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**Women Survivors' Experiences of
Legal Responses to Domestic Violence:
Therapeutic Possibilities?**

by
Kate Louise Paradine

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ABSTRACT

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WOMEN SURVIVORS' EXPERIENCES OF LEGAL RESPONSES TO
DOMESTIC VIOLENCE: THERAPEUTIC POSSIBILITIES?

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This thesis is based on 28 in-depth focussed interviews with women survivors of domestic violence which explored their perceptions and experiences of legal responses to domestic violence. The interviews were conducted and analysed using the theoretical framework and methods of Grounded Theory and feminist perspectives.

The research examines women's different 'pathways' through 'domestic violence law', including the criminal, civil and family law systems. Recent legal reforms focus on responding to domestic violence as a crime, holding perpetrators accountable, changing their behaviour and protecting 'victims'. In focussing on these aspects of 'domestic violence law' we miss crucial aspects of the meaning of law in survivors' lives. For the women in this research legal responses were part of breaking the silence surrounding domestic violence, seeking 'connections' with others, establishing power in the violent relationship and creating a new life apart from the perpetrator. Women's experiences reveal that, generally, legal responses failed to recognise these needs or to respond to the complex emotional journeys of surviving domestic violence. Legal responses also tended to silence, exclude and disempower women.

This thesis argues that there are 'therapeutic possibilities' for legal responses that 'heal' and 'serve' survivors of domestic violence. It is argued that we need to develop an understanding of the role of emotion in legal responses and in experiences of domestic violence and that empathy should be valued as central to legal practice. The thesis also argues that law should develop opportunities for empowering women at an individual and collective level.

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For Mum

I don't really understand the law.

There's a legal side.

And then there's another side.

(Emma, a survivor of domestic violence)

Introduction

*The fish can't see the ocean.*¹

*Those trained in the law learn to see the world in particular ways, and the particular ways come to be seen unproblematically as the only truth there is.*²

It may be traditional for a thesis to tackle a narrow topic in depth, but as this research progressed, and as the thesis shows, it became necessary to challenge the ways in which we think about domestic violence and law. The product of the research requires the reader to rethink established ways of understanding the relationship between the two in order to see the 'world' of domestic violence law as others see it. The danger lies in overlooking how difficult it is to change ingrained ways of thinking and to overcome the myths, prejudices and misunderstandings that are part of the problem of domestic violence.

Domestic Violence

The term 'domestic violence' is sometimes used to refer to all violence between family members.³ Here, in line with recent trends, the term refers to a pattern of behaviours, including physical, sexual, verbal, psychological, emotional and financial abuse, used by one partner against another in an intimate heterosexual or homosexual relationship, including current or former partners.⁴ Every term used to describe this kind of violence is problematic and incomplete, but the word 'domestic' is most commonly used to describe violence in this context.⁵

¹ Chinese Proverb.

² Schepple, K. (1989) 'Forward: Telling stories', 87 *Michigan Law Review* 2073-2098 at 2088.

³ Mirlees-Black, C., Mayhew, P. and Percy, A. (1996) *The 1996 British Crime Survey (England and Wales)*, Home Office Statistical Bulletin 19/96 (London: Home Office) at 27.

⁴ Home Office Circular 19/2000, *Domestic Violence*, Revision of Home Office Circular 60/90 (London: Home Office) at 3.

⁵ Thornton, M. (1991) 'Feminism and the contradictions of law reform', 19 *International Journal of the Sociology of Law* 453-474 at 460; Smith, L. (1989) *Domestic Violence: An Overview of the Literature*, Home Office Study No. 107 (London: Home Office) at 1-2.

Another problematic issue is that 'labels' are often given to those who experience domestic violence. The term 'women who experience domestic violence' avoids the connotations of weakness and defeat that are implied by the word 'victim', but is cumbersome simply due to its length. Some women see themselves as 'victims' at certain stages, but that definition is unlikely to adequately reflect their entire experience over time. The word 'survivor' focuses on the resilience, strength, resourcefulness and hope that many people reveal when they experience domestic violence.⁶ No one word adequately reflects the experiences of all women in this situation. In this study, the terms 'victim' and 'survivor' are used depending on the context. The latter is generally preferred because it reflects the stories of strength and hope that are at the heart of this study.

The recent Home Office review of existing research reveals our lack of knowledge about domestic violence.⁷ Whilst the secrecy and shame surrounding the issue means that we can not appreciate the full extent of the problem,⁸ we know that it is widespread. Research suggests that domestic violence has occurred to between one quarter and one third of women, depending on how wide a definition is applied.⁹ The 1996 British Crime Survey found that 22.7% of women and 14.9% of men reported being a victim of physical domestic violence at some stage in their lives.¹⁰ In 1998/9 the number of women killed by current or former partners was twice that of men killed in similar circumstances.¹¹ The cost of domestic violence in Greater London

⁶ Gondolf, E. and Fisher, E. (1988) *Battered Women as Survivors: An Alternative to Treating Learned Helplessness* (Massachusetts: Lexington Books).

⁷ Home Office (2000) *Reducing Domestic Violence ... What Works? Policing and Reducing Crime Briefing Notes* (London: Home Office).

⁸ Smith (1989) *op. cit.* at 6-14.

⁹ Mooney, J. (1993) *The Hidden Figure: Domestic Violence in North London* (Middlesex University and Islington Council) at 27; British Medical Association (1998) *Domestic Violence: A Health Care Issue* (London: British Medical Association) at 8.

¹⁰ Mirrlees-Black, C. (1999) *Domestic Violence: Findings from a New British Crime Survey Self-completion Questionnaire*, Home Office Research Study 191 (London: Home Office) at 18.

¹¹ Home Office (1998) *Criminal Statistics England and Wales 1998* (London: HMSO) at 71.

alone has been estimated at £278 million, which excluded the costs of prosecuting offenders and the costs associated with domestic homicide.¹²

One important question is that of who experiences and who perpetrates this kind of violence. Whilst domestic violence in homosexual relationships is an important and neglected issue¹³ the focus of this thesis is on violence in heterosexual relationships. Some researchers have claimed that violence by women against men is as much a problem as violence against women by male partners.¹⁴ These findings have been criticised for flawed methods, including the sampling of respondents, focus on physical as opposed to sexual or psychological abuse.¹⁵ Also, for ignoring the context of violence, including whether there is a pattern of abuse, precipitating events (was it self defence?), the injuries sustained and the social and economic contexts of relationships which mean that a man may have more opportunities to leave than a woman.¹⁶ Other methodologies reveal male violence as far more threatening and more likely to lead to serious injuries and increases in women's anxiety,¹⁷ as well as having different motivations in terms of asserting power rather than self defence and escape.¹⁸ British Crime Survey research in 1996 found that whilst 4.2% of both men

¹² Stanko, B. (1998) *Counting the Costs: Estimating the Impact of Domestic Violence in the London Borough of Hackney* (Bristol: Crime Concern) at 5; Also, see Crisp, D. and Stanko, B. (2000) *Reducing Domestic Violence ... What Works? Monitoring Costs and Evaluating Needs*, Policing and Reducing Crime Briefing Note (London: Home Office).

¹³ West, C. (1998a) 'Leaving a second closet: Outing partner violence in same-sex couples', in Jasinski, J. and Williams, L. (Eds) (1998) *Partner Violence: A Comprehensive Review of Twenty Years of Research* (California: Sage Publications); Goldfarb, P. (1996) 'Describing without circumscribing: Questioning the construction of gender in the discourse of intimate violence', 64(3) *George Washington Law Review* 582-631.

¹⁴ For a summary of this research see, Straus, M. (1993) 'Physical assaults by wives: A major social problem', in Gelles, R. and Loseke, D. (Eds) (1993) *Current Controversies on Family Violence* (California: Sage).

¹⁵ See, for example, Barron, J. and Harwin, N. (Spring, 1994) 'The myth of the battered husband', *Rights of Women Bulletin* 5-7; Dobash, R.P., Dobash, R.E., Cavanaugh, K. and Lewis, R. (1998) 'Separate and intersecting realities: A comparison of men's and women's accounts of violence against women', 4(4) *Violence Against Women* 382-414; Kurz, D. (1993) 'Physical assaults by husbands: A major social problem', in Gelles and Loseke (1993) *ibid.*

¹⁶ *ibid.*

¹⁷ Nazroo, J. (1995) 'Uncovering gender differences in the use of marital violence: The effect of methodology', 29(3) *Sociology* 475-494.

¹⁸ Hamberger, L., Lohr, J., Bonge, D. and Tolin, D. (1997) 'An empirical classification of motivations for domestic violence', 3(4) *Violence Against Women* 401-423; Also, see, Dasgupta, S. (1999) 'Just

and women said that they had been physically assaulted in the previous year by a current or former partner, women had higher risk during their life time and their chances of serious assault and injury were greater than men's.¹⁹ Women were more likely than men to experience threats, to be repeatedly assaulted and to seek medical help.²⁰ The level of fear and emotional upset was higher for women and had more long lasting effects, women were less likely to be in a financial position to leave the relationship and were at greater risk of violence after separation from their partner.²¹ Whilst this study accepts that some men experience domestic violence, the focus is on women who survive violence from male partners and their experiences of legal responses to that violence.

Women's Experiences of Legal Responses to Domestic Violence

In this thesis, the terms 'law' and 'legal responses' incorporate legal rules, practices, principles and procedures, legal institutions, agencies, and legal actors. 'Law' is also viewed as ideology, a system of knowledge that affects, and is affected by, people's everyday lives.²² The term 'legal actors' is used to refer to those who work most directly with 'law', including judges, police officers, family court welfare officers, barristers and solicitors. Other practitioners working with survivors of domestic violence, including social workers, housing officers, health practitioners, women's refuge workers and counsellors, use legal tools more indirectly. Like legal actors they can be involved in the work of lawyering or 'doing law'. "Legal consciousness" is used to describe the ways in which we understand and use law.²³

like men? A critical view of violence by women', in, Shepard, M. and Pence, E. (Eds) (1999) *Co-ordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond* (California: Sage).

¹⁹ Mirrlees-Black (1999) *op. cit.* at 61.

²⁰ *ibid.*

²¹ *ibid* at viii.

²² Sarat, A. and Kearns, T. (Eds) (1993) *Law in Everyday Life* (Michigan: University of Michigan Press) at 8.

²³ Merry, S. (1990) *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans* (Chicago: University of Chicago Press) at 4.

Research suggests that women who experience domestic violence do not perceive legal responses as addressing their problems²⁴ and only a small proportion of victims come into contact with the legal system directly.²⁵ For example, in the 1996 British Crime Survey over half those who identified themselves as having experienced a domestic assault said they had not told anyone about the last attack.²⁶ Only 17% of victims said the police were aware of one or more incidents in the previous year.²⁷ In one study 47% of the women from ethnic minorities interviewed about their experiences of domestic violence had had no contact with the police.²⁸

Some research suggests that women who do make use of the law are often not satisfied with the services they receive and feel angry, frustrated and disappointed in legal responses.²⁹ Help has been found to be neither comprehensive nor easily accessible.³⁰ The criminal legal system has been criticised for failing to give protection to victims of domestic violence and not holding violent men accountable for their violence by failing to arrest, charge, convict and sentence appropriately.³¹ Similar criticisms have been made towards civil and family law responses due to the limited effectiveness of court orders³² and the failure to take account of domestic

²⁴ Hoyle, C. (1998) *Negotiating Domestic Violence: Police, Criminal Justice and Victims* (Oxford: Clarendon Press); Cretney, A. and Davis, G. (1997b) 'Prosecuting domestic assault: Victims failing courts or courts failing victims?' 32(2) *The Howard Journal* 146-157 at 154; Barron, J. (1990) "Not worth the Paper..." *The Effectiveness of Legal Protection for Women and Children Experiencing Domestic Violence* (Bristol: Women's Aid Federation England).

²⁵ Dobash, R..E. and Dobash, R.P. (1979) *Violence Against Wives: A Case Against the Patriarchy* (London: Open Books); Pagelow, M. (1981) *Women Battering: Victims and Their Experiences* (London: Sage Publications).

²⁶ Mirrlees-Black (1999) *op. cit.* at 51 and 54.

²⁷ *ibid.*

²⁸ Mama, A. (1989b) 'Violence against black women: Gender, race and state responses', 32 *Feminist Review* at 173.

²⁹ Dobash and Dobash (1979) *op. cit.*; Pagelow (1981) *op. cit.*; Walker, L. (1984) *The Battered Woman Syndrome* (New York: Springer) at 137; Barron (1990) *op. cit.*; Pahl (1985) *Private Violence and Public Policy* (London: Routledge and Kegan Paul); Channel 4's *Dispatches* broadcast, 16 April 1998; Hoyle (1998) *op. cit.*

³⁰ Home Office (1998b) *Living Without Fear: An Integrated Approach to Tackling Violence Against Women* (London: Home Office) at 14.

³¹ Edwards, S. (1989) *Policing Domestic Violence: Women, the Law and the State* (London: Sage Publications); Dobash and Dobash (1979) *op. cit.*

³² Barron (1990) *op. cit.*

violence in divorce and child contact proceedings.³³ Recent campaigns have focussed on the need for women to ‘live without fear’, for domestic violence to be ‘taken seriously’ and for ‘zero tolerance’ to be shown to violent men.

Another opinion of researchers and legal actors is that the law has a limited role to play in domestic violence situations because of the complexity of the problems and the ‘bluntness’ and inflexibility of present legal responses.³⁴ It has been argued that legal responses to survivors needs are very narrow and that when we extend the law in relation to domestic violence we do not necessarily increase its responsiveness to women.³⁵ Indeed, one recent article begins with the question: “What is the point of making it a crime for men to assault their female partners and ex partners?”³⁶ One of the problems in the relationship between domestic violence and law is that there has been a tendency towards the formation of ‘battle camps’ of dichotomised thinking. In one ‘camp’ there exist demands for legal tools to be used more proactively and that domestic violence be treated in the same way as other crimes of violence alongside additional civil protections. Such demands are often met with the claim that domestic violence is different and complex and that law does not provide the answers. One aim of this research is to move away from the limitations of such thinking.

This Study

This study is driven by a sense of injustice at the plight which many survivors of domestic violence face and a sense of hope that legal responses have the potential to play a role in alleviating their pain. Feminist legal research methods have been crucial

³³ Joseph Rowntree Foundation (1996) *Domestic Violence and Child Contact Arrangements*, Social Policy Research 100 (York: Joseph Rowntree Foundation); Radford, L., Sayer, S. and Aid for Mothers Involved in Contact Action (AMICA) (1999) *Unreasonable Fears? Child Contact in the Context of Domestic Violence: A Survey of Mothers Perceptions of Harm* (Bristol: Women’s Aid Federation England).

³⁴ Brownlee, I. (1990) ‘Compellability and contempt in domestic violence cases’, *Journal of Social Welfare Law* 107-115 at 113; Hoyle (1998) *op. cit.* at 225.

³⁵ Mama (1989b) *op. cit.*

³⁶ Hoyle, C. and Sanders, A. (2000) ‘Police responses to domestic violence: From victim choice to victim empowerment’, 40 *British Journal Of Criminology* 14-36 at 14.

throughout the research process.³⁷ The study began by ‘asking the woman question’ systematically examining domestic violence law in order to discover where it leaves out or disadvantages women.³⁸ ‘Feminist practical reasoning’ has also been crucial in looking at the law from the perspective of particular concrete problems rather than abstract ideas.³⁹ The ‘consciousness raising’ approach of feminist legal research also involves engaging with individuals about their personal experiences.⁴⁰ Making survivors’ voices central to this study assesses domestic violence law from the perspective of some women who are affected by it. But the research also attempts to think about law in a different way because feminist jurisprudence is not only about “adding women . . . but rethinking our understanding of law”.⁴¹ This study expands existing knowledge and debates in three main ways.

Firstly, in structuring the research around, and grounded in, the voices of survivors, a view of law is established which reflects the complexities of women’s lives. In-depth interviews, with survivors of domestic violence,⁴² reveal neglected perspectives that establish a new context for legal discussion.⁴³ Traditional legal education and research focuses on legislation and case law, excluding the events leading up to a particular case, the fate of the individuals involved,⁴⁴ and the identities of the legal actors who shape the law.⁴⁵ In this thesis, reported judicial decisions are of limited use as so few cases involving domestic violence reach the courts⁴⁶ and most of those that do are heard in the lower courts or are not reported.⁴⁷ When such cases do reach the courts it is often at the ‘extremes’ such as the death of a perpetrator or a victim of domestic violence.⁴⁸ The danger is that in focussing on highly publicised cases both

³⁷ Bartlett, K. (1990) ‘Feminist legal methods’, 103 *Harvard Law Review* 830-888.

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ Smart, C. (1989) *Feminism and the Power of Law* (London: Routledge) at 2.

⁴² For further detail see Appendix One.

⁴³ Abrams, K. (1991) ‘Hearing the call of stories’, 79(4) *California Law Review* 971-1052 at 1031.

⁴⁴ Berns, S. (1999) *To Speak as a Judge: Difference, Voice and Power* (Ashgate: Dartmouth) at 4.

⁴⁵ Noonan, J. (1976) *Persons and the Masks of the Law* (New York: Farrar, Straus and Giroux) at 7.

⁴⁶ Edwards (1989) *op. cit.*; Hoyle (1998) *op. cit.*

⁴⁷ Davies, N. (1999) ‘Getting away with murder’, *Guardian*, 11th January.

⁴⁸ Littleton, C. (1989) ‘Women’s experience and the problem of transition: Perspectives on male battering of women’, *University of Chicago Legal Forum* 23-57 at 28.

practitioners and academic writers may miss the everyday reality of law's operation, which then becomes removed from 'legal consciousness'.⁴⁹ Rather than the 'law' as defined by legal actors or academics, this thesis starts with the everyday experiences and perceptions of survivors of domestic violence.⁵⁰

*Public assessment of and beliefs about the law's nature and operation are as much a part of our society's legal consciousness as the carefully composed views of courts and scholars.*⁵¹

This study joins others in suggesting that the perspectives and experiences of the public, law's consumers are actually the more important aspect of legal consciousness.⁵² It is the "persons to whom the rules are spoken"⁵³ who are of prime importance here, rather than the rules themselves. Whilst, the use of narratives in critiques of law has been criticised for focussing on particular experiences and neglecting the general lessons which law could draw from these stories,⁵⁴ this thesis attempts to draw out general insights from the particular experiences of individual women.

The second limitation of current research, addressed here, is the lack of an overview of the operation of different legal responses. So many different systems and agencies are involved in domestic violence, including criminal, civil, family, social security and housing law, police, judges, solicitors, barristers, probation and family court welfare services, refuge and local authority workers. Despite recent emphasis in domestic violence policy making on 'joined-up thinking' and multi-agency working, research usually takes traditional legal categories as a convenient starting point, focusing on

⁴⁹ Merry (1990) *op. cit.* at 4.

⁵⁰ Sarat and Kearns (1993) *op. cit.*

⁵¹ Bezdek, B. (1992) 'Silence in the court: Participation and subordination of poor tenants voices in legal process', 20 *Hofstra Law Review* 532-608 at 576.

⁵² For examples see Merry (1990) *op. cit.*; Conley, J. and O'Barr, W. (1990) *Rules Versus Relationships: The Ethnography of Legal Discourse* (Chicago, University of Chicago Press); Genn, H. (1999) *Paths to Justice: What People Do and Think about Going to Law* (Oxford: Hart Publishing); Tyler, T. (1990) *Why People Obey the Law* (New Haven: Yale University Press); Davis, G., Cretney, S. and Collins, J. (1994) *Simple Quarrels* (Oxford: Clarendon Press); Cretney, A. and Davis, G. (1995) *Punishing Violence* (London: Routledge).

⁵³ Noonan (1976) *op. cit.* at 28.

⁵⁴ Abrams (1991) *op. cit.*

criminal law,⁵⁵ civil law,⁵⁶ and family law responses⁵⁷ as distinct issues. Even when different areas of law are dealt with in the same publication, they are usually discussed separately.⁵⁸ Law cannot be treated as a unified body, in terms of intent, theory or practice, but limiting enquires to discrete parts of the system can create false divisions between the interconnecting aspects of the experiences of individual survivors of domestic violence.

Rather than looking at what law is, in an abstract sense, Karl Llewellyn sought a more holistic and contextual approach to law, attempting to identify the ‘jobs’ which law does within society.⁵⁹ He argued that the use of general rules, of say criminal or civil law, to cover an array of vastly different situations actually had a distorting effect on law.⁶⁰ Similarly, Stang Dahl argues that we should focus on ‘women’s law’, rather than abstract legal concepts because they have such little meaning in women’s lives.⁶¹ Here, the term ‘domestic violence law’ encompasses the range of legal responses a woman may encounter in relation to domestic violence, including criminal, civil and family law provisions, parts of housing, social security and immigration law. The research traces some women’s pathways through the legal system and sometimes civil and criminal responses are discussed together as they were in the stories told. It is suggested here that the everyday reality for survivors is of supposedly separate legal categories and systems, which actually interact, merge together and overlap, sometimes with one legal response contradicting or undermining another. Starting this inquiry with people’s everyday experiences, rather than with legal categories enables the discovery of multiple interactions with law in which “whole and complex persons”

⁵⁵ See for example Hoyle (1998) *op. cit.*

⁵⁶ See for example, Barron (1990) *op. cit.*

⁵⁷ See for example, Joseph Rowntree Foundation (1996) *op. cit.*

⁵⁸ See for example, McWilliams, M. and Spence, L (1996) *Taking Domestic Violence Seriously: Issues for the Civil and Criminal Justice System*. (Belfast: HMSO); Lockton, D. and Ward, R. (1997) *Domestic Violence* (London: Cavendish).

⁵⁹ Llewellyn, K. (1941) *My Philosophy of Law* (Boston, Massachusetts: Boston Law Company) at 186-7.

⁶⁰ *ibid.*

⁶¹ Stang Dahl, T. (1987) *Women’s Law: An Introduction to Feminist Jurisprudence* (Translated by Craig, R.) (Oslo: Norwegian University Press).

live with law that “regularly buckles and is resisted, or reinterpreted or distorted.”⁶² The focus is less on formal legal rules than on the way that we think about domestic violence law. One aim of the study is to move away from the legal detail of different responses to ask what women’s stories suggest are the overall purposes of law’s intervention in domestic violence. There is often an assumption that law’s consumers share understandings with legal actors about the nature and purpose of law and are frustrated by flaws in delivery, but this research, like that of others, suggests sources of dissatisfaction are more fundamental.⁶³

The third contribution this thesis makes is to look at domestic violence law and the experiences of survivors from a different perspective. Researchers and legal actors have tended to view law solely as a form of protection for women and a way of controlling violent men,⁶⁴ individually through criminal and civil sanctions and collectively through general deterrence and the symbolic power of the law to condemn certain behaviour. This research suggests that this limited vision of law may be one reason why women often view legal responses as remote from their lives, or as a harmful intrusion. It is argued here that we need to see legal responses, not only as a source of power to be used against perpetrators, but also as a tool for empowering survivors which shows care and empathy for different experiences of domestic violence. One question this study asks is whether there are ‘therapeutic possibilities’ for law.

The term ‘therapeutic’ is itself problematic and is often associated with ‘non-legal’ responses to human problems such as psychiatry and counselling. Such responses to domestic violence have been criticised for individualising a complex social problem.⁶⁵ But here ‘therapeutic’ is understood in the wider terms of the Greek “*therapeuein*” meaning ‘to heal and to serve’.⁶⁶ The notion of therapeutic possibilities for law is of

⁶² Sarat, A. and Kearns, T. (1993) ‘Beyond the great divide: Forms of legal scholarship and everyday life’, in, Sarat and Kearns (1993) *op. cit.* at 55.

⁶³ Conley and O’Barr (1990) *op. cit.* at 127.

⁶⁴ For example, Home Office Circular 19/2000 *op. cit.* at 4.

⁶⁵ Dobash, R.E. and Dobash, R.P. (1992) *Women, Violence and Social Change* (London: Routledge) at 84.

⁶⁶ Cooper, D. (1972) *Psychiatry and Anti-Psychiatry* (London: Paladis) at 87.

legal responses that heal the damage caused by domestic violence and serve survivors at both an individual and collective level. The first step towards discovering these therapeutic possibilities is to see domestic violence and legal responses from the perspectives of women themselves.

Therapeutic Possibilities?

Part One introduces the concepts of domestic violence and domestic violence law. Chapter One describes women's different experiences of surviving domestic violence and goes on to highlight different 'models' for understanding the violence itself. The chapter ends by suggesting the development of an 'eclectic' model that reflects the complexity of different 'types' of domestic violence. Chapter Two summarises the main forms of domestic violence law and highlights the key critiques of existing legal approaches. The chapter goes on to introduce some of the theoretical frameworks and approaches to lawyering which are used in this research to challenge the dominant assumptions about the relationship between domestic violence and law.

Part Two discusses the range of pathways a woman may follow at different stages in the process of surviving domestic violence, including the rules, procedures, practices and people which were important in women's accounts of their experiences. Chapter Three summarises the pathways a woman takes when she 'comes to the borderline' of breaking the silence surrounding domestic violence at the beginning of her process of help-seeking and before she participates in a formal legal process. Chapter Four considers the pathways of a survivor when she 'draws a line in the sand' and becomes involved in formal legal procedures that are known to the perpetrator. Chapter Five focuses on the legal proceedings that usually involve 'separation' of the survivor from the perpetrator when she is trying to 'create a new life'.

Part Three discusses two main themes in women's experiences that point us in the direction of some 'therapeutic possibilities' for domestic violence law. Chapter Six focuses on the role of emotion and empathy in the context of legal responses. Chapter Seven discusses how law both silences and empowers women. Both chapters end by discussing some practical possibilities for changing legal responses so that they have

the potential to heal and serve survivors, both individually and collectively. The concluding chapter summarises the new ways of thinking that would enable domestic violence law to be responsive to survivors. The hope is that this thesis will be a small step towards the day when the fish might see the ocean.

Part One

Domestic Violence
and
Domestic Violence Law

Chapter One

Domestic Violence

Before, I used to think, maybe women marry rough men and they should see the abuse coming. But now I think I bet they didn't feel any different to me - they loved him and married him like I did.¹

If people don't know what it means, what it feels like and what it does to be slapped on the face at home by someone you once trusted to love and cherish you, then for heaven's sake tell them.²

This chapter begins by describing the complex and painful experience of surviving domestic violence using insights from women's stories. The chapter goes on to consider ways in which survivors and others have tried to make sense of domestic violence. Various theories are divided into four models summarising explanations which focus on the 'individual', 'family', 'community' and 'gender'. A fifth, 'eclectic' model is suggested as a way of understanding domestic violence that reflects women's complex and different experiences.

1.1. Surviving domestic violence

Domestic violence is often portrayed as exceptional behaviour, allowing the construction of a problem that is perpetrated and experienced by "people other than us."³ Stereotypes in law and in everyday decision-making maintain simplicity in our thinking and block the need for empathy, which links the stories of others lives with

¹ Emma, Int. 16 at 10.

² West, R. (1997) *Caring for Justice* (New York: New York University Press) at 210.

³ Gelles, R.J. (1993a) 'Through a sociological lens: Social structure and family violence', in, Gelles, R. and Loseke, D. (Eds) (1993) *Current Controversies on Family Violence* (California: Sage Publications) at 40.

our own experiences.⁴ Like all human stories, each experience of domestic violence is unique. But the stories told for this research and other accounts of domestic violence have striking similarities.⁵ Here consideration is given to the pattern of behaviour that constitutes domestic violence and women's processes of survival, including some of the cognitive, behavioural, emotional and psychological effects. Women's different pathways of help seeking are considered in Part Two.

1.1.1 Violence

It is not uncommon to find sections in research and training materials for practitioners entitled, 'Domestic Violence is...' followed by an extensive list of behaviours including physical, sexual, verbal, psychological, emotional and financial abuse (control of finances). The 'Power and Control' wheel is one model used in some training courses and domestic violence perpetrator programmes to explain this continuum of violence.⁶ It describes the dynamics of domestic violence including coercion, threats, intimidation, verbal attacks, blame, isolation, economic control, the abuse of authority, use of loved ones and the minimisation and denial of violence by the perpetrator. It has been observed that the wide definitions of domestic violence adopted by feminist campaigners and increasingly by legal agencies and in the training of practitioners "have not yet reached most women."⁷ However, survivors' stories show that women understand only too well how a pattern of different behaviours by the partner, or a "culture of battering,"⁸ work together to create the painful complexity

⁴ Henderson (1987) 'Legality and empathy', 85 *Michigan Law Review* 1574-1653 at 1591; Also, Glass, D. (1995) *All My Fault: Why Women Don't Leave Abusive Men* (London: Virago) at 7.

⁵ Glass (1995) *ibid* at 4.

⁶ Shepard, M. and Pence, E. (1999) *Co-ordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond* (California: Sage) at 275.

⁷ Kelly, L. and Radford, J. (1996) "Nothing really happened": The invalidation of women's experiences of sexual violence', in, Hester, M. and Kelly, L. and Radford, J. (Eds) (1996) *Women, Violence and Male Power* (Buckingham: Open University Press) at 28.

⁸ Fischer, K., Vidmar, N. and Ellis, R. (1993) 'The culture of battering and the role of mediation in domestic violence cases', 46 *South Methodist University Law Review* 2117-2174.

of domestic violence.⁹ In the words of Joan, it was not just the physical violence, “it was everything and it all just went together.”¹⁰

Survivors describe different patterns of domestic violence.¹¹ For some participants in this research physical violence started within weeks of the relationship beginning.¹² For others the process began with verbal abuse, jealousy, possessiveness, and other controlling behaviour.¹³ Iris described being “loved” and “adored” in the early stages of the relationship to becoming “like a possession to him.”¹⁴ Many women said that physical violence started or worsened when they became pregnant.¹⁵ There is evidence that women are at increased risk when pregnant.¹⁶ Other women traced the first instances of physical violence to the birth of their first child,¹⁷ to their marriage¹⁸ or to a time of financial hardship.¹⁹ Some women talked of physical violence that became worse over time²⁰ and research suggests that ‘minor’ violence predicts escalation to ‘major’ violence.²¹ Physical injuries described by women included

⁹ Mooney, J. (1993) *The Hidden Figure: Domestic Violence in North London* (Middlesex University and Islington Council) at 22; Hearne, J. (1998) *The Violences of Men: How Men Talk About and How Agencies Respond to Men's Violence to Women* (London: Sage Publications) at 116.

¹⁰ Joan, Int. 31 at 14.

¹¹ Glass (1995) *op. cit.*; Kaufman Kantor, G. and Jasinski, J. (1998) ‘Dynamics and risk factors in partner violence’, in, Jasinski, J. and Williams, L. (1998) *Partner Violence: A Comprehensive Review of Twenty Years of Research* (California: Sage) at 4; Hanmer, J. (1996) ‘Women and violence: Commonalities and diversities’, in, Fawcett, B., Featherstone, B., Hearne, J. and Toft, C. (Eds) (1996) *Violence and Gender Relations: Theories and Interventions* (London: Sage).

¹² Amelia, Int. 28 at 1; Caroline, Int. 21 at 1; Kate, Int. 3 at 2.

¹³ Clare, Int. 14 at 2; Jenny, Int. 9 at 3; Jill, Int. 29 at 1.

¹⁴ Iris, Int. 11 at 21 and 10.

¹⁵ Iris, Int. 11 at 20; Jacqui, Int. 15 at 1 and 37; Emma, Int. 16 at 1; Kerry, Int. 10 at 7 and 9; Leila, Int. 22 at 1-2; Becky, Int. 20 at 1; Clare, Int. 14 at 2; Jill, Int. 29; Joan, Int. 31 at 3; Sharon, Int. 30 at 2.

¹⁶ Walby, S. and Myhill, A. (2000) *Reducing Domestic Violence ... What works? Assessing and Managing the Risk of Domestic Violence*, Policing and Reducing Crime Briefing Note (London: Home Office); Cahn, N. (1991) ‘Civil images of battered women: The impact of domestic violence on child custody decisions’, 44 *Vanderbilt Law Review* 1041; Walker (1984) *The Battered Woman Syndrome* (New York: Springer) at 51.

¹⁷ Maria, Int. 26 at 1.

¹⁸ Rachel, Int. 27 at 1.

¹⁹ Ruth, Int. 18 at 4.

²⁰ Maria, Int. 26 at 2; Leila, Int. 22 at 15; Susan, Int. 2 at 37; Jill, Int. 29 at 1 and 5; Joan, Int. 31 at 2 and 5.

