

The Nexus of Sex, Spousal Violence, and the State

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Anne Campbell, *Men, Women and Aggression*. New York: Basic Books. 1993. 196 pp. \$22.00.

Ann Jones, *Next Time, She'll Be Dead: Battering and How to Stop It*. Boston: Beacon Press. 1994. 288 pp. \$22.00.

Lawrence W. Sherman, *Policing Domestic Violence: Experiments and Dilemmas*. New York: Free Press. 1992. 442 pp. \$35.00.

It is a pleasure to write a review essay on three books that reveal the profound division among scholars in ongoing debates about the intersections among gender, violence, and the state. Prior to the contemporary women's movement, there was a denial of spousal violence in academic, legal, and social discourses. The focus of academic studies was violence among male strangers, and research on the family seldom examined violence between intimates. For example, from 1939 to 1969, the indexes of the *Journal of Marriage and the Family* contained no references to spousal violence (Schechter 1982). The silence of the social and legal system is apparent in early court decisions which argued that "if no permanent injury has been inflicted, nor malice, cruelty, nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forgive and forget" (uncited case referred to in *Thurman v. City of Torrington* 1984:1528). With the advent of the women's movement in the early 1900s and its reemergence in the 1960s,

I would like to thank Nancy Cauthen, Kathleen Dunleavy, Shoshanna Garfield, Kathleen Gerson, Robert Jackson, Louise Roth, Robin Tamarelli, Vanessa Barker and students in the gender, politics and law class at New York University for their helpful comments. I would also like to thank Bette Sikes for her careful editorial assistance. Address correspondence to Jo Dixon, Sociology Department, New York University, 269 Mercer Street, 4th Floor, New York, New York 10003.

the hidden violence in women's lives was exposed by feminist grassroots activists, and state involvement became inevitable.

During the 1970s, radical feminist activists and academics defined women as a class and victims of spousal violence as evidence of male domination in patriarchal institutions, especially the family. Because victimization was defined in group rather than individual terms, the issue of male victimization was ignored and the problem of spousal assault was defined as a problem for women as a class. While activists recognized the role of the state in perpetuating female oppression, they also realized its potential for changing established legal and social practices regarding spousal violence. Consequently, they lobbied for state support of refuges where battered women could escape oppressive circumstances, increased opportunities for financial independence for women, and greater arrest and prosecution of male batterers by the criminal justice system. Just as the grassroots organizations and radical feminist researchers began to unmask the sexism in social institutions and lay out a framework for social and legal changes, liberal academicians and social service professionals gained ownership of the problem (Loseke & Cahill 1984). Consequently, the parameters of the debate dramatically changed from the family as a site of male domination to the family as a site of interpersonal conflict capable of being resolved by therapeutic intervention.

During the 1980s, while radical feminist activists lobbied for judicial and legislative reforms that would improve the status of women as a class, liberal feminists and academic researchers began conducting research to appraise radical theories characterizing the family as a patriarchal institution where men use violence to dominate and control women. The primary proving ground for theories of spousal violence became the family violence data collected in 1975 and 1985. In a study directed by Murray Straus, Richard Gelles, and Suzanne Steinmetz (1975), a large sample of married and cohabitating couples was interviewed to gauge their use of violence in conflict resolution. Results from both the 1975 and the 1985 replication suggested that violence is prominent in a quarter of American couples and that men and women committed almost the same number of acts of aggression toward their partners. Moreover, the data implied that males were slightly more likely than females to be victims of severe incidents of aggression (Straus, Gelles, & Steinmetz 1980; Straus & Gelles 1990).

These findings were anathema to the battered women's movement. Moreover, they stunned the research community, since all previous studies on violence reported sex asymmetry with males being more violent. Trying to explain why family violence was sex symmetrical while other forms were sex asymmetrical, Straus developed a sex-neutral theory of spousal violence

which focused on individuals and family conflict rather than on women and male domination. He argued that the intensity of emotions coupled with the stresses in family life promote frustration and aggression for husbands and wives such that the sex differences in the rates of violence found in the public sphere are absent in the private sphere. This theory became widely articulated when Straus (1990) published "The Marriage License as a Hitting License." The focus of much academic research on spousal violence at this point moved from explaining male violence toward women to explaining the forces which propel some individuals to employ violent conflict tactics in marital dispute resolution. This sex-neutral conception of spousal assault challenged the rhetoric of radical feminist activists and radical academic theories that focused on the family as the major site of male domination.

