law to support battered women is unsuccessful. It is intended to exempt battered women with dependent children from some of the cutbacks in welfare, but is at odds with the socially and politically dominant rhetoric underlying welfare reform, which stigmatizes battered women. The case study drawn from the Netherlands is concerned with a programme developed to respond more effectively to the victims of domestic violence and stalking. Römken shows how the implementation of this programme demonstrates a shifting of priorities from victim protection to prosecution of the offender. The result is effectively to exclude the majority of victims from entering the programme. Rights-based interventions thus may have unintended consequences: invocation of the law can be more detrimental and less emancipatory than its advocates hope (see Siegel, 1996).

## The Criminal Law

The literature on criminal justice responses to domestic violence is vast. This collection offers three examples. In Chapter 12 Carolyn Hoyle and Andrew Sanders ask the pertinent question: what is the point of making it a crime for men to assault their female partners (and ex-partners)? There are several reasons: criminalization emphasizes the moral unacceptability of domestic violence; it may deter; it enables the state to intervene (and this may deter others and enable steps to be taken to treat the perpetrator). Of course, all this can be said of crime generally. But domestic violence is not like other crimes: there are some instrumental benefits, but there are also ‘disbenefits’, most obviously more violence as punishment from the offender and the economic costs to the whole family of monetary penalties. Prosecution may be counterproductive. So what are the views of the victims? Hoyle and Sanders explore these.

<sup>21</sup> In Ronald Dworkin’s famous expression (1977, p. xi).