²¹ Walby and Myhill (2000) *op. cit.*; Pagelow, M. (1981) *Woman Battering: Victims and Their Experiences* (London: Sage Publications) at 163; Walker (1984) *op. cit.* at 148.

cuts,²² black eyes,²³ broken teeth,²⁴ miscarriage,²⁵ migraines,²⁶ on-going problems from punches, kicks and attempted drowning or strangulation.²⁷ Some women described sexual assault by their partners, which they did not name as ‘rape’.²⁸ But the partners of Susan, Clare and Lucy were prosecuted for rape, sexual assault and attempted rape respectively.²⁹ Research suggests that between 10% and 14% of married or cohabiting women have been raped at least once by their partners.³⁰

Physical violence to the woman herself was sometimes accompanied by violence towards property, including throwing things and smashing up the house or car.³¹ Many women mentioned their partner destroying the telephone so that they could not call for help.³² When the home and “objects that have domestic, functional, aesthetic and sentimental value”³³ become resources of violence the loss of a sense of safety and control may have profound effects on a woman’s confidence and sense of self. An appreciation of violence that is inextricably linked with the “banal activities of everyday life”³⁴ helps to explain the trauma that results from domestic violence. One of the features which distinguishes this kind of violence from other forms is that it takes place in the contexts of home and family in which we usually associate with safety. A crucial aspect of surviving domestic violence is coping with the fear and threat of violence in the most intimate aspects of everyday life.

²² Melanie, Int. 1 at 33; Amelia, Int. 28 at 4; Yvette, Int. 23 at 2; Kerry, Int. 10 at 1-2.

²³ Lucy, Int. 4 at 1 and 5; Melanie, Int. 1 at 6; Amelia, Int. 28 at 2; Iris, Int. 11 at 7; Ann, Int. 5 at 5.

²⁴ Lucy, Int. 4 at 7; Julie, Int. 13 at 3; Joan, Int. 31 at 7.

²⁵ Maria, Int. 26 at 33.

²⁶ Maria, Int. 26 at 27.

²⁷ Leila, Int. 22 at 2-3; Julie, Int. 13 at 3; Yvette, Int. 23 at 6 and 45; Melanie, Int. 1 at 6; Iris, Int. 11 at 29; Kerry, Int. 10 at 7; Ann, Int. 5 at 1,2 and 5.

²⁸ Angie, Int. 21 at 3 and 34; Rachel, Int. 27 at 7; Jill, Int. 29 at 5 and 9.

²⁹ Lucy, Int. 4; Susan, Int. 2 and Clare, Int. 14.

³⁰ Mahoney, P. and Williams, L. (1998) ‘Sexual assault in marriage: Prevalence, consequences, and treatment of wife rape’, in Jasinski and Williams (1998) *op. cit.* at 115.

³¹ Rachel, Int. 27 at 2; Maria, Int. 26 at 1; Yvette, Int. 23 at 6; Emma, Int. 16 at 1; Jacqui, Int. 15 at 5; Melanie, Int. 1 at 13; Lucy, Int. 4 at 4; Leila, Int. 22 at 5; Caroline, Int. 21 at 25; Helen, Int. 12 at 28; Kerry, Int. 10 at 29; Jill, Int. 29 at 6.

³² Amelia, Int. 28 at 2; Maria, Int. 26 at 2; Yvette, Int. 23 at 6; Emma, Int. 16 at 20; Kerry, Int. 10 at 23; Sally, Int. 24 at 9; Lucy, Int. 4 at 24; Melanie, Int. 1 at 41; Jill, Int. 29 at 6; Joan, Int. 31 at 8.

³³ Hearne (1998) *op. cit.*

³⁴ Glass (1995) *op. cit.* at 54.

Verbal threats were mentioned in the interviews including threats of violence against the victim herself,³⁵ the children,³⁶ friends or relatives³⁷ and threats by the perpetrator to commit suicide.³⁸ The abuse included reminders of how lonely or financially vulnerable she would be alone,³⁹ threats to take the children⁴⁰ or to report their mother to social services, and threats never to leave her alone.⁴¹ The visual effect of a certain facial expression from the perpetrator may be enough to remind the woman of the threat of physical violence. Emma said that a certain ‘look’ could be even more frightening than the actual violence.⁴²

Violent men may use denial, minimisation, excuses, justifications and blame of the partner as a means of controlling her.⁴³ Emma sometimes received apologies but at times her partner would also deny his violence.

*He was evil during pregnancy. One time he elbowed me on the stairs and I slipped half way down. He just said that he caught me and denied it was deliberate. He would push and shove me. It was really weird. I started thinking maybe its because I'm pregnant - you know hormones and I'm maybe a bit sensitive.*⁴⁴

Emma said that, “it was like playing tricks with your mind.”⁴⁵ Many women described how their partner tried to convince the woman herself or others that she was “going mad.”⁴⁶

³⁵ Iris, Int. 11 at 3; Caroline, Int. 21 at 17; Jenny, Int. 9 at 4; Yvette, Int. 23 at 6; Kate, Int. 3 at 4; Sharon, Int. 30 at 14.

³⁶ Iris, Int. 11 at 3; Maria, Int. 26 at 19.

³⁷ Amelia, Int. 28 at 3-4; Maria, Int. 26 at 18.

³⁸ Iris, Int. 11 at 3; Emma, Int. 16 at 1; Maria, Int. 26 at 19; Yvette, Int. 23 at 5; Sarah, Int. 6 at 1; Jill, Int. 29 at 6; Joan, Int. 31 at 20; Sharon, Int. 30 at 14.

³⁹ Iris, Int. 11 at 3; Rachel, Int. 27 at 4-5.

⁴⁰ Yvette, Int. 23 at 9; Emma, Int. 16 at 4-5; Lucy, Int. 4 at 10; Rachel, Int. 27 at 4-5.

⁴¹ Helen, Int. 12 at 28; Kerry, Int. 10 at 38.

⁴² Emma, Int. 16 at 5.

⁴³ Hearne (1998) *op. cit.*; Dobash, R.P., Dobash, R.E., Cavanagh, K. and Lewis, R. (1998) ‘Separate and intersecting realities: A comparison of men’s and women’s accounts of violence against women’, 4(4) *Violence Against Women* 382-414.

⁴⁴ Emma, Int. 16 at 1.

⁴⁵ Emma, Int. 16 at 3-4.

⁴⁶ Emma, Int. 16 at 4; Sally, Int. 24 at 1; Lucy, Int. 4 at 10; Melanie, Int. 1 at 22; Susan, Int. 2 at 4; Sharon, Int. 30 at 6.

Constant criticism, insults, name calling, blame and belittlement are a powerful form of control which undermines some women's sense of self.⁴⁷ Sharon was constantly told by her partner that she was worthless, that she was lucky to have him and that no one else would want her.⁴⁸ Iris said: "I had to change into a different person, I couldn't be myself anymore."⁴⁹ Many survivors of domestic violence say that this verbal and psychological abuse is more destructive than physical violence.⁵⁰ Iris said: "the mental torture was the worst . . . it makes you feel like you're nothing."⁵¹ Jenny said: "You lose your personality and your self esteem and your confidence."⁵² The woman's sense of self may be so undermined that it becomes defined by the violence and the abuser.⁵³ A pattern of domestic violence often includes behaviour that is subtly controlling.⁵⁴ Helen said: "even if he doesn't speak, he's controlling me."⁵⁵ Several women described how their respective partners would choose their clothes,⁵⁶ keep them without money⁵⁷ or a phone,⁵⁸ or keep the woman's name from being on a tenancy agreement.⁵⁹ Research suggests that economic dependency increases the risk of violence.⁶⁰ Joan felt more dependent on her violent partner when her baby was born and she could not go out to work. It was at this time that the violence worsened.⁶¹

⁴⁷ Amelia, Int. 28 at 5-6; Lucy, Int. 4 at 3; Jill, Int. 29 at 8.

⁴⁸ Sharon, Int. 30 at 4.

⁴⁹ Iris, Int. 11 at 9.

⁵⁰ Mooney (1993) *op. cit.* at 23; Giles-Sims, J. (1998) 'The aftermath of partner violence', in, Jasinski and Williams (1998) *op. cit.* at 59; Holtzworth-Munroe, A., Bates, L., Smutzler, N. and Sandin, E. (1997b) 'A brief review of the research on husband violence: Part II: The psychological effects of husband violence on battered women and their children', 2(2) *Aggression and Violence Behaviour* 179-213 at 193.

⁵¹ Int. 11 at 27; Also, Amelia, Int. 28 at 6.

⁵² Int. 9 at 20.

⁵³ Lempert, L. (1996) 'Women's strategies for survival: Developing agency in abusive relationships', 11(3) *Journal of Family Violence* 269-289.

⁵⁴ Ptacek, J. (1988) 'Why do men batter their wives?', in, Yllo, K. and Bograd, M. (Eds) (1988) *Feminist Perspectives on Wife Abuse* (California: Sage Publications) at 151.

⁵⁵ Helen, Int. 12 at 4.

⁵⁶ Lucy, Int. 4 at 2; Jenny, Int. 9 at 2.

⁵⁷ Jenny, Int. 9 at 2; Rachel, Int. 27 at 2; Leila, Int. 22 at 15; Melanie, Int. 1 at 27; Sharon, Int. 30 at 2.

⁵⁸ Rachel, Int. 27 at 2.

⁵⁹ Amelia, Int. 28 at 2.

⁶⁰ Walby and Myhill (2000) *op. cit.*

⁶¹ Int. 31 at 5.

Walker used the framework of the ‘cycle of violence’ to describe the patterns in some domestic violence situations.⁶² In this ‘cycle’ the tension-building phase is characterised by emotional abuse, threats and ‘minor’ violence.⁶³ This leads to the ‘acute battering’ incident when violence escalates.⁶⁴ The ‘honeymoon’ or ‘tranquil phase’ often sees the perpetrator apologising, begging for forgiveness and making heartfelt promises for the future.⁶⁵ Several women described how some violent incidents were followed by a barrage of apologies and promises.⁶⁶ Kerry described the aftermath of the first incident of physical violence by her partner, Neil.

*He assured me wholeheartedly that it was a one off, that he'd been under a great deal of pressure and lots of stress had been put on him and that he had a chronic toothache. Again, absolutely barraged with flowers and charm and pleas. You know, "What we had was special." And, yes, I have felt that there was a side to Neil that is - that was - extremely loving . . . hypocritical as it sounds, contradictory as it sounds . . . The Neil I knew, or thought I knew, was actually a very sort of protective . . . and a caring kind of person.*⁶⁷

Emma said:

*He'd hit me and then say he was sorry. He'd have his head in his hands and even though he'd just injured me, I'd feel sorry for him.*⁶⁸

For some women this pressure and “emotional blackmail”⁶⁹ was alternated with abuse and threats of violence.⁷⁰ Walker’s theory reflects the experiences of only some women’s experience of some violent incidents.⁷¹ Some women experience the

⁶² Walker (1984) *op. cit.* at 95-103.

⁶³ *ibid.*

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ Emma, Int. 16 at 1-2; Becky, Int. 20 at 3; Leila, Int. 22 at 2; Susan, Int. 2 at 27; Amelia, Int. 28 at 2; Iris, Int. 11 at 22; Sarah, Int. 6 at 1; Lucy, Int. 4 at 24; Maria, Int. 26 at 15; Caroline, Int. 21 at 2; Ann, Int. 5 at 11; Jill, Int. 29 at 2; Joan, Int. 31 at 1.

⁶⁷ Int. 10 at 3.

⁶⁸ Int. 16 at 1.

⁶⁹ Iris, Int. 11 at 3; Yvette, Int. 23 at 19 and 22; Helen, Int. 12 at 23; Ann, Int. 5 at 15

⁷⁰ Amelia, Int. 28 at 14; Yvette, Int. 23 at 11; Iris, Int. 11 at 20.

⁷¹ Walker (1984) *op. cit.* at 96; Dutton, M. (1993) ‘Understanding women’s responses to domestic violence: A redefinition of Battered Woman Syndrome’, 21(4) *Hofstra Law Review* 1191-1242; Pagelow (1981) *op. cit.* at 68.

‘tension building’ without the ‘honeymoon phase’, or vice versa. In other cases the perpetrator’s behaviour may be completely unpredictable. Iris said that it felt like she was, “walking on egg shells.”⁷² Jill said her partner was “like a time bomb waiting to explode.”⁷³ Others exist in a state of constant tension living with the threat or possibility of the ‘acute’ battering incident that has not yet happened.⁷⁴ Some men may never show remorse for their violence,⁷⁵ nor express a wish to change.⁷⁶

Jealousy is a consistent theme in cases of men who kill current and former partners.⁷⁷ Women in this research described their partners’ displays of jealousy and possessiveness,⁷⁸ constantly being told what to do, having their movements restricted, being followed and questioned and isolated from friends and family.⁷⁹ Kerry said:

*I began to get more and more withdrawn, very - don't look at anybody. Just look at a spot on the carpet. It took the breath away from me, the life, the life force away. Because if you acknowledge somebody you were a tart, you were a flirt, you were a whore and you'd get a hiding when you got home. You're either an anti-social bitch or you're a whore, so you couldn't win.*⁸⁰

Some women described how their respective partners would be so rude to friends and family that they would stop visiting.⁸¹ Ann said:

He sort of systematically cut me off from friends, family . . . He didn't want me to work, he wanted just to be with me all day long. It was very sort of

⁷² Int. 11 at 1.

⁷³ Jill, Int. 29 at 6

⁷⁴ Jenny, Int. 9 at 3.

⁷⁵ Dobash, R.E. and Dobash, R.P. (1979) *Violence Against Wives: A Case Against the Patriarchy* (London: Open Books) *op. cit.* at 117.

⁷⁶ Glass (1995) *op. cit.* at 121.

⁷⁷ Cornwell, J. (2000) ‘Sex and Violence’, *Sunday Times* 23rd April; Wilson, M., Johnson, M. and Daly, M. (1995) ‘Lethal and non-lethal violence against wives’, 37 *Canadian Journal of Criminology* 331-361 at 333.

⁷⁸ Amelia, Int. 28 at 2; Maria, Int. 26 at 5; Yvette, Int. 23 at 1 and 5; Melanie, Int. 1 at 26; Kate, Int. 3 at 7; Ruth, Int. 18 at 1; Jill, Int. 29 at 5; Joan, Int. 31 at 1; Sharon, int. 30 at 2; Jill, Int. 29 at 9 and 30.

⁷⁹ Ann, Int. 5 at 5; Amelia, Int. 28 at 2; Yvette, Int. 23 at 2; Melanie, Int. 1 at 26; Iris, Int. 11 at 27; Sharon, Int. 30 at 3.

⁸⁰ Int. 10 at 6; Also, Amelia, Int. 28 at 6.

⁸¹ Emma, Int. 16 at 17; Lucy, Int. 4 at 8.

*claustrophobic and you get so used to it . . . You're not sort of seeing the outside world, you're not going anywhere or doing anything.*⁸²

“Jealous surveillance” by the perpetrator and isolation from her support network can contribute to a woman’s loss of confidence, making it easier for the abuser to manipulate her.⁸³

‘Separation assault’ is one form of this possessiveness. Despite the common assumption that leaving a violent relationship will end violence, women who separate from their partner are at a higher risk of murder,⁸⁴ physical violence⁸⁵ and sexual assault.⁸⁶ In a small proportion of domestic violence cases, violence may only occur after separation.⁸⁷ Even when separated from their partners some women described their constant state of fear and hyper-vigilance.⁸⁸ Violence and controlling behaviour after separation included verbal threats and abuse,⁸⁹ passing messages and threats through other people,⁹⁰ following her,⁹¹ verbally abusive or silent telephone calls,⁹² sitting outside the house,⁹³ driving around her home, sending letters or having circulars sent to her address.⁹⁴ For Kerry and Caroline, the threats continued when

⁸² Int. 5 at 1 and 8.

⁸³ Kelly, L. (1996) ‘Tensions and possibilities: Enhancing informal responses to domestic violence’, in, Edleson, J. and Eisikovits, Z. (Eds) (1996) *Future Interventions With Battered Women and Their Families* (California: Sage Publications).

⁸⁴ Wilson et al (1995) *op. cit.*; Mahoney, M. (1991) ‘Legal images of battered women: Redefining the issue of separation’, 90 *Michigan Law Review* 1-94.

⁸⁵ Walby and Myhill (2000) *op. cit.*; Kurz (1996) ‘Separation, divorce and woman abuse’, 2(1) *Violence Against Women* 63-81; Wilson et al (1995) *op. cit.* at 340-341; Also Hoyle, C. (1998) *Negotiating Domestic Violence: Police, Criminal Justice and Victims* (Oxford: Clarendon Press) at 188; Kelly, L. (1999) *Domestic Violence Matters: An Evaluation of a Development Project*, Home Research Study 193 (London: Home Office) at 17.

⁸⁶ Mahoney and Williams (1998) *op. cit.* at 133.

⁸⁷ Mooney (1993) *op. cit.* at 39; Kurz (1996) *op. cit.* at 69.

⁸⁸ Melanie, Int. 1 at 15; Susan, Int. 2 at 46.

⁸⁹ Maria, Int. 26 at 19.

⁹⁰ Iris, Int. 11 at 3; Karen, Int. 10 at 38.

⁹¹ Karen, Int. 10 at 43.

⁹² Jenny, Int. 9 at 8; Karen, Int. 10 at 27 and 32-36; Leila, Int. 22 at 8; Angie, Int. 21 at 10; Maria, Int. 26 at 18; Yvette, Int. 23 at 12; Caroline, Int. 21 at 10; Becky, Int. 20 at 7; Lucy, Int. 4 at 32; Sally, Int. 24 at 4.

⁹³ Yvette, Int. 23 at 14.

⁹⁴ Jenny, Int. 9 at 9; Karen, Int. 10 at 27 and 39.

their partners were in prison.⁹⁵ Maria said that after separating from her partner she felt he would “never let go.”⁹⁶ This combination of physical, verbal, psychological, emotional and financial abuse had profound effects in the lives of the women who described their different processes of survival.

1.1.2. Surviving, Staying, Leaving and Returning

Survivors often experience psychological and emotional effects, including shock, fear, depression, anxiety, anger, shame, self blame and low self esteem.⁹⁷ A woman’s survival is a process of changing feelings⁹⁸ that a perpetrator can exploit as part of a pattern of control.⁹⁹ It has been argued that there should be more focus on the social factors affecting the process of survival rather than the individual psychological effects.¹⁰⁰

*The pattern of staying, leaving and returning reflect the complex pushes and pulls of the numerous personal, social and material factors that motivate the battered woman.*¹⁰¹

Despite increasing knowledge of the “long path of change”¹⁰² and the complex obstacles confronting a woman during this process of survival, ignorance and lack of empathy still drives that persistent question: ‘Why does she stay?’ This ignores the question of why men are violent, the commonality of experiences of domestic violence, the normality of staying and the dangers of exit.

⁹⁵ Kerry, Int. 10 at 26; Caroline, Int. 21 at 2.

⁹⁶ Int. 26 at 5.

⁹⁷ Barnett, O. and La Violette, A. (1993) *Why Battered Women Stay: It Could Happen to Anyone* (California: Sage Publications); Ferraro, K. and Johnson, J. (1983) ‘How women experience battering: The process of victimisation’, 30 *Social Problems* 325-339; Herman, J. (1992) *Trauma and Recovery* (New York: Basic Books); Giles-Sims (1998) *op. cit.*; Merritt-Gray, M. and Wuest, J. (1995) ‘Counteracting abuse and breaking free: The process of leaving revealed through women’s voices’, 16 *Health Care for Women International* 399-412.

⁹⁸ Brown, J. (1997) ‘Working toward freedom from violence: The process of change in battered women’, 3(1) *Violence Against Women* 5-26; Ferraro and Johnson (1983) *op. cit.*

⁹⁹ Walker (1984) *op. cit.*; Barnette and LaViolette (1993) *op. cit.* at 189.

¹⁰⁰ Bowker, L. (1993) ‘A battered woman’s problems are social, not psychological’, in Gelles and Loseke (1993) *op. cit.* at 164.

¹⁰¹ Dobash and Dobash (1979) *op. cit.* at 144.

¹⁰² Jones, A. and Schechter, S. (1992) *When Love Goes Wrong: What To Do When You Can’t Do Anything Right* (London: Victor Gollancz) at 20.

*[Focus on exit], in turn, denies structures of power by focussing on termination rather than the nature of power in that relationship, and by pretending exit from this particular situation will mean exit from all abuse.*¹⁰³

The question of ‘why she stays’ is also a form of blame which focuses on women and does not see the violence in the context of the relationship and other commitments, involving shared children, financial issues, social support mechanisms and family ties.¹⁰⁴ A more useful question might be: ‘How does she ever leave?’ The fact is that women repeatedly leave violent relationships, many permanently.¹⁰⁵ One way of understanding why this process may take a long time is to imagine oneself experiencing violence from a loved one.¹⁰⁶ When would you leave? Where would you go? What would you leave behind? Women experiencing domestic violence confront a range of obstacles. One is fear.

1.1.3. Fear and Distrust

Many women are trapped in violent relationships by fear of harm to themselves or others¹⁰⁷ that is reinforced by their partners’ escalating violence.¹⁰⁸ That fear may control a woman so effectively that the partner has less reason to use physical violence.¹⁰⁹ A woman’s financial dependence and the perception that she has few other options outside her own home may increase her fear of leaving¹¹⁰ and be reinforced when she attempts to escape and discovers the loneliness and poverty involved in leaving a violent relationship. The sense of shame, self blame, low self-esteem and other debilitating psychological effects work with this fear to undermine

¹⁰³ Mahoney, M. (1992) ‘Exit, power and the idea of leaving in love, work and the confirmation hearings’, 65 *South California Law Review* 1283-1319 at 1296.

¹⁰⁴ Brown (1997) *op. cit.* at 7-8.

¹⁰⁵ Holtzworth-Munroe *et al* (1997b) *op. cit.* at 194; Loseke, D. and Cahill, S. (1984) ‘The social construction of deviance: Experts on battered women’, 31 *Social Problems* 269-310 at 304.

¹⁰⁶ Barnett and LaViolette (1993) *op. cit.* at xxiii.

¹⁰⁷ Mooney (1993) *op. cit.* at 61; Dobash and Dobash (1979) *op. cit.* at 146; Pagelow (1981) *op. cit.* at 72; Baker, P. (1997) ‘And I went back: Battered Women’s Negotiation of choice’, 26(1) *Journal of Contemporary Ethnography* 55-74 at 59-60.

¹⁰⁸ Mahoney (1991) *op. cit.*

¹⁰⁹ Barnett and LaViolette (1993) *op. cit.* at 54.

¹¹⁰ Mooney (1993) *op. cit.* at 61; Dobash and Dobash (1979) *op. cit.* at 146; Pagelow (1981) *op. cit.* at 72.

the enormous strength and resourcefulness it takes to leave.¹¹¹ The evidence about ‘separation assault’ shows the aptness of women’s fears. Some may never feel safe again, because as long as the perpetrator is alive they are never free from the fear of violence.¹¹²

Melanie said that she would only feel safe when her partner was dead.¹¹³ Yvette said that she did not trust her partner after the first incident of physical violence¹¹⁴ and Julie described how difficult it was to “get the trust back.”¹¹⁵ Sexual and physical violence by a partner are often experienced as a “deep, personal violation of trust as well as body” and the effects of violence in this context may be more severe than violence by a stranger.¹¹⁶ Dobash and Dobash suggest that feelings of fear, hatred and rage are most intense after physical violence, but cannot be sustained over long periods of time, so that women sometimes cope by trying to ignore the violence.¹¹⁷ Some women also have hope for change as well as feelings of attachment - to the partner, the family, children, religion, community and home.¹¹⁸ These are similar reasons why people do not end unsatisfactory relationships where there is no violence.¹¹⁹

¹¹¹ Barnett and La Violette (1993) *op. cit.*; Ferraro and Johnson (1983) *op. cit.*; Herman (1992) *op. cit.*; Mooney (1993) *op. cit.* at 60.

¹¹² Thanks go to Yvonne Collins of Southampton Women’s Aid for her thoughts on this issue.

¹¹³ Int. 1.

¹¹⁴ Int. 23 at 2; Also, Ruth, Int. 18 at 32.

¹¹⁵ Int. 13 at 14.

¹¹⁶ Mahoney and Williams (1998) *op. cit.* at 115.

¹¹⁷ Dobash and Dobash (1979) *op. cit.* at 139.

¹¹⁸ Mooney (1993) *op. cit.* at 61; Dutton, D. and Painter, S. (1981) ‘Traumatic bonding: The development of emotional attachments in battered women and other relationships of intermittent abuse’, 6 *Victimology* 139; Graham, D., Rawlings, E. and Rimini, N. (1988) ‘Battered women, hostages and Stockholm Syndrome’, in, Yllo and Bograd (1988) *op. cit.*; Goldner, V., Penn, P., Sheinberg, M. and Walker, G. (1990) ‘Love and violence: Gender paradoxes in volatile attachments’, 29(4) *Family Process* 343-363; Lempert (1996) *op. cit.*; Dobash and Dobash (1979) *op. cit.* at 146-151; Pagelow (1981) *op. cit.* at 72; Mills, L. (1998) *The Heart of Intimate Abuse: New Interventions in Child Welfare, Criminal Justice and Health Care Settings* (New York: Springer Publishing) at 35-37; Littleton, C. (1989) ‘Women’s experience and the problem of transition: Perspectives on male battering of women’, *University of Chicago Legal Forum* 23-57 at 52.

¹¹⁹ Tysoe, M. (1992) *Love Isn’t Quite Enough: The Psychology of Male -Female Relationships* (London: Fontana) at 180; Loseke and Cahill (1984) *op. cit.*

1.1.4. 'Normal Life', 'Making it Work', Love and Hope

Many stories of domestic violence begin with 'falling in love', with romance and commitment, trust, faith and hope and attempts to build a 'normal life.'¹²⁰ Kerry described the early days of her relationship with her partner.

*He came across as a very pleasant man . . . the flowers, the chocolates, the charm . . . And I really got sucked in . . . I'd never been treated what appeared to be so good before . . . I found him quite a sensitive man, I found him quite a caring man, until the November.*¹²¹

Violent incidents may be perceived by survivors as only part of their relationship with the abuser.¹²² For some women the violent behaviour was such a gradually invasive element of everyday life that it was difficult for the woman to recognise it as abusive.¹²³ Sally said that the violence "becomes part of normal life."¹²⁴ Ann said of the mental abuse: "You get used to it."¹²⁵

*When I first met him he couldn't be nicer you know. As time went on he became a very sort of jealous, possessive, controlling type of person and you don't - I don't think you recognise it. If you still care about someone you tend to go on.*¹²⁶

Emma said:

*Friends . . . said that the way he used to talk to me was wrong but I seemed to be totally oblivious to it, as if I didn't hear him. It got to be a way of life . . . I had begun to accept it.*¹²⁷

Jenny said of her partner's practice of keeping her without money, "I didn't know any different so I just accepted that as being the norm."¹²⁸ Susan described her feelings of

¹²⁰ Rosen, K. (1996) 'The ties that bind women to violent premarital relationships', in Cahn, D. and Lloyd, S. (1996) *Family violence from a Communication Perspective*. (California: Sage Publications); Hood-Williams, J. and Bush, T. (1995) 'Domestic violence on a London housing estate', 37 *Research Bulletin* 11-19 (London: Home Office) at 17.

¹²¹ Int. 10 at 1; Jill, Int. 29 at 2 and 20.

¹²² Lempert (1996) *op. cit.*; Mahoney (1991) *op. cit.* at 16; Ferraro and Johnson (1983) *op. cit.* at 334.

¹²³ Emma, Int. 16 at 3; Jenny, Int. 9 at 4.

¹²⁴ Int. 24 at 4.

¹²⁵ Int. 5 at 11.

¹²⁶ Int. 5, at 1; Also, Helen, Int. 12 at 2.

¹²⁷ Int. 16 at 3; Also, Sally, Int. 24 at 24-5.

¹²⁸ Int. 9 at 4.

“disbelief” and said: “You can’t believe that it’s happening to you.”¹²⁹ Helen said, “I didn’t recognise the controlling behaviour . . . it crept up on me really.”¹³⁰ For some women, violence becoming part of normal life was linked with their wish to make the relationship ‘work’ and reliance on love to improve the situation.

One ideal of love is that it does not insist on perfection, but “bears all things, believes all things, hopes all things, endures all things.”¹³¹ In *The Normal Chaos of Love*, Beck and Beck-Gernsheim argue that the ideal of love has replaced God, country, class, politics and family as the new religion, “a hope of transcendence in everyday life.”¹³² So it is that love, marriage and relationships become overloaded with expectations for happiness, satisfaction and fulfilment.¹³³ The family, particularly for women, is often seen as the site of altruism, sacrifice, patience and all forgiving love.¹³⁴ Women are encouraged to believe, through cultural and religious representations of love that it really does conquer all and some women define themselves through relationships with others.¹³⁵ This may be particularly true for Asian women.¹³⁶ Forced marriages have been identified as a form of domestic violence which are experienced by women in some communities,¹³⁷ but the issue is not considered in the thesis. Women subject to forced marriages deal with a complex range of emotional connections of love and commitment, which are important aspects of all experiences of domestic violence.¹³⁸

¹²⁹ Int. 2 at 29.

¹³⁰ Int. 12 at 8.

¹³¹ 1 *Corinthians* 13: 4-8.

¹³² Beck, U. and Beck-Gernsheim, E. (Eds) (1995) *The Normal Chaos of Love* (Cambridge: Polity Press) at 11-12.

¹³³ Lasch, C. (1977) *Haven in a Heartless World: The Family Besieged* (New York: Basic Books).

¹³⁴ Olsen, F. (1993) ‘The family and the market: A study of ideology and legal reform’, in, Smith, P. (Ed) (1993) *Feminist Jurisprudence* (New York: Oxford University Press).

¹³⁵ Barnett and LaViolette (1993) *op. cit.* at 17 and 22; Rosen (1996) *op. cit.* at 174-5.

¹³⁶ Currell, S. and Gill, A. (1998) *Silenced ‘n Caught: Unlocking the Barriers to Reporting Domestic Violence in an Asian Community* (London: Home Office, Police Policy Directorate) at 11.

¹³⁷ Home Office (2000c) *A Choice By Right: Summary of the Report of the Working Group on Forced Marriage* (London: Home Office).

¹³⁸ Baker (1997) *op. cit.*; Lempert (1996) *op. cit.*; Hood-Williams and Bush (1995) *op. cit.*

Iris said, “I used to believe him because you wanted to believe him and you wanted it to work.”¹³⁹ In marriage the ‘norm’ is considered to be staying and people are generally admired for trying to ‘make it work.’¹⁴⁰ But a woman experiencing domestic violence who ‘stays’ is likely to be considered a weak victim and irresponsible mother.¹⁴¹ Emma said:

*I used to think if a bloke hit you I'd be gone but when you marry someone and you love and trust someone your feelings don't just stop as soon as they hit you.*¹⁴²

A woman may continue to hope that the earlier ‘non-violent’ man whom she had fallen in love with will return.¹⁴³ One challenge for some survivors is realising that ending the ‘bad times’ means ending the good ones too.¹⁴⁴

An important aspect of the feelings described in women’s stories is the hope in the relationship itself and all the dreams of falling in love, marrying and building a family.¹⁴⁵ The social pressure on women to hold families together putting the feelings of others first, and the stigma of divorce and single parenthood are powerful forces in the life of a woman experiencing violence.¹⁴⁶ Kerry and Helen both described how friends and family pressurised them to stay by saying: “He loves you.”¹⁴⁷ These pressures may encourage feelings of guilt, shame and hope. Emma said:

I think I only ever put up with it because I was married and I had taken marriage seriously and tried to work at it . . . Friends say they'd never put up with it but until you love someone and see how it happens and you're so involved with them . . . I kept it all to myself for a long time. I'd married so young and had wanted the marriage to work so much. I'd wanted a family. I

¹³⁹ Int. 11 at 21.

¹⁴⁰ Loseke and Cahill, (1984) *op. cit.* at 297.

¹⁴¹ Mahoney (1991) *op. cit.*; Barnett and LaViolette (1993) *op. cit.* at 19 and 22; Lempert (1996) *op. cit.* at 282; Littleton (1989) *op. cit.* at 44.

