

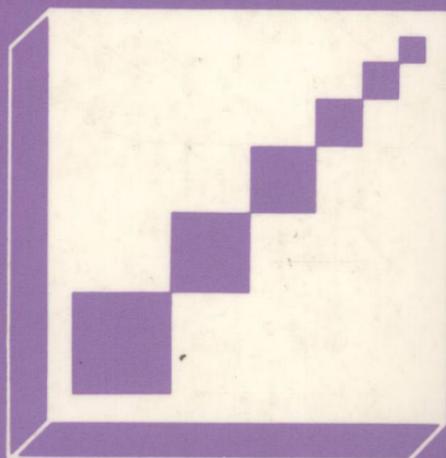
DOMESTIC VIOLENCE

The Criminal Justice Response

BY

Eve S. Buzawa

Carl G. Buzawa



STUDIES IN CRIME, LAW AND JUSTICE ■ Volume 6

DOMESTIC VIOLENCE

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This book is dedicated to the victims who have long suffered from the violence inflicted in their home. We can only hope that society will begin taking their pain more seriously.

On a more personal note, we are deeply grateful to our children, Aaron and Laura Buzawa, for sacrificing innumerable hours of time together in order for this work to be completed.

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Naturally, any errors or omissions are the entire fault of the authors.

Eve Schlesinger Buzawa
Carl G. Buzawa

Introduction and Purpose of this Book

What is the appropriate response to domestic violence? This complex question, still without clearly defined answers, is the subject of intense controversy and debate. As such, it has recently become an urgent topic for researchers, practitioners, and other professionals concerned with the study of the family and control of criminal activity.

This book will provide a brief overview of theories of causation of domestic violence and its prevalence in our society. Concentration shall, however, be placed upon the changing nature of how the criminal justice system responds to this problem and the opportunities and limitations of various new approaches being attempted. This work will not try to provide a policy manual or convince readers of the feasibility of a particular approach or set of solutions.

For purposes of this monograph, *domestic violence* will be defined as violence between heterosexual adults who are living together or who have previously lived together in a conjugal relationship. The term is broadly defined and it is acknowledged that definitions are largely dependent on descriptions by the police, assailants and victims, or both. Hence, the definition of family violence is societally based. This adopted definition is “gender neutral” as we see violence as a problem of both sexes (Gelles, 1972; Straus, Gelles, & Steinmetz, 1980). It should, however, be understood that some feminist writers have strongly objected to this perspective believing that it minimizes the disproportionate amount of male violence against women, ignores the “self-defense” aspect of much female violence, and discounts the component of male domination and power at the heart of feminist analysis (Bograd, 1988).

Since empirical research on domestic violence began in the 1970s, it has become clear that without societal intervention, a significant percentage of domestic violence cases escalate into more serious incidents over time. One estimate often cited is that 32% of victimized women will be revictimized within a relatively short time without effective intervention (Langan & Innes, 1986).

Escalation of minor acts of violence occurs when cultural norms forbidding violence in a family setting have, for whatever reason, been neutralized. Subsequent violence becomes permissible or tolerable and often increases in frequency and intensity over time. A history of past violence may also indicate that recurrent violence-provoking factors, such as stress or power struggles, exist within a family so that the family unit is unable to achieve non-violent resolution of these problems. Violence may therefore be used as a successful vehicle to achieve the batterer's immediate ends, that is, of winning a power struggle to dominate the family or perversely to achieve self respect. Unless intervention occurs, the success of violence reinforces the act and increases its pervasiveness in a relationship.

Traditionally, the primary social institution intervening in domestic abuse cases has been the local law enforcement agency. In fact, Dutton (1988) estimated that as many as 14.5% of all actual domestic assaults come into police contact, far more than to any other agency. Widely acknowledged as having a pivotal role, local police departments usually have the initial contact with violence-prone families; provide free service; are highly visible authority figures; maintain a central dispatch system; and are likely to be the only public agency in a position to provide rapid assistance on a 24 hour basis (Bard, 1973; Buzawa, 1979; Parnas, 1967; President's Commission on Law Enforcement, 1967; Wilt & Bannon, 1977; Wolfgang, 1958). The last factor is most significant, as shown in a study of one major city where it was found that only 15% of domestic violence calls were received by the police between 8 a.m. and 5 p.m. on weekdays (Pierce, Spaar, & Briggs, 1988). The remaining 85% of domestic violence calls are made at times when alternative service providers are generally not available.