Inspired by the findings of Straus, others began endorsing and publicizing the sex-neutral view of spousal assault. The sex-neutral representation of spousal violence was epitomized in the work of Steinmetz (1977–78) who proclaimed the existence of a "battered husband syndrome" analogous to the "battered wife syndrome."

As social scientists and public policymakers increasingly relied on the findings from the family violence studies, representations of gender and violence as a sex-neutral family problem in the academic realm spilled over into the public discourse and state responses. Hence, social and legal discourses changed from a sex-specific focus on wife abuse to a gender-neutral one on family violence. The victimization status attributed to women in the 1970s was extended to men in the 1980s, and the problem of spousal violence in the United States changed from a woman's problem to a family problem.

As family conflict discourses replaced male domination rhetoric, the state began backpedaling. As had happened in domestic violence campaigns during the Progressive movement, feminist discourses proposed by activists were displaced by therapeutic discourses and the state employed experts to define and intervene in family matters (Pleck 1987; Loseke & Cahill 1984). State policies offering shelter and jobs to battered women and their children were replaced with state therapeutic intervention in family conflict by the police and family courts. Money once given to the shelter movement and women's groups was reallocated to criminal justice agencies. Police crisis intervention and court diversionary family counseling became the criminal justice response to spousal assault. By 1980, over 70% of police departments were training police officers in family crisis intervention (Dobash & Dobash 1992), and most spousal assault cases brought to the attention of the court were handled in civil family courts. The emphasis on crisis intervention by police and counseling by

police and court social workers inspired by the family violence researchers reinforced the disparate treatment of public and private assault whereby spousal assault was treated as a private family problem best resolved through informal or civil dispute resolution rather than through criminal procedures.

In recent years there has been a slow erosion of police crisis intervention and family court diversion responses to spousal assault. When results from the Minneapolis Domestic Violence Project revealed that arrest deterred spousal assault more than police crisis intervention and court counseling programs (Sherman & Berk 1984), policymakers began to question the efficacy of family intervention strategies. Police and court therapeutic interventions were also eroded when several lawsuits were won arguing the failure of the police to provide adequate protection for spousal assault victims (*Thurman v. City of Torrington* 1984). Knowledge about the failure of crisis intervention and family counseling approaches to spousal violence became public against a background of growing concern about increased violence and criminal justice softening. By 1984, drawing on the testimony of evaluators of the Minneapolis Domestic Violence Project, medical and social service workers, battered women's activists, and battered women, the U.S. Attorney General's Task Force on Family Violence recommended that family violence be treated as a criminal activity to be handled in criminal rather than civil courts (U.S. Department of Justice 1984). Given this context, legislators began proposing mandatory or preferential arrest and criminal prosecution policies for handling spousal assault (Lengyel 1990).

The books of Anne Campbell, Ann Jones, and Lawrence Sherman were written against a backdrop of these recent debates. Because they offer alternative discourses about the relationship between gender and violence along with differing discourses about law, they envision alternative state interventions to empower those they define as the victims of spousal assault. For example, Anne Campbell describes spousal violence as a private family dispute problem for men and women best handled by informal dispute processing. Antithetically, Ann Jones argues that spousal assault by men is a public problem requiring a civil rights solution for women. Finally, Larry Sherman maintains that spousal assault is a criminal act that should be handled, like all criminal offenses, at the discretion of police and criminal courts. Given that the legal system will continue to be a site for struggles over the issue of spousal assault, it is important to examine alternative academic discourses on gender and spousal violence, how legal practices are constituted by these academic discourses, and which individuals or institutions are empowered by alternative intervention strategies. Reading these books together encourages one to question anew the complex nexus among sex, violence, and the state.

Empowerment via the Female Voice

Anne Campbell, unlike the other two authors, begins with a discourse that uncritically accepts the findings of the family violence studies which designate the victims of spousal violence as equally male and female. For those familiar with the sex-symmetry debate, this is not surprising since Campbell, like Straus, defines violence in terms of the acts of the perpetrator, while the other two authors define violence in terms of its consequences for the victim.