¹⁴² Int. 16 at 4.

¹⁴³ Hood-Williams and Bush (1995) *op. cit.*

¹⁴⁴ Jones and Schechter (1992) *op. cit.* at 206.

¹⁴⁵ Merritt-Gray and Wuest (1995) *op. cit.* at 403; Ferraro and Johnson (1983) *op. cit.* at 334.

¹⁴⁶ Dobash and Dobash (1979) *op. cit.* at 93 and 146; Jones and Schechter (1992) *op. cit.* at 43; Glass (1995) *op. cit.* at 35.

¹⁴⁷ Kerry, Int. 10 at 17; Helen, Int. 12 at 24.

*thought that bad times like good ones were just a part of marriage. I thought that things would get better.*¹⁴⁸

Joan thought that her partner would change because she was pregnant.¹⁴⁹ It has been suggested that hope can be a form of denial and a coping mechanism that helps a woman to have perceived control over her situation and prevents her from facing up to her painful choices and limited options.¹⁵⁰ Sally said that she “kept believing” partly because she did not know where she would go or what she would do otherwise.¹⁵¹ In fact this question of where a woman will go and what she leaves behind is an important theme in stories of domestic violence.

Attachment to the home plays a important role in some women’s continued faith in the relationship. The word home connotes a private place of intimacy, safety, memories and love. It is often an extension of ourselves where individual creativity can flourish and where we can be sure of acceptance and a sense of belonging.¹⁵² Its location usually centres us amidst family, friends, school and work. In decisions to end a relationship women often have to consider leaving their own and their children’s home. For some women who experience domestic violence the home may be a site of violence and fear but also of security, identity and their own sense of achievement. This contradiction may have profound consequences for a woman’s sense of self. Emma described suffering panic attacks because “I didn’t feel safe in my own home.”¹⁵³

Many women have to face up to the possibility of leaving their own and their children’s home and starting somewhere new, away from friends, family, school and community. This may be particularly important for women living in ‘hard to reach’ communities such as travellers or Asian communities, for their homes may provide

¹⁴⁸ Int. 16 at 9 and 3; Also, Jenny, Int. 9 at 4.

¹⁴⁹ Int. 31 at 3

¹⁵⁰ Marden, M. and Rice, M. (1995) ‘The use of hope as a coping mechanism in abused women’, 13(1) *Journal of Holistic Nursing* 70-82 at 76-77.

¹⁵¹ Int. 26, at 6.

¹⁵² Hetty, S. (1997) ‘The violence of displacement: The problematics of survival for homeless young women’, in, Cook, S. and Bessant, J. (Eds) (1997) *Women’s Encounters with Violence: Australian Experiences* (California: Sage Publications).

¹⁵³ Int 16 at 4; Also, Jill, Int. 29 at 28; Joan, Int. 31 at 5

shelter from hostility outside and they face losing community support and a sense of belonging. Material problems for all women include finding somewhere new to live, finding a job, money and childcare.¹⁵⁴ Some women may also need to find a new home in proximity to temples, mosques and special clothes and food shops. Judith did not know where she could go until her health visitor put her in touch with an Asian women's refuge.¹⁵⁵ Fear of not being able to cope alone also plays a role.¹⁵⁶ Rachel talked about her worries in ending her relationship in terms of the stigma, loneliness and financial hardship of becoming a single mother.¹⁵⁷ Loneliness and the stigma of lone parenthood was also mentioned by some women in terms of their feelings once they had left their violent partners, which sometimes contributed to their decision to return.¹⁵⁸

Some women went through a process of trying to remedy what were perceived as their mistakes, seeing themselves as holding the power and responsibility to end the violence.¹⁵⁹ Judith said: "It felt in a way it was my fault. I should be able to help him."¹⁶⁰ This sense of control and the ability to 'save' their partner may help maintain a woman's hope for change.¹⁶¹ Sally knew her partner came from a violent family.

*I thought . . . give him a bit of time to understand that I'm not like this and to change his ways, to see everybody's not like that.*¹⁶²

Joan's partner had had a violent upbringing and she thought that if she stayed she could "make him nice."¹⁶³ The hope that a perpetrator will change is important for

¹⁵⁴ Dobash and Dobash (1979) *op. cit.* at 156.

¹⁵⁵ Int. 8 at 2.

¹⁵⁶ Hood-William and Bush (1995) *op. cit.* at 13; Davies, J. and Lyon, E. (1998) *Safety Planning with Battered Women: Complex Lives/Difficult Choices* (California: Sage) at 39; Ferraro and Johnson (1983) *op. cit.* at 30.

¹⁵⁷ Rachel, Int. 27 at 22.

¹⁵⁸ Lucy, Int. 4 at 21; Maria, Int. 26 at 13; Jacqui, Int. 15 at 21; Yvette, Int. 23 at 51; Rachel, Int. 27 at 3; Ruth, Int. 18 at 13.

¹⁵⁹ Glass (1995) *op. cit.* at 37; Walker (1984) *op. cit.* at 79; Ferraro and Johnson (1983) *op. cit.* at 1; Gondolf, E. and Fisher, E. (1988) *Battered Women as Survivors: An Alternative to Treating Learned Helplessness* (Massachusetts: Lexington Books) at 22; Lempert (1996b) *op. cit.* at 283; Fischer *et al* (1993) *op. cit.* at 2129.

¹⁶⁰ Int. 31 at 5.

¹⁶¹ Walker (1984) *op. cit.* at 79; Ferraro and Johnson (1983) *op. cit.* at 328.

¹⁶² Int. 24 at 2; Also, Sharon, Int. 30 at 3.

¹⁶³ Int. 31 at 12.

many women who do not leave violent relationships.¹⁶⁴ Caroline imagined her partner as two different people.¹⁶⁵

*He's never been verbally violent - can't even say a nasty word to me when he's sober. I wish I'd have taken a video of him. I had him out in the kitchen baking cakes with the kids, you know. When he's been sober he's been fabulous, bathed them, put them to bed for me. He's somebody else when he's sober.*¹⁶⁶

Faith in her partner played an important role in Ann's story.

*If you've still got strong feelings for somebody you will still hope things will get better.*¹⁶⁷

Giving up hope that her partner would change was an important factor in Amelia's process of separation.¹⁶⁸ Iris found that the more time that passed made it more difficult to bring the relationship to an end.¹⁶⁹ Kerry described how the time she had spent working at the relationship became an additional pressure applied by her partner.¹⁷⁰

*All the time it was, [Him saying] "I love you, don't do this to me, we've gone through this together."*¹⁷¹

It has been suggested that as violence becomes more established as part of the relationship it may become an integral part of the world that a woman knows.¹⁷²

1.1.5. Confusion, Denial, Minimisation and the Effects of Trauma

The pattern of violence that includes abuse and acts of kindness leading to fear and hope is very confusing so that some women may begin to lack confidence in their own

¹⁶⁴ Marden, and Rice (1995) *op. cit.*; Pagelow (1981) *op. cit.*; Barnett and La Violette (1993) *op. cit.*; Dobash and Dobash (1979) *op. cit.* at 124 and 146; Merritt-Gray and Wuest (1995) *op. cit.* at 405; Ferraro and Johnson (1983) *op. cit.* at 334.

¹⁶⁵ Caroline, Int. 21 at 2.

¹⁶⁶ Int. 21 at 14-15.

¹⁶⁷ Int. 5 at 30; Also, Jenny, Int. 9 at 6.

¹⁶⁸ Int. 28 at 14.

¹⁶⁹ Int. 11 at 28-9.

¹⁷⁰ Rosen (1996) *op. cit.* at 170.

¹⁷¹ Int. 10 at 4.

¹⁷² Borkowski, M., Murch, M. and Walker, V. (1983) *Marital Violence: The Community Response* (London: Tavistock Publications) at 118 and 122.

feelings.¹⁷³ The term ‘learned helplessness’ has been used to describe the process by which some women experiencing domestic violence believe they cannot change their situation.¹⁷⁴ The process may include feelings of despair, numbness, cognitive distortions, social phobias, flashbacks, depression, hyper-vigilance, crying, panic attacks, sleeping and eating problems and social withdrawal. These effects have been said to indicate Battered Woman Syndrome,¹⁷⁵ Post-Traumatic Stress Disorder and Rape Trauma Syndrome.¹⁷⁶ The latter may be less stigmatising terms than ‘Battered Woman Syndrome’ because they are considered normal responses to traumatic events, rather than pathologising women who experience domestic violence.¹⁷⁷

The trauma of experiencing violence may be exacerbated by the fact that the events occur in an environment and relationship previously deemed safe.¹⁷⁸ It has also been suggested that predictable and unpredictable patterns of violence may link the victim with the batterer in a “traumatic bond,” in which she sees herself as dependent on him and lives for the calm periods between the violence, when she perceives the perpetrator as showing her acts of kindness.¹⁷⁹ One problem with such theories is that they may simplify and stereotype a process of survival that differs between people and results in individual women having different needs at different times.¹⁸⁰ The danger is that women whose experience is different from the ‘norm’ will be penalised.¹⁸¹ These theories also risk focussing on only the psychological aspects of domestic violence to the exclusion of social, emotional and practical issues that are so important to the

¹⁷³ Jones and Schechter (1992) *op. cit.* at 29-30; Walker (1984) *op. cit.* at 81.

¹⁷⁴ Seligman, M. (1975) *Helplessness: On Depression, Development and Death* (San Francisco: Freeman), cited in, Walker (1984) *op. cit.* at 286-294.

¹⁷⁵ Walker (1984) *ibid.*

¹⁷⁶ Dutton, M. and Goodman, L. (1994) ‘Post Traumatic Stress Disorder among battered women: Analysis of legal implications’, 12 *Behavioural Sciences and the Law* 215-234 at 216; Meir, J. (1993) ‘Notes from the underground: Integrating psychological and legal perspectives on domestic violence in theory and practice’, 21(4) *Hofstra Law Review* 1295-1366.

¹⁷⁷ Dutton and Goodman (1994) *ibid* at 216 and 221; Herman (1992) *op. cit.* at 127; Meir (1993) *ibid* at 1314.

¹⁷⁸ Mahoney and Williams (1998) *op. cit.* at 143.

¹⁷⁹ Dutton and Painter (1981) *op. cit.*

¹⁸⁰ Glass (1995) *op. cit.* at 149; Mahoney (1991) *op. cit.*; Dutton (1993) *op. cit.*

¹⁸¹ Glass (1995) *ibid.* at 150.

process of survival.¹⁸² Contrary to the theory of learned helplessness, it seems many women increase their help seeking as danger increases.¹⁸³

Panic attacks,¹⁸⁴ depression,¹⁸⁵ sleeping problems¹⁸⁶ and weight loss¹⁸⁷ were mentioned by several women as consequences of the violence. Attempts and actual suicides are the response of some women to domestic violence.¹⁸⁸ Several women referred to their suicide attempts.¹⁸⁹ Isolation prevents a woman hearing positive messages about herself¹⁹⁰ and makes it easier for her partner to define her sense of self and silence her.

1.1.6. Silence, Shame and Loss of Self

Silence is an important theme in stories of domestic violence - the silencing of the abused person's sense of self and the literal silence surrounding domestic violence.¹⁹¹ Melanie said, "I was always told to keep me mouth shut, you shouldn't be heard."¹⁹² Sharon said that she felt worthless: "I didn't feel that I had anything sort of valid to say."¹⁹³ Jenny said:

*I lost all my confidence and became very quiet. I was frightened to say anything or to look directly at people. I didn't want to make friends as I didn't want people to know what was going on.*¹⁹⁴

Humiliation, degradation and shame are a consistent theme in women's stories of domestic violence. Many of the women interviewed for this research mentioned

¹⁸² Stark, E. (1992) Framing and reframing battered women', in, Buzawa, E. and Buzawa, C. (Eds) (1992) *The Changing Criminal Justice Response* (Connecticut: Auburn House) at 290.

¹⁸³ Gondolf and Fischer (1988) *op. cit.* at 17.

¹⁸⁴ Emma, Int. 16 at 1; Jacqueline, Int. 15 at 29; Iris, Int. 11 at 19.

¹⁸⁵ Leila, Int. 22 at 9; Maria, Int. 26 at 27; Melanie, Int. 1 at 25.

¹⁸⁶ Leila, Int. 22 at 8; Melanie, Int. 1 at 16; Jill, Int. 29 at 28.

¹⁸⁷ Amelia, Int. 28 at 6; Ann, Int. 5 at 6; Jill, Int. 29 at 20.

¹⁸⁸ Walker (1984) *op. cit.* at 149; Herman (1992) *op. cit.* at 95.

¹⁸⁹ Melanie, Int. 1 at 7; Becky, Int. 20 at 5; Sharon, Int. 30 at 8.

¹⁹⁰ Rosen (1996) *op. cit.* at 168.

¹⁹¹ Lempert (1996) *op. cit.*

¹⁹² Int. 1 at 27.

¹⁹³ Int. 30 at 11.

¹⁹⁴ Int. 9 at 6; Also, Sharon, Int. 31 at 9; Jill, Int. 29 at 21.

feeling “stupid,”¹⁹⁵ “ashamed”¹⁹⁶ or “embarrassed”¹⁹⁷ or “humiliation”¹⁹⁸ in relation to their experience of domestic violence.¹⁹⁹ Shame has particular significance in the stories of some Asian women who risk being condemned for breaking “izzat”, the concept of family honour, by which a woman is expected to uphold her own honour, that of her assailant, the extended family and the wider community.²⁰⁰

Linked to this shame is often the undermining of a woman’s self esteem,²⁰¹ a sense of failure,²⁰² self blame²⁰³ and feelings of guilt²⁰⁴ that she was somehow responsible for the violence or ‘deserved’ it.²⁰⁵ Ruth said:

*When you spend years with someone like that it makes you look at everything you are and everything you do to see what it is you’re doing that is making it all go wrong . . . So, you live your life, if I did more of this, if I do less of that, if I did that in a different way, if I behave differently, if I don’t go out. All of these things that become an issue in the previous argument you try and adjust.*²⁰⁶

Ruth recognised that the effects of this experience ran through every area of her life from her work to her children.²⁰⁷ Ann described the difficulty she found in making decisions.²⁰⁸ Jenny said: “You lose your personality and your self esteem and your confidence.”²⁰⁹ These complex emotions and loss of a sense of self help to maintain the silence surrounding domestic violence and may lead a woman to minimise and

¹⁹⁵ Iris, Int. 11 at 20; Yvette, Int. 23 at 2.

¹⁹⁶ Iris, Int. 11 at 21; Sally, Int. 24 at 5; Jill, Int. 29 at 4.

¹⁹⁷ Iris, Int. 11 at 32; Karen, Int. 10; Emma, Int. 16 at 8; Angie, Int. 21 at 16; Jill, Int. 29 at 20.

¹⁹⁸ Emma, Int. 16 at 10.

¹⁹⁹ Mama (1989a) *The Hidden Struggle: Statutory and Voluntary Sector Responses to Violence Against Black Women in the Home* (London: London race and Housing Research Unit) at 84.

²⁰⁰ Currell and Gill (1998) *op. cit.* at 12.

²⁰¹ Angie, Int. 21 at 16; Sally, Int. 24 at 11; Jill, Int. 29 at 5.

²⁰² Rachel, Int. 27 at 2; Clare, Int. 14 at 17.

²⁰³ Rachel, Int. 27 at 2 and 13; Leila, Int. 22 at 17; Emma, Int. 16 at 1; Susan, Int. 2 at 46; Ann, Int. 5 at 20.

²⁰⁴ Emma, Int. 16 at 1 and 10.

²⁰⁵ Leila, Int. 22 at 17.

²⁰⁶ Int. 18 at 3; Also, Rachel, Int. 27 at 8.

²⁰⁷ Int. 18 at 46.

²⁰⁸ Int. 5 at 6.

²⁰⁹ Int. 9 at 20; Also, Iris, Int. 11 at 9 and 20; Rachel, Int. 27 at 33.

deny the violence,²¹⁰ disguise her injuries²¹¹ and make excuses for her partner.²¹²

Some of the excuses women use to explain violence are discussed in the second part of this chapter. Forgetting and minimising are important coping strategies which enable a woman to avoid the shame, stigma and loss involved in naming domestic violence²¹³ and to maintain a perception of control over her situation.²¹⁴

The secrecy and shame surrounding the ‘failure’ of marriage and intimate relationships is another important feature of women’s stories of domestic violence.²¹⁵ Talking about the violence or seeking help was often seen as not just risking further violence and breaking the confidence of the relationship,²¹⁶ but as admitting to ‘yourself’ that your marriage had failed.²¹⁷ Rachel said:

*I think just really why I did keep it in for so long was because I didn’t want to accept the fact that my marriage was failing.*²¹⁸

Reasons women gave for not revealing violence included fear of the perpetrator and fear that she would not be believed.²¹⁹ Another is the sense of failure and the belief that the violence is somehow the woman’s own fault.²²⁰ Ruth commented that the effort in keeping the violence secret and “pretending” is a strain in itself.²²¹

Women can also be silenced due to ethnicity, culture, class, sexuality, disability and age so that violence can have different meanings for different women.²²² For

²¹⁰ Ferraro and Johnson (1983) *op. cit.* at 329.

²¹¹ Sally, Int. 24 at 5.

²¹² Rachel, Int. 27 at 13; Kerry, Int. 10 at 3; Sally, Int. 24 at 21; Emma, Int. 16 at 14.

²¹³ Kelly (1988) ‘How women define their experiences of violence’, in, Yllo and Bograd (1988) *op. cit.* at 124.

²¹⁴ Coates, D. and Penrod, S. (1980-1) ‘Social psychology and the emergence of disputes’, 15 (3-4) *Law and Society Review* 655-680.

²¹⁵ Lempert (1996) *op. cit.*; Merritt-Gray and Wuest (1995) *op. cit.* at 403; Scott-Gliba, E., Minne, C. and Mezey, G. (1995) ‘The psychological, behavioural and emotional impact of surviving an abusive relationship’, 6(2) *Journal of Forensic Psychiatry* 343-358.

²¹⁶ Dobash and Dobash (1979) *op. cit.* at 167.

²¹⁷ Rachel, Int. 27 at 22; Ann, Int. 5 at 27.

²¹⁸ Int. 27 at 22.

²¹⁹ Rachel, Int. 27 at 2.

²²⁰ Rachel, Int. 27 at 2 and 13; Also, see Glass (1995) *op. cit.*; Gondolf and Fisher (1988) *op. cit.* at 21.

²²¹ Int. 18 at 4.

²²² Hester *et al.* (1996) *op. cit.* at 5.

example, in making domestic violence incidents public some women risk providing fuel for racist ideas about those who perpetrate violence and face the possibility of racist responses from public authorities.²²³ In black communities seeking help from the authorities can be seen as betrayal and black women may be expected to understand abuse as the result of black men's oppression.²²⁴ These considerations are added to the self blame, guilt, stigma and isolation experienced by most survivors of domestic violence which help maintain the silence preventing her from naming the experience as abusive²²⁵ and seeking outside support.²²⁶ Children are also of crucial importance in women's stories of domestic violence.

1.1.7. Children

Children make it more difficult to leave a relationship for practical and emotional reasons.²²⁷ Lucy hoped that when her baby was born her partner's violence would stop.²²⁸ Kerry found her children's feelings a pressure to remain in the relationship.²²⁹ The perpetrator may use the threat of harming the children, or a custody battle to prevent a woman from leaving²³⁰ and some men use legal proceedings and contact with children as a way to control a woman after separation.²³¹ Many women mentioned their partner's violence against the children or the psychological effects on the children of witnessing violence.²³² Research has suggested links between domestic violence and child physical and sexual abuse²³³ and there is growing

²²³ Mama (1989a) *op. cit.*; James Hanman, D. (1990) *Domestic Violence and the Asian Community in Hounslow* (London Borough of Hounslow, Equal Opportunities Unit) at 2.2.4. and 2.2.6.

²²⁴ Mama (1989a) *op. cit.* at 84.

²²⁵ Dobash and Dobash (1979) *op. cit.* at 164.

²²⁶ Hester, M., Kelly, L. and Radford, J. (1996) 'Introduction', in Hester *et al.* (1996) *op. cit.* at 28.

²²⁷ Featherstone, B. and Trinder, L. (1997) 'Familiar subjects? Domestic violence and child welfare', 2 *Child and Family Social Work* 147-159; Glass (1995) *op. cit.* 108.

²²⁸ Int. 4 at 2.

²²⁹ Int. 9 at 10.

²³⁰ Davies and Lyon (1998) *op. cit.* at 86.

²³¹ Cahn (1991) *op. cit.*; Mahoney (1991) *op. cit.* at 43-49.

²³² Amelia, Int. 28 at 12; Maria, Int. 26 at 10; Caroline, Int. 21 at 15 and 33; Ruth, Int. 18 at 18 and 20; Emma, Int. 16 at 2 and 5; Clare, Int. 14 at 20; Helen, Int. 12 at 10 and 30; Iris, Int. 11 at 12; Kerry, Int. 10 at 41; Sarah, Int. 6 at 2 and 4; Susan, Int. 2 at 22-23.

²³³ Mullender, A. (2000) *Reducing Domestic Violence ... What Works? Meeting the Needs of Children*, Policing and Reducing Crime Briefing Note (London: Home Office).

evidence that witnessing violence can have different psychological, behavioural and emotional effects on children.²³⁴ This knowledge exists alongside research about the harmful effects on children of divorce.²³⁵ A woman suffering domestic violence is likely to be driven in different directions by love of her children, knowing that leaving and staying with her partner may have damaging effects.

Some women give reasons for staying in their relationship as not wanting to disrupt their children's lives, or take them from their home or father.²³⁶ Some women leave because of the effects of the violence on the children.²³⁷ Children were the reason women in this research stayed²³⁸ and left violent relationships.²³⁹ Kate's story is an example of how such decisions may appear contradictory.

*He was a pig but I was pregnant, and I've got two children with him. I really wanted to try and make a go of it. And I stood an awful lot of behaviour but not for very long, I mean we're talking about a year . . . He then turned on the children which was when I phoned my mum . . . because he turned on the children, that gave me the impetus to go.*²⁴⁰

Judith said that she had decided to leave her violent husband because her children were trying to defend her and because they were asking her to leave.²⁴¹ For Joan having a new born baby to protect meant that she could no longer defend herself and it was this, as well as the need to protect her daughter which helped make her 'stronger'

²³⁴ Holtzworth-Munroe *et al* (1997b) *op. cit.* at 199-206; McGee, S. (1997) 'Children's experiences of domestic violence,' 2 *Child and Family Social Work* 13-23; Brandon, M. and Lewis, A. (1996) 'Significant harm and children's experiences of domestic violence', 1 *Child and Family Social Work* 33-42; Hester, M., Pearson, C. and Harwin, N. (1998) *Making an Impact: Children and Domestic Violence: A Reader* (London: Banardos/Department of Health).

²³⁵ See, for example, Rodgers, B. and Pryor, J. (1998) *Divorce and Separation: The Outcomes for Children* (York: Joseph Rowntree Foundation).

²³⁶ Dobash and Dobash (1979) *op. cit.* at 148-152; Pagelow (1981) *op. cit.* at 72; Kurz (1996) *op. cit.* at 68; Baker (1997) *op. cit.* at 60-62.

²³⁷ *ibid*; Ferraro and Johnson (1983) *op. cit.* at 333.

²³⁸ Lorraine, Int. 7 at 1; Ruth, Int. 18 at 41; Lucy, Int. 4 at 64; Sally, Int. 24 at 5; Rachel, Int. 27 at 22; Maria, Int. 26 at 13.

²³⁹ Amelia, Int. 28 at 9; Rachel, Int. 27 at 2; Sally, Int. 24 at 24; Caroline, Int. 21 at 16; Emma, Int. 16 at 5.

²⁴⁰ Int. 3 at 3.

²⁴¹ Int. 8 at 3.

in order to leave.²⁴² Angie had recently received a psychological report on her five year-old son.

*If I hadn't seen that [report] he would probably be back in my life now . . . But hearing that has made me think he's not just hurting me he's hurting the children as well . . . I don't care what he does to me as long as he don't hurt them, but now he has and that's what's done it.*²⁴³

The pressure on women to act in their children's best interests mean that when complex decisions are faced by survivors of domestic violence they are experienced in silence and shame.²⁴⁴ 'Naming' is an important way of ending that silence.

1.1.8. Naming domestic violence

One stage in a woman's process of survival is to 'name' her experience as abusive.²⁴⁵ In 'naming' she finds a language for her experience and discovers that she is not alone.²⁴⁶

*In order to live in the world, we must name it. Names are essential for the construction of reality, for without a name it is difficult to accept the existence of an object, an event, a feeling.*²⁴⁷

Shame and reluctance to admit the need for help to oneself or others plays an important part in the naming process.²⁴⁸ Naming may begin the process of altering a pattern of violence but also includes negative consequences, such as taking on the label of a 'victim', with all the potential connotations of powerlessness, defeat, passivity, vulnerability, and blame for your own victimisation.²⁴⁹ The British Crime

²⁴² Int. 31 at 20-21.

²⁴³ Int. 21 at 16.

²⁴⁴ Stanley, N. (1997) 'Domestic violence and child abuse: Developing social work practice', 2 *Child and Family Social Work* 135-145 at 139-140.

²⁴⁵ Glass (1995) *op. cit.* at 58-70 ; Bush and Hood-Williams (1995) *op. cit.* at 16.

²⁴⁶ Herman (1992) at *op. cit.* 158.

²⁴⁷ Spender, D. (1980) *Man-made language* (London: Routledge) at 163.

²⁴⁸ *ibid.*

²⁴⁹ Bumiller, K. (1987) 'Victims in the shadow of the law: A critique of the model of legal protection', 12 *Signs* 421-439.

Survey 1996 found that only one third of respondents who had been assaulted by their partner identified themselves as a “victim of domestic violence.”²⁵⁰

The fact that women interviewed for this research had volunteered suggests that they had ‘named’ their experiences. However, many women referred to the difficulties they faced during the process of surviving domestic violence. Rachel said: “You don’t like to admit you are one of those people.”²⁵¹ Emma said: “I didn’t want to be seen as a victim or weak or anything. It was humiliation.”²⁵² It has been suggested that women have difficulty in naming experiences as harm when violence and ‘coerced sex’ are part of their daily experience.²⁵³ When women say ‘nothing really happened’ they may be prefacing accounts of things which did actually happen but which are difficult to ‘name’.²⁵⁴

Angie’s story is similar to accounts of other women who say that coerced or forced sex with a partner “wasn’t really rape.”²⁵⁵ A friend of Angie’s called the police after seeing bruises on her legs caused when the perpetrator forced his way into her home. Angie said:

*And he’d actually -. I don’t like the word ‘rape’ because it wasn’t really rape. So, I said “no” but we had sex any way. And I was telling the police lady this and she said: “You’ve been raped”. And I said: “No, I haven’t been raped because he didn’t force me.” Like I said “No” but it was just more like the power of persuasion.*²⁵⁶

Angie went on to say:

Everybody else seems quick enough to say you’re stupid for getting pregnant again and what nobody seems to realise is that the reason I’m pregnant is because I had sex with him against my will . . . And I don’t want to come out

²⁵⁰ Mirrlees-Black, C. (1999) *Domestic Violence: Findings from a New British Crime Survey Self-Completion Questionnaire*, Home Office Research Study 191 (London; Home Office) *op. cit.* at 48-49.

²⁵¹ Int. 27 (telephone call).

²⁵² Emma, Int. 16 at 10.

²⁵³ Kelly (1988) *op. cit.* at 120-1.

²⁵⁴ Kelly, L. and Radford, J. (1996) “‘Nothing really happened’: The invalidation of women’s experiences of sexual violence”, in, Hester *et al* (1996) *op. cit.*

²⁵⁵ *ibid* at 30.

²⁵⁶ Int. 21 at 3.

*and say he raped me, you know, because I don't actually see it as rape - nasty word that is. I think they should change it.*²⁵⁷

As in other accounts of survivors' experiences of domestic violence,²⁵⁸ the words 'rape' and 'sexual assault' were often avoided in the stories women told for this research. Rachel said that her husband had twice "tried to force me to have sex."²⁵⁹ Lucy said that her partner was "very persistent about sexual demands" and "when I didn't have sex he would make me."²⁶⁰ Such difficulties in naming violence were not restricted to rape.

Emma referred to "the first time he really hit me,"²⁶¹ indicating the existence of other violence which wasn't 'real'. Karen described the early months of the relationship, saying that it was not what she "would call real violent, but none the less it was a hefty shove around."²⁶² Leila described a particular violent incident and then said: "There'd been slaps previous to that but nothing too serious you know."²⁶³ Emma also said:

*The violence wasn't as bad as with most women. He didn't break my arm or anything.*²⁶⁴

Clare, whose partner was acquitted of attempted rape, said:

*He's never beaten me up . . . he's hit me a couple of times but nothing that would need - you know - the police.*²⁶⁵

Helen said: "I wasn't sure what was happening was domestic violence and I still struggle with that now."²⁶⁶ Ideas about 'real violence' and reluctance to associate with words like 'rape', 'victim' and 'battered woman' may prevent a woman from beginning the process of separation from a violent partner.²⁶⁷

²⁵⁷ Int. 21 at 34.

²⁵⁸ Mahoney and Williams (1998) *op. cit.* at 125.

²⁵⁹ Int. 27 at 7.

²⁶⁰ Int. 4 at 4.

²⁶¹ Int. 16 at 3 and 10.

²⁶² Int. 10 at 4 and 15.

²⁶³ Int. 22, at 2.

²⁶⁴ Int. 16 at 3. Also, Ann, Int. 5 at 1; Joan, Int. 31 at 14; Sharon, Int. 30 at 26.

²⁶⁵ Int. 14 at 17. Also, Kate, Int. 3 at 6.

²⁶⁶ Int. 12 (II) at 21.

²⁶⁷ Minow, M. (1990) 'Words to the door to the land of change: Law, language and family violence', 43(6) *Vanderbilt Law Review* 1665-99; Mahoney (1991) *op. cit.* at 24-26.

1.1.9. Process of Separation

Separation in the context of domestic violence tends to be viewed as an act. Legal actors often ask: ‘why does she stay?’ and ‘why doesn’t she leave?’ Yet, these stories show that it is difficult to distinguish between women who have separated from their partner and those women who have not. The process of survival often includes many attempts to leave, physical separations and subsequent returns. At some stages a woman may believe she has separated from her partner permanently only to have a different view at another time. She may also be persuaded to return by people, including children, partner or family. Circumstances such as legal rules on property rights, financial reasons and religion may also persuade her to return. Separation is rarely complete due to the physical proximity of the parties, shared friends, family, children and finances. It is rarely possible, in the context of domestic violence, for the term ‘separation’ to mean the complete parting of the ways of the two parties, however committed a survivor is to such an end.

The process of separation from the violent partner, like survival, is a physical and emotional process involving feelings of fear, failure, shame, guilt, anger, grief, depression and vulnerability.²⁶⁸ It involves much more than physical separation. Psychological separation or the “process of breaking free” may begin as soon as violence does.²⁶⁹ For many women the loss of faith and trust, and the predominance of fear and loneliness over love is a gradual process.²⁷⁰ Iris had left her partner several times and returned. She described how negative feelings gradually overtook positive ones.

*You hate them more every time and it’s harder to love them again, to carry on in the same way.*²⁷¹

²⁶⁸ Jones and Scheter (1992) *op. cit.* at 207 Ferraro and Johnson (1983) *op. cit.* at 335; Lempert (1996) *op. cit.*

²⁶⁹ Meritt-Gray and Wuest (1995) *op. cit.*

²⁷⁰ Lampert (1997) *op. cit.* at 164; Ferraro and Johnson (1983) *op. cit.* at 334; Brown (1997) *op. cit.*

²⁷¹ Int. 11, at 29; Also, Jill, Int. 29 at 19.

Separation often requires a woman to repair her loss of trust, fear of intimacy and lost sense of self and to overcome isolation.²⁷² She may need to give up hope in the relationship,²⁷³ realise that her partner is controlling her life, but that she has the power to take the control back.²⁷⁴ Herman argues that trauma shatters “the construction of the self that is formed and sustained in relation to others.”²⁷⁵ She argues that ‘the self’ can only be reconstructed in relation to others.²⁷⁶ This thesis argues that survivors’ need for power and relationships has been ignored in the ways we think about the role of law in relation to domestic violence. Jill said of the process which allowed her to leave the violent relationship “I got myself back . . . I rejoice in life now.”²⁷⁷ This thesis reveals how the law contributes to that process.

