



Working Paper No. 2

Historic portrayals of domestic abuse vary between comic depictions of angry husbands being driven to violence by ‘nagging’ spouses to Victorian melodramas about tyrannical husbands and timid wives. Moreover, whilst there is clear evidence that domestic abuse has been present since Roman times there is complex history to the violence that passed between intimate partners from the late eighteenth century to the present (Godfrey and Lawrence 2014). Writing a history of family violence focused on Boston 1880-1960, Gordon (1988) observes that public and political concerns about domestic abuse from the late nineteenth century onward have ebbed and flowed with the absence and/or presence of feminist voices. Indeed, historically campaigns for equality in public life were frequently interconnected with concerns about private life as shall be seen below. However historically speaking it was never the case that a man could beat his wife with total impunity. There were ‘acceptable’ limits.

The notion of the ‘rule of thumb’, that husbands could physically chastise their wives, so long that the stick that they hit them with was smaller than the circumference of a man’s thumb, is mythical (Simpson 1984), but indicates some understanding of acceptable boundaries of abuse. In the 18th century husbands were meant to have financial responsibility for their spouses, and to regulate their wife’s public and private behaviour. “Scolds”, ‘nags’ and ‘outspoken women’ could be disciplined without comment by neighbours or friends. If, however, the abuse overstepped community norms – was too public, was too violent – then community sanctions came into play. Crowds banging pots and pans outside someone’s home (Rough Music) indicated that a husband should reign in their violence. There was little challenge to either the violence or the protest by the lawful authorities. Indeed, even after Borough and County police forces were introduced from 1835, their authority seemed to stop at the front door. Few nineteenth century police officers would cross the threshold unless the violence being meted out was extreme, or the offender was known as a public nuisance (Emsley 2005; Tomes 1978). However, the ascent to the throne of Queen Victoria in 1837 introduced a period of change unprecedented in previous eras.

During the nineteenth century the ideals surrounding domesticity and their distinction between the public and private spheres of life for men and women became embedded in Victorian life and whilst these ideals did as much to mask and excuse male violence(s) they were also the backcloth against which social changes occurred (Clark, 2000). Most of these changes related to family law. However, there was one stand-alone change to criminal law dealing specifically

with domestic violence. The 1853 Criminal Procedure Act (also referred to as the Act for the Better Prevention and Punishment of Aggravated Assaults upon Women and Children) was the first legislative attempt made to limit the level of 'chastisement' a man was entitled to give to his wife or children. This was a legal landmark, through which authorities indicated that not all domestic violence was acceptable (Clark: 2000, Weiner: 2004) as opposed to its social unacceptability of earlier times. However under this legislation a husband might receive a six month prison sentence for assault resulting in financial hardship for his wife and his family and not surprisingly, facing the prospect of reprisals on his release, this was neither an easy nor a popular course of action for women to choose. It nevertheless placed concerns about domestic abuse in the legal domain (Williams and Walklate, 2020). In many ways greater gains were made for women in the realm of civil law changes rather than the criminal law.

The 1857 Matrimonial Causes Act allowed women to divorce their husband on the grounds of cruelty alone (previously they would have had to prove that their husband had deserted them or was in a bigamous relationship). However, in 1878 Frances Power Cobbe had a highly influential article published in the *Contemporary Review*. Its title, 'Wife Torture in England' speaks volumes about its contents. This article had a dual focus in the attention it paid to both the physical and the mental torture endured by women particularly the absence of rights should they choose to leave their marriage. Should they choose this course of action they cut themselves off from the means to live. The 1878 Matrimonial Causes Act, influenced by the writings of Power Cobbe, gave magistrates the power to order the husband to pay a weekly sum for the maintenance of their wife and children. Later the Summary Jurisdiction (Married Women) Act of 1895 gave women the power to make the decision to separate from their husbands themselves. As D'Cruze (1998: 11) notes, 'this legislation meant that the magistrates' courts became a more frequent resort of women subject to violence by their husbands, and magistrates took on the role of both "marriage menders", and overseers of separations'. These courts were often a site for contested allegation, theatre, telling of intimate details, and accusations on both sides. Wives prosecuted husbands for common assault but withdrew the allegation once they had given evidence, shaming their partner in open court, sometimes before a sizable audience. The act of shaming being punishment enough.