In fact, much of the confusion created by these debates comes from a failure to distinguish between aggression and violence. Those who talk about *aggressive acts* point to the sex symmetry of Straus's research and conclude that males and females are equal victims of spousal assault. Antithetically, those focusing on *injurious consequences* direct attention to police and victimization data that show the overwhelming majority of spousal assault victims are female. Campbell's courageous pursuit of female aggression is commendable and fills a gap in the current literature on this topic. Her book demonstrates that female aggression is not a contradiction in terms and offers a refreshing digression from research which defines women by their victimhood and refuses to come to terms with female aggression. However, I do not think that a recognition of *sex symmetry in spousal aggression* discredits arguments about *sex asymmetry in spousal violence*. If males and females using the same level of aggression vary in the levels of injury they inflict on their victims, then is this sex symmetry in violence? For example, if Jim hits Jane causing internal injuries, is it the same as Jane hitting Jim with little injury? Moreover, if females hitting males are disproportionately acting in self-defense, then is this sex symmetry in violence? Campbell's argument would have been more persuasive if she had not made the inferential leap that equated equality in aggression with equality in violence. As a reader perfectly willing to accept her sex symmetry thesis about *aggression*, I was frustrated with the attempt to equate it with sex symmetry in *violence*.

While Campbell is willing to uncritically accept the sex-symmetry rates of spousal violence offered by the family violence studies, she is less willing to accept the sex-neutral theory offered by Straus. Campbell replaces his sex-neutral theory of family conflict with a gendered theory that considers sex differences in the intersubjective understandings of husbands and wives. In the tradition of Gilligan (1982) and Tannen (1990), Campbell offers a theory of aggression that privileges the differences between males and females in explaining the divergent paths that lead husbands and wives to assault their spouses. While most authors employing the difference perspective argue that sex differences in the male and female voice explain sex differences in behavior,

Campbell argues for sexual equifinality—that the same pattern of acts of males and females can be the result of different causal processes.

Campbell supports her argument by examining gender contrasts in talk about aggression by eight male and eight female friends invited to two evenings of sex-segregated discussions of their own experiences with aggression. She then uses the contrasts in male and female social representations of aggression to explain the divergent reasons husbands and wives faced with frustrations resort to aggressive acts in resolving marital conflicts. After analyzing her data, she concludes that male spouse abusers use aggression instrumentally to impose control over their wives while female spouse abusers use it expressively to delineate a temporary loss of self-control when relationships are threatened. “[I]n men’s accounts of aggression, we are told what it is like to take control, in women’s accounts we hear about what it means to lose control” (p. 7).

Again Campbell makes an inferential leap when she equates representations of *aggression* given by her *friends* with representations of *spousal violence* given by *spousal assault victims*. A more appropriate sample would have been a group of battered spouses. I suspect that the voices using this type of sample may have given her a very different picture, since trying to endure the behavior of an aggressive spouse is qualitatively different from trying to survive an ongoing violent spouse. While representations of aggression and violence both may be linked to sex, it is dangerous to equate the two.

According to Campbell (p. 7), “the search for a single theory of aggression will have to be abandoned in favor of a search for two theories.” Attempting to do for frustration-aggression theory what Carol Gilligan did for moral development theory, Campbell creates a “his” and “her” theory of frustration-aggression in marital relationships.

Because her research builds on a binary gender theory, it is not surprising that the only significant differences in representations of aggression in marriage given by male and female respondents are based on sex. This theoretical and methodological trap almost guarantees that one will find an oppositional discourse based solely on sex differences. By privileging sex differences in representations of aggression, Campbell essentializes male and female differences while silencing other differences. Why is the sex difference privileged above those based on class, race, and ethnicity? Perhaps there are as many theories of frustration-aggression as there are disenfranchised voices. Given a unidimensional focus on sex, it is not surprising that her subjects’ representations of aggression are described in the same oppositional terms as the shared Western cultural understandings of male and female behavior. Campbell offers her theory as a general theory,

but we must ask whether a theory based on the instrumental male and the expressive female is culturally and historically specific. For example, are fighting women in Australian aboriginal society afraid of losing control (Burbank 1993; Stacey 1994)? Are the representations of aggression she presents the male and female voices or the voices of males and females socialized in Western society during a particular historical period? Furthermore, how does this binary discourse deal with battering by lesbians?