As the process of survival differs for every woman so do her pathways of seeking assistance from outside agencies. Those pathways are considered in more detail in Parts Two and Three. The next part of this chapter considers an issue that is crucial to each woman’s experience of survival²⁷⁸ and to the future of domestic violence law - the ways survivors and others try to make sense of domestic violence.

1.2. Understanding domestic violence

Survivors²⁷⁹ and legal actors²⁸⁰ adopt a range of explanations in attempting to make sense of domestic violence. There have been several useful summaries of the range of explanations for domestic violence. One edited collection looks at domestic violence through a “psychological lens,”²⁸¹ a “sociological lens”²⁸² and a “feminist lens.”²⁸³ In

²⁷² Graham *et al.* (1988) *op. cit.* at 230; Merritt-Gray and Wuest (1995) *op. cit.*

²⁷³ Marden and Rice (1995) *op. cit.* at 76.

²⁷⁴ Walker (1984) *op. cit.* at 80.

²⁷⁵ Herman (1992) *op. cit.* at 51.

²⁷⁶ *ibid.*

²⁷⁷ Int. 29 at 18 and 30

²⁷⁸ Ferraro and Johnson (1983) *op. cit.* at 2.

²⁷⁹ Mooney (1993) *op. cit.* at 61.

²⁸⁰ Borkowski *et al* (1983) *op. cit.* at 52-78.

²⁸¹ O’Leary, K. (1993) ‘Through a psychological lens - Personality traits, personality disorders, and levels of violence’, in, Gelles and Loseke (1993) *op. cit.*

²⁸² Gelles (1993a) *op. cit.*

her review of the literature Smith divides theories into “individual pathology,” “social structural explanations” and “feminist explanations.”²⁸⁴ Domestic violence research has been said to consist of:

*enemies rather than colleagues, opposition rather than co-operation, sabotage rather than assistance, silence rather than communication.*²⁸⁵

In this “battle for ownership of the problem,”²⁸⁶ it is not uncommon for contributions to the domestic violence debate to be dismissed because they appear to cast doubt on a particular view. For instance, those who take a feminist perspective may be dismissed due to that label,²⁸⁷ and those who cast doubt on ‘feminist’ views are dismissed by others for the opposite reason.²⁸⁸ When one claim to absolute truth is replaced by an opposing claim we risk dangerous misunderstandings about the complexity of domestic violence.²⁸⁹

The ‘individual’, ‘family’, ‘community’ and ‘gender’ models are used here to categorise some popular ways of making sense of domestic violence. The models should be seen as fluid and overlapping, with most theories failing to fall clearly into any one ‘model’. The ‘eclectic’ model moves away from the idea of ‘truths’ and ‘myths’ to reflect the complex reality of various types of domestic violence experienced differently by different people.

²⁸³ Yllo, K. (1993) ‘Through a feminist lens: Gender, power and violence’, in Gelles and Loseke (1993) *op. cit.*

²⁸⁴ Smith, L. (1989) *Domestic Violence: An Overview of the Literature*, Home Office Study No. 107 (London: Home Office) at 1-2 *op. cit.* at 23-30.

²⁸⁵ Gelles and Loseke (1993) *op. cit.* at xv.

²⁸⁶ Hanna, C. (1998) ‘The paradox of hope: The Crime and Punishment of domestic violence’, 39(5) *William and Mary Law Review* 1505-1584.

²⁸⁷ Pizzey, E. (1998) *The Observer*, 5th July.

²⁸⁸ Hester, Kelly and Radford (1996) *op. cit.*; Also see response to Carolyn Hoyle’s work in ‘Letters’, *The Independent on Sunday*, 20th September 1998; Bindell, J. (1998) *Guardian*, 29th March.

²⁸⁹ Straus (1993) *op. cit.* at 80; Solender, E. (1998) ‘Report on miscommunication problems between family courts and domestic violence victims’, 19(2) *Women’s Rights Law Reporter* 156-9; Goodyear-Smith, F. and Laidlow, T. (1999) ‘Aggressive acts and assaults in intimate relationships: Towards an understanding of the literature’, 17 *Behavioural Sciences and the Law* 285-304.

1.2.1 'Individual' model

This framework relies on the medical model of the individual perpetrator as sick (in body or mind). It also looks to the victim of the violence asking why she begins the relationship, how she may provoke the violence and why she stays with her partner, focussing on individual 'dysfunction', rather than the wider relational and social context of domestic violence.²⁹⁰ This model suggests individualistic 'medical' solutions for domestic violence such as psychiatric, psychological and substance abuse treatment, 'anger-management programmes', counselling for either the perpetrator or survivor or 'couple counselling'.

Perpetrator Focus

Biological explanations of domestic violence relate to the view that men are naturally aggressive,²⁹¹ and suggest links to high testosterone levels,²⁹² chromosomal abnormalities and head injuries.²⁹³ These biological theories have left so many gaps, that theories about the psychology of the mind, recognising the social influences affecting behaviour, are generally more popular today.²⁹⁴ These were the explanations that some women used to try to make sense of domestic violence. Karen referred to her belief that her partner had "a serious psychological problem."²⁹⁵ Emma said that "there was something wrong in the head."²⁹⁶ Maria felt that her partner was "screwed up in the mind."²⁹⁷

²⁹⁰ Kurz, D. and Stark, E. (1988) 'Not-so-benign neglect: The medical response to battering', in, Yllo and Bograd (1988) *op. cit.*

²⁹¹ Hearne (1998) *op. cit.* at 17.

²⁹² Hearne (1998) *op. cit.* at 18; Holtzworth-Monroe, A. Bates, L. Smutzler, N. and Sandin, E. (1997a) 'A brief review of the research on husband violence: Part I: Maritally violent versus not violent men, 2(1) *Aggression and Violent Behaviour* 65-99 at 76-77.

²⁹³ See Holtzworth-Monroe *et al* (1997a) *ibid* at 77-8.

²⁹⁴ Hearne (1998) *op. cit.* at 19.

²⁹⁵ Int. 10 at 4.

²⁹⁶ Int. 16 at 2.

²⁹⁷ Int. 26 at 26.

Some theories focus on mental disorders and masochistic tendencies of perpetrators of domestic violence, stemming from traumatic child-hoods, and damaging relationships between men and their mothers.²⁹⁸ It has also been suggested that perpetrators of domestic violence may have abnormal personalities and character traits such as antisocial, borderline and other personality disorders, depression and low self-esteem.²⁹⁹ Some lack social skills, such as assertiveness, communication and problem-solving.³⁰⁰ Many of these explanations suggest that perpetrators of domestic violence are “generally violent.”³⁰¹ Some women mentioned that their partners had been violent to friends, family members,³⁰² strangers,³⁰³ their children³⁰⁴ or other partners.³⁰⁵ There is some evidence that child abuse may be an indicator of domestic violence and vice versa.³⁰⁶

There is an enduring perception that drug and alcohol abuse are connected with domestic violence.³⁰⁷ Some women who were interviewed looked to their partner’s use of alcohol as explanation for the violence³⁰⁸ or saw alcohol as making it worse.³⁰⁹ Others said that their partners were physically violent when sober and drunk.³¹⁰ Empirical research suggests some relationship between excessive alcohol

²⁹⁸ Hearne (1998) *op. cit.* at 21-23.

²⁹⁹ *ibid*; Holtzworth-Monroe *et al* (1997a), *op. cit* at 67-72.

³⁰⁰ Holtzworth-Monroe *et al* (1997a) *ibid* at 75-6.

³⁰¹ Brisson, N. (1981) ‘Battering husbands: A survey of abusive men’, (1-4) *Victimology* 338-344 at 342; Edwards, S. (1989) *Policing ‘Domestic’ Violence: Women, the Law and the State* (London: Sage) *op. cit.* at 126.

³⁰² Iris, Int. 11 at 23; Jill, Int. 29 at 3.

³⁰³ Iris, Int. 11 at 24; Kerry, Int. 10 at 16; Lucy, Int. 4 at 1; Melanie, Int. 1 at 15; Maria, Int. 26 at 38; Sally, Int. 24 at 2-4.; Joan, int. 31 at 13.

³⁰⁴ Kerry, Int.10 at 16; Emma, Int. 16 at 2; Kate, Int. 3 at 3; Melanie, Int. 1 at 1; Ruth, Int. 18 at 4; Leila, Int. 22 at 9.

³⁰⁵ Karen, Int. 10 at 5 and 39; Emma, Int. 16 at 2; Angie, Int. 21 at 2.; Julie, Int. 13 at 11; Susan, Int. 2 at 36; Yvette, Int. 23 at 30.

³⁰⁶ Walby and Myhill (2000) *op. cit.*; Davidson, H. (1995) ‘Child abuse and domestic violence: Legal connections and controversies’, 29(2) *Family Law Quarterly* 357-73.

³⁰⁷ Jones and Schechter (1992) *op. cit.* at 53.

³⁰⁸ Maria, Int. 26 at 1-3; Angie, Int. 21 at 8 and 14-15; Julie, Int. 13 at 13; Kerry, Int. 10 at 4; Lorraine, Int. 7 at 2; Susan, Int. 2 at 14; Joan, Int. 31 at 1.

³⁰⁹ Sally, Int. 24 at 7; Leila, Int.22 at 15; Ann, Int. 5 at 22.

³¹⁰ Becky, Int. 20 at 13; Kate, Int. 3 at 9; Melanie, Int. 1 at 26; Jill, int. 29 at 16.

consumption and the use of violence.³¹¹ The evidence is that this is not a simple cause of domestic violence but a factor which exists in some incidents.³¹² There is also evidence that some men use alcohol as an excuse for their violence.³¹³

Victim Focus

Victims of domestic violence have much in common with other victims of violent crime, such as those who have been raped or abused as children, in that explanations often focus on how they contributed to their own victimisation.³¹⁴ One reason for this tendency to blame victims may be that when we witness an injustice, which we are unable to redress, it comforts us to believe that no injustice has occurred at all and that the victim deserves her fate.³¹⁵ Not only does this belief distance us from the possibility of suffering a similar fate, it also helps us to believe that the world is just, shields us from the notion that the system responding to injustice is not working efficiently and precludes the need to work towards change.³¹⁶

Victims of domestic violence have found themselves labelled 'neurotic', 'hysterical', 'mentally ill,' 'depressive,' 'drug addicts' or 'alcoholics'.³¹⁷ One of the earliest psychoanalytic theories was that battered women consciously or unconsciously encouraged their abusers due to masochistic tendencies³¹⁸ and it has been suggested that some women become addicted to violence.³¹⁹ These ideas have been discredited

³¹¹ Farrell, G. and Pease, K. (1994) 'Crime seasonality: Domestic disputes and residential burglary in Merseyside', 1988-1990', 34(4) *British Journal of Criminology* at 487-498; Flanzer, J. (1993) 'Alcohol and other drugs are key causal agents of violence', in Gelles and Loseke (1993) *op. cit.*; Holtzworth-Munroe *et al* (1997a) *op. cit.* at 72-75.

³¹² Gelles, R. (1993b) 'Alcohol and Other drugs are associated with violence - They are not its cause', in Gelles and Loseke (1993) *op. cit.*

³¹³ Hearne (1998) *op. cit.* at 122 ; Ptacek, (1988) *op. cit.* at 142.

³¹⁴ Barnett and LaViolette (1993) *op. cit.* at 75; Ptacek (1988) *ibid* at 154.

³¹⁵ Lerner, M. (1980) *The Belief in a Just World* (New York: Plenum) cited in, Dutton and Painter (1981) *op. cit.* at 140-1.

³¹⁶ Dutton and Painter (1981) *ibid* at 141.

³¹⁷ Rosewater, L. (1988) 'Battered or schizophrenic? Psychological tests can't tell', in, Yllo and Bograd (1988) *op. cit.*

³¹⁸ Snell, J., Rosenwald, E. and Robey, A. (1964) 'The wifebeaters wife - A study of family interaction', 11 *Archives of General Psychiatry* 107-113.

³¹⁹ Pizzey, E. and Shapiro, J. (1982) *Prone to Violence* (Middlesex: Feltham).

with evidence of survivors' repeated attempts to leave violent men and the lack of evidence that battered women repeatedly form relationships with violent men.³²⁰

Victims have been blamed for provoking violence by infidelity,³²¹ 'nagging',³²² or 'acting like a victim'.³²³ Violent men explain their violence in relation to the behaviour of the victim - she was drunk, she was not being faithful, she was flirting, she was not caring for the children, doing the housework or maintaining her appearance, she was not staying in, or she was talking too much.³²⁴ Karen described her partner's words to her after one violent incident, "Now you've done it - that's your f-f-fault - you f-ing made me do this."³²⁵ In the process of self blame women themselves may also look for aspects of their own behaviour to explain the violence.³²⁶ This was true for many women in this research.³²⁷

The concept of 'honour killing' in some cultures justifies the murder of women who are raped, commit adultery or otherwise 'shame' their family.³²⁸ In 1999 the mother and brother of Rukhsana Naz were convicted of murder after killing her when she became pregnant during an adulterous affair.³²⁹ In 1998 Shabir Hussain's defence of provocation succeeded after the murder or 'honour killing' of his cousin Tasleem Byun after she committed adultery.³³⁰ This blame is reproduced in law when a man is tried for killing his partner and the court hears portrayals of the victim which focus on

³²⁰ Pagelow (1981) *op. cit.* at 59; Walker (1984) *op. cit.* at 148; Barnett and LaViolette (1993) *op. cit.* at 13.

³²¹ Borkowski *et al.* (1983) *op. cit.* at 45.

³²² Dobash and Dobash (1979) *op. cit.* at 133.

³²³ Melville, A. (1999) *Difficult Men: Strategies for Women Who Choose Not To Leave* (London: Vermillion).

³²⁴ Hearne (1998) *op. cit.* at 126-8; Ptacek (1988) *op. cit.* at 147.

³²⁵ Int. 10 at 18; Also Leila, Int. 22 at 9.

³²⁶ Ferraro and Johnson (1983) *op. cit.* at 329.

³²⁷ Sally, Int. 24 at 5 and 11; Rachel, Int. 27 at 2 and 13; Leila, Int. 22 at 17; Ruth, int. 18 at 3; Ann, Int. 5 at 11; Susan, Int. 2 at 46; Joan, Int. 31 at 5.

³²⁸ See Huggler, J. (1997) *Independant*, 7th May; Burger, J. (1997) *Guardian*, 4th November; Olden, M. (1998) *Guardian*, 2nd November.

³²⁹ Henche (1999) *Guardian*, 5th August.

³³⁰ Dyer, C. (1998) *Guardian*, 2nd November.

her failure to live up to the traditional image of the good wife and good mother.³³¹ In 1997 David Swinbourne was sentenced to two hundred hours community service for stabbing his wife eleven times, after the court heard that she had been “living what can only be described as a riotous lifestyle.”³³² In 1999 David Hampson was sentenced to six years in prison after killing his ‘nagging’ wife with a hammer. He had buried her in the garden and pretended she was alive for two years after the killing.³³³ His sentence was cut to four years on appeal.³³⁴ This year, Denis Day was given a thirty month prison sentence for involuntary manslaughter after pushing his ‘unfaithful wife’ over a cliff. He had waited until four weeks before his murder trial to admit to his role in her death.³³⁵

1.2.2 ‘Family’ Model

Rather than focusing on individuals, this model concentrates on particular families and family life in general. The characteristics which make the family warm and supportive may be seen as having the potential to make it violent.³³⁶ They include the time spent together increasing the chance of conflict, the high tensions which stem from intense emotional involvement, the traditional rights of some family members to interfere with the lives of others, and the fact of different generations and sexes living together with roles assigned by age and sex, rather than interest and competence.³³⁷ The privacy and involuntary membership which characterises life in families means stress may be exacerbated by transmission between family members and family life rests on history which brings with it extensive knowledge of vulnerabilities and past conflicts.³³⁸ One aspect of this is that families are a natural source of conflict because

³³¹ Bumiller, K. (1990) ‘Fallen angels: The representation of violence against women in legal culture’, 18 *International Journal of the Sociology of Law* 125-142.

³³² Donegan, L. (1997) *Guardian*, 19th July.

³³³ *Guardian* (1999) ‘Six years jail for hammer killing of nagging wife’, 29th October.

³³⁴ *Guardian* (2000) ‘Husband’s sentence cut’, 11th July.

³³⁵ Gibbs, G. (2000) ‘Jail for cliff-top wife killer’, *Guardian*, 29th January.

³³⁶ Straus, M. and Hotaling, G.(eds) (1980) *The Social Causes of Husband-Wife Violence* (Minneapolis: University of Minneapolis Press) cited in, Gelles (1993) *op. cit.* at 35.

³³⁷ *ibid.*

³³⁸ *ibid.*

people are attempting to live out personal agendas in a group.³³⁹ Some women looked to the stresses of everyday life in order to explain violent incidents, including a house move,³⁴⁰ problems at work³⁴¹ and the perpetrator's family moving away.³⁴²

Social learning theory posits that a propensity to violence is transmitted through the generations in a 'cycle of violence'.³⁴³ Some women saw a connection between their partners' family background and the violence.³⁴⁴ Some abusers have histories of a violent childhood and this does seem to be a risk factor for domestic violence.³⁴⁵ But it does not explain why men should be more violent than women, why many people with such backgrounds do not use violence and why there are so many perpetrators who did not grow up in violent homes.³⁴⁶ These theories have also been used to suggest that a woman may learn to be a victim from experiencing and witnessing violence as a child.³⁴⁷ Women who experience domestic violence have different family backgrounds and previous experience of violence does not seem to be a risk factor.³⁴⁸ Some women in this research referred to violence in their family backgrounds.³⁴⁹ Others described non-violent and loving childhoods.³⁵⁰

There is sometimes a perception of domestic violence as an extension of 'normal' family conflict where abuse is mutual.³⁵¹ The 'General Systems Theory' or the systemic approach sees violence as a product of the family system suggesting that

³³⁹ *ibid.*

³⁴⁰ Emma, Int. 16 at 16.

³⁴¹ Karen, Int. 10 at 3.

³⁴² Leila, Int. 22 at 15.

³⁴³ Egeland, B. (1993) 'A history of violence is a major risk factor for abusing the next generation', in Gelles and Loseke (1993) *op. cit.*; Hearne (1998) *op. cit.* at 24-27.

³⁴⁴ Amelia, Int. 28 at 7; Maria, Int. 26 at 19 and 26; Sally, Int. 24 at 2; Clare, Int. 14 at 16; Karen, Int. 10 at 5; Lorraine, Int. 7 at 3; Susan, Int. 2 at 38-39.

³⁴⁵ Egeland (1993) *op. cit.*; Holtzworth-Munroe *et al* (1997a) *op. cit.* at 88.

³⁴⁶ Kaufman, J. and Zigler, E. (1993) 'The intergenerational transmission of abuse is overstated', in Gelles and Loseke (1993) *op. cit.*

³⁴⁷ Holtzworth-Munroe *et al* (1997b) *op. cit.* at 189-191.

³⁴⁸ Pagelow (1981) *op. cit.* at 61.

³⁴⁹ Kate, Int. 3 at 1; Melanie, Int. 1 at 5; Leila, Int. 22 at 11;

³⁵⁰ Kerry, Int. 10 at 5; Sally, Int. 24 at 2; Amelia, Int. 28 at 9; Jenny, Int. 9 at 11; Emma, Int. 16 at 5; Jill, Int. 29 at 1; Joan, Int. 31 at 3.

³⁵¹ Hearne (1998) *op. cit.* at 118-120.

violence can become a pattern in families when there is “positive feedback.”³⁵² This process occurs through the labelling of a violent family member, creation of ‘secondary conflicts’ over violence, development of role expectations, self identity as violent and reinforcement for the perpetrator through successful use of such violence.³⁵³ The ‘communication perspective’ views physical violence as part of a wide spectrum of behaviour comprising messages from one partner to another and suggests that families can be taught to change their communication patterns.³⁵⁴

1.2.3. ‘Community’ model

Rather than focusing on individuals or families this theory looks to the dysfunctional aspects of particular cultural and social communities and socio-economic factors as explanations for violence. In ‘Social Learning Theory’ people are said to learn their behaviour from their parents, peers and those in their immediate social or micro environment and violence is “produced and reproduced through learning, socialisation, modelling [and] imitation.”³⁵⁵ One idea is that norms and values of particular communities create a subculture of violence.³⁵⁶ There exists a perception that in some communities domestic violence is more acceptable³⁵⁷ fed by theories about an ‘underclass’, characterised by a declining work ethic and reliance on state support in which violence and crime is a way of life.³⁵⁸ There are also negative societal stereotypes about some ethnic minority communities, including assumptions about black men being inherently violent, Afro Caribbean women being ‘aggressive’ and Asian women being ‘passive’.³⁵⁹ It has been suggested that some black women

³⁵² Straus, M. (1973) ‘A General Systems Theory approach to a theory of violence between family members’, 12(3) *Social Science Information* 105-125 at 116.

³⁵³ *ibid.*

³⁵⁴ Cahn, D. and Lloyd, S. (1996) *Family Violence from a Communication Perspective* (California: Sage Publications).

³⁵⁵ Hearne (1998) *op. cit.* at 29.

³⁵⁶ See Wolfgang, M. and Ferracuti, F. (1982) *The Subculture of Violence* (Second edition) (London: Tavistock), cited in, Gelles (1993) *op. cit.* at 38.

³⁵⁷ Borkowski *et al* (1983) *op. cit.* at 46.

³⁵⁸ Herrnstein, R. and Murray, C. (1994) *The Bell Curve* (New York: Free Press).

³⁵⁹ Mama, A. (1989b) Violence against black women: Gender, race and state responses’, 32 *Feminist Review* 30-48 at 43; West, C. (1998b) ‘Lifting the “political gag order” Breaking the silence around partner violence in ethnic minority families’, in Jasinski and Williams (1998) *op. cit.*

are reluctant to report violence against them by black men for fear of supporting these stereotypes or betraying their communities.³⁶⁰ However research has found different rates of reporting between different ethnic minority groups and it may be that some women from ethnic minorities are more likely to call the police.³⁶¹ There are also occupations, such as the armed forces³⁶² and the police,³⁶³ in which people are exposed to a culture of violence because the use of force is seen as generally accepted and necessary. The film *Nil By Mouth* is a powerful portrayal of life in a poverty stricken area of London and shows how aggressive forms of verbal communication may become part of a culture.³⁶⁴

In the 'community' model socio-economic pressures are considered important as explanations for why people living in certain areas might be more inclined to resort to violence. For instance, poor housing, high levels of unemployment and the poverty which goes with that may increase the stresses of family and community life, making resort to violence more likely.³⁶⁵ But research suggests that domestic violence occurs at similar rates in all kinds of homes, families and areas.³⁶⁶ Domestic Violence may be more visible in lower socio-economic groups because survivors have no choice but to use publicly funded services in their attempts to stay safe. Law enforcement agencies may be contacted more frequently where crowded living conditions mean the neighbours are more likely to overhear physical and verbal violence.³⁶⁷ In contrast, the privacy of rural living may mean neighbours live long distances from each other, isolating families in a way which may heighten tensions and decrease the chances of the violence coming to the attention of agencies or the wider community. It may also be that small close knit rural communities impose social sanctions that make the

³⁶⁰ Mama (1989) *op. cit.* at 84.

³⁶¹ Mooney (1993) *op. cit.* at 52.

³⁶² See Enloe, C. (1988) *Does Khaki Become You? The Militarisation of Women's Lives* (London: Pandora Press) at 86-91.

³⁶³ See Westley, W. (1970) *Violence and the Police: A Sociological Study of Law, Custom and Morality* (Cambridge, MIT Press); Graef, R. (1989) *Talking Blues: The Police in Their Own Words* (London: Collins Harvill).

³⁶⁴ *Nil By Mouth* (1997) directed by Gary Oldham.

³⁶⁵ Gelles (1993) *op. cit.* at 33.

³⁶⁶ Mooney (1993) *op. cit.* at 63; Smith (1989) *op. cit.* at 16.

³⁶⁷ James-Hanman, D. (1998) *Social Exclusion and Domestic Violence* (London: Greater London Domestic Violence Project).

victim less likely to reveal the violence. In wealthier areas women may be less willing to involve outside agencies and make more use of private medical care and housing.³⁶⁸ Different issues may apply in some close-knit urban Asian communities in which the stigma of leaving home may be greater than the stigma of enduring violence.³⁶⁹

If a perpetrator achieves control over his partner through fear, and there are no social or legal costs for his behaviour then violence appears rational. It has been recognised that many perpetrators “gain compliance and other benefits” from their violence and that one answer is to increase the costs of continuing violence by outside intervention.³⁷⁰ The ‘Resource theory’ suggests that violence is a resource available to achieve power and that the less economic, personal and social resources available to an individual the more likely he or she will be to resort to violence.³⁷¹ Gelles used the ‘exchange’ or ‘social control’ theory to explain the principle that when there are lower costs and higher rewards then domestic violence is more likely.³⁷² In communities where respect for the law is limited, social costs in terms of shame and stigma may not exist. In another context, some famous sportsmen accused of violence to their partners have not paid in any professional sense,³⁷³ although when legal sanctions have applied, this has sometimes led to professional costs.³⁷⁴ In some cultures, violence may be a way of achieving standing and displaying masculinity, particularly when non-violent means of showing manhood, in terms of financial standing and employment, are not available.

³⁶⁸ Smith (1989) *op. cit.*

³⁶⁹ Choudry, S. (1996) *Pakistani Women's Experience of Domestic Violence in Great Britain*, Research Findings No.43 (London: Home Office Research and Statistics Directorate) at 2.

³⁷⁰ Adams, D. (1988) Treatment models of men who batter - A pro-feminist analysis', in, Yllo and Bograd (1988) *op. cit.* at 181.

³⁷¹ Goode, W. (1971) 'Force and violence in the family', 33 *Journal of Marriage and the Family* 624-636.

³⁷² Gelles (1993) *op. cit.*

³⁷³ Examples include, Paul Gascoigne, George Best and Stan Collymore (Carter, H. (1998) *Guardian* 11th June), Mike Tyson (Chaudhary (2000) *Guardian*, 18th January) and Lee Chapman (Amoore, T. (1997) *The Express*, 24th October. Examples from the US include American footballers, Jim Brown and O.J. Simpson (Campbell, D. (1999) 'Heroes and Villians', *Guardian*, 21st September.

³⁷⁴ One example is Geoffrey Boycott, who had contracts with the BBC cancelled after being convicted, in a French court, of assaulting his partner (Henley, J. (1998) *Guardian* 11th November).

1.2.4. 'Gender' model

The 'gender' model focuses on relationships between men and women and includes a range of feminist views and others that are not considered 'feminist'. Some have argued that domestic violence is part of the historical and socially constructed patriarchal ordering of power relations that exist to keep women in submission to men.³⁷⁵ One version of the 'gender' model is that rather than dysfunctional and exceptional, violence is a functional and normal aspect of everyday gender relations which is not about conflict, but coercive control.³⁷⁶ Rather than as an indication of a breakdown in the social order, domestic violence may be seen as one way of affirming a social order which keeps women in submission to men.³⁷⁷ The term 'sexual violence' has been used to describe a continuum of violent methods including sexual harassment, indecent exposure, incest, pornography, rape, and domestic violence which men use to exercise power over women.³⁷⁸

Ideas about what it means to be men and women in our society surround us. Our development is shaped by our perceived gender. The toys we play with, the games we play, the stories we are told, the language we use and expectations of our behaviour are all shaped by whether we are boys or girls. These learnt social roles are reinforced by cultural representations of men as dominant and women as submissive in the media, in sport, in politics and in the law.³⁷⁹

*[G]ender is one of the fundamental organising principles of society . . . It is a social relation that enters into and partially constitutes all other social relations and activities and pervades the entire social context in which a person lives.*³⁸⁰

³⁷⁵ Dobash and Dobash (1979), *op. cit.*; Dobash and Dobash (1992) *op. cit.*; Bograd (1988) 'Feminist Perspectives on wife abuse: An introduction', in, Yllo and Bograd (1988) *op. cit.*; Yllo (1993) *op. cit.*

³⁷⁶ Yllo (1993) *op. cit.* at 53.

³⁷⁷ Freeman, M. (1984) 'Legal ideologies, patriarchal precedents, and domestic violence', in, Freeman, M. (Ed) (1984) *State, Law and the Family* (London: Tavistock Publications) at 52.

³⁷⁸ Kelly (1988) *op. cit.*

³⁷⁹ Dobash and Dobash (1979) *op. cit.* at 24.

³⁸⁰ Kurz, D. (1993) 'Physical assaults by husbands: A major social problem', in, Gelles and Loseke (1993) *op. cit.* at 77.

It has been argued that perpetrators of domestic violence are living up to cultural prescriptions of masculinity.³⁸¹

Being violent is an accepted, if not always an acceptable, way of being a man.

*Doing violence is . . . available as, a resource for demonstrating a person is a man.*³⁸²

One theory, not generally labelled as feminist, is that men are expected to fulfil certain roles as economically successful providers and that when these goals are not fulfilled men are more likely to be susceptible to violent behaviour.³⁸³ So, the roles themselves are not challenged, as in feminist theories, and the problem is seen to lie in the economic conditions, bad housing, poverty and lack of favourable job opportunities which block these 'gender goals'. Ruth traced the beginning of her partner's violence to when he became unemployed and "lost his status" through a well-paid job. At the same time she was advancing in her career.³⁸⁴

The traditional family is usually accepted as warm and caring, guided by ethics of altruism and care, the privacy of which protects its members from the dangers outside³⁸⁵ - the 'haven in a heartless world'.³⁸⁶ The women's movement attempted to break down the metaphorical divide between the public and the private spheres, claiming that personal issues had profound implications for women's oppression. The family was revealed as a source of injustice, poverty, violence, inequality and oppression for many women,³⁸⁷ although it has been argued that the black family has functioned as a prime source of resistance to oppression.³⁸⁸ The ideology of the traditional family has been viewed as creating and sustaining the prevailing understanding of relations between the genders - "a microcosm of an unequal society."³⁸⁹ The privacy surrounding the family, protecting it from state intervention,

³⁸¹ Dobash and Dobash (1979) *op. cit.* at 24.

³⁸² Hearne (1998) *op. cit.* at 37.

³⁸³ Smith (1989) *op. cit.* at 25.

³⁸⁴ Ruth, Int. 18 at 4.

³⁸⁵ Dobash and Dobash (1979) *op. cit.* at 7; Olsen (1993) *op. cit.*; Okin, S. (1989) *Justice, Gender and the Family* (New York: Basic Books) at 9.

³⁸⁶ Lasch, C. (1977) *Haven in a Heartless World* (New York: Basic Books) at 6.

³⁸⁷ Dobash and Dobash (1979) *op. cit.*

³⁸⁸ Currell and Gill (1998) *op. cit.* at 12; Mama (1989) *op. cit.* at 305.

³⁸⁹ Smith (1989) *op. cit.*

has been said to sustain these unequal relations.³⁹⁰ The marriage contract has been described as “an institution of dominance and subservience, labour and bondage” which requires “faith, commitment, vows, the practice of certain behaviours, reverence, worship and sacrifice.”³⁹¹

General attitudes, media representations of married life, legal rules and discourse all suggest that it is women who are expected to bear the major part of this sacrifice in terms of becoming wives and mothers and surrendering their independent legal, economic, social and personal status and ownership of their bodies.³⁹² Some research suggests that “male sexual proprietariness is the main substantive issue behind violence against wives.”³⁹³ There is evidence that some perpetrators view their violence as an expression of love and ownership of ‘their’ partner.³⁹⁴ This “vocabulary of male entitlement”³⁹⁵ and the perpetrator’s control of finances and women’s economic dependency has been found to be an important element in cases of domestic violence.³⁹⁶ It has also been suggested that the feelings of attachment which help to prevent women leaving violent men are related to patriarchal understandings of heterosexual relationships as based on women’s submission and of women finding identity and a sense of worth through relationships with men.³⁹⁷

One explanation for domestic violence is that men react violently when their traditional gender role as head of the household or main breadwinner is challenged by their relationships with individual women.³⁹⁸ Violence sometimes increases when a woman acts independently by asserting her point of view, going to work or into

³⁹⁰ Olsen, F. (1985) ‘The myth of state intervention in the family’, 18(4) *University of Michigan Law Review* 8835-8864.