By the end of the nineteenth century the creation of prosecution agencies (such as the Associate Institution for Improving and Enforcing the Laws for the Protection of Women and the National Society Prevention of Cruelty to Children) helped to propel more cases into court. By the end of this century too, the potential for both criminal and civil interventions in relation to domestic abuse on behalf of women (and children) had made their presence felt. Indeed, as Hammerton (2002) has observed, the law led the way in reinforcing slowly changing public attitudes towards domestic abuse if largely infused with Victorian middle class presumptions of respectability with arguably the work of Walkowitz (1980) standing as testimony to the import of these presumptions. Moreover police attitudes during this time largely reflected those of the middle classes (that proper men built their careers, looked after their property, their families and did not hit their wives), As Clark (2000:40) intimates: 'Women's economic dependence on men and the persistence of a domestic ideology mandating their submission limited the effectiveness of legal changes of the nineteenth century in significantly reducing the incidence of domestic violence'.

Changing Attitudes? 1900-1970

The powerful presence of the Suffragette Movement continued to make its presence felt in campaigning for women's right to vote on the same terms as men (not achieved until 1928) but

the advent of both World Wars put a wide range of domestic concerns on hold. Whilst the Women's Police Service was established in 1914 and the first woman called to the bar was in 1922, the 1918 Income Tax Act classified married women as "*incapacitated persons*" along with infants and lunatics, suggestive of the extent of work that remained to be done in relation to the wider issue of social equality for women. A further notable landmark during these years was that attributed to Eleanor Rathbone, elected as an independent Member of Parliament in 1922 whose campaign for the Family Allowances Act finally succeeded in 1945, was a remarkable milestone for women and their capacity for some financial independence from men.

Both World Wars in their different ways ensured the Victorian ideals of domesticity (women as homemakers and carers, men as breadwinners and providers) became deeply rooted family values. Indeed, the push to move women out of the workforce and back into the home was epitomized by the powerful influence of the work of John Bowlby and its focus on the contribution of maternal deprivation to juvenile delinquency. Moreover, during the 1950s the prevailing values associated with (private) domestic life were matched by the reluctance of the police and/or social work professionals to officially interfere in this private domain, and only to unofficially intervene if the violence was excessive, or the perpetrator was already "known to police". For example, Nottingham, police officers recalled returning drunken husbands back home after a night out in the 1950s. If there was evidence that their wives had been assaulted earlier that evening or were in danger of being assaulted after the officers left, then they would put the husband out of action for the evening. They were careful only to beat up men who 'could take it'. Abusive men who they considered unmanly enough to take a beating, or who would make a complaint against them, they prosecuted for drunkenness (much easier to get a conviction for drunkenness than for domestic violence) (Godfrey 2014). It is likely that such practices were not unusual.

The silence perpetuated by permissive values surrounding men's violence(s) towards women (and children) prevailed until the emergence of what is now called second wave feminism during the 1960s. The publication of Betty Friedan's book 'The Feminine Mystique' in 1964 captured the mood of a generation of women (mostly middle class women) for whom a life of domesticity held increasingly less appeal. This was just one of a number of significant interventions during the 1960s, alongside the events in Paris in 1968, the Vietnam War, what came to be called the 'swinging sixties' and the increasing availability of contraception, all of which contributed to the growing presence of women's voices. Some of which focused on violence(s) against women and their treatment in the criminal justice process.