Since Campbell accepts the sex symmetry thesis of spousal assault, for her the foundations of male domination do not lie in male violence against women in the private sphere. Rather, they lie in the institutionalization of male representations of aggression in legal discourses concerning assault in the home. Accordingly, law is a patriarchal institution because it represents male discourses about violence. To illustrate this point, she describes (p. 145) the “collision between . . . [women’s] understanding of their aggression and that of the male-dominated criminal justice system.” Since Campbell accepts that males and females are equally violent, gender inequality cannot be explained by sex differences in violence. Rather, subordination resides in gendered legal practices that privilege instrumental male representations of violence. Thus, to end male domination, legal practices which privilege male discourses about aggression based on instrumentality must be changed. Women must give expression to female representations of violence based on expressiveness. Only through consciousness raising can feminists eliminate legal practices subordinating the female voice to the male voice.

Campbell criticizes liberal legal strategies of empowerment that promote gender neutrality while maintaining a silent male referent. She offers an alternative political strategy that affords the female voice the same legitimacy as the male voice in law. Thus, empowerment consists of women voicing their representations of spousal assault and institutionalizing the female voice alongside the male voice in legal practices. As an illustration of the predominance of the male discourse in current law, Campbell points to the “reasonable person” standard in self-defense cases of domestic homicide. According to Campbell, “*reason* to a man means a detached appraisal of threat and the use of appropriate violence” while “*reason* to a woman means holding to nonviolence until self-control finally snaps under too much exploitation” (p. 152; emphasis in original). After delineating the voice of the reasonable male and the reasonable female, Campbell argues that the voice of the reasonable person in legal discourses is synonymous with the voice of the reasonable male. Moreover, until the female voice is heard, the reasonable person will be constituted by the reasonable male voice.

Campbell’s reliance on the male voice in law as the basis for male domination is attractive in terms of its simplicity but is prob-

lematic when one turns to the arduous task of developing a legal strategy which gives equal voice to male and female representations of spousal violence in legal discourse. Are we to assume that the male voice in current legal discourses about spousal assault is a unitary male voice? Similarly, are we to assume that there is a unitary female voice to be introduced into current legal discourses on spousal assault that will represent the voices of all women regardless of class and race? While Campbell rightly defines law as a discourse that empowers some voices over others, it is not clear why that voice is based solely on sex.

If we accept the oppositional analysis of spousal violence based on the male and female voice offered by Campbell, then our only legal recourse to current reasonable person standards based on gender neutrality which silently represent the male voice is to choose between the validity of male and female voices or to create "his" and "her" reasonable person standards. If we move from thinking about men and women in the gender-neutral terms of Straus and employ the oppositional terms of Campbell, might we institutionalize the two voices? Recently, some have argued for reducing the impact of sex bias in reasonable standards of self-defense without creating two standards. They wish to introduce the cultural and historical circumstances and experiences surrounding the defendant's perspective to judges and juries without denying or essentializing gender (Schneider 1992; Maguigan 1991). In this way, men and women can be regarded as reasonable in a specific historical and cultural context without adding the additional burden of constructing men as instrumental actors and women as expressive actors.

Strategies of empowerment which reproduce females as expressive and men as instrumental in legal discourse may serve to reproduce current gender ideologies. More important, they may give legitimacy to these constructions of gender. Perhaps empowerment might involve changing social constructions of gender rather than reproducing and legitimating them in legal ideology. Campbell's dualistic model of aggressive behavior based on the instrumental male and expressive female voices may offer short-term legal empowerment, but the long-term social disempowerment created by giving legitimacy to this dualistic conception of male and female aggression is hard to escape.

Empowerment via Equal Protection

Ann Jones offers a discourse on gender and violence that consistently diverges from that of Straus or Campbell. Unlike Straus who emphasizes "sameness" and Campbell who emphasizes "difference," Jones emphasizes "dominance." Because her representation of the relationship between violence and gender concentrates on the physical dominance of women by men, she

offers a strategy for empowering women as a class that champions the absolute right of women to be free from bodily harm.