³⁹¹ Young, A. (1994) ‘Caveat sponsa: violence and the body in law’, in Brettell, J. and Rise, S. (Eds) (1994) *Public Bodies, Private States* (Manchester: Manchester University Press) at 151.

³⁹² Dobash and Dobash (1979) *op. cit.* at 60-61.

³⁹³ Wilson *et al* (1995) *op. cit.* at 354.

³⁹⁴ Hearne (1998) *op. cit.* at 140-144, 152-154; Dobash and Dobash (1979) *op. cit.* at 94.

³⁹⁵ Ptacek (1988) *op. cit.* at 149.

³⁹⁶ Dobash and Dobash (1979) *op. cit.*; Walker (1984) *op. cit.*

³⁹⁷ Dobash and Dobash, (1979) *ibid* at 33 and 76; Barnett and LaViolette (1993) *op. cit.* at 1-5; Goldner *et al* (1990) *op. cit.* at 357.

³⁹⁸ Hearne (1998) *op. cit.*

further education.³⁹⁹ Emma said: “The trouble started again when . . . I said I wanted to go back to work.”⁴⁰⁰ Another stage at which the traditional power balance between the genders may be challenged is when a woman becomes a mother. Jacqueline suggested that one reason her partner may have been more violent when she was pregnant was jealousy.⁴⁰¹ Jill described a violent incident when she was seven months pregnant: ““You belong to me,” he said, punching me in the stomach.”⁴⁰² In a recent study, a quarter of perpetrators admitted kicking and/or punching their partner in the stomach when she was pregnant.⁴⁰³ A similar suggestion is that a man attempts to reassert gender difference and dominance when “his terror of not being different enough from ‘his’ women threatens to overtake him.”⁴⁰⁴ Violence is therefore seen, paradoxically, as an exercise of power and control and as an expression of feelings of powerlessness and frustration.⁴⁰⁵ This paradox of power is an issue that continues to present challenges for all models of understanding domestic violence.

1.2.5. Towards an Integrated Eclectic Model

Each of these models has some influence on different people’s attempts to make sense of domestic violence. They also help us to understand the triggers for and the patterns of violence which some women experience. But no one framework reflects the complexity of domestic violence or gives the law a model by which to respond to the range of domestic violence situations.⁴⁰⁶ The ‘individual’ and ‘family’ models do not adequately explain the predominance of violence by men against women, nor do they suggest reasons why many people with particular ‘sicknesses’ and dysfunctions are not perpetrators or victims of domestic violence. Such theories also risk removing blame from the violent person to a ‘sickness’ in the individual or family or putting

³⁹⁹ Kurz (1996) *op. cit.* at 77.

⁴⁰⁰ Emma, Int. 16 at 17.

⁴⁰¹ Jacqueline, Int. 15 at 1.

⁴⁰² Int. 29 at 12.

⁴⁰³ Dobash, R.P., Dobash, R.E., Cavanagh, R. and Lewis, R. (1999) ‘A research evaluation of British Programmes for violent men’, 28(2) *Journal of Social Policy* 205-233 at 220.

⁴⁰⁴ Goldner *et al* (1990) *op. cit.* at 348.

⁴⁰⁵ Mills (1998) *op. cit.* at 35-37; Hearne (1998) *op. cit.* at 208 and 220; Holtzworth-Monroe *et al* (1997a) *op. cit.* at 80-81.

⁴⁰⁶ Hanna (1998) *op. cit.* at 1512-1513.

blame onto the victim. The pressures of family life do not always lead to domestic violence and many people live in families experiencing violence and never go on to be perpetrators. 'Community' models do not explain why only some people from a particular culture or location will be perpetrators or victims of domestic violence. They also risk strengthening damaging stereotypes. Explanations based on 'gender' do not explain why only some men are perpetrators of domestic violence, nor do they adequately address the issue of female perpetrators and violence in homosexual partnerships.

Within the constraints of certain disciplinary and ideological frameworks, the complex reality of domestic violence has often been overlooked.⁴⁰⁷ Attempts have been made by some researchers and practitioners to develop a model of understanding that acknowledges a variety of explanations in different situations of domestic violence and sometimes use several different models simultaneously in order to make some sense of it all.⁴⁰⁸

*Increasingly, separate disciplinary and professional traditions are being superseded by interdisciplinary, multidisciplinary, inter-professional, inter-agency, inter-organisational and international approaches.*⁴⁰⁹

Several researchers have suggested the need to recognise multiple causes and develop knowledge about different "typologies" of domestic violence.⁴¹⁰

Murray Straus cites multiple causes including high levels of conflict in the family and in society, family socialisation into violence and cultural norms legitimating violence in the family.⁴¹¹ He also recognises violence integrated into the personality and behaviour of individuals as well as a sexist society and family systems in which women endure violence for structural and ideological reasons.⁴¹² There have been attempts to establish multiple profiles of men who use domestic violence with

⁴⁰⁷ Featherstone and Trinder (1997) *op. cit.*

⁴⁰⁸ Goldner *et al* (1990) *op. cit.* at 346.

⁴⁰⁹ Hearne (1998) *op. cit.* at 34.

⁴¹⁰ Smith (1989) *op. cit.* at 29.

⁴¹¹ Straus, M. (1977) 'Wife beating: How common and why?', 2(3-4) *Victimology* 443-458.

⁴¹² *ibid.*

different responses tailored for each ‘type’.⁴¹³ Saunders argues that all perpetrators of domestic violence are influenced by societal norms about male to female violence, but that the violence has unique backgrounds and causes.⁴¹⁴ He distinguishes between the ‘generalised aggressor’, ‘family only’ and the ‘emotionally volatile’ perpetrator.⁴¹⁵ Johnston and Campbell have also developed typologies of violence which suggest different implications for legal responses acknowledging, for instance, that some ‘types’ of domestic violence may result in more danger after separation.⁴¹⁶ Gondolf and Fisher have also distinguished between the ‘socio-pathic’, ‘anti-social’, ‘chronic’ and ‘sporadic’ batterer.⁴¹⁷ Finkelhor and Yllo distinguished between three types of rape in marriage - ‘battering rape’ which included physical violence, ‘force-only rape’ which did not and ‘obsessive rape’ which was related to sexual arousal.⁴¹⁸ One problem with typologies like these is that cases might not clearly fit into one category and patterns of violence may change over time.⁴¹⁹

Others have developed understandings of domestic violence which attempt to combine traditionally separate explanatory frameworks. There are examples of researchers and practitioners ‘weaving ideas’ from different perspectives combining psychoanalysis, social learning, socio-political and gender ideas and systemic theories which focus on the ways in which particular families and relationships operate.⁴²⁰ For example, Goldner and colleagues start from the premise that ideas about gender are at the heart of domestic violence, but they use the ‘gender’ model alongside ideas about how violence becomes part of a ‘family’ and relationship structure in a “gendered bond.”⁴²¹ Others have called for theoretical frameworks that take account of the

⁴¹³ Jacobson, N. and Gottman, J. (1998) *Breaking the Cycle: New Insights into Violent Relationships* (London: Bloomsbury).

⁴¹⁴ Saunders, D. (1993) ‘Husbands who assault: Multiple profiles requiring multiple responses’, in, Hilton, N. (1993) *Legal Responses to Wife Assaults: Current Trends and Evaluations* (California: Sage) at 23.

⁴¹⁵ *ibid.*

⁴¹⁶ Johnston, J. and Campbell, L. (1993) ‘A clinical typology of interpersonal violence in disputed custody divorces’, 63 *American Journal of Orthopsychiatry* 190-199.

⁴¹⁷ Gondolf and Fisher (1988) *op. cit.* at 59-66.

⁴¹⁸ Finkelhor, D. and Yllo, K. (1985) *License to Rape: Sexual Abuse of Wives* (New York: Free Press).

⁴¹⁹ Mahoney and Williams (1998) *op. cit.* at 139-140.

⁴²⁰ Goldner *et al* (1990) *op. cit.* at 346.

⁴²¹ Goldner *et al* (1990) *ibid* at 363.

complexity and diversity of survivor's experiences, which may differ according to class, race, sexuality, age and mental and physical abilities of both parties.⁴²² While the 'eclectic' model may be complicated it also gives us the potential to gain a more comprehensive understanding of the complex reality of domestic violence in order to develop multiple responses.⁴²³

The 'eclectic' model raises questions about the meaning, purposes, limitations and possibilities of law's response to domestic violence. It is common for the metaphor of a 'fight' or 'battle' to be used to describe developments in legal theory.⁴²⁴ Advocates for law reform have revealed "profound conflicts over what law is or could be."⁴²⁵ The next chapter discusses some of those conflicts and introduces some approaches to lawyering which may reveal possibilities for law to respond to "what it means, what it feels like and what it does"⁴²⁶ to experience domestic violence.

⁴²² Goldfarb, (1996) 'Describing without circumscribing: Questioning the construction of gender in the discourse of intimate violence', 64(3) *George Washington Law Review* 582-631 at 620-1; Dutton, M. (1996) 'Battered women's strategic responses to violence: The role of context', in, Edleson, J. and Eisikovits, Z. (Eds) *Future Interventions with Battered Women and Their Families* (California: Sage) at 123.

⁴²³ Eisikovits, Z., Enoch, G. and Edleson, J. (1996) 'The future of interventions in woman battering: Common themes and emerging directions', in Edleson and Eisikovits (1996) *op. cit.*

⁴²⁴ Minow, M. (1991) 'Partial justice: Law and minorities', in Sarat, A. and Kearns, T. (Eds) (1991) *The Fate of Law* (Ann Arbor: University of Michigan Press) at 17.

⁴²⁵ *ibid* at 26.

⁴²⁶ West (1997) *op. cit.* at 210.

Chapter Two

Domestic Violence Law

*Justice will require change, not reflection -
a new jurisprudence, a new relation between
life and law.¹*

Chapter One described the complexity of women's experiences of surviving domestic violence and some different models that have been used to make sense of this issue. This chapter examines the historical and contemporary legal responses to domestic violence, referred to here as 'domestic violence law'. The chapter then goes on to consider some critical approaches to the relationship between law and domestic violence. Finally, the chapter explains some 'progressive' approaches to domestic violence law which envisage 'therapeutic possibilities' for the relationship between law and survivors - "a new relation between life and law".²

2.1. Domestic Violence Law

Legal responses to domestic violence reveal that the concept of violence itself is not a descriptively neutral concept and is historically, socially and culturally constructed.³ One of the problems has been the failure to name domestic violence as 'real' violence.⁴ Historically there has been a social and legal acceptance of physical and sexual violence within marriage as an extension of the traditional rights men have had as heads of families to control 'their' wives and children.⁵ Marriage has traditionally

¹ MacKinnon, C. (1983) 'Feminism, Marxism, method, and the state: Toward feminist jurisprudence', 8(4) *Signs: Journal of Women in Culture and Society* 635-658 at 658.

² *ibid.*

³ Hearne, J. (1998) *The Violences of Men: How Men Talk About and How Agencies Respond to Men's Violence to Women* (London: Sage Publications) at 15.

⁴ Freeman, M. (1984) 'Legal ideologies, patriarchal precedents and domestic violence', in, Freeman, M. (Ed) (1984) *State, Law and the Family* (Cambridge: Cambridge University Press) at 51.

⁵ Hearne (1998) *op. cit.* at 8-10; Dobash, R.E. and Dobash, R.P. (1979) *Violence Against Wives: A Case Against the Patriarchy* (London: Open Books) at 48-74.

been considered an institution in which a woman surrenders her legal and social identity to that of her husband, taking on his name, identifiable as his wife with the title 'Mrs' and surrendering independent rights to property.⁶ Women's economic dependence on their husbands, which makes it more difficult to leave a violent relationship, has been buttressed by tax, social security and employment laws.⁷ Legal reforms have attempted to eliminate such dependency through legislation such as the Sex Discrimination Act 1976, Equal Pay Act 1970 and changes to social security and tax law.⁸ The legal rights of English men to use physical violence against their wives was gradually eroded throughout the Nineteenth Century.⁹ But it was not until 1891 that a husband lost the right to use any force to chastise his wife.¹⁰ It was in 1984 that a wife became a compellable witness in a criminal prosecution of her husband for assaulting her.¹¹ It was only in 1991 that it became a criminal offence for a man to rape his wife.¹² In recent years attempts have been made to recognise domestic violence as a crime, to hold perpetrators accountable, to change their behaviour and to protect survivors of domestic violence.

2.1.1. Recognising Domestic Violence as a Crime

Today, in principle, criminal laws prohibiting physical and other violence apply regardless of the relationship between the victim and perpetrator and there are a range of powers which allow police to intervene in incidents of domestic violence. There is are a range of offences, including breach of the peace¹³ and those under Offences

⁶ Dobash and Dobash (1979) *op. cit.* at 60-61; Pateman, C. (1988) *The Sexual Contract* (Oxford: Polity Press).

⁷ Freeman (1984) *op. cit.* at 58; Olsen, F. (1984) 'The family and the market: A study of ideology and legal reform', 96(7) *Harvard Law Review* 1497-1528; Atkins, S. and Hoggett, B. (1984) *Women and the Law* (Oxford: Basil Blackwell).

⁸ Freeman (1984) *ibid.*

⁹ Freeman (1984) *ibid* at 62-64; Edwards, S. (1989) *Policing 'Domestic' Violence: Women, the Law and the State* (London: Sage Publications) at 51-54.

¹⁰ *R v Jackson* [1891] 1 QB 671, cited in, Dobash and Dobash (1979) *op. cit.* at 63.

¹¹ Police and Criminal Evidence Act 1984 s.80(3)(a).

¹² *R v R* [1992] 94 Criminal Appeal Reports 216. Also, s.142 Criminal Justice and Public Order Act 1994.

¹³ *Lavin v Albert* [1982] AC 546.

Against the Persons Act 1861, including common assault,¹⁴ actual bodily harm,¹⁵ malicious wounding¹⁶ and grievous bodily harm.¹⁷ Actual bodily harm may include psychiatric injury, although not emotions such as fear, distress or panic.¹⁸ Silent telephone calls resulting in psychological symptoms for the victims have been held to constitute actual bodily harm¹⁹ and making malicious telephone calls and sending malicious letters are criminal offences.²⁰ Crimes of sexual violence may also apply in the domestic context including rape, attempted rape and indecent assault.²¹

Police officers may also enter premises without a warrant for the purposes of “saving life or limb or preventing serious damage to property”²² and can arrest the perpetrator “to protect a child or other vulnerable person.”²³ It is a public order offence to use threatening, abusive or insulting words or behaviour intending another person to believe that immediate unlawful violence will be used against them, or intending to cause and causing harassment, alarm or distress.²⁴ The Protection from Harassment Act 1997 is a useful tool in some cases of domestic violence. Harassment requires that the accused pursues a “course of conduct,” on at least two occasions, which amounts to harassment of another and which he “knows or ought to know amounts to harassment.”²⁵ Harassment can include speech²⁶ and covers causing alarm or distress so there is no need to prove psychological injury, as is necessary if the charge is one of assault.²⁷ There is also a more serious offence of a course of conduct, on at least two occasions, causing another to fear that violence will be used against them.²⁸ We know that the Act is being widely used although figures cannot tell us the number of cases

¹⁴ Offences Against the Person Act 1861 s.42.

¹⁵ *ibid* s. 47.

¹⁶ *ibid* s.20.

¹⁷ *ibid* s.18.

¹⁸ *R v Chan-Fook* [1994] 2 All ER 552.

¹⁹ *R v Ireland* [1998] AC 147.

²⁰ Telecommunications Act 1984 s.43 and Malicious Communications Act 1988.

²¹ Sexual Offences Act 1956.

²² Police and Criminal Evidence Act 1984 s.17.

²³ *ibid* s.25.

²⁴ Public Order Act 1986 s.4A, inserted by Criminal Justice and Public Order Act 1994 s.154.

²⁵ Protection from Harassment Act 1997 s.1 and s.7(3).

²⁶ *ibid* s.7(4).

²⁷ *ibid* s.1(1)(a).

²⁸ *ibid* s.4.

relating to domestic violence and there is evidence of variations in police use and differing perceptions of its usefulness in this context.²⁹

Despite the wide range of powers which can be used in domestic violence situations, practical implementation can undermine legislation³⁰ and legal rules can be fettered by the discretion given to police, prosecutors and judges.³¹ The police in particular have been subject to a great deal of criticism for failing to respond to domestic violence, not recording incidents as crimes, not making arrests and failing to enforce civil injunctions.³² There is evidence of an existing perception among legal actors and more generally, that a certain level of violence in a relationship is acceptable and in some individual families and communities 'normal'.³³ Some judges still consider heterosexual relationships to be private.³⁴ For instance, rape by a partner does not fit the prevailing stereotype of 'real rape' as committed by a stranger in a dark alley.³⁵ It has been said that:

*rape by a cohabitant or ex-cohabitant, though horrible, as all rape is, cannot be so horrible and terrifying as rape by a stranger.*³⁶

Such assumptions stem from the misconception that the harm of rape is about sex rather than an exercise of power that violates a woman's sense of safety, and which is undermined further when she must continue to live with the rapist.³⁷ The discourse

²⁹ Edwards, S. (2000a) *Reducing Domestic Violence ... What Works? Use of the Criminal Law*, Policing and Reducing Crime Briefing Note (London: Home Office).

³⁰ Smart, C. (1989) *Feminism and the Power of Law* (London: Routledge) at 118; Ferraro (1989).

³¹ McCann, K. (1985) 'Battered women and the law: Limits of the legislation', in, Brophy, J. and Smart, S. (Eds) (1985) *Women In Law: Explorations in Law, Family and Sexuality* (London: Routledge and Kegan Paul) at 71; Edwards (1989) *op. cit.*; Ferraro, K. and Boychuck, T. (1992) 'The courts response to interpersonal violence: A comparison of intimate and non intimate assault', in, Buzawa, E. and Buzawa, C. (Eds) (1992) *Domestic Violence: The Changing Criminal Justice Response* (Westport Connecticut: Auburn House:) at 216; Ferraro, K. (1989) 'Policing woman battering', 36(1) *Social Problems* 61-74.

³² Edwards (1989) *op. cit.*; Kelly, L. (1999) *Domestic Violence Matters: A evaluation of a Development Project*, Home Office Research Study (London: Home Office).

³³ Borkowski, M., Murch, M. and Walker, V. (1983) *Marital Violence: The Community Response* (London: Tavistock Publications) at 44; Freeman (1984) *op. cit.* at 70; Ferraro (1989) *op. cit.*

³⁴ *R v Wilson* [1996] 3 WLR 125.

³⁵ Alder, Z. (1987) *Rape on Trial* (London: Routledge) at 11.

³⁶ Williams, G. (1992) 'Rape is rape', (10th January) *New Law Journal* 11 at 12.

³⁷ Yllo, K. (1999) 'The silence surrounding sexual violence: The issue of marital rape and the challenges it poses for the Duluth model', in Shepard, M. and Pence, E. (1999) *Co-ordinating*

around ‘real rape’ and ‘real violence’³⁸ continues to exist in legal responses to domestic violence.³⁹

In the 1980s Edwards found that a high rate of domestic violence cases were not recorded as crimes and were diverted out of the criminal system.⁴⁰ There was also a tendency to mediate between the parties and direct them to civil remedies.⁴¹ The Home Office circular in 1990, which encouraged police officers to consider pursuing a case even when the victim withdrew her support, does not appear to have translated to practice.⁴² Research suggests that crimes of domestic violence are not prosecuted with the same rigour as other crimes of violence.⁴³ More recent research examining prosecution suggests that domestic violence is still not regarded as fully criminal⁴⁴ and, in relation to rape, the practice of ‘no criming’ continues.⁴⁵ Few cases of domestic violence are prosecuted, despite increases in recorded incidents.⁴⁶ Victims of domestic violence often refuse to make statements or withdraw them soon after they are made.⁴⁷ In her study Hoyle found that police and prosecutors decisions “were highly correlated with victim’s wishes.”⁴⁸ She also recognised that some victims might have been dissuaded from pursuing criminal action by police officers behaviour or because they had ‘prepared’ the victim for the worst possible case scenario of

Community Responses to Domestic Violence: Lessons from Duluth and Beyond (California: Sage Publications) at 226.

³⁸ Smart (1989) *op. cit.*

³⁹ Gregory, J. and Lees, S. (1999) *Policing Sexual Assault* (London: Routledge); Rumney, P. (1999) ‘When rape isn’t rape: Court of Appeal sentencing practice in cases of marital and relationship rape’, 19(2) *Oxford Journal of Legal Studies* 243-269; Edwards (1989) *op. cit.* at 97.

⁴⁰ Edwards (1989) *op. cit.* at 50 and 143.

⁴¹ *ibid* at 51.

⁴² Hoyle, C. (1998) *Negotiating Domestic Violence: Police, Criminal Justice and Victims* (Oxford: Clarendon Press); Grace, S. (1995) *Policing Domestic Violence in the 1990s*, Home Office Research Study 139 (London: Home Office).

⁴³ Soothill, K. and Grover, C. (1994) ‘Marital rape in the news’, 5(3) *Journal of Forensic Psychiatry* 539-549; Rumney, P. (1999) *op. cit.*; Tempkin, J. (1997) *Guardian*, 11th September; Cretney, A. and Davis, G. (1997b) ‘Prosecuting domestic violence assault: Victims failing courts, or courts failing victims?’, 36(2) *The Howard Journal* 146-157.

⁴⁴ Cretney, A. and Davis, C. (1996) ‘Prosecuting “Domestic” assault’, *Criminal Law Review* 162-174 at 171.

⁴⁵ Gregory and Lees (1999) *op. cit.* at 165.

⁴⁶ Edwards (2000a) *op. cit.*

⁴⁷ Hoyle (1998) *op. cit.*; Cretney, A. and Davis, G. (1995) *Punishing Violence* (London: Routledge).

⁴⁸ Hoyle (1998) *op. cit.* at 213.

giving evidence in court.⁴⁹ There have also been suggestions that police officers discourage victims from pressing charges in anticipation of withdrawal,⁵⁰ so that their perceptions become a self-fulfilling prophecy.⁵¹ Others suggest that the relevant factor in prosecution is not whether an assault is domestic or not but the fact that police culture leads officers to prioritise cases where public order and their authority has been challenged with secondary importance attached to victims perspectives.⁵² When perpetrators of domestic violence are prosecuted, they are less likely to be convicted and receive lower sentences.⁵³

This thesis does not examine the decision-making processes of legal actors in relation to domestic violence. The research suggests that there are many reasons why domestic violence is not regarded as ‘real’ crime. These include enduring myths about the nature of domestic violence discussed in Chapter One, the idea that the family is private, that victims often say they do not want legal action, and that domestic violence is considered too complex an issue for the law to deal with. The focus of this research is how women experience legal responses. This has been a neglected issue in the development of special policies which aim to hold perpetrators accountable, and act on a victim’s ‘interests’, rather than her wishes or feelings.⁵⁴

⁴⁹ *ibid* at 202.

⁵⁰ Faragher, T. (1985) ‘The police response to violence against women in the home’, in, Pahl, J. (Ed) (1985) *Private Violence and Public Policy* (London: Routledge); Wasoff, F. (1982) ‘Legal protection from wife beating: The processing of domestic assaults by Scottish prosecutors and criminal courts’, 10(2) *International Journal of Sociology of Law* 187-204.

⁵¹ Cretny and Davis (1997b) *op. cit.* at 147; Kelly (1999) *op. cit.* at ix.

⁵² Sanders, A. (1988) ‘Personal violence and public order: The prosecution of ‘domestic’ violence in England and Wales’, 16 *International Journal of the Sociology of Law* 359-382 at 376.

⁵³ Rumney (1999) *op. cit.*; Hoyle (1998) *op. cit.* at 192.

⁵⁴ Hoyle (1998) *op. cit.* at 215; Hanna, C. (1996) ‘No right to choose: Mandated victim participation in domestic violence prosecutions’, 109 *Harvard Law Review* 1850-1910; Mills, L. (1998b) ‘Mandatory arrest and prosecution policies for domestic violence: A critical literature review and the case for more research to test victim empowerment approaches’, 25(3) *Criminal Justice and Behaviour* 306-318; Mills, L. (1999) ‘Killing her softly: Intimate abuse and the violence of state intervention’ (1999) 113(2) *Harvard Law Review* 551-613.

2.1.2. Holding Perpetrators Accountable

Arrest

In attempts to hold perpetrators accountable for their violence the trend in this country, and elsewhere, has been towards pro-arrest policies that relieve women of the decision as to whether to arrest.⁵⁵ Research on the effects of arrest on perpetrators of domestic violence are indeterminate.⁵⁶ A study conducted in Minneapolis suggested that arrest was effective in reducing the likelihood of further violence.⁵⁷ But replications of this study suggest a much more complex reality with arrest having different effects on different people.⁵⁸ Some studies have found no evidence of the effectiveness of arrest and there is some evidence of escalation of violence over the long term and suggestions that “arrest increases violence for unmarried and also for unemployed suspects and deters it for married and for employed suspects.”⁵⁹ One explanation for these different effects is that arrest is more likely to be a deterrent for men with “strong conventional social bonds” such as marriage or employment, but may further alienate those with “already weak ties to conventionality.”⁶⁰ It has also been suggested that perpetrators’ perceptions that they have been treated in a procedurally fair manner during the arrest may reduce the likelihood of re-offending.⁶¹ Arrest of the perpetrator can be valuable to a survivor of domestic violence even without prosecution because it removes the perpetrator.⁶²

⁵⁵ Buzawa, E. and Buzawa, C. (1996) *The Changing Criminal Justice Response* (Second Edition) (London: Sage).

⁵⁶ Wanless, M. (1996) ‘Mandatory arrest: A step toward eradicating domestic violence, but is it enough?’, 2 *University of Illinois Law Review* 533-586; Garner, J. and Fagan, J. and Maxwell, C. (1995) ‘Published findings from the spouse assault replication program: A critical review’, 11(1) *Journal of Qualitative Criminology* 3-28.

⁵⁷ Sherman L. and Berk, R. (1984) ‘The specific deterrent effects of arrest for domestic assault’, 49 *American Sociological Review* 261-272.

⁵⁸ Garner *et al* (1995) *op. cit.*

⁵⁹ *ibid* at 7.

⁶⁰ Paternoster, R., Brame, R., Bachman, R. and Sherman, L. (1997) ‘Do fair procedures matter? The effect of procedural justice on spouse assault’, 31(1) *Law and Society Review* 163-204 at 174.

⁶¹ *Ibid.*

⁶² Hoyle (1998) *op. cit.* at 20.

Arrest and Prosecution

There is some evidence that prosecution following arrest reduces the chance of further violence⁶³ and that pro-prosecution policies can reduce homicides.⁶⁴ ‘Hard’, ‘no drop’ prosecution policies in the United States entail compelling survivors to testify.⁶⁵ In Duluth, Minnesota, and other states women are regularly subpoenaed to give evidence so that they are shielded from the responsibility of pursuing a prosecution, but there also exists a strong network of support to guide women through the criminal system, such as specialist victim advocates.⁶⁶ Ultimately women can be imprisoned for contempt but sentences are usually to attend a domestic violence programme or a community sentence.⁶⁷ In England there are powers to compel married and unmarried survivors to be witnesses.⁶⁸ Witnesses may be held in contempt of court for refusing to give evidence⁶⁹ and fined or imprisoned,⁷⁰ but the compellability provisions are rarely used.⁷¹ Apart from the low chance of achieving a conviction using compelled witness prosecutors use a range of arguments against the action, including violence being too trivial or too grave in terms of risk of reprisals, because the relationship is continuing or because it is over.⁷²

Some dangers of aggressive prosecution policies are that there are problems achieving convictions, they ignore the complex reality of domestic violence for survivors, risk increasing violence by the perpetrator and may discourage victims from reporting.⁷³ Some evidence in the US shows a reduction in domestic violence calls following

⁶³ Ford, D. and Regoli, M. (1992) ‘The preventive impacts of policies for prosecuting wife batterers’, in, Buzawa and Buzawa (1992) *op. cit.* at 204.

⁶⁴ Hanna, C. (1996) *op. cit.* at 1864.

⁶⁵ Buzawa and Buzawa (1996a) *op. cit.* at 178-179.

⁶⁶ Corsilles, A. (1994) ‘No-drop policies in the prosecution of domestic violence cases: Guarantee to action or dangerous solution’, 63(3) *Fordham Law Review* 853-881 at 862.

⁶⁷ *ibid* at 864.

⁶⁸ Police and Criminal Evidence Act 1984 s.80(3)(a); Magistrates Court Act 1980.

⁶⁹ Contempt of Court Act 1981 s.14; Also see, Brownlee, I. (1990) ‘Compellability and contempt in domestic violence cases’, *Journal of Social Welfare Law* 107-115.

⁷⁰ *R v Renshaw* [1989] Crim LR 811.

⁷¹ Cretny, A. and Davis, G. (1997a) ‘The significance of compellability in the prosecution of domestic assault’, 37(1) *British Journal of Criminology* 75-89; Hoyle (1998) *op. cit.* at 213.

⁷² *ibid* at 80; Cretny and Davis (1997a) *ibid*.

⁷³ Buzawa and Buzawa (1996a) *op. cit.* at 178-179.

positive arrest policies, which could suggest reluctance to seek help or a decreased incidence of violence.⁷⁴ In contrast, some jurisdictions report an increase in calls.⁷⁵ It has been suggested that by compelling testimony the relationship between a survivor and legal actors becomes adversarial and suggests that a woman is somehow to blame for not ending the violence.⁷⁶ Some argue that the benefits of ‘no-drop’ policies outweigh their risks, in that they communicate a message to the community, perpetrator and survivor about the unacceptability of violence.⁷⁷

*By dismissing cases simply because a victim requests it, prosecutors allow batterers to extend their power and control into the court room.*⁷⁸

Ford and Regoli found that allowing victims to drop charges, but supporting them to follow through could make victims safer but only if they did not eventually choose to drop charges.⁷⁹ This indicates the importance of measures that focus on supporting the survivor, as well as holding the perpetrator accountable. ‘Soft’, ‘no drop’ prosecution policies in some US states provide women with support services, but allow a woman to drop charges.⁸⁰ In some jurisdictions this can only occur after counselling and she may have to appear in front of a judge to explain why she is not supporting a prosecution.⁸¹

In the United States methods have also been developed to achieve convictions without a woman’s direct testimony. Examples include reading out a woman’s statement in court, evidence from other witnesses, recorded calls to emergency services, photographs of injuries and the scene of the crime.⁸² Expert witnesses may also be

⁷⁴ Martin, M. (1997) ‘Double your trouble: Dual arrest in family violence’, 12(2) *Journal of Family Violence* 139-157 at 145-6.

⁷⁵ Hanna (1996) *op. cit.* at 1865; Busch, R. and Robertson, N. (1993) “‘What’s love got to do with it?’” An analysis of an intervention approach to domestic violence’, 1 *Waikato Law Review* 109-140 at 140.

⁷⁶ Durham, G. (1998) ‘The domestic violence dilemma: How our ineffective and varied responses reflect our conflicted views of the problem’, 71(3) *Southern California Law Review* 641-665 at 653.

⁷⁷ Corsilles (1994) *op. cit.* at 878-879.

⁷⁸ *ibid* at 881.

⁷⁹ Ford, D. and Regoli, M. (1993) ‘Criminal prosecution of wife assaulters: Process, problems and effects’, in, Hilton, N. (Ed) (1993) *Legal Responses to Wife Assault: Current Trends and Evaluations* (Newbury Park, California: Sage) at 158.

⁸⁰ Cahn, N. (1992) ‘Innovative approaches to the prosecution of domestic violence crimes: An Overview’, in Buzawa and Buzawa (1992) *op. cit.* at 168; Hanna (1996) *op. cit.* at 1863.

⁸¹ *ibid.*

⁸² Buzawa and Buzawa (1996a) *op. cit.* at 178-9.

used to testify about the dynamics of domestic violence and explain why a woman may not feel able to co-operate in a prosecution.⁸³ The US experience shows that judges can become accustomed to admitting new forms of evidence.⁸⁴

In this country, a woman's statement can be read out in evidence without her having to testify, but is only admissible as evidence where direct oral evidence on the same issue would be admissible.⁸⁵ The statement must have been made to a police officer and the witness must have refused to give evidence through fear.⁸⁶ Despite encouragement to use this power,⁸⁷ it has rarely been used and prosecutors are reluctant to go ahead without the witness testimony.⁸⁸ "Enhanced evidence gathering" methods are only in their early stages of development here and require evaluation.⁸⁹ Hoyle found that in domestic violence incidents, police did not seem to make the effort to "locate and interview those who could provide corroborative evidence."⁹⁰ There has been a marked resistance to continue with prosecutions without the survivor's attendance at court although enhanced evidence gathering can induce early guilty pleas and can help the victim recognise the extent of abuse and encourage her towards prosecution.⁹¹

It has been argued that studies have not tested the general deterrent effect of pro-arrest policies,⁹² or the effect that the actions of survivors, prosecutors and judges have on

⁸³ Schroeder, J. (1991) 'Using Battered Woman Syndrome evidence in the prosecution of a batterer', 140 *Iowa Law Review* 553-582; Sonkin, D. and Fazio, W. (1987) 'Domestic violence expert testimony in the prosecution of male batterers', in, Sonkin, D. (Ed) (1987) *Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence* (New York: Springer).