Even if other services are available, they are not as widely known or accessible to the general public (Hanmer, Radford, & Stanko, 1989). Contact with the violent family by other local government agencies has instead traditionally been dependent upon police suggestions, voluntary referrals, the surfacing of child abuse, or sheer accident.

Prosecutors, in turn, are responsible for the evaluation of police actions when the incident results in an arrest; receiving and assessing the sufficiency of complaints requested by victims; and acting as the state's representative in the formal sanctioning of criminal conduct.

In addition to the direct impact of criminal justice intervention, these agencies indirectly define the parameters of permissible contact by criminalizing violence as out of bounds, thus, condoning behavior that does not result in an arrest or a prosecution (Hanmer, Radford, & Stanko, 1989). Hence, the criminal justice system not only functions as initial respondent, but also shapes the probable future response of other social agencies.

Although virtually all observers acknowledge the importance of the police and prosecutors' roles, by the early 1970s it was widely noted that their practices had been of limited effectiveness. In fact, the criminal justice response to domestic violence has been repeatedly criticized for neglecting opportunities to deter future acts of violence, and a general failure to respond to urgent requests for assistance by victims (Buzawa & Buzawa, 1985; Finesmith, 1983; Hanmer et al., 1989; Langley & Levy, 1978).

While the criminal justice response to domestic violence was clearly not ideal, this did not mean it would be altered. While researchers and practitioners had long acknowledged its role to be inappropriate and ineffective, traditional responses remained relatively unchanged for decades (Parnas, 1967).

Three key problems confronted any advocate committed to changing existing law enforcement and prosecutorial policies. First, police departments as institutions were historically remarkably resistant to change. This makes street level implementation of any directives problematic at best, and of necessity, focuses attention upon the methods used to facilitate actual behavioral changes.

The second problem has been a basic disagreement among the practitioners, researchers, and feminists over the central tenet of police policies. There has been a recurrent exercise of police discretion to avoid arresting domestic violence offenders whenever possible assuming it is allowed and supported by probable cause.

Finally, prosecutors have the same biases as the police. They perceive that use of discretion is an integral component of their job and apply it to filter out cases that lack sufficient public purpose to prosecute. In effect, prosecutorial discretion has historically been used to not only eliminate weak cases, but also those considered unimportant. To the extent that misdemeanor domestic violence is judged to be an insignificant crime, it is not surprising that there is a strong bias to continue dismissal of such cases regardless of any instructions to the contrary.

Despite the foregoing, the criminal justice system has changed structurally and to a somewhat lesser extent, operationally, in response to political and social pressures for a more activist role in handling domestic violence. Before the late 1970s, the statutory structure for handling domestic violence could charitably be described as "benevolent neglect." To the extent that domestic violence was even acknowledged by officials, it was considered only as one of many "family problems." Therefore, state assistance, if any, went to traditional social welfare agencies handling a variety of family problems. Until relatively recently, in the late 1960s, the problem was never formulated as being partially a result of the persistent neglect of government institutions to perform their responsibilities.

Since the late 1970s, an almost unprecedented wave of statutory change has directly tried to alter official responses to domestic violence, mainly by enabling warrantless misdemeanor arrests. During this time, 48 states and the District of Columbia have enacted legislation designed to modify official behavior. Such legislation, often the result of the interplay of pressure from feminist groups, actions of concerned legislators, and professionals in the criminal justice system, has markedly changed the underlying legal philosophy toward the problem of domestic violence.

While differing greatly in their scope and limitations, the new statutes expressly purport to make profound structural change in the response of government agencies to domestic violence. Such changes have primarily been concentrated in three areas: The police response to domestic violence, the handling of cases by prosecutors and the judiciary, and to a lesser extent, methods of educating the public to the problem and providing state funding for shelters and other direct assistance to its victims.

In light of these issues, Chapter 1 will provide a brief discussion of the controversy over the proper framework in which to study domestic violence and what is currently understood about its scope in American society. Chapter 2 will then discuss the historical basis of the "classic" pattern of non-interference. The remaining chapters of Part I will cover the characteristics of traditional policies; the critique advanced by researchers, political advocates, and modern administrators; and the factors that have contributed to the continuation of practices by insular bureaucracies even when these factors are no longer considered viable by their administrators.