Rejecting Straus's and Campbell's portrayals of spousal assault victims as equally male and female, Ann Jones insists that domestic violence victims are overwhelmingly female. Jones is highly critical of the family violence studies and berates them for deflecting "attention from male violence against women by recasting 'family violence' as an unfortunate but egalitarian problem" (p. 154). Unlike Straus and Campbell, who submit that males and females are equally battered by their spouses, Jones contends (p. 162) that "all battered women have only one significant characteristic in common—they are all *female*" (emphasis in original). According to Jones (p. 155), the research which states that men and women batter at the same rate "continues to mislead the public and policy makers alike about the real nature and severity of male violence against women." Again, unlike Straus and Campbell, who define violence in terms of aggressive acts, Jones defines it in terms of injurious consequences. While Straus and Campbell try to make sense of the experiences of males and females whose spouses have engaged in aggressive acts, Jones limits her analysis to the class of individuals who have sustained the majority of injuries in spousal assaults—women.

Countering the claims of Straus and Campbell that spousal violence is as prevalent among husbands as wives, Jones cites evidence from studies using police, victimization, and emergency room data which shows overwhelmingly that spousal assault victims are female. For example, analyses of police and courts records in North America and Europe indicate that women constitute 90% to 95% of the victims of those assaults reported to the criminal justice system (Dobash & Dobash 1992). Given these data, Jones sets out to explain why judges, police, journalists, psychiatrists, social workers, academic experts, and even feminists deny women's everyday experiences of violence, use discourses that blame women, and deny women's constitutional right to freedom from bodily harm.

Jones locates the site of patriarchal practices that deny wife abuse or blame women in many institutions, but particularly in the legal system. Relentless attacks are made on those who obscure the relationship between sex and violence by employing discourses that either deny male violence against women or admit it and blame women for their victimization. Jones faults those who obscure the violent nature and sex specificity of spousal assault by employing terms like domestic violence, partner abuse, family dysfunction, and spousal dissonance. Even feminists are criticized for succumbing to pressures to change the name of their cause from that of a wife abuse movement to a domestic violence movement. The term "battered woman" is seen as problematic because it sets apart women who are victims of male vio-

lence as though they are a particular type of women. Putting the adjective in front of the male instead of the female, Jones prefers to see the victims of spousal assault as “women” who are in a relationship with a “battering man”: “We are likely to be betrayed by syntax as well, just as women *are beaten*, wives *are abused*, and children *are abandoned*. By whom? In the scholarship of sociology and psychology, and even in the columns of the local papers, women are less likely to be assaulted by men than by a deadly mob of abstract nouns (p. 86; emphasis in original).

As does Campbell, Jones warns of the dangers of the gender-neutral theory of spousal assault promoted by Straus. However, Jones locates the origins of women’s subordination, not in institutional practices that silence the female voice, but rather in the institutional practices in law and other institutions that deny women their constitutional right to be free from bodily harm. Although Campbell and Jones both view the legal system as a site of patriarchal practices, they disagree on the utility of civil rights as a source of empowerment for victims. Campbell’s work, which is reminiscent of Gilligan’s (1982), makes the case that rights talk represents the male voice in law. Jones, on the other hand, sees a role for civil rights in constructing a feminist jurisprudence.

In case after case, Jones illustrates how legal practices are deeply implicated in denying women equal protection. Jones affirms that the right to be secure in our persons is mentioned in the Bill of Rights, just as are freedom of speech, freedom of assembly, and freedom of religion. She then shows how the public/private distinction coupled with a hands-off policy for the state in private matters operates as a mask for inequality, protecting male violence against women. According to Jones (p. 35), “the law no longer explicitly states . . . that women have no right to be free from bodily harm, but in the peculiar way it contrives to avoid punishing women’s assailants, and in the devious ways it reasons about domestic harms, it enforces that ancient policy” (emphasis omitted). “‘In both due process and equal protection analyses,’ the court said, ‘the lesson of *DeShaney* is that if “law enforcement officials have authority to act [it] does not imply that they have any constitutional duty to act” ’ ” (p. 72).