⁸⁴ Corsilles (1994) *op. cit.* at 877.

⁸⁵ Criminal Justice Act 1988 s.23(3)(a).

⁸⁶ Criminal Justice Act 1988 s.23(3)(b).

⁸⁷ Home Office (1990) *Domestic Violence*, Circular 60/90 (London: Home Office) at 26.

⁸⁸ Cretney and Davis (1997a) *op. cit.*

⁸⁹ Hammer, J and Griffiths, S. (2000) *Reducing Domestic Violence ... What works? Policing Domestic Violence*, Policing and Reducing Crime Briefing Note (London, Home Office); Edwards (2000a) *op. cit.*

⁹⁰ Hoyle (1998) *op. cit.* at 155.

⁹¹ Edwards (2000a) *op. cit.*

⁹² Wanless (1996) *op. cit.* at 557.

the effectiveness of arrest.⁹³ For instance, it has been suggested that criminal sanctions may increase a perpetrator's perceived risk of losing his partner so that he sees her as having more relative power in the relationship.⁹⁴ Conversely, such responses may increase violence when men perceive a threat to their power and attempt to reassert control.⁹⁵ Criminal responses may make the violence more visible and generate social support for the victim and informal sanctions against the perpetrator.⁹⁶ Also, arrest and prosecution of perpetrators may help a survivor in ways that are not detected in official recidivism data, such as encouraging her to 'name' domestic violence and seek further help.⁹⁷ It has been said of survivors of domestic violence that "there is no more important issue in recovery than the restoration of 'voice'."⁹⁸ Yet the issue of how much women feel empowered by attempts in the criminal law to hold perpetrators accountable has been a neglected area of research.⁹⁹ This thesis focuses on the way women perceive and experience responses like arrest and prosecution, rather than the effect they have on men's violence. In attempts to change perpetrators' violence, the effects on survivors has also been a neglected issue.

2.1.3. Changing the Perpetrators' Violent Behaviour

Alongside pro-arrest and prosecution policies emphasis has been on rehabilitating perpetrators and changing their violent behaviour through domestic violence perpetrator programmes. Although this issue may not appear directly relevant to the focus of this research such programmes are important in giving women a range of options during the process of survival. There are around thirty programmes in the

⁹³ Lerman, L. (1992) 'The decontextualisation of domestic violence', 83(1) *Journal of Criminal Law and Criminology* 217-235.

⁹⁴ Dutton, D., Hart, S., Kennedy, L. and Williams, K. (1992) 'Arrest and the reduction of repeat wife assault', in, Buzawa and Buzawa (1992) *op. cit.* at 120.

⁹⁵ Stark, E. (1996) 'Mandatory arrest of batterers: A reply to its critics', in Buzawa and Buzawa (Eds) (1996b) *Do Arrests and Restraining Orders Work?* (California: Sage) at 132.

⁹⁶ *ibid* at 121 and 124.

⁹⁷ Tolman, R. and Weisz, A. (1995) 'Co-ordinated community intervention for domestic violence: The effects of arrest and prosecution on recidivism of woman abuse perpetrators', 41(4) *Crime and Delinquency* 481-495 at 493.

⁹⁸ Stark (1996) *op. cit.* at 145.

⁹⁹ Mills (1998b) *op. cit.*

United Kingdom run by voluntary sector and the probation service.¹⁰⁰ In some projects attendance is mandated by a court as part of a probation order.¹⁰¹ The Duluth model is the one adopted most widely in Britain and focuses on cognitive-behavioural work to achieve individual change alongside education as to the power and control dynamics of domestic violence and encouraging men to take personal responsibility for their violence. Men may be taught to log their feelings, to identify triggers for violence and to learn how to take ‘time out’ before violence escalates.¹⁰²

Research in this area is limited by methodological problems, including small sample sizes, lack of control groups, lack of long-term follow up, reliance on self-reporting and official records, low response rates of perpetrators’ partners and neglect of intervening variables such as victim services.¹⁰³ There is evidence of high drop out rates and though there are indications of a reduction of physical violence for a substantial proportion of those who complete treatment, the programmes are less impressive in regard to verbal and emotional abuse.¹⁰⁴ It has been suggested that holding perpetrators criminally responsible for their actions “may be as effective as any treatment modality.”¹⁰⁵ But programmes for violent men are not without some promise.

¹⁰⁰ Mullender, A., and Burton, S. (2000) *Reducing Domestic Violence ...What works? Perpetrator Programmes*, Policing and Reducing Crime Briefing Note (London: Home Office).

¹⁰¹ Examples include CHANGE, Lothian Domestic Violence Probation Project in Scotland, Domestic Violence Intervention project in Hammersmith and Fulham; Northumbria Probation Service’s DIVERT programme.

¹⁰² Dominelli, L., Mullender, A. and Orme, J. (1995) ‘Working with violent men from a feminist social work perspective’. Paper presented at the International Association of Schools of Social Work, at *Fourth World Conference on Women*, Beijing.

¹⁰³ Gondolf, E. (1997) ‘Batterer programs: What we know and what we need to know’, 12(1) *Journal of Interpersonal Violence* 83-98; Dobash, R.P., Dobash, R.E., Cavanaugh, K. and Lewis, R. (1999) ‘A research evaluation of British programmes for violent men’, *Journal of Social Policy* 205-233.

¹⁰⁴ Mills, L. (1998a) *The Heart of Intimate Abuse: New Interventions in Child Welfare, Criminal Justice, and Health* (New York: Springer) at 184-185.

¹⁰⁵ Hanna, C. (1998) ‘The paradox of hope: The crime and punishment of domestic violence’, 39(5) *William and Mary Law Review* 1505-1554 at 1533.

An evaluation of one programme found some impact on most of those who maintained attendance, but this was based on a very low rate of completion.¹⁰⁶ A recent evaluation of two British programmes for violent men found that in contrast to other criminal justice sanctions, programmes had “significant effects on the prevalence and frequency of violence” during the 12 month period following the imposition of a sanction.¹⁰⁷ The study also found that men who completed the programme were more likely to reduce physical violence and controlling behaviour and their partners were more likely to report improvements in quality of life.¹⁰⁸ Positive changes were also more likely for men who were married, rather than cohabiting and for those who were employed.¹⁰⁹

There is still much doubt over the merits of forcing men to attend programmes through the criminal system when the individual’s commitment to change is so important to treatment approaches.¹¹⁰ Women’s stories show us that perpetrators often deny their violence and are reluctant to seek help voluntarily. It has been argued that the process of arrest, charge, prosecution and sentence provides perpetrators with the incentives to participate and weekly attendance enables social control and surveillance of the men’s behaviour.¹¹¹

*Men’s programmes are not a panacea, rather they can play a positive role in the overall complement of improved legal, social, medical and community responses.*¹¹²

It has been suggested that research should not focus on *whether* treatment works, but on what treatment works best on which types of client and under what conditions.¹¹³

¹⁰⁶ Burton, S., Regan, L. and Kelly, L. (1998) *Supporting Women and Challenging Men: Lessons from the Domestic Violence Intervention Project* (Bristol: Policy Press).

¹⁰⁷ Dobash *et al* (1999) *op. cit.* at 229.

¹⁰⁸ Dobash, R.E. and Dobash, R.P. (2000) ‘Evaluating criminal justice interventions for domestic violence’, 46(2) *Crime and Delinquency* 252-270 at 265-266.

¹⁰⁹ *ibid* at 266.

¹¹⁰ Hamberger, L. and Hastings, J. (1993) ‘Court-mandated treatment of men who assault their partner: Issues, controversies and outcomes’, in, Hilton (1993) *op. cit.* at 194.

¹¹¹ Dobash *et al* (1999) *op. cit.* at 230.

¹¹² *ibid.*

¹¹³ Hamberger and Hastings (1993) *op. cit.* at 220.

This would enable us to develop different types of treatment for different offenders.¹¹⁴ This research focuses on the experiences of survivors and how legal responses affect their process of survival, rather than the perpetrator's process of change. But all responses to perpetrators' behaviour have important implications in women's process of survival.

One of the dangers of perpetrator programmes is that they may compete for resources with services for survivors.¹¹⁵ Perpetrator programmes sometimes work against the needs of victims by giving them false hope that their partners will change and women are most likely to stay with the partner if he attends treatment.¹¹⁶ Also, there are suggestions that attendance on programmes may be used as a means of the perpetrator convincing his partner to take him back or as evidence that he has changed in legal proceedings related to child contact.¹¹⁷ Perpetrators also learn other non-physical means of abusing and controlling their partner.¹¹⁸ Some minimise their violence to themselves, their partner and others by comparing it with the more severe physical injuries inflicted by other group members and forge potentially negative relationships with other perpetrators.¹¹⁹ These are some of the reasons why programmes should always be run alongside support services for survivors.¹²⁰ In a review of research Gondolf suggests that services for survivors may actually determine programme outcomes for men.¹²¹ Perpetrator programmes were not a feature of most of the

¹¹⁴ Saunders, D. (1996) 'Interventions for men who batter: Do we know what works?', 2(3) *In Session: Psychotherapy in Practice* 81-93 at 93.

¹¹⁵ Dominelli *et al* (1995) *op. cit.*

¹¹⁶ Hanna (1998) *op. cit.* at 1536; Gondolf, E. and Fisher, E. (1988) *Battered Women as Survivors: An Alternative to Learned Helplessness* (Massachusetts: Lexington Books).

¹¹⁷ Busch, R. and Robertson, N. (1997) 'The gap goes on: An analysis of issues under the Domestic Violence Act 1995', 17 *New Zealand University Law Review* 337-378 at 363-367; Busch and Robertson (1993) *op. cit.* at 130; Jones, A. and Schechter, S. (1992) *When Love Goes Wrong: What To Do When You Can't Get Anything Right* (London: Victor Gollancz) at 108.

¹¹⁸ Hamberger and Hastings (1993) *op. cit.* at 201; Dobash, R.E. and Dobash, R.P. (1992) *Women, Violence and Social Change* (London: Routledge) at 250.

¹¹⁹ Stark (1996) *op. cit.* at 141; Busch and Robertson (1993) *op. cit.* at 130; Jones and Schechter (1992) *op. cit.* at 108.

¹²⁰ Busch and Robertson (1993) *ibid* at 129.

¹²¹ Gondolf (1997) *op. cit.* at 88.

stories told for this research, but in later chapters some aspects of women's experiences are discussed in terms of the implications they have for this kind of legal response.

2.1.4. Protecting Survivors of Domestic Violence

Protection Through Criminal Responses

The criminal responses described above may all provide women with some protection by removing the abuser and attempting to change his violent behaviour. It has been suggested that "arrest is a mechanism of asserting authority rather than protecting the victim."¹²² But the latest Home Office Circular states that the primary duty of the police is to protect the victim and secondly, to take positive action against the assailant.¹²³ An important rationale behind the positive arrest and prosecution policies described above has been the need to protect victims. The Youth Justice and Criminal Evidence Act 1999 also has measures to protect vulnerable and intimidated witnesses in court, including use of screens, videos and television links for giving evidence.

There has been increased attention to repeat victimisation in domestic violence and indications that "the risk of re-victimisation is greatest in the period immediately after victimisation."¹²⁴ Measures put in place to protect women at risk of repeat victimisation include home alarms and a 'graded response' to calls for assistance which attempt to protect the victim and challenge the offender.¹²⁵ The response depends on the number of attendances and previous history of violence.¹²⁶ One level

¹²² Buzawa, E., Austin, T., Buzawa, C. (1995) 'Responding to crimes against women: Gender differences versus organizational imperatives', 4(4) *Crime and Delinquency* 443-466 at 447.

¹²³ Home Office (2000a) Home Office Circular 19/2000, *Domestic Violence*, revision of Home Office Circular 60/90 (London: Home Office) at 4.

¹²⁴ Farrell, G. and Pease, K. (1993) *Once Bitten, Twice Bitten: Repeat Victimisation and its Implications for Crime Prevention*, Police Research Group, Crime prevention Unit Series Paper 46 (London: Home Office) at 8.

¹²⁵ Hanmer, J., Griffiths, S. and Jerwood, D. (1999) *Arresting Evidence: Domestic Violence and Repeat Victimisation*, Police Research Series Paper 104 (London: Home Office) at 5.

¹²⁶ *ibid.*

might involve a warning letter to the offender and an information letter for the victim. Another might include installation of a home alarm, a visit from a domestic violence officer and 'police watch', which involves patrol cars making regular checks on the house.¹²⁷ 'Cocooning' is used with a woman's consent and involves her neighbours and others in her support network watching out for her safety and calling the police when necessary.¹²⁸ Evaluation of one project in Killingbeck, West Yorkshire, suggests that such responses can be successful in reducing repeat attendance by early intervention, reducing chronic repeat offenders and encouraging women to ask for police support.¹²⁹

Domestic Violence Units and specialist officers have been established in order to provide a higher quality of service to women. Survivors' experiences of this support have been positive, but domestic violence work tends to be marginalised from mainstream policing, is poorly resourced and has little status.¹³⁰ In the Islington *Domestic Violence Matters* project, the aim was for civilian advocates to make contact with women within 24 hours of a call to the police, to provide women with immediate support and sometimes help them through the prosecution process.¹³¹ The continuation of the project was made difficult by the relationship between police and civilians, the disputes over the role of civilians in policing domestic violence and a substantial decrease in the number of referrals from the police towards the end of the project.¹³² The value of specialised domestic violence officers and survivor support schemes from women's perspectives are discussed further in later chapters. There have also been attempts to provide protection outside the criminal system by allowing women to take out civil orders of protection or injunctions.

¹²⁷ *ibid* at 4.

¹²⁸ Lloyd, S., Farrell, G. and Pease, K. (1994) *Preventing Repeated Domestic Violence: A Demonstration project on Merseyside*. Police Research Group, Crime Prevention Unit Series, Paper 49 (London: Home Office) at 9; Hanmer *et al* (1999) *op. cit.* at 4.

¹²⁹ Hanmer *et al* (1999) *ibid* at vi.

¹³⁰ Morley, R. (1993) 'Recent responses to 'domestic violence' against women: A feminist critique', in, Page, R. and Baldock, J. (Eds) (1993) *Social Policy Review* at 180; Grace (1995) *op. cit.* ; Hoyle (1998) *op. cit.* at 216; Hoyle, C. and Sanders, A. (2000) 'Police response to domestic violence: From victim choice to victim empowerment', 40 *British Journal of Criminology* 14-36.

¹³¹ Kelly (1999) *op. cit.*

¹³² *ibid.*

Protection Through Civil Responses

Women's experience of the injunction procedure is considered in Chapter Four, but here there is a brief outline of the legal restrictions on these responses.¹³³ Prior to 1976 injunctions were only available via other proceedings such as divorce and judicial separation.¹³⁴ The Domestic Violence Act 1976 and Domestic Proceedings and Matrimonial Causes Act 1978 amounted to a "confusing array of statutory relief."¹³⁵ Under the 1976 Act 'non-molestation' or 'ouster' orders excluding the perpetrator from the home or surrounding area were available in the county court to married and unmarried couples. However, a power of arrest could only be attached to the order if the offender had caused actual bodily harm to his partner or child and the judge considered that this was likely to happen again. The 1978 Act allowed access to the quicker and more inexpensive Magistrate's Court, but it was only available to married couples, there were different powers to attach a power of arrest and the scope of the orders available was different. The Matrimonial Homes Act 1983 also provided relief in the County Court for married couples that could act as an exclusion order, but was not designed for emergencies.¹³⁶ The Acts were given restrictive interpretation by the judiciary who were concerned about interfering with men's property rights,¹³⁷ particularly in the case of ouster injunctions and powers of arrest were attached to only a small proportion of orders.¹³⁸ In relation to injunctions without a power of arrest, the onus is on applicants to seek enforcement and there is evidence of the police and courts failing to enforce orders by not making arrests¹³⁹ or punishing breaches.¹⁴⁰ Also, women may be reluctant to challenge persistent breaches because

¹³³ For more detail of the relevant legislation see Lockton, D. and Ward, R. (1997) *Domestic Violence* (London: Cavendish).

¹³⁴ McCann (1985) *op. cit.* at 73.

¹³⁵ *ibid.* at 76.

¹³⁶ Barron, J. (1990) *Not Worth the Paper. . . ? The Effectiveness of Legal Protection for Women and Children Experiencing Domestic Violence* (Bristol: Women's Aid Federation England) at 18.

¹³⁷ *Davis v Johnson* [1978] 2 WLR 553; *Practice Direction* [1978] 2 All ER 1056; *Richards v Richards* [1984] AC 174; Also, Edwards (1989) *op. cit.* at 70; Lockton and ward (1997) *op. cit.* at 47.

¹³⁸ Edwards (1989) *op. cit.* at 60-61; Barron (1990) *op. cit.* at 50 and 55.

¹³⁹ Edwards (1989) *ibid* at 107.

¹⁴⁰ Barron (1990) *op. cit.* at 66.

they do not feel it will make a difference or want to avoid the partner being sent to prison, so the failures of the system become ‘invisible’.¹⁴¹ Overall these civil law responses provided little protection for women.¹⁴²

Part IV of the Family Law Act 1996 made injunctions available in both Magistrates and County Courts and replaced the previous terminology with that of ‘occupation orders’ and ‘non-molestation orders’. Under the previous law *ex parte* orders were only possible in the case of immediate danger,¹⁴³ but now a court can make such an order when it considers it just and convenient to do so.¹⁴⁴ Also, the Act provides that a power of arrest must be attached to an order, if violence has been used or threatened to a child or person applying for the order, unless the court is satisfied that those concerned will be protected without one.¹⁴⁵ This is mandatory except in the case of an *ex parte* order when a power of arrest is at the discretion of the court.¹⁴⁶ But it has been held that a power of arrest should be attached to a non-molestation injunction in all but exceptional circumstances.¹⁴⁷

In the context of this research, non-molestation orders can be sought by women who are married or who have agreed to marry, cohabitants and former cohabitants (a man and woman living together as husband and wife who are not married), but not to partners who have never lived together.¹⁴⁸ As an illustration of the ramifications of this limitation, the Leicestershire Domestic Violence Annual Report for 1995/6 identified 18% of all domestic violence incidents for that year as occurring between non-cohabiting boyfriend and girlfriend.¹⁴⁹ ‘Molestation’ is not defined in legislation and has been held to include any conduct that is sufficiently serious to warrant intervention by the court,¹⁵⁰ and one incident is enough providing it satisfies the

¹⁴¹ *ibid* at 41.

¹⁴² Lockton and Ward (1997) *op. cit.* at 48.

¹⁴³ *Practice Note* (Injunction *ex parte* applications) [1978] 1 WLR 925.

¹⁴⁴ FLA 1996 s.45.

¹⁴⁵ FLA 1996 s.47(2).

¹⁴⁶ *ibid* s.47(3).

¹⁴⁷ *Chechi v Bashir* (1999) Times, 25th March.

¹⁴⁸ FLA 1996 s.62(3)(4).

¹⁴⁹ Lockton and Ward (1997) *op. cit.* at 90.

¹⁵⁰ *Horner v Horner* [1983] FLR 50 at 51.

seriousness hurdle.¹⁵¹ In granting the order the court has to consider all the circumstances focusing on the health, safety and well-being of the parties and children.¹⁵² The focus is on the needs of the victim rather than the conduct of the perpetrator. The court may express the conduct prohibited in general terms or specify acts which are prohibited,¹⁵³ which gives the court more flexibility than previous legislation.

The list of people who can apply for an occupation order is more restricted than the non-molestation order. There is a different test applied for ‘entitled’ and ‘non entitled’ applicants and the content of an order may also differ. An ‘entitled’ person is someone who has property rights or spouse’s rights in the home.¹⁵⁴ ‘Non entitled’ applicants are people who have no property rights but are cohabitants, former cohabitants and former spouses of the respondent who are ‘entitled’ to occupy the home. Declaratory orders confirm existing rights. Regulatory orders regulate occupation so can require the respondent to admit the applicant, or restrict or terminate the respondent’s rights. An order can confine a person to using part of the property (such as excluding the person from the bedroom), or excluding the respondent from an area around the house. An order can prohibit the changing of locks, or require the parties to vacate the property at certain times. An order can also include obligations on the respondent or applicant to maintain rent, mortgage or maintenance and can demand that the occupier pay the non-occupier compensation or rent.

Declaratory orders tend to be obtained fairly easily, but in relation to orders regulating or restricting rights to occupation, the courts have to consider all the circumstances.¹⁵⁵ This includes the housing needs and resources of the parties and children, financial resources of the parties, likely effect of an order or decision not to exercise its powers on the health, safety and well being of the parties and children and the conduct of the

¹⁵¹ *Spindlow v Spindlow* [1979] 1 All ER 169.

¹⁵² FLA 1996 s.42(3).

¹⁵³ Family Law Act 1996 s.42(6).

¹⁵⁴ FLA 1996 s.33.

¹⁵⁵ *ibid* s.33(6).

parties.¹⁵⁶ The court also operates a ‘significant harm’ test. It has to make an order if significant harm is likely to the applicant or a relevant child were an order not made and the harm will not be as great or greater than if an order is not made.¹⁵⁷ A similar test to that for ‘entitled’ applicants is applied to ‘non-entitled’ applicants who are former spouses. But the court has also to look at issues such as the length of time since the couple stopped living together or since their marriage was dissolved or the existence of other proceedings between the parties.¹⁵⁸ So, the applicant without property rights has a harder test to satisfy.

In the case of ‘non-entitled’ applicants who are cohabitants or former cohabitants the court is also supposed to examine the so-called nature of their relationship, such as the length of time they have lived as husband and wife, whether they have children or share parental responsibility.¹⁵⁹ Also, if the significant harm test does lean in favour of an order being made there is no duty on the court to make an order that exists in the case of ‘entitled’ applicants.¹⁶⁰ The court should also consider the fact that the cohabitants have chosen not to commit to marriage.¹⁶¹ ‘Entitled’ applicants can have unlimited orders but ‘non entitled’ applicants only receive short-term relief. In the case of former spouses orders can last up to six months but may be extended.¹⁶² Cohabitants and former cohabitants can have an order lasting up to six months but it can only be extended on one occasion.¹⁶³ One explanation for these complex rules is that not marrying should, in some way, reduce the protection offered by the law. Yet, for some women who experience domestic violence the choice not to marry is a way of protecting themselves by not forming a legal tie with the perpetrator. Later in this chapter there is a discussion of how legal rules, like those relating to marriage have important implications for women when living in a violent relationship and when

¹⁵⁶ *ibid.*

¹⁵⁷ *ibid* s.33(7).

¹⁵⁸ *ibid* s.35.

¹⁵⁹ *ibid* s.36.

¹⁶⁰ *ibid* s.36(8).

¹⁶¹ *ibid* s.41(2).

¹⁶² *ibid* s.35.

¹⁶³ *ibid* s.36.

trying to escape. Although it is still early days of the Family Law Act's operation, what part has it played in protecting women?

Recent research indicates that there was no change in the number of non-molestation orders granted under the new legislation, but there were more occupation orders.¹⁶⁴ Since the Family Law Act there has been an increase in attachment of powers of arrest and more committal proceedings, but statistics suggest that women in different parts of the country receive different degrees of protection.¹⁶⁵ There have not been any notable British evaluations of the effect of orders on perpetrators and the extent to which injunctions are breached.¹⁶⁶ One study in the United States found that violators were more likely to be unemployed, to abuse alcohol or drugs, to be violent in and outside the home and to have a general disregard for the law,¹⁶⁷ which echoes research about the effects of arrest on different men. The general evidence is that these civil injunctions provide little long-term protection for women experiencing domestic violence.¹⁶⁸ What other civil protection is available?

For those who fall outside the ambit of the Family Law Act 1996, if, for instance, they have never lived with the perpetrator, proceedings in tort for harassment is another option.¹⁶⁹ Those experiencing domestic violence also have the choice for using the Protection from Harassment Act 1997 in which the crime of harassment is also classified as a statutory tort.¹⁷⁰ The Act allows damages to be awarded for any anxiety caused by the harassment or any financial loss that results and the court may issue an injunction to prohibit further harassment.¹⁷¹ Breach of an injunction “without

¹⁶⁴ Edwards, S. (2000b) *Reducing Domestic Violence...What Works? Civil Law Remedies*. Policing and Reducing Crime Briefing Note (London: Home Office).

¹⁶⁵ *ibid.*

¹⁶⁶ Kewley, A. (1996) 'Pragmatism before principle: The limitations of civil law remedies for the victims of domestic violence', 18(1) *Journal of Social Welfare and Family Law* 1-10 at 3.

¹⁶⁷ Chaudhuri, M. and Daly, K. (1992) 'Do restraining orders help? Battered women's experience with male violence and legal process', in, Buzawa and Buzawa (1992) *op. cit.* at 240.

¹⁶⁸ Harrell, A. and Smith, B. (1996) 'Effects of restraining orders on domestic violence victims', in, Buzawa and Buzawa (1996) *op. cit.*; Barron (1990) *op. cit.*

¹⁶⁹ *Khorasandjian v Bush* [1993] 1 QB 727; *Burris v Azandi* [1995] 4 All ER 802.

¹⁷⁰ Protection from Harassment Act 1997 s.3.

¹⁷¹ *ibid.*

reasonable excuse” is a criminal offence.¹⁷² It is difficult to know the extent to which the 1997 Act has been used in domestic violence cases and there seem to be variations in solicitors’ advice to clients seeking protection.¹⁷³ So, even legal tools specifically designed to protect against the harm caused by domestic violence are not always accessible to women. More worryingly, in areas of family law there has been a failure to even recognise the need to protect survivors of domestic violence.

Family Law and the Failure to Protect

Recent emphasis in divorce law has been on removing the concept of fault and looking to the past in attempts to build relationships between the parties for the future that reduces bitterness and enables shared parenting. These attempts to ‘draw a line’ under the past are dangerous when the history of the relationship, particularly in a case of domestic violence is crucial to the way that the parties relate to each other.¹⁷⁴ Yet legal actors, in divorce and child contact disputes often fail to recognise domestic violence as relevant.¹⁷⁵ Chapter Five discusses the ways in which the silencing of survivors of domestic violence in these proceedings can be dangerous for women and children. The trend towards informal forms of dispute resolution, like mediation, also has important implications for survivors of domestic violence. Mediation is intended to be a process of discussion and compromise, usually facilitated by a third party who has no power to impose a decision, but focuses on persuading the parties to reach a voluntary settlement.¹⁷⁶ Mediation is considered preferable to traditional adjudication in terms of reducing financial costs, avoids the risks and uncertainties of litigation and enables agreements that are acceptable to both parties and reducing feelings of

¹⁷² *ibid.*

¹⁷³ Edwards (2000b) *op. cit.*

¹⁷⁴ Fineman, M. (1988) ‘Dominant discourse, professional language and legal change in child custody decision-making’, 101(4) *Harvard Law Review* 727-774; Smart, C. (1991) ‘The legal and moral ordering of child custody’, 18(4) *Journal of Law and Society* 485-500.

¹⁷⁵ Radford, L. Sayer, S. and Aid for Mothers Involved in Contact Action (AMICA) (1999) *Unreasonable Fears? Child Contact in the Context of Domestic Violence: A Survey of Mothers’ Perceptions of Harm* (Bristol: Women’s Aid Federation England).

¹⁷⁶ Rifkin, J. (1984) Mediation from a feminist perspective: Promises and problems’, 2 *Law and Inequality* 21-31 at 25.

bitterness.¹⁷⁷ So, how do such processes fail to protect survivors of domestic violence?

A number of criticisms emerge in the literature examining the risks of using mediation in cases of domestic violence.¹⁷⁸ Such informal legal responses are in danger of reproducing the imbalanced power relationships in domestic violence because they tend to assume the equality of the parties.¹⁷⁹ There are fears that perpetrators are more able to manipulate decisions and intimidate women in informal mediation proceedings and that the experience of violence makes it difficult for a woman to be able to speak up for her own interests.¹⁸⁰ This is particularly dangerous when the agreements emanating from mediation are not subject to public scrutiny.¹⁸¹ It has been recognised that mediators do have an impact on the outcomes and processes of mediation.¹⁸² But mediators are unlikely to help a survivor when they do not understand the dynamics of domestic violence or recognise the physical, emotional and psychological dangers that women face in mediation.¹⁸³ There have been doubts expressed as to whether it is possible to redress the deeply ingrained imbalance of power which exists in situations of domestic violence.¹⁸⁴ Some mediators may also see such a role as a violation of the neutrality that is often considered to be central to mediation.¹⁸⁵ Voluntary mediation

¹⁷⁷ Mnookin, R. and Kornhauser, L. (1979) 'Bargaining in the shadow of the law: The case of divorce', 88 *Yale Law Journal* 950-997.

¹⁷⁸ Kaganas, F. and Piper, C. (1994) 'Domestic violence and divorce mediation', 3 *Journal of Social Welfare and Family Law* 265-278; Lerman, L. (1984) 'Mediation of wife abuse cases: The adverse impact of informal dispute resolution on Women', 7 *Harvard Women's Law Journal* 57-43; Fischer, K., Vidmar, N. and Ellis, R. (1993) 'The culture of battering and the role of mediation in domestic violence cases', 46 *South Methodist University Law Review* 2117-74; Astor, H. (1994) 'Swimming against the tide: Keeping violent men out of mediation', in, Stubbs, J. (Ed) (1994) *Women, Male Violence and the Law* (Sydney: Institute of Criminology); Raitt (1996) 'Domestic violence and divorce mediation', 18(1) *Journal of Social Welfare and Family Law* 11-20.

¹⁷⁹ Bottomley, A. (1985) 'What is happening to family law? A Feminist critique of conciliation', in, Brophy and Smart (1985) *op. cit.* at 179.

¹⁸⁰ Kaganas and Piper (1994) *op. cit.*

¹⁸¹ *ibid*; Astor, H. (1991) *Position Paper on Mediation* (Australia: National Committee on Violence Against Women) at 10.

¹⁸² Davis, G. (1988) *Partisans and Mediators* (Oxford: Clarendon Press).

¹⁸³ Joseph Rowntree Foundation (1997) *Family Court Welfare and Voluntary Sector Mediation in Relation to Domestic Violence*, Social Policy Research 117 (York: Joseph Rowntree Foundation)

¹⁸⁴ Fischer *et al* (1993) *op. cit.*; Astor (1991) *op. cit.* at 11 and 22.

¹⁸⁵ Astor (1991) *op. cit.* at 30.

may not be a valid 'choice' for a woman who feels pressured to take part by the perpetrator, legal actors or her own belief that such a process would be better for her children.¹⁸⁶ Generally women are at a disadvantage in mediation processes because of gender expectations on them to act as 'peacemakers'.¹⁸⁷ This may be one reason why women tend to be more satisfied with formal adjudication than men.¹⁸⁸ How has domestic violence law responded to these criticisms of mediation and existing trends in family law?

The divorce provisions of the Family Law Act 1996 are not yet in force, but could have profoundly negative effects for survivors of domestic violence. Firstly, the Act removes the concept of fault and enshrines the principle of "marriage saving."¹⁸⁹ The experiences described in this research suggests that survivors are painfully aware of this principle which is part of the struggle to separate from their abuser. The new divorce law will require the parties to attend "information sessions" at the beginning of the process. This will be an opportunity to provide information about domestic violence, but may also be used by legal actors or the perpetrator to pressurise her to reconcile or to take part in mediation. Another potentially harmful aspect of the new law for survivors of domestic violence is that there is a minimum of one year between application and divorce during which the parties will have a "period for reflection and consideration."¹⁹⁰ Survivors stories show that they often endure long periods of 'reflection' before leaving violent partners, and the delay in completing the legal process of divorce is a major problem for women once they have made the difficult decision to try and create a new life.