Changing Attitudes? 1970-2020

Against the backdrop of the political, social, and cultural changes generated during the 1960s, the 1970s marked the beginnings of wider concerns about violence against women (and children). The death of Maria Colwell in 1973 at the hands of her stepfather was one moment in which the tide began to turn against viewing the private domain as not a place for public intervention. Others followed. The first Rape Crisis Centre was established in London in 1972 and the first Women's Refuge in Chiswick in 1977. Notably, according to Goodmark (2018) the 1970s prepared the ground for the emergent and subsequent focus by many in the feminist movement on invoking the criminal more to be both more effective, and better implemented in tackling domestic abuse. In sum there emerged a strong view that more law would provide an answer to tackling such abuse. This view informed in part Wilson's (1983) book, 'What is to be done about violence against women?'.

Such feminist informed campaigns did much to secure gains in civil proceedings during the 1970s, but it was the Women's National Commission brought together in the mid-1980s which brought violence against women to the attention of government (Smith 1989). Work conducted during the 1980s clearly illustrated that as far as policing was concerned the paternalism of the earlier part of the century maintained. Domestic violence was most frequently not seen as 'real' policework and even when all the conditions were met to make an arrest for such violence this often did not happen (Edwards, 1986; 1989). Even in cases where the woman was keen to pursue a prosecution the police were not (Dobash and Dobash 1980) choosing instead to believe in the 'myth of the reluctant victim' (Stanko 1989). The Women's Commission drew attention to two issues in particular; the police handling of rape cases and the need in cases of domestic violence to ensure the future safety of the victim. (Smith 1989). These concerns in turn influenced Home Office Circulars 69/1986 and 60/1990 both of which marked turning points in the expectations associated with policing policy and practices on rape and domestic violence.

Other legislative changes were also significant (like for example, including the possibility of marital rape in 1991) and the increasing presence and growth of victim support organisations (like Rape Crisis and Victim Support) ensured that violence(s) against women maintained their visibility on policy agendas from the 1990s onward. Despite these and many other policy developments and initiatives since the early 1990s the view that domestic violence is not really policework still lingers. For example, the 2014 report of the HMIC Inquiry into the policing of domestic abuse concluded:

Domestic abuse is a priority on paper but, in the majority of forces, not in practice. Almost all police and crime commissioners have identified domestic abuse as a priority in their Police and Crime Plans. All forces told us that it is a priority for them. This stated intent is not translating into operational reality in most forces. Tackling domestic abuse too often remains a poor relation to acquisitive crime and serious organising crime. (HMIC, 2014, 6)

This is a telling observation made in the face of policies encouraging a pro-active response which had been available to the police since Home Office Circular 60/1990.

In the context of the courts it is possible to discern a range of activity during this time equally positive in its intent. Major legislative changes include the Domestic Violence, Crime and Victims Act 2004, the introduction of a standalone offence of coercive and controlling behaviour in 2015, and the Domestic Abuse Bill (2019) going through parliament at the time of writing. With Specialist Domestic Violence Courts rolled out across England and Wales during 2005-6 (since pulled in the interests of austerity). Other legislative changes have included making the sharing of sexual images without consent illegal (2015) and a re-thinking of what provocation might mean for women who kill their male partners.

Conclusion: What has changed?

There has undoubtedly been a significant change in public and professional attitudes towards domestic abuse, and the criminal justice system has come a long way toward supporting victims of abuse much more than was the case in the late eighteenth and nineteenth centuries. By the late nineteenth century, notions of 'reasonable chastisement' were disappearing; by the late twentieth century, women who suffered abuse were seen to be entitled to support, a refuge as

a place of safety, and the protection of the police and the courts. Policing and prosecuting domestic violence on an *ad hoc* basis, with the frequent use of unofficial, illegal, or community sanctions, has given way to a more systematic and professional system. Yet, there was still chronic under-reporting of domestic abuse and ever-present media reporting on the suffering women (and children) can be subjected to. However, many of the assumptions about femininity, masculinity, and the in/appropriate use of violence in domestic settings in use today are still historically-conditioned – attitudes take a remarkably long time to change– and there is clearly still a lot of work to be done in this respect. What history seems to be telling us is that, no matter what changes are made to the *response* to domestic abuse, only greater levels of political and economic equality between the sexes will bring about an embedded and fundamental change in the *level* of domestic abuse.

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