Jones is chiefly concerned with empowering women by invoking women’s right to equal protection and due process. Thus, she posits a sex discrimination approach to the problem of spousal assault. Analogous to MacKinnon’s (1979) hostile work environment, Jones proposes that inadequate state protection from a “hostile home environment” impedes women from equally participating in society. Although women have gained the right, even the responsibility, to leave an abusive marriage, the legal system has conspired to keep abused women in their place within the traditional family in two ways. First, because women are not afforded shelter, housing, child care, adequate wel-

fare benefits, job training, and living-wage jobs, they cannot free themselves and their children from violence. Second, since the criminal justice system does not mandate arrest and prosecution for abusers, women continue to be sacrificed to preserve the institution of family. By showing how benevolent arrest policies coupled with blocked opportunities in the public sphere keep women in abusive marriages, Jones points to the futility of arrest policies that do not also offer victims shelter and job opportunities.

Jones's discourse on spousal assault breaks out of the confines of the sameness/difference dilemma in law by offering a dominance model of spousal assault. By defining sexual assault in terms of the subordination of women as a class, Jones offers women empowerment by making public that which Campbell and Lawrence Sherman define as individual and private. In addition, the dominance perspective on spousal assault provides a position from which to argue for state intervention based on the equal protection and due process clause of the Constitution.

But the discourse of the dominance model, like the difference model posited by Campbell, offers a binary gender discourse that may essentialize gender and reproduce itself in ways that disempower some classes of women. The social discourse and legal practices emanating from Jones's dominance/victim discourse may pose problems similar to those of Campbell's instrumental/expressive discourse. To link dominance to males and victimization to females produces an overdetermination that may obscure hierarchal differences related to class, race, and sexual orientation. African American and lesbian feminists have often criticized analyses using gender dualisms for their reliance on the experiences of white middle-class heterosexual men and women (hooks 1981; Crenshaw 1989).

Jones's suggestion for civil rights is premised on a universal conceptualization of woman, race, and sexual orientation. Moreover, mandatory arrest has the potential for empowering some classes of women while disempowering others. Recent research by Sherman suggesting that arrest actually increases the probability of future violence for a woman whose partner is unemployed provides empirical evidence that such a policy may have negative consequences for women of the lower class and women of color.

Empowerment via Selective Criminalization

Larry Sherman, like Jones, defines spousal assault as a woman's problem. Although the discourse in the book typically refers to victims and suspects, the victims in the police experiments he analyzes are almost exclusively female. The focus of the book is on police responses to domestic violence and the variable na-

ture of the deterrent value of arrest for different classes of women. Sherman cautions against Jones's call for a mandatory arrest policy for suspects in all jurisdictions and suggests that police should be given discretion in the arrest decision. Thus the strategies of empowerment he advocates are as much, if not more, about empowering the police as they are about empowering women.

Sherman begins by offering a solid research design capable of determining whether the mandatory arrest suggested by Jones or the conflict resolution offered by Campbell has greater promise for empowering victims of spousal assault by deterring future incidents of violence. He then reports on the findings from the various National Institute of Justice projects that empirically test the effects that arrest and conflict resolution have on reducing future episodes of spousal assault.

The Minneapolis Domestic Violence experiment, the first of a series of experiments directed by Sherman, supports Jones's proposition that arrest empowers women. The results from this study show that arrest provides a significantly greater reduction of repeated spousal assault against the same victim over a six-month period than do informal conflict resolution strategies employed by the police (Sherman & Berk 1984). Although the strength of these results points to mandatory arrest as the preferred policy for domestic assault, Sherman recommends against enactment of mandatory arrest policies, arguing (p. 3) that "the Minneapolis experiments did *not* prove" that "arrest would work best in every community, or for all kinds of people" (emphasis in original). A group of researchers led by Sherman replicated the Minneapolis experiment in five other cities. The findings from these studies that the deterrent effect of arrest varies across geographic and social contexts substantiate Sherman's earlier warnings regarding mandatory arrest for domestic assault (Sherman et al. 1992; Pate & Hamilton 1992; Berk et al. 1992).