Under the new law all parties, and particularly those receiving legal aid, will be under pressure to use mediation.¹⁹¹ Although it is stated that the parties must only participate

¹⁸⁶ Kaganas and Piper (1994) *op. cit.* at 269; Astor (1991) *op. cit.* at 34.

¹⁸⁷ Kaganas and Piper (1994) *ibid* at 274-275; Hilton, N. (1991) 'Mediating wife assault: Battered women and the "new family"', 9 *Canadian Journal of Family Law* 29-53; Smart (1991) *op. cit.*; Fineman (1988) *op. cit.*

¹⁸⁸ Davis, G., Cretney, A. and Collins, J. (1994) *Simple Quarrels* (Oxford: Clarendon Press) at 225.

¹⁸⁹ Family law Act s.1.

¹⁹⁰ Family Law Act 1996 s.7(3).

¹⁹¹ *ibid* s.29, amending Legal Aid Act 1988 s.15.

in mediation if willing and not influenced by fear of violence or other harm,¹⁹² it is unclear how this will work in practice when women are so reluctant to reveal violence. It is established as a general principle in the Family Law Act that risk of violence to any of the parties or children should “so far as reasonably practicable, be removed or diminished.”¹⁹³ But even the implementation of aspects of the law intended to hold perpetrators accountable, change their behaviour and protect survivors fails to remove the risk of violence. The next part of this chapter focuses on some ‘critical’ approaches to domestic violence law that suggest other ways in which it fails survivors of domestic violence.

2.2. ‘Critical’ Approaches to Domestic Violence Law

This research adopts a ‘critical’ approach to domestic violence law in highlighting its flaws and is ‘progressive’ in the sense of considering future possibilities. The following discussion briefly examines some ‘critical lawyering’ approaches that highlight ways in which legal responses to domestic violence fail to heal and serve survivors.

2.2.1. Law: Part of the Problem of Domestic Violence

Law is part of the problem of domestic violence when it fails to ensure that there are costs for men’s violence and supports the predominant constructions of gender roles in the family.¹⁹⁴ Law has been described as sexist in terms of the unequal application of its rules to women, as patriarchal in the male view of the world which it privileges, and as phallocentric due to the universalisation of features of masculinity so that they appear to represent both sexes.¹⁹⁵ It has been argued that law exists to serve the “man of law” - an autonomous and economically independent individual (usually white and

¹⁹² *ibid* s.27(7)(a)(b).

¹⁹³ *ibid* s.1(d).

¹⁹⁴ Smart (1989) *op. cit.*; Dobash and Dobash (1979) *op. cit.*; Hester, M., Kelly, L. and Radford, J. (1996) *Women, Violence and Male Power* (Buckingham: Open University Press).

¹⁹⁵ Gunew, S. (1990) *Feminist knowledge: Critique and Construct* (London: Routledge) at 149-151.

heterosexual) who works outside the home and does not become pregnant or bring up children.¹⁹⁶

This explains why the concerns of the ‘private’ sphere of home and family, have been neglected by the legal system, including domestic violence.¹⁹⁷ It has been argued that whilst the liberal ideal of law is of a logical, objective and abstract system of rules, the reality is of a system which upholds the patriarchal structure of the family through the “myth of non-intervention.”¹⁹⁸ There is a traditional belief that the family is a unit which is not suitable for legal or state intervention, but it has been argued that the concepts of ‘intervention’ and ‘non-intervention’ are incoherent concepts:

*because the state constantly defines and redefines the family and adjusts and readjusts family roles.*¹⁹⁹

This critique of non-intervention and the privacy of the family has been applied to recent emphasis on mediation in family law²⁰⁰ and the use of special treatment programmes for perpetrators of domestic violence.²⁰¹ There is evidence that decisions by legal actors are influenced by stereotypical and traditional ideas about the sanctity of the family, relationships between women and men, and how women and men should behave and that domestic violence is treated as a relationship issue rather than a public crime.²⁰²

¹⁹⁶ Naffine, N. (1990) *Law and the Sexes: Explorations in Feminist Jurisprudence* (London: Allen and Unwin).

¹⁹⁷ West, R. (1987) ‘The difference in women’s hedonic lives: A phenomenological critique of feminist legal theory’, 3 *Wisconsin Women’s Law Journal* 81-145; West, R. (1997) *Caring for Justice* (New York: New York University Press).

¹⁹⁸ Olsen, F. (1985) ‘The myth of state intervention in the family’, 18(4) *University of Michigan Law Review* 8835-8864.

¹⁹⁹ *ibid* at 8842.

²⁰⁰ Bottomley (1985) *op. cit.*

²⁰¹ Hanna (1998) *op. cit.*

²⁰² Edwards (1989) *op. cit.* at 91; Busch, R. (1993) “‘Was Mrs Masina really ‘lost’?” An analysis of New Zealand judges’ attitudes towards domestic violence’, 7(4) *Otago Law Review* 17-50; Busch, R. (1994) “‘Don’t throw bouquets at me... (judges) will say we’re in love”: An analysis of New Zealand judges attitudes towards domestic violence’, in, Stubbs (1994) *op. cit.*; Ford, J., Rompf, E., Faragher, T. and Weisenfluh, S. (1995) ‘Case outcomes in domestic violence court: Influence of judges’, 77 *Psychological Reports* 587-594; Czapansky, K. (1993) ‘Domestic violence, the family, and the lawyering process: Lessons from studies on gender bias in the courts’, 27(2) *Family Law Quarterly* 247-77; Bumiller, K. (1990) ‘Fallen angels: The representation of violence against women in legal culture’, 18 *International Journal of the Sociology of Law* 124-142; Young, A. (1994) ‘Caveat sponsa:

One aspect of law's power is its ability to shape "our perceptions, cognitions and preferences"²⁰³ and "the possibilities available to us."²⁰⁴ Historical and contemporary legal messages influence everyday perceptions of what counts as domestic violence.

*Law thought and legal relations . . . dominate self understandings and one's understanding of one's relations to others . . . [W]e have internalised law's meanings and its representations of us, so much so that our own purposes and understandings can no longer be extricated from them.*²⁰⁵

Law's meanings are reflected in the perceptions and actions of legal actors²⁰⁶ and in women's experiences of domestic violence.

*[T]he law not only reflects but also constructs a very limited definition of sexual violence, and thereby plays a significant role in denying or trivialising women's experience of male sexual violence . . . [I]deologies, stereotypes and limited definitions combine with women's own coping strategies to prevent them naming and defining men's behaviour as violent and abusive.*²⁰⁷

Women's stories suggest that an experience may not be named as rape or violence if a woman does not think that a court would agree.²⁰⁸ In the 1996 British Crime Survey less than half of the respondents who defined themselves as 'victims of domestic

Violence and the body in law', in, Brettell, J. and Rice, S. (Eds) (1994) *Public bodies, Private states* (Manchester: Manchester University Press); Kurz, D. (1992) 'Battering and the criminal justice system: A feminist view', in, Buzawa, C. and Buzawa, E. (1992) *op. cit.* at 30; Finn, M. and Stalans, L. (1997) 'The influence of gender and mental state on police decisions in domestic assault cases', 24 (2) *Criminal Justice and Behaviour* 157-176.

²⁰³ Lukes, S. (1974) *Power: A Radical View* (London: Macmillan Press) at 24.

²⁰⁴ Smart, C. (1995) *Law, Crime and Sexuality: Essays in Feminism* (London: Sage) at 2.

²⁰⁵ Sarat, A. and Kearns, T. (1993) 'Beyond the great divide: Forms of legal scholarship and everyday life', in Sarat, A. and Kearns, T. (1993) *Law in Everyday Life* (Ann Arbor: University of Michigan Press) at 29.

²⁰⁶ Borkowski, M., Murch, M. and Walker, V. (1983) *Marital Violence: The Community Response* (London: Tavistock Publications) at 49.

²⁰⁷ Kelly, L. and Radford, J. (1996) "'Nothing really happened": The invalidation of women's experiences of sexual violence', in, Hester *et al* (1996) *op. cit.* at 19 and 27.

²⁰⁸ MacKinnon, C. (1993) 'Reflections on law in the everyday life of women', in, Sarat and Kearns (1993) *op. cit.* at 114.

violence' said the incident was also a crime.²⁰⁹ In his research on men's descriptions of their violence to their partners, Hearne concluded that:

*for men (who are violent to women), the construction of what is meant by violence is itself part of the problem.*²¹⁰

Hearne noted that most men did not consider sexual or physical assault to be 'real' violence unless they were prosecuted and convicted or charged and convicted of offences of violence, rather than public order.²¹¹ As well as helping to construct the problem of domestic violence, law has been criticised as limited by its focus on individuals and rights.

2.2.2. Law: Limited by Focus on Individuals and Rights

The individualistic nature of legal remedies has been criticised for leaving the patriarchal structure creating domestic violence in place and for addressing women as individuals rather than their collective experience of violence.²¹² Feminist legal theorists have also highlighted the flaws in liberal theory's focus on the individualistic legal concept of 'right'. It has been argued that rights are empty if there is no financial support for their fulfilment²¹³ and that "preoccupation with personal entitlements can divert concern from collective responsibilities."²¹⁴ Rights can also be appropriated against the weak by the more powerful and it has been suggested that, rather than resolving problems, legal rights simply define the problem as having a legal solution.²¹⁵

Despite the limitations, dangers and frequently illusionary power of rights, they are "a linguistic currency to which everyone has access."²¹⁶ Although rights can be divisive,

²⁰⁹ Mirrlees-Black, C. (1999) *Domestic Violence: Findings From a New British Crime Survey Self-Completion Questionnaire*, Home Office Research Study 191 (London: Home Office) at 50.

²¹⁰ Hearne (1998) *op. cit.* at 116.

²¹¹ Hearne (1998) *op. cit.* at 81, 102, 116 and 117.

²¹² Kurz (1992) *op. cit.*; Thornton, M. (1991) 'Feminism and the contradictions of law reform', 19 *International Journal of the Sociology of Law* 453-474 at 461.

²¹³ Smart (1989) *op. cit.* at 144.

²¹⁴ Rhode (1993) *op. cit.* at 603.

²¹⁵ Smart (1989) *op. cit.* at 144-145.

²¹⁶ *ibid.* at 143.

they are a useful instrument for oppressed individuals and groups and expressive of an individual's and group's equality and identity and are often considered necessary to any political and legal strategy for change.²¹⁷ Claims for rights have been important in the domestic violence movement. These include demands for the rights of women to alternatives to a violent relationship in the form of practical housing options, economic independence and rights to be protected from domestic violence by the state. But 'rights' to protection in the form of criminal prosecution harm women who are forced to co-operate or are imprisoned for failing to do so and blamed for not using their 'rights'.²¹⁸ Women are also adversely affected by their partner's assertion of legal rights and the problem of conflicting rights. In the context of injunctions the courts have struggled to reconcile the proprietary rights of violent partners with the safety of the woman and children, sometimes at the expense of the latter.²¹⁹ Recently, the fathers' rights movement has grown in momentum and the right of a child to have contact with both parents has involved violating women's (and children's) right to live free of violence.²²⁰

This thesis suggests that the individualistic and separating effect of rights can also be useful in an individual woman's survival of domestic violence in helping her to re-establish a sense of self separate from her partner.²²¹ Enforcing legal rights can bring a sense of empowerment.²²² Survivors of domestic violence are trapped by fear and economic, social and emotional connection to a violent partner and the exercise of rights can help bring freedom and connection with the outside world.

*The articulation of women's rights provides a sense of self and distinction for individual women, while at the same time giving women an important sense of collective identity.*²²³

²¹⁷ Thornton (1991) *op. cit.* at 466.

²¹⁸ Brownlee (1990) *op. cit.* at 112.

²¹⁹ McCann (1985) *op. cit.*

²²⁰ Joseph Rowntree Foundation (1996) *Domestic Violence and Child Contact Arrangements*, Social Policy Research Paper, No.100 (York: Joseph Rowntree Foundation); Radford et al (1999) *op. cit.*

²²¹ Schneider, E. (1986) 'The dialectic of rights and politics: Perspectives from the Women's Movement', 61 *New York University Law Review* 589-652. at 616.

²²² Genn, H. (1999) *Paths to Justice: What People Do and Think About Going to Law* (Oxford: Hart Publishing) at 193.

²²³ Schneider (1986) *op. cit.* at 625.

While acknowledging “the universal, affirming, expressive and creative aspects of rights claims,” this research maintains “a critical impulse” towards them.²²⁴ The focus of this thesis is less on specific legal rules and rights than on the way domestic violence law generally responds to the complex realities of women’s processes of survival.

2.2.3. Law: Fails to Respond to Survivors’ Complex Lives

This thesis argues that survivors of domestic violence often regard law as separate from their complex lives, because in the ‘legal world’ human existence tends to be reduced to simplistic choices: guilty or not guilty, crime or no crime, leave or stay. Hierarchically ordered dichotomies and dualisms assumed by law, such as private/public, individual/community and emotion/rationality have been challenged in critiques of law.²²⁵ This thesis attempts to move away from this dualistic thinking and to give an insight into the lives of survivors of domestic violence which reveals how flawed legal ways of thinking are. One simplification which has a particular effect on survivors of domestic violence is the liberal pretence that we exist as abstract individuals.

It has been argued that law tends to act on abstract individuals who are removed from their social context and assumed to act in self-interest.

*It does not include a view of the person operating for altruistic motives to assist and foster the positions of others - the sort of thing women are expected to do in families.*²²⁶

West highlights the value that liberal legal theory attaches to a person’s autonomy and freedom from interference.²²⁷ She compares it to the lives of women, who exist in a state of connection, due to pregnancy, intercourse, breast-feeding and through their

²²⁴ *ibid* at 652.

²²⁵ Lacey, N. (1993) ‘Theory into practice? Ponography and the public/private dichotomy’, 20 *Journal of Law and Society* 93-113 at 98.

²²⁶ Naffine (1990) *op. cit.* at 65.

²²⁷ West (1993) *op cit.* at 498.

“moral and practical life.”²²⁸ The previous chapter shows how important psychological, emotional, social and financial connections are in the survival of domestic violence. Despite the overwhelming empirical evidence that separation is a long and difficult process, that is often never completed, connection is still considered anathema in the context of domestic violence.²²⁹ In law, people are generally assumed to be autonomous individuals and ‘why she stays’ has continued to appear as an unintelligible mystery in the mythology surrounding domestic violence.²³⁰ It has been noted that there are “irreconcilable differences” between survivors of domestic violence and legal actors because, while the legal system is grounded in notions of autonomy and protection from annihilation, a central issue for survivors is connection.²³¹

It has been observed that the value attached to separation by liberal theory actually fails to reflect most people’s realities and prevents law responding to the problems of most people.²³² Some feminist writers have focussed their critique of law on;

*Concern for intimacy, relationships, care and concern for empathic understanding; stories of emotion, pain and pleasure; concern for compassionate responsive judging.*²³³

Gilligan argues that law values a masculine ‘ethic of justice’ focussing on rights, equality, autonomy, objectivity and impartiality at the expense of a more feminine ‘ethic of care’ which values intimacy, empathy, nurturance, care, responsibility and community.²³⁴ It has been suggested that if law hears the ‘different voice’ of the more female ‘ethic of care’ - relational and contextual rather than individualistic and

²²⁸ *ibid* at 494.

²²⁹ Littleton, C. (1989) ‘Women’s experience and the problem of transition: Perspectives on male battering of women’, *University of Chicago legal forum* 23-57; Mahoney, M. (1991) Legal images of battered women: Redefining the issue of separation’, 90 *Michigan Law Review* 1-94.

²³⁰ Barnett, O and LaViolette, A. (1993) *It Could Happen to Anyone: Why Battered Women Stay* (Newbury Park, CA: Sage).

²³¹ Ferraro, K. and Lucille, P. (1993) ‘Irreconcilable differences: Battered women, police and the law’, in, Hilton (1993) *op. cit.*

²³² Naffine (1990) *op. cit.* at 78

²³³ Henderson (1988) ‘The dialogue of heart and head’, 10(1/2) *Cardozo Law Review* 123-148 at 133.

²³⁴ Gilligan, C. (1982) *In a Different Voice* (Cambridge, Massachusetts: Harvard University Press)

abstract - that voice might create opportunities for less combative and more conciliatory legal procedures.²³⁵

The dichotomy between the 'ethic of care' and the 'ethic of justice' has been challenged to reveal the much more complex reality of the relationship between law and life. It has been argued that care exists in law but does not "provide the organising principle for our legal system."²³⁶ Daly has argued that the criminal system takes account of relationships and connections when it treats domestic violence differently in prosecution and sentencing decisions.²³⁷

*[The] problem in criminal-court practices is not that the female voice is absent, but that certain relations are presupposed, maintained, and reproduced.*²³⁸

Okin argues that the failure to apply an "ethic of justice" and the idea that "justice somehow takes away from the intimacy, harmony and love" of the family, has resulted in a range of injustices which include domestic violence.²³⁹ Critical approaches to mediation have also highlighted how the 'ethic of care' can be damaging for women when it is used to justify potentially harmful legal responses like mediation in family law.²⁴⁰

The belief that the dichotomy between care and justice is unhelpful has led to a more complex analysis. There have been arguments against privileging 'care' over 'justice', due to the risk of excluding valuable approaches to human problems.²⁴¹ It has been suggested that gender does not decide the way we approach decisions and that the individual techniques of lawyers may be a more fruitful source of enquiry in discovering how effective different practices can be.²⁴² It has been argued that the

²³⁵ Daly, K. (1989) 'Criminal justice ideologies and practices in different voices: Some feminist questions about justice', 17 *International Journal of the Sociology of Law* 1-18 at 2.

²³⁶ Shaughnessy, J. (1988) 'Gilligan's travels', 7 *Journal of Law and Inequality* 1-27 at 18

²³⁷ *ibid* at 11.

²³⁸ *ibid* at 2.

²³⁹ Okin, S. (1989) *Justice, Gender and the Family* (Basic Books) at 9.

²⁴⁰ Lerman (1984) *op. cit.*; Fischer *et al* (1993) *op. cit.*

²⁴¹ Cahn, N. (1992b) 'Styles of lawyering', 43 *Hastings Law Journal* 1039-1069 at 1052 and 1059

²⁴² *ibid* at 1059 and 1061.

best hope for changing the practice of law depends on a combination of care and justice.

*The best theorising about justice . . . has integral to it the notions of care and empathy, of thinking of the interests and well-being of others who may be very different from ourselves . . . [and] results from the carefully attentive consideration of everyone's point of view.*²⁴³

West says that, "justice must be caring if it is to be just" and "caring must be just if it is to be caring."²⁴⁴

*[Justice] requires at a minimum, an appreciation of each participant's human essence, and that in turn requires a compassionate attempt to understand his or her lived dilemma.*²⁴⁵

Flax argues that we need to see justice as a relational, rather than abstract process which involves seeing from the point of view of another, skills which require imagination and empathy.²⁴⁶ This thesis develops the idea that the process of justice is as important as outcomes and that skills like empathy are crucial if women are to experience law as just *and* caring. A central criticism of existing legal responses is that they are experienced by women as both unjust and violent.

2.2.4. Law: A Source of Violence to Survivors of Domestic Violence

In the context of domestic violence law there is a consistent conflict between views of state intervention as "intrusive, repressive and controlling" or "enabling, empowering and protective."²⁴⁷ This thesis attempts to move away from such limited dichotomised thinking to see law in the complex way it is experienced by survivors of domestic violence. Law itself is a form of violence²⁴⁸ and whilst hating and condemning it in some contexts, our present legal system needs force and coercion to

²⁴³ Okin (1989) *op. cit.* at 15.

²⁴⁴ West (1997) *op. cit.* at 24.

²⁴⁵ *ibid* at 91.

²⁴⁶ Flax, J. (1992) 'Beyond equality: Gender, justice and difference', in, Bock, G. and James, S. (Eds) (1992) *Beyond Equality and Difference: Citizenship, Feminist Politics and Female Subjectivity* (London: Routledge) at 206.

²⁴⁷ Dobash, R. E. and Dobash, R.P. (1992) *Women, Violence and Social Change* (London: Routledge) at 105.

exist.²⁴⁹ Our society is one that accepts and requires state violence in terms of arrest, imprisonment and acts of war. Judges authorise violent acts daily when they hand down criminal sentences²⁵⁰ and the ‘enforcement’ of contracts and other legal orders relies on the threat of force.²⁵¹

*Lawyers deal in power – legalised force. This is simultaneously the source of the law’s great strength in our society and it’s great weakness.*²⁵²

The power of prevailing cultures, including that of law, to define beliefs about the world²⁵³ is central to our assumptions about the meaning of violence.²⁵⁴

*Law’s efficacy is not in what it can get people to agree to do, but in what they will think and do un-self consciously.*²⁵⁵

Through this power, the state controls general definitions of violence, such as those in legislation, and has come to have the monopoly over force which is regarded as legitimate, controlled, predictable and necessary and called “enforcement of law and order”.²⁵⁶ The nasty word ‘violence’ is reserved for supposedly illegitimate, gratuitous and harmful use of force.²⁵⁷ Sarat and Kearns have argued that we have failed to develop a meaningful ‘jurisprudence of violence’ in contemporary legal theory that allows us to understand the complex relationship between law and violence.²⁵⁸

Law can be part of domestic violence by allowing it to continue.²⁵⁹ The adversarial system can exacerbate the perpetrator’s violence by reinforcing his denial and

²⁴⁸ Young (1994) *op. cit.* at 153; Edwards (1989) *op. cit.* at 153.

²⁴⁹ Bauman, Z. (1995) *Life in Fragments: Essays in Postmodern Morality* (Oxford: Blackwell) at 141.

²⁵⁰ Cover, R. (1992) ‘Violence and the word’, in, Minow, M., Ryan, M. and Sarat, A. (Eds) (1992) *Narrative, Violence and the Law: The Essays of Robert Cover* (Ann Arbor: University of Michigan Press).

²⁵¹ Berns, S. (1999) *To Speak as a Judge - Difference, Voice and Power* (Ashgate: Dartmouth) at 54.

²⁵² Shaughnessy (1988) *op. cit.* at 22.

²⁵³ Lukes (1974) *op. cit.*

²⁵⁴ Freeman (1984) *op. cit.*

²⁵⁵ Sarat and Kearns (1993) *op. cit.* at 11.

²⁵⁶ Bauman (1995), *op. cit.* at 141-3.

²⁵⁷ *Ibid.*

²⁵⁸ Sarat, A. and Kearns, T. (1991) ‘A journey through forgetting: Toward a jurisprudence of violence’, in, Sarat, A. and Kearns, T. (Eds) (1991) *The Fate of Law* (Ann Arbor: University of Michigan Press).

²⁵⁹ Minow, M. (1990) ‘Words and the door to the land of change: Law, language and family violence’, 43(6) *Vanderbilt Law Review* 1665-1699 at 1671.

minimisation of his behaviour.²⁶⁰ The criminal process has also been described as a source of “double victimisation” for survivors of domestic violence.²⁶¹ Margulies describes how a lawyer’s representation in court silences a woman’s voice and disempowers her by focussing solely on legal goals.²⁶² Mandatory prosecution can also be coercive and disempowering if it takes place against the woman’s wishes or involves compelling her to testify in court.²⁶³ The symbolic power of criminal law to condemn violence may also condemn those women who do not co-operate with legal responses.²⁶⁴ It has been suggested that the practice of putting a woman in a witness box to explain her reasons for retracting a statement are not to safeguard her against intimidation, but to punish her, ‘teach her a lesson’ and protect legal actors.²⁶⁵ It has also been suggested that pro arrest and prosecution policies disproportionately affect ethnic minority women and those with less economic resources who have fewer alternatives than other women.²⁶⁶ In the United States women experiencing domestic violence have been arrested along with their partners due to the ‘over enforcement’ of pro-arrest policies.²⁶⁷ Law is violent when decisions are made which force a woman to facilitate her children’s contact with a father who she knows to be a threat.

Chapter Seven discusses women’s experiences of silence and empowerment in relation to domestic violence law and highlights how a response which one woman experiences as harmful, another may experience as empowering. As with the issue of justice and care, the idea of law as a source of both violence and empowerment is complex for women experiencing domestic violence. The dilemma presented by the need to protect *and* empower are central to debates around domestic violence law.

²⁶⁰ Simon, L. (1995) ‘A therapeutic jurisprudence approach to the legal processing of domestic violence cases’, 1(1) *Psychology, Public Policy and Law* 45-79.

²⁶¹ Edwards (1989) *op. cit.* at 153.

²⁶² Margulies, P. (1996) ‘The violence of law and violence against women’, in, 8(1) *Cardozo Studies in Law and Literature* 179-202.

²⁶³ *ibid*; Mills, L. (1998b) *op. cit.*; Mills, L. (1999) ‘Killing her softly: Intimate abuse and the violence of state intervention’, 113(2) *Harvard Law Review* 551-613.

²⁶⁴ Cretny and Davis (1997a) *op. cit.* at 80-81.

²⁶⁵ Cretny and Davis (1996) *op. cit.* at 169.

²⁶⁶ Miller, S. (1989) ‘Unintended side effects of pro-arrest policies and their race and class implications for battered women: A cautionary note’, 3(3) *Criminal Justice Policy Review* 299-319 at 304.

²⁶⁷ Martin, M. (1997) ‘Double your trouble: Dual arrest in family violence’, 12(2) *Journal of Family Violence* 139-157 at 139 and 145.

Existing theories, including feminist ones, offer few answers to “complex real world decisions.”²⁶⁸ It may even be that protection and empowerment for survivors of domestic violence lie somewhere other than law.

2.2.5. Law Reform Empowers Law

There have been powerful and convincing critiques of domestic violence law and some feminists have claimed that attempts at law reform are fundamentally misguided “[f]or the master’s tools will never dismantle the master’s house.”²⁶⁹ It has been argued that resort to law legitimates a flawed system and that “all law reforms empower law.”²⁷⁰ It is true that legal responses can worsen women’s position, as in the trauma of a criminal trial,²⁷¹ and that law can be used against women, particularly when competing rights are adjudicated.²⁷² It has also been argued that statutory reforms do not affect the informal norms of case processing in courts or the organisational structures of legal decision making²⁷³ or the language and symbols used to make sense of issues such as rape.²⁷⁴ Applying legal tools may also perpetuate some forms of oppression if, for instance, black men are disproportionately affected by pro-arrest policies.²⁷⁵ There is also a danger that demands for harsh sanctions may be counterproductive when legal interventions do not have “remedial, rehabilitative or preventative value.”²⁷⁶

Smart argues that feminists need to engage with law in full awareness of the dangers of legitimating a mode of social regulation which is “deeply antithetical” to women’s

²⁶⁸ Hanna (1996) *op. cit.* at 1854.

²⁶⁹ Lorde, A. (1984) ‘The master’s tools will never dismantle the house’, in, *Sister Outsider: Essays and Speeches*, (New York: The Crossing Press) at 112; Also, Smart (1989) *op. cit.*

²⁷⁰ Smart (1989) *op. cit.* at 161.

²⁷¹ *ibid* at 161; Edwards (1989) *op. cit.* at 153.

²⁷² Smart (1989) *op. cit.* at 164.

²⁷³ Hoyle (1998) *op. cit.*

²⁷⁴ Matoesian, G. (1993) *Reproducing Rape: Domination Through Talk in the Courtroom* (Chicago: University of Chicago Press).

²⁷⁵ Miller (1989) *op. cit.*

²⁷⁶ Thornton (1991) *op. cit.* at 466.

concerns and interests.²⁷⁷ Crucial specialist services for women have been created as an addition to the established legal system including the women's refuge movement. Confidential outreach, support, advice and counselling services for women experiencing domestic violence and rape are provided by organisations such as Rape Crisis, Southall Black Sisters and Women's Aid. This thesis argues that legal responses could learn much of value from the ways in which these organisations respond to survivors of domestic violence. It also adopts the view that the power the law has as a symbolic and instrumental tool in changing attitudes and behaviours and in shaping everyday life means that we should engage with it.²⁷⁸ It has been argued that law's public role is important in exploring the harm women often endure in private.²⁷⁹ There is also a danger that the dependency on men will be replaced by reliance on legal agencies.²⁸⁰ This thesis considers moving beyond this dichotomised thinking to ask how legal actors can share power, so that women become "full partners" in legal processes.²⁸¹

Thornton has written that "[t]he strait-jackets of legal form allow little scope for imaginative and creative solutions."²⁸² She also writes that in entering the "authoritative and privileged" world of law:

*The challenge for feminist reformers is how to manage the contradictions in order to secure liberatory outcomes for women without being caught by one of legality's many concealed traps.*²⁸³

One method of securing legal reforms which work for survivors is to start with women's stories.²⁸⁴ Before moving onto the stories in this thesis, the remainder of

²⁷⁷ Smart (1989) *op. cit.* at 164.

²⁷⁸ Mackinnon (1993) *op. cit.* at 122; Also, Edwards, S. (1990) 'Violence against women: Feminism and the law', in, Gelshorpe, L. and Morris, A. (Eds) (1990) *Feminist Perspectives in Criminology* (Milton Keynes: Open University Press).

²⁷⁹ Thornton (1991) *op. cit.* at 466.

²⁸⁰ Morley (1993) *op. cit.* at 196.

²⁸¹ Buzawa and Buzawa (1996a) *op. cit.* at 180.

²⁸² *ibid* at 467.

²⁸³ *ibid* at 468.

²⁸⁴ Murphy, J. (1993) 'Lawyering for social change: The power of narrative in domestic violence law reform', 21(4) *Hofstra Law Review* 1243-1293 at 1292-3.

this chapter introduces some ‘progressive’ ways of thinking about domestic violence law which acknowledge the violence *and* the possibilities of law.²⁸⁵

2.3. ‘Progressive’ Approaches to Domestic Violence Law

Some critical lawyers claim that by working towards law reform we legitimate and prolong a fundamentally flawed system of law. Other legal actors and writers argue that they are working within the reality of an existing system that needs to be changed, rather than destroyed, in order to respond to human problems. Melanie Abbot identifies this as the difference between ‘critical’ lawyering and ‘progressive’ lawyering.²⁸⁶ By dereifying and deconstructing the liberal assumptions about law, critical approaches have enabled us to think differently about the future of law.

‘Progressive’ lawyering may also be known by other terms, such as healing, holistic, humanistic or alternative lawyering.²⁸⁷ These approaches focus on the practice of law, developing Karl Llewellyn’s idea of law having certain ‘jobs’ to do. These schools of thought are not always clearly distinct and tend to share ideas about inter-disciplinary and holistic approaches to law.²⁸⁸ They adopt creative problem solving skills²⁸⁹ in a search for “collaborative, long term, interdisciplinary, and symbiotic solutions”²⁹⁰ rather than solely legal ones. They tend to develop alternatives to traditional legal approaches that optimise human well being by de-emphasising the concept of individual rights to focus instead on the connectedness of human relationships.²⁹¹

²⁸⁵ Marguiles (1996) *op. cit.*

²⁸⁶ Abbott, M. (1997) ‘Seeking shelter under a deconstructed roof: Homelessness and critical lawyering’, 44 *Tennessee Law Review* 269-314.

²⁸⁷ Daicoff, S. (1999) ‘Lawyering in the next millenium: A multifaceted approach’, (Unpublished Paper on Draft with Author) at 8.

²⁸⁸ Cooper, J. (1998) ‘Towards a new architecture: Creative problem solving and the evolution of law’, 34 *California Western Law Review* 297-323.

²⁸⁹ Cooper (1998) *op. cit.* ; Barton, T. (1999) ‘Therapeutic jurisprudence and creative problem solving: An essay on harnessing emotion and human connection’, (Unpublished paper on file with author).

²⁹⁰ Cooper (1998) *op. cit.* at 312.

²⁹¹ Daicoff (1999) *op. cit.* at 24.

This thesis takes an eclectic approach to the relationship between domestic violence and law, borrowing from a variety of progressive approaches to law and domestic violence including therapeutic jurisprudence (which has incorporated ideas from preventive lawyering and procedural justice), restorative justice, affective lawyering and rebellious lawyering.