In Part II of the book, Chapter 6 traces the external pressures which have led to the changes now being implemented. The remaining chapters present a detailed discussion of major improvements now being adopted or discussed: Removal of procedural barriers to official action, new substantive domestic violence laws, the increased use of arrests and of prior restraints upon known offenders, and the development of court sponsored mediation and counseling programs. Emphasis will be placed not only upon the specific reforms being attempted, but also upon the growing controversy over decisions to remove or sharply limit agency discretion. Similarly, because we believe that administrative/legal pronouncements and statutory changes do not automatically translate into operational alterations, concentration is not only given to the mandate of changes but also upon an assessment, even if preliminary, of the impact such changes have had upon the actual delivery of services.

PART I

The “Classic” Response
to Domestic Violence

1

Causation and Scope of Domestic Violence

Theories of causation of domestic violence can be loosely classified into three general categories: (1) individually focused theories, (2) those that examine family structure, and (3) those critically reviewing the legal, religious, and economic basis of how violence is structurally based in society.

To some extent, disputes among theorists who focus upon individual or small group etiology, or micro-analysis, versus those focusing upon societal determinants, or a macro-level analysis, are common in academia. The degree of intense controversy among such scholars may be due to profoundly different assumptions regarding societally defined roles of men and women and the ability of individuals to change behavior in such a context. This chapter does not purport to settle such disputes or argue that any particular analytical framework is superior. However, an initial theoretical grounding in the causation of domestic violence is necessary as particular theories of etiology have become implicit assumptions in certain methods of how the criminal justice system treats domestic violence, the primary focus of this monograph.

INDIVIDUALLY ORIENTED THEORIES

Theories focusing upon the individual assailant examine characteristics of the offender and, to a lesser extent, the victim, that increase the 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 (Straus, 1980); patterns of poor self-control and low self-esteem (Green, 1984); immaturity, depression, schizophrenia, and severe character disorders (Steinmetz, 1980); efforts to keep control despite poor communication skills;

commission of crimes by the offender outside the family (Hotaling, Straus, & Lincoln, 1989); the ability of assailants to externalize blame by rationalizing their actions and blaming their victims (Dobash & Dobash, 1979; Star, 1982); substance abuse, as it has been found that most domestic violence offenders use illegal drugs or excessive alcohol (Kantor & Straus, 1987); and the occupational environment of the offender, for example, the tasks and ideology of specific occupations that are theorized to predict rates of domestic violence with more accuracy than social class or parental violence (Steinmetz, 1980). It has been noted that minority groups, perhaps because they are subjected to a higher level of stress, higher rates of broken families, or as a correlation with poverty, have had higher rates of domestic violence (Steinmetz, 1980).

Finally, Hotaling et al. (1989) found assault to be a general pattern of interaction that does not limit its victims to family members. They found men who assault children or spouses are five times more likely than other men to also assault nonfamily persons. While this same pattern was found with female offenders, the strength of the correlation was substantially weaker.

One variant of an individual centered approach posits that differences exist between victimized women and others. The suggestion is that certain victim attributes may distinguish victims that report multiple incidents of domestic violence from single-event victims (Pierce & Deutsch, in press; Skogan, 1981; Snell et al., 1964). For example, it has been theorized that although most people modify their behavior to avoid future victimization, repeat victims are, like offenders, unable to change behavior patterns.

For this reason, victims of repeated acts of domestic violence were, in earlier psychiatric-orientated articles, termed to be masochistic (Snell et al., 1964) and in later research were termed to be "trapped" by perceptions of their role (U.S. Department of Justice, 1981, in Pierce & Deutsch, 1989). However, Hotaling and Sugarman (1986) in an empirical analysis of the National Family Violence Resurvey could not find a single risk factor that distinguished female victims of minor violence from female victims of severe violence. Also, such psychologically based theories analyzing victim responses to violence may ignore historical traditions condoning familial violence, the superior economic and physical power enjoyed by most men, and the impact of fear of retaliation if a battered woman tries to leave or alter her relationship with the offender (See especially Graham, Dee, Rawlings, & Rimini, 1988, for analysis of how the battering experience itself may limit her perceived options, and how the psychological effects of being battered situationally create the observed phenomenon).