Most of this book presents domestic violence as a police problem. The implications that the findings from the replications of the Minneapolis studies have for police responses to domestic violence are explored. Sherman offers a discourse on the relationship between gender and violence that challenges the dualistic discourses of Campbell and Jones describing women as a unitary class faced with a set of unitary patriarchal legal practices. The findings from the replication studies show that arrest deters future violence for women who are married to their partners and for women whose partners are employed. In addition, arrest actually increases violence for women who are not married and for women with unemployed partners. This presents a dilemma since some classes of women will be helped by arrest while others will be harmed with such a policy. The question then becomes whether we advance the interests of women as a class by utilizing

mandatory arrest, even if such a policy exists at the expense of lower-class and minority women. In addition to denying the unitary nature of women and their experiences with male violence, Sherman questions the unitary nature of the consequences of patriarchal practices across jurisdictions by revealing that arrest deters violence in the short run but escalates in the long run in cities with higher proportions of unemployed black suspects. Do we advance mandatory arrest in all jurisdictions, when we know that such a policy will probably have negative repercussions for minority victims living in areas of high unemployment?

After reporting the findings from the various replications, Sherman concludes that states requiring mandatory arrest on probable cause in cases of misdemeanor assault should be replaced with mandatory action chosen by police from a list of options to be specified by each police agency. In direct contrast with Jones's policy recommendations, he maintains that police should not be held civilly liable for failure to prevent future violence or serious injury because of failure to make arrests in misdemeanor spousal assaults.

To feminist critics, Sherman's conclusions from the police experiments are incomplete because they take the experiences of police seriously without giving adequate attention to the experiences of the female victims. Jones (p. 160) argues that "one of the most interesting things about the police experiments is that whenever women were asked about the repetition of assaults, their reports differed from official police records; women reported, for one thing, 'better results from arrest.'" Similarly, Cynthia Grant Bowman (1992) questions conclusions drawn solely in terms of the circumstances of the perpetrators with no attention to the socioeconomic circumstances of the victims, who often have few options other than police protection from future assaults.

From Sherman's perspective, the reverence for privacy in American society prevents the police from providing the protection demanded by Jones and Bowman. "Given a choice between privacy and prevention," Sherman (p. 213) says, "Americans choose privacy." Thus, the problem of the public/private dichotomy in liberal legalism rears its head. While Jones defines spousal assault as a public problem, Sherman and Campbell accept its privatization.

Although critics are correct that Sherman's research stresses the lived experiences of the police to the detriment of the experiences of the female victims, other research has looked at the effects of arrest from the victim's perspective. David Ford's (1991) interviews with victims of spousal assault in Indianapolis finds that battered women engage in active resistance when they employ arrest and prosecution as a power resource to try to determine the future course of their relationships. Thus, women

who file but later drop charges are not passive but are engaging in a rational power strategy as they attempt to manage conjugal violence. Ford warns that mandatory arrest and prosecution policies that limit battered women's control over criminal justice processes disempower battered women as they attempt to control or at least manage a violent conjugal relationship.

Findings from the police experiments on domestic violence suggest that we should not ignore the negative consequences that mandatory arrest has on future violence for minority and poor women. However, if the police experiments suggest the need for discretionary decisionmaking, it is not clear why Sherman maintains that the police rather than the victims should be accorded the discretionary power. Ford's research (1991) arguing for giving discretion suggests that empowerment for victims necessitates that discretion be given to victims rather than to police officers and/or prosecutors. Since victims have more knowledge of the suspect and the relationship than criminal justice officials, it seems they would be in a better position than police to judge the merits of arrest.

Conclusions

It is difficult to imagine that anyone would adhere to the assumptions of legal formalism after studying the history of legal responses to spousal assault. The nexus of sex, violence, and law clearly illustrates how gender identities are constituted by non-static academic and legal discourses institutionalized in state policies. Thus, feminists who seek to employ academic discourses to reform law must be ever conscious of the way each constructs and institutionalizes gender. It is this power that makes science and law the greatest allies and foes to feminists attempting to reform spousal assault laws.

Each of these books puts forth a reform strategy for spousal assault based on academic discourses about gender that view the relationship between sex and violence in terms of dominance, difference, or neutrality. Furthermore, these same reform strategies are reflective of legal discourses which delineate spousal assault as either a public or a private problem. Like the academic and legal debates surrounding legal reform of abortion and pregnancy law, debates over spousal assault grapple with the dominance/difference/neutrality models of gender and the public/private models of law.

The application of the dominance discourse to spousal assault developed by Jones offers a feminist politics and law that challenges the patriarchy of current laws by laying the groundwork for new interpretations of civil rights constituted from women's experiences with violence in the private sphere. However, the institutional practices derived from marrying a universalistic

dominance discourse on gender with a universalistic civil rights legal discourse are problematic. The dominance gender discourse restates an essentialist view of gender that portrays women as passive victims of male physical violence. By representing women as a unitary class of citizens defined by their powerlessness, the complex identities of battered women are reduced to a unitary class of helpless victims in need of universal civil rights. As Martha Minow (1987:62) states, "women fall into every category of race, religion, class and ethnicity, and vary in sexual orientation, handicapping conditions and other sources of assigned difference." Thus, the disparate stories and voices of active female survivors of battering are silenced by the universality of a dominance feminist discourse. Similarly, the universality of a civil rights legal discourse often disempowers those it seeks to help by dividing them (Bumiller 1988). Hence, combining a universalist dominance discourse on gender with a universal civil rights legal discourse on spousal assault only obscures the fact that patriarchal power relationships are tied to other power relationships based on class, race, and sexual orientation.

Repudiating the dominance gender model and the civil rights approach to spousal assault, Campbell offers a difference discourse on gender and a relational legal discourse more concerned with nurturing relationships among men and women than with asserting the civil rights of women. Approaching spousal assault from the perspective of difference discourses on gender challenges the patriarchy of current laws by giving legitimacy to interpretations of spousal violence constituted by the experiences of women. Still, the legal practices developed from the difference discourse on gender, like the legal practices derived from the dominance discourse, depict an essentialist view of gender. While the dominance discourse represents women as victim, the difference discourse defines women as expressive. The multiplicity of voices from battered women with varying identities and social representations of their experiences with male violence are reduced to one expressive female voice. As with the dominance gender discourse, the stories of women varying in race, ethnicity, and sexual orientation are silenced by the difference gender discourse on spousal assault. The relational legal discourse offered by Campbell also poses a problem, since it posits that spousal assault is individual and private rather than social and public. Thus, challenging the dominance gender and rights legal discourse with a difference gender discourse and relational legal discourse not only obscures the interaction of patriarchal power relationships with other power relationships based on class, race, and sexual orientation, it also privatizes the nature of those power relationships.

Sherman sets the stage for addressing the essentialist problems of the dominance and difference discourses of gender

as he recognizes “the great diversity of human populations” and the inequality of results “produced by equality or consistency of treatment” (p. 156). However, rather than exploring the many different voices of battered women located in intersecting power relationships, he silences the voices of all battered women, only to capture the voice of the police. Discarding the dominance and difference discourses on gender, he reverts back to the family conflict discourses that stress the individual and private nature of spousal assault. According to Sherman (p. 213), “[t]he idea that police can grapple with underlying causes of domestic violence, such as adultery, alcoholism, or just plain argumentativeness, strikes many people as too unlikely to believe” (emphasis omitted). Thus, while presenting a sex-asymmetrical sample of victims of spousal assault, he clings to a sex-neutral discourse on gender and violence. Agreeing that adultery, alcoholism and argumentativeness cause domestic assault, Sherman sees little role for the state beyond social control. The legitimation of spousal assault that occurs when the state privatizes spousal assault is unacknowledged by Sherman. With regard to a legal discourse, Sherman rejects the civil rights approach of Jones and the alternative dispute resolution approach of Campbell in order to advocate a social control approach that both privatizes spousal assault and empowers the state. Although Sherman points to the problems of mandatory arrest, it is unlikely that his state-centered stance based on the voice of the police will do much to enhance our understanding of the overlapping power relationships associated with law’s patriarchy.

As new public policies toward spousal assault emerge, it is important to recognize how the gender and legal discourses employed to create these policies naturalize and essentialize various representations of the nexus of sex, violence, and the state. Since the state as embodied in law is not simply an instrument wielded by men, it becomes a site of struggle where discourses about gender and law are produced and contested. The various representations of gender and law these authors offer attack the patriarchal state. However, let us not forget that they also naturalize and essentialize various representations of gender. As feminists continue to utilize discourses about gender and law in reforming institutional responses to spousal assault, we must be ever conscious that institutional practices constituted by gender and legal discourses reproduce themselves. Thus, gender and legal discourses about spousal assault are doubled-edged swords often giving rise to self-inflicted wounds.

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