2.3.1. Therapeutic Jurisprudence

The term ‘therapeutic’ is usually associated with processes and knowledge outside traditional legal forums, suggesting mediation, social work²⁹² and, in Smart’s words, the ‘psy’ professions.²⁹³ The term ‘therapeutic jurisprudence’ was first used in the context of mental health law.²⁹⁴ The term has since been used in a range of legal contexts and has been defined as:

*the use of social science to study the extent to which a legal rule or practice promotes the psychological or physical well-being of the people it affects.*²⁹⁵

Therapeutic jurisprudence, or ‘TJ’, asks whether legal rules, actors, procedures and decisions have therapeutic or anti-therapeutic consequences for the people involved, focussing on particular human problems, rather than looking to the traditional categories of law in which general principles are applied to a variety of different human needs. The ultimate goal of the movement is to minimise the negative or ‘anti-therapeutic’ consequences in order to create a more therapeutic legal system that maximises human well-being.

TJ works from the premise that non-legal knowledge can assist in legal decisions. This inter-disciplinary approach incorporates psychology, psychiatry, criminology and philosophy, as well as other behavioural and social sciences. In relation to domestic violence law, legal actors have been urged to use knowledge in the social sciences,

²⁹² Fineman (1988) *op. cit.* at 731.

²⁹³ Smart (1989) *op. cit.*

²⁹⁴ Wexler, D. and Winick, B. (Eds) (1996) *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* (Durham, North Carolina: Carolina Academic Press).

²⁹⁵ Slobogin, C.(1995) ‘Therapeutic jurisprudence: Five dilemmas to ponder’, in Wexler and Winick (1996) *op. cit.*

psychology and other disciplines in order to make decisions²⁹⁶ and “consider the many influences on human behaviour and family life”.²⁹⁷ TJ adopts theories like ‘procedural justice’ to evaluate how issues such as participation in legal processes and relationships with legal actors affect people’s evaluations of law and its effects on their lives.²⁹⁸ The preventive lawyering approach has also been taken up in the TJ literature.²⁹⁹ Preventive lawyering seeks to uncover and to anticipate ‘legal soft spots’ in the life of a client and considers ways of avoiding, eliminating or minimising those ‘soft spots’ in order to prevent the development of legal conflicts.³⁰⁰ TJ has been linked with preventive law to show the importance, in prevention, of focusing on psychological well-being as well as potential legal conflicts.³⁰¹ Attention to these ‘psycholegal soft spots’ can prevent future problems and provide opportunities for discovering potential benefits, rights and gains.³⁰² Later chapters consider suggestions in the literature for periodic ‘legal check ups’ to become part of legal practice,³⁰³ which could provide opportunities to serve the needs of survivors of domestic violence.

TJ perspectives have been applied to a diverse range of issues,³⁰⁴ including analysis of the therapeutic and anti-therapeutic effects of legal responses on perpetrators and survivors of domestic violence.³⁰⁵ The TJ perspective on domestic violence law

²⁹⁶ Meir, J. (1993) ‘Notes from the underground: Integrating psychological and legal perspectives on domestic violence in theory and practice’, 21(4) *Hofstra Law Review* 295-1366 at 1324.

²⁹⁷ Babb, B. (1997) ‘An interdisciplinary approach to family law jurisprudence: Application of an ecological and therapeutic perspective’, 72 *Indiana Law journal* 775-808 at 776.

²⁹⁸ Tyler, T. (1988) ‘What is procedural justice?: Criteria used by citizens to assess the fairness of legal procedures’, 22(1) *Law and Society Review* 103-135; Tyler, T. ((1990) *Why People Obey the Law* (New Haven: Yale University Press).

²⁹⁹ Stolle, D. (1996) ‘Professional responsibility in elder law: A synthesis of preventive law and therapeutic jurisprudence’, 14 *Behavioural science and law* 459; Stolle, D. and Wexler, D. (1997) ‘Therapeutic jurisprudence and preventive law: A combined concentration to invigorate the everyday practice of law’, 39 *Arizona Law Review* 25.

³⁰⁰ Wexler, D. (1998) ‘Practising therapeutic jurisprudence: Psycholegal soft spots and strategies’, 67(2) *Revista Juridica Universidad de Puerto Rico* 317-342.

³⁰¹ Stolle (1996) *op. cit.*

³⁰² *ibid.*

³⁰³ Stolle and Wexler (1997) *op. cit.*

³⁰⁴ Wexler and Winick (1996) *op. cit.* at 122.

³⁰⁵ Simon (1995) *op. cit.*

focuses on the importance of discouraging cognitive distortions of perpetrators and victims, listening to the parties, increasing their perceptions of the fairness of proceedings, and tailoring responses to the individual needs of survivors.³⁰⁶ This thesis focuses only on legal responses from the perspective of survivors of domestic violence, rather than perpetrators, but uses the TJ ‘lens’ to ask how a particular legal rule, process, product or legal actor could have had a more ‘therapeutic effect’ in a woman’s life.

It is acknowledged here that TJ is only one ‘lens’ through which law can be viewed alongside considerations such as individual autonomy, community safety, fact-finding, efficiency and economy.³⁰⁷ There are aspects in which the existing theory is limited. It has been suggested that the term ‘therapeutic’ is too vague and that it can imply the need for legal procedures to enhance autonomy, social adjustment or simply enhance ‘happiness’.³⁰⁸ This study begins with a wide definition of ‘therapeutic’ to encompass these different notions of ‘healing’ and ‘serving’ in order to explore the limits and possibilities of a ‘therapeutic’ approach to law and domestic violence. But one difficulty with this approach is that of measuring empirically the ‘therapeutic’ consequences of legal experiences. Social science methods are difficult to apply in the context of infinitely variable experiences of law.³⁰⁹ Researchers are rarely able to control variables in legal situations and a true randomised experiment is almost always impossible for either practical or ethical reasons. It may be impossible to ever answer the questions that TJ asks relating to the overall effects of law on an individual’s physical and psychological well-being. The research presented here, which considers the experiences of a small group of people in depth from a TJ perspective, is more easily achieved than the testing of hypotheses which needs to follow.

³⁰⁶ *ibid* at 62, 77 and 78.

³⁰⁷ Wexler, D. (1996) ‘Some thoughts and observations on the teaching of TJ’, 35(2) *Revista de Derecho Puertorriqueno* 273-287 at 275.

³⁰⁸ Slobogin (1995) *op. cit.* at 775.

³⁰⁹ *ibid* at 776.

This thesis also touches on the ‘rule of law dilemma’ of TJ.³¹⁰ This arises when a certain rule or practice is therapeutic for some but harmful to others. Attempting to apply laws differently according to how they affect a particular individual’s well-being involves abandoning the certainty of the rule of law in favour of discretion for practitioners. The problems with granting discretion and the fact that the ‘therapeutic’ in TJ may not be the same for all individuals are central to this analysis of legal responses to domestic violence. This thesis also considers the need to balance survivors’ internal interests. For instance, pro-arrest and pro-prosecution policies which proceed without the consent of the survivor may improve her physical safety by deterring her partner from further violence, but may also undermine her sense of control and autonomy or increase her partner’s violence.³¹¹ ‘External balancing’ involves considering the interests of other people involved in domestic violence situations including children, family members, the wider community and the perpetrator. For instance, whilst arrest and prosecution of a perpetrator may not be in the interests of a particular woman, it may serve her children and the general interests of the wider community in condemning domestic violence and deterring others.³¹² Whilst acknowledging the need to deal with issues of ‘external balancing’ this thesis focuses on the therapeutic and anti-therapeutic effects of law on survivors of domestic violence, not their children, perpetrators or the wider community. However, the research does go beyond the traditional TJ focus on individuals by considering therapeutic possibilities for the collective interests of survivors of domestic violence.

In the context of responses to domestic violence, Dobash and Dobash argue that rather than presenting a new approach, ‘therapeutic’ discourses simply seek solutions to violence within the behaviour of victims.³¹³ Their understanding and that assumed by much work given the TJ label, assumes that the concept is essentially an individualistic one. Here, the use of the word ‘therapeutic’ challenges the way we view domestic violence law by imagining legal responses which ‘heal and serve’³¹⁴

³¹⁰ *ibid.*

³¹¹ Mills (1999) *op. cit.*

³¹² Hanna (1996) *op. cit.*

³¹³ Dobash and Dobash (1992) *op. cit.* at 291.

³¹⁴ Cooper (1972) *Psychiatry and Anti-Psychiatry* (London: Paladis) at 87.

survivors of domestic violence both individually and collectively. This approach starts from the premise that domestic violence needs to be analysed and responded to at the level of individuals, families, communities and the gendered power structure of society. One way of responding to domestic violence is to create legal responses that serve and strengthen women individually and collectively towards the realisation that, whilst there may be no solution to the violence of individual men, there are many ways in which survivors can regain power over their own lives.

2.3.2. Restorative Justice

Restorative justice is a way of thinking about law, linked to ancient methods of dispute resolution practised by the indigenous peoples of New Zealand and Australia.³¹⁵ Although it is often used as a term to describe specific legal responses, restorative justice is also regarded as a philosophical framework - “a way of thinking, a way of behaving and a way of measuring.”³¹⁶ The movement seeks alternative methods of dispute resolution to replace formal adversarial court procedures and whilst usually associated with the criminal system the principles have been applied in other contexts, such as child welfare. The central aim of restorative justice is to restore community relationships that have been destroyed by conflict.³¹⁷ In the criminal context, restorative methods aim to return the ownership of crime and other social problems to those individuals and communities affected by them rather than the state appropriating those conflicts.³¹⁸ The focus is on the restoration of relationships and communities, with emphasis on future peace and care, rather than rights, justice and retribution for past wrongs.³¹⁹ In other contexts ‘restorative justice’ is used as a

³¹⁵ Van Ness, D. (1993) ‘New wine in old wineskins: Four challenges of restorative justice’, 4 *Criminal Law Forum* 251-306.

³¹⁶ Umreit, M. and Carey, M. (March, 1995) ‘Restorative justice: Implications for organisational change’, 59 *Federal Probation* 47-54 at 49, cited by, Goundry, S. (1998) *Restorative Justice and Criminal Justice Reform in British Columbia - Identifying Some Preliminary Questions, Issues and Concerns* (Unpublished, Manuscript, on file with author).

³¹⁷ Van Ness (1993) *op. cit.*

³¹⁸ Christie, N. (1977) ‘Conflicts as property’, 17(1) *British Journal of Criminology* 1-15.

³¹⁹ Hudson, B. (1998) ‘Restorative Justice: The challenge of sexual and racial violence’, 25(2) *Journal of Law and Society* 237-256 at 242.

framework to empower families and communities to solve their problems rather than law or 'professionals' imposing 'solutions'.³²⁰

Restorative justice is associated with a number of practical proposals including victim/offender mediation³²¹, community conferences,³²² restorative conferences,³²³ and family group conferences.³²⁴ Family group conferences are a method used in the context of child welfare to bring a child together with their chosen 'community of care', which can include family, friends teachers and other people in their support network.³²⁵ At the 'conference' the group are assisted by practitioners to reach agreements about how they will make decisions and plans for the future.³²⁶ These methods are thought to empower the young person and the 'community of care' and create more workable and long-lasting plans for the future.³²⁷ In the criminal context, victim/offender mediation, community and restorative conferences work from similar principles and entail the victim and offender meeting face-to-face along with a third party and sometimes their individual support networks. In the ideal situation these methods empower the victim who is able to describe the impact of the crime, feel involved rather than excluded and who receives reparation in the form of an apology or more practical compensation.³²⁸ These methods can also encourage an offender to take responsibility for his crime and find some kind of reconciliation with the victim which enables his reintegration into the community.³²⁹ It is suggested that this has

³²⁰ Swain, P. and Ban, P. (1997) 'Participation and partnership - family group conferencing in the Australian context', 19(1) *Journal of social welfare and family law* 35-52.

³²¹ Mika, H. (1993) 'The Practice and prospect of victim-offender programs', 46(5) *SMU Law Review* 2191-2206.

³²² Scheff, T. (1998) 'Community conferences: Shame and anger in therapeutic jurisprudence', 67(3) *Revista Juridica Universidad de Puerto Rico* 95-120; Braithwaite, J. and Daly, K. (1994) 'Masculinities, violence and communitarian control', in, Newburn, T and Stanko, E. (Eds) (1994) *Just Boys Doing Business: Men, Masculinities and Crime* (London: Routledge).

³²³ Young, R. and Goold, B. (1999) 'Restorative police cautioning in Aylesbury - from degrading to reintegrative shaming ceremonies?', *Criminal Law Review* 126-138.

³²⁴ Jackson, S. (1998) 'Family group conferences in youth justice: The issues for implementation in England and Wales', 37(1) *The Howard Journal* 34-51; Swain and Ban (1997) *op. cit.*

³²⁵ Swain and Ban (1997) *op. cit.*

³²⁶ *ibid.*

³²⁷ *ibid.*

³²⁸ Scheff (1998) *op. cit.*

³²⁹ *ibid.*

greater potential for changing offending behaviour than a criminal system that encourages denial by the offender and retribution by the community.³³⁰

Recent legislative developments in England have brought restorative justice to the centre stage of criminal law reform³³¹ and the use of such approaches in cases of domestic violence looks more likely.³³² Consideration is being given to using restorative conferences within the criminal system and family group conferences outside it in attempts to address domestic violence.³³³ Braithwaite and Daly have proposed that the legal system should adopt a 'pyramid' of escalating responses to domestic violence which might begin with a 'community conferencing' approach and lead ultimately to imprisonment.³³⁴ The stories told for this research suggest that the exclusion and silencing of survivors, focus on individuals, rather than communities and the limited effectiveness of present legal responses to domestic violence provide strong incentives to seek alternative methods. But before going further it is important to highlight the real dangers of the approaches presently being suggested. For there are good reasons why cases of domestic violence have traditionally been excluded from restorative justice experiments.³³⁵

Some of the objections to restorative justice methods are similar to those raised against mediation in the context of family law – the physical danger, risks of intimidation and emotional pressures.³³⁶ The likelihood is that the core aim of giving a victim a voice in the criminal process will be undermined by a perpetrator's power

³³⁰ *ibid.*

³³¹ Crime and Disorder Act 1998; Youth Justice and Criminal Evidence Act 1999; Also, see Dignan, J. (1999) 'The Crime and Disorder Act and the prospects for restorative justice', *Criminal Law Review* 48-60; Morris, A. and Gelsthorpe, L. (2000) 'Something old, something new, something borrowed, something blue, but something new? A comment on the prospects for restorative justice under the crime and disorder Act 1998', *Criminal Law Review* 18-30.

³³² Paradine, K. and Wilkinson, J. (2000) 'Home Truths', 25th February, *Police Review* 26-27

³³³ Hoyle (1998) *op. cit.* at 227-228; Thames Valley Partnership (1999) 'Draft Proposal for the Domestic Violence Intervention Programme Pilot', (On file with author).

³³⁴ Braithwaite and Daly (1994) *op. cit.*

³³⁵ Goundry (1998) *op. cit.*

³³⁶ Stubbs, J. (1997) 'Shame, deviance, and violence against women: A critical analysis of 'communitarian' conferencing', in, Cook, S. and Bessant, J. (Eds) (1997) *Women's Encounters with Violence: Australian Experiences* (California: Sage).

over her. The private nature of some restorative justice reforms have led to suggestions that these processes have the potential to “reproduce and reinforce the imbalance of power of the crime relationship,” when it would be more effective to confront the offender with the “power of the state.”³³⁷ There is a danger that restorative justice methods will simply substitute criminal responses for civil ones.³³⁸ Use of such approaches as an alternative to criminal sanctions would send out a dangerous message to perpetrators, victims and the wider community about the seriousness of domestic violence. While it is important that survivors and communities have ownership and power in relation to confronting violence, one of the problems in the past is that there has been too little state ownership of domestic violence.

Although there are suggestions that some restorative methods increase the participants’ satisfaction, current expectations may be unrealistic and restorative justice approaches can be disappointing for participants.³³⁹ We do not know whether any restorative justice initiative significantly reduces rates of re-offending.³⁴⁰ Evidence from perpetrator programmes discussed earlier shows that it is very difficult to change men’s ingrained patterns of violence and the “culture of battering”, so a one-off ‘restorative’ conference or a series of several meetings are unlikely to have any effect. So, why is restorative justice discussed here as a potentially progressive approach to domestic violence law?

The hope for these approaches does not focus on changing the perpetrator’s behaviour, or ‘restoring’ his relationship with either the survivor or the wider community. If anything there has been too little shame attached to domestic violence, too much integration of the perpetrator in the community, and too much readiness to treat domestic violence as a problem of the relationship. In this thesis, discussions of restorative justice start from an assumption that such approaches should aim to

³³⁷ Hudson (1998) *op. cit.* at 247.

³³⁸ Hudson (1998) *op. cit.* at 251.

³³⁹ Stubbs (1997) *op. cit.*; Davis, G. (1992) *Making Amends: Mediation and Reparation in the Criminal Justice System* (London: Routledge).

³⁴⁰ Young and Gold (1999) *op. cit.* at 137-138; Jackson (1998) *op. cit.* at 41

empower, heal and serve survivors, rather than trying to change the perpetrator's behaviour. Restorative justice shares the positive aspects of approaches like mediation that can enable a woman to have a voice in the process and feel in control.³⁴¹ Its 'progressive' potential also lies in facilitating a woman's sense of belonging in the community that could give her opportunities to heal the harm of domestic violence surrounded by a 'community of care'.³⁴²

This thesis shares the view of Hilton, that to reject methods like those associated with restorative justice in favour of more formal legal processes risks idealising responses which can be detrimental for survivors of domestic violence.³⁴³ Women's stories do not suggest that the 'privatisation' of responses to domestic violence holds any promise for them. It is argued here that we need to move towards the idea that some 'therapeutic' possibilities might lie in responses which exist in the middle of the private/public continuum, conducted in private, but under the authority of the state.³⁴⁴ In Chapter Seven, women's experiences of existing responses to domestic violence are used to suggest some potential pitfalls and possibilities for the use of restorative approaches in dealing with domestic violence.

2.3.3. Affective Lawyering

Rather than restoring 'community' relationships, affective lawyering focuses on the interpersonal relationships involved in legal practice and looks particularly at the development of 'connection' between lawyer and client. Mills describes this style of lawyering as "insightful work" in which lawyers acquire

*the tools necessary to "crawl inside" their clients and feel, from the inside out, the oppression neither the lawyer nor the client may have the language to vocalise.*³⁴⁵

³⁴¹ Braithewaite and Daly (1994) *op. cit.*

³⁴² *op. cit.*

³⁴³ Hilton (1991) *op. cit.* at 52.

³⁴⁴ *ibid* at 49.

³⁴⁵ Mills, L. (1996) 'On the other side of silence: Affective lawyering for intimate abuse', 81(6) *Cornell Law Review* 1225-1263 at 1229.

Like TJ, this perspective on legal practices relies on inter-disciplinary insights using psychology and other disciplines. Affective Lawyering requires time, self-disclosure and attention to the development of personal relationships.³⁴⁶ Marguilles refers to affective lawyering as the achievement of “access, connection and voice.”³⁴⁷ It requires the lawyer to be accessible to the client, connect with her at a personal level and help her to find a voice in the legal process that makes flexible and empowering legal solutions possible.

The focus of affective lawyering is on the needs of a particular individual rather than on an homogenous group of individuals such as ‘victims of domestic violence’.

Central to this research is the vision of:

*a model of relational, or affective justice, which takes account of the particularities of each battered woman's experience, and begins to imagine a system and a method of relating which can respond more flexibly to the unique complexities that financial, cultural, and emotional contingencies place on the battered woman.*³⁴⁸

In the affective lawyering approach the ‘job’ of legal responses is seen to be affective remedies and approaches to individual women which take account of their different situations. Affective lawyering advocates question the utility of the traditional approach of lawyers, judges and other legal actors who seek to define client’s problems in terms of pre-existing legal categories. In the literature considerable attention has been paid to the need for empathy in legal practice. It has been suggested that the most important psychological ingredient in interviewing and counselling skills is empathetic understanding, which is necessary for trust, communication, and to develop joint decision-making.³⁴⁹ The necessity for empathy and building affective relationships between legal actors and survivors of domestic violence are important themes in Chapters Six and Seven.

³⁴⁶ Marguilles, P. (1995) ‘Representation of domestic violence survivors as a new paradigm of poverty law: In search of access, connection and voice’, 63 *George Washington Law Review*, 1071-1104 at 1073.

³⁴⁷ Mills (1996) *op. cit.*

³⁴⁸ *ibid* at 1230.

³⁴⁹ Meir (1993) *op. cit.* at 1334.

2.3.4. Rebellious Lawyering

Rebellious lawyering also focuses on the role of the lawyer in relation to her client and the term has been used by Lopez to highlight the traditional ‘regnant lawyering’ methods used in progressive practice of law.³⁵⁰ Lopez argues that ‘regnant’ lawyers tend to become attached to their roles as experts and professionals and are detached from the lives and stories of their clients so that they advocate for a cause rather than in the clients’ own individual best interest.³⁵¹ He argues that the ‘rebellious lawyer’ should be devoted to empowering and giving control to clients, to working with practitioners in other disciplines and to educating the community about legal issues and the real lives of clients.³⁵² In Lopez’s vision of the rebellious lawyer, focus is on the micro-dynamics of lawyering in terms of the individual relationships between lawyer and client rather than the institutional subordination experienced by many communities in relation to the law. Ancheta suggests that rebellious lawyering should lend more weight to the empowerment of subordinated communities. He uses the term ‘community lawyering’ to extend the empowering features of ‘rebellious lawyering’ from individual interactions between client and lawyer to the empowerment of whole communities.³⁵³

Lopez imagines rebellious lawyering as a means of passing on and extending problem-solving skills so that people:

*gain confidence in their ability to handle situations that they would otherwise experience as utterly foreign and unmanageable with or without a lawyer as representative.*³⁵⁴

This issue of legal actors empowering and inspiring confidence is particularly important for survivors of domestic violence and is considered throughout this thesis.

³⁵⁰ Lopez, G. (1992) *Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice* (Boulder, Colorado: Westview Press).

³⁵¹ *ibid* at 23-29.

³⁵² *ibid* at 37.

³⁵³ Ancheta, N. (1993) ‘Community Lawyering’, 81 *California Law Review* 1363-1399.

³⁵⁴ Lopez (1992) *op. cit.* at 70.

Lopez regards us all as ‘lay lawyers’ who are faced with problems to solve. Law is seen as a form of human problem solving which is practised in all our daily lives:³⁵⁵

*When problem-solving requires persuading others to act in a compelling way, we can call it lawyering, whether the problem-solver is representing herself (self-help), a friend (lay lawyering), or a client (professional lawyering) . . . Everyone knows how to solve some common problems that involve persuading others to do things - everyone owns a set of lawyering skills.*³⁵⁶

A key theme in this thesis is that law is too often portrayed as a ‘special’ world and that to see it as part of a larger world of human problem solving allows us to respond to survivors of domestic violence in a more meaningful way which empowers *and* protects.

The traditional approaches of legal writers and practitioners have created an image of law as separate from our everyday lives in a way which continues to limit our understanding of what law is or could be. Rebellious lawyering and other ‘progressive’ approaches suggest a “new relation between life and law”³⁵⁷ for the future. This notion of developing a new relationship between domestic violence law and survivors is at the heart of the analysis that follows. The next part of the thesis focuses on some women’s pathways through existing legal responses to domestic violence.

³⁵⁵ *ibid* at 39.

³⁵⁶ *ibid*.

³⁵⁷ MacKinnon (1983) *op. cit.*

Part Two

**Survivors' Pathways
Through
Domestic Violence Law**

Chapter Three

Pathways: “Coming to the borderline”¹

The stories on which this study is based show that women who experience domestic violence are not a monolithic group. The same applies to their pathways through the legal system. Similar legal rules and processes have different effects on different people. An individual woman may have contrasting experiences of a particular legal response on different occasions. The women’s stories reveal that ‘legal responses’ are an amorphous category without boundaries or clear starting points.

The concept of ‘pathways’ is used as a model to provide an account of domestic violence law as experienced by some survivors. It emphasises that experiencing domestic violence, and legal responses to it, is a complex process. The different ‘pathways’ show that law exists in different roles - “organising assumptions, as background threats, and as overt tactical tools.”² At some stages in an individual woman’s life the law may seem to be pervasive. At other points the law’s role is minimal and insignificant. To a woman experiencing domestic violence, legal procedures and rules can be:

*inescapably, at times overwhelmingly, present yet at the same time not the most important determinant of her moral situation.*³

Law exists as only one source of authority in survivors’ lives along with religion, popular culture, custom, their children and family, emotions and the pragmatic realities of everyday life. The ‘pathways’ metaphor emphasises that legal routes are experienced amidst a range of other matters that a survivor of domestic violence has on her mind.

¹ Jacqui, Int. 15 at 36

² Hartog, H. (1993) ‘Abigail Bailey’s coveture: Law in a married woman’s consciousness’, in Sarat, A. and Kearns, T. (Eds) (1993) *Law in Everyday Life* (University of Michigan Press) at 107.

³ *ibid.*

Ann said of her survival of domestic violence and separation from her partner: “It’s been my own bit of journey”.⁴ Snapshots of different women’s ‘bits’ of journey - or ‘pathways’ - are illustrated with extracts from interviews. Other empirical research illuminates some of the ‘pathways’. The focus is on the aspects of law which women themselves regard as relevant, and of which they have direct personal experience. In common with other research on consumers’ experiences of law, there was difficulty in reconstructing women’s pathways in a clear temporal sequence. This reflects their confusion and lack of understanding of legal processes and terminology.⁵

The experiences, or ‘pathways’, are not considered in terms of their ‘success’ or ‘failure’. There are limits to the ‘instrumental’ approach to legal research, in which the goals of legal policy are compared with the results to determine ‘success’ or ‘failure’.⁶ Such an approach neglects the general effects and consequences of legal responses that may not be predicted in policy goals. Legal ‘successes’ can be seen as personal failures by survivors of domestic violence and sometimes legal ‘failures’ have positive consequences in women’s lives. Instead of being analysed in terms of their ‘effectiveness’, the ‘pathways’ are described from the perspective of survivors.

This chapter begins by describing some of the pathways which women experience when they, in Jacqui’s words, “come to the borderline”⁷ of breaking the silence surrounding domestic violence. The process involves the use of personal resources, the informal social network of friends and relatives and moving beyond that network. More formal help-seeking ‘pathways’ include contact with medical services, use of help lines and specialist support services like women’s refuges and services for children. Other ‘pathways’ women take when ‘coming to the borderline’ include seeking advice from legal advisors, such as solicitors or the Citizen’s Advice Bureau or the police. At this point women are usually seeking support, to be believed, advice,

⁴ Int. 5 at 29.

⁵ Genn, H. (1999) *Paths to Justice: What People Do and Think about Going to Law* (Oxford: Hart Publishing) at 146.

⁶ Sarat, A. (1985) ‘Legal effectiveness and social studies of law: On the unfortunate persistence of a research tradition’, 9(1) *Legal Studies Forum* 23-31; Sarat, A. and Kearns, T. (1993) ‘Beyond the great divide: Forms of legal scholarship and everyday life’, in, Sarat and Kearns (1993) *op. cit.*

⁷ Jacqui, Int. 15 at 36.

validation and ‘someone to talk to’ rather than formal legal action. All the ‘pathways’ described in this chapter can be taken without the perpetrator’s knowledge. Chapter Four focuses on the legal pathways women take when they “draw a line in the sand”⁸ and become involved in some kind of formal legal action, which is known to the perpetrator. In all the pathways described in those two chapters it is possible that a woman is still living with the perpetrator as his partner. Chapter Five describes pathways, including divorce, child contact disputes and the process of a woman leaving home, which are most likely when she is no longer living as the partner of the abusive man and is attempting to “create a new life.”⁹

These ‘pathways’ are not always consciously experienced or chosen by women to survive domestic violence. In fact some pathways may be actively resisted. Some may be chosen for the woman by her partner, other people, legal actors or due to certain legal rules or policies. In Chapter One there was a discussion of how difficult it is to ‘name’ domestic violence to oneself or others and this may prevent a woman taking some legal ‘pathways’:

*Hearing the words spoken out loud sometimes feels so irrevocable, so out in the open and susceptible to the judgement of others, that keeping it secret seems like the only option.*¹⁰

Many women keep silent whilst using their own personal resources to survive and ensure safety.

3.1. Personal resources

Survivors of domestic violence often use their own personal resources to try and control the violence. The latest British Crime Survey found that about half of domestic violence victims had told someone about their most recent assault and this was most likely to be a friend, neighbour or relative.¹¹ The secrecy surrounding

⁸ Lucy, Int. 4 at 40.

⁹ Jenny, Int. 9 at 21.

¹⁰ Glass, D. (1995) *“All My Fault”: Why Women Don’t Leave Abusive Men* (London: Virago) at 70.

¹¹ Mirrlees-Black, C. (1999) *Domestic Violence: Findings from a new British Crime Survey self completion Questionnaire*, Home Office Research Study 191 (London: Home Office) at x.



domestic violence is often used by the perpetrator, as part of the violence, to isolate and silence the victim. Jill described how she felt “trapped”, because even when her partner attacked her in the shopping precinct, “no one called the police, no one helped, they all ignored it and kept on going.”¹²

Chapter One described how silence sometimes helps a woman to survive, when minimising or denying the violence is a method of coping. Ann gave one reason why she did not seek help when she was experiencing violence:

*You don't really want to tell the people in case it takes something away . . .
You want to try and sort it out yourself.*¹³

Emma said that when she discovered her neighbours had called the police: “I felt worse . . . as I had thought that people didn’t know.”¹⁴ She described how it was important for her to go to work and pretend all was well at home.

*In work I carried on as normal. I liked it that way because it was as if it
wasn't happening. It's hard to explain, but it was like it was strange to go
outside the house and to admit that it was happening.*¹⁵

Some methods used by women to control the violence without knowledge of her situation existing outside the home, were listed in a recent Home Office study.¹⁶ These strategies included living from day to day, trying to reason with and appease the abuser, making excuses and taking the blame on oneself.¹⁷ Other actions included changing one’s own behaviour, refusing the abuser’s demands, drinking alcohol or taking prescribed drugs, “living for the good times and forgetting the bad.”¹⁸ These strategies give a woman time to come to terms with the loss of trust in her partner, her hope in the relationship, her fear and allow her to gather strength for the future.

¹² Int. 29 at 26 .

¹³ Ann, Int. 5 at 29 and 18.

¹⁴ Emma, Int. 16 at 21.

¹⁵ Int. 16 at 10.

¹⁶ Kelly, L. (1999) *Domestic Violence Matters: An Evaluation of a Development Project*, Home Office Research Study No. 193 (London: Home Office) at 16.

¹⁷ *ibid.*

¹⁸ *ibid.*

Sally tried to prevent her partner from having contact with her when he was drunk.¹⁹ Some women use physical violence as a form of self defence or “fighting back,”²⁰ and because of their actions, may not consider themselves to have experienced domestic violence.²¹ Amelia, described how after her son was born she began to “stand up for myself,” escaping attacks by running into the garden or using self-defence.²² Iris also said “I used to get braver in the end.” She defended herself²³ as did Becky and Joan.²⁴ Several women tried to convince their partner to seek individual counselling²⁵ or have outside help with their relationship from an organisation like Relate.²⁶ Others made their own secret plans to leave.²⁷ Another strategy was to focus on the children in order to carry on²⁸ and trying to protect them from hearing the violence.²⁹ Several women talked about the books they had read to help them understand their situation,³⁰ including Jones and Schechter’s *When Love Goes Wrong: What to do When You Can’t do Anything Right*.³¹ After having an abortion and a “breakdown”, Sharon started attending a playgroup and a ‘family centre’ with her son, so that she no longer felt so isolated.³² Jenny adopted survival strategies including making new friends, being out during the day while her husband was at home, working as an agency nurse and joining a mother and toddler group as an “outlet”.³³ After one violent incident Jenny set a time limit of a year on how long she would wait for change in her

¹⁹ Sally, Int. 24 at 7.

²⁰ Saunders, D. (1988) ‘Wife abuse, husband abuse, or mutual combat? A Feminist Perspective on the empirical findings’, in Yllo, K. and Bograd, M. (Eds) (1988) *Feminist Perspectives on Wife Abuse* (California: Sage) at 107.

²¹ Jones, A. and Schechter, S. (1992) *When Love Goes Wrong: What To Do When You Can’t Get Anything Right* (London: Victor Gollancz) at 89.

²² Amelia, Int. 28 at 6.

²³ Iris, Int. 11 at 24.

²⁴ Becky, Int. 20; Joan, Int. 31.

²⁵ Susan, Int. 2, at 40; Kerry, Int. 10 at 19-20; Helen, Int. 12; Ruth, Int. 18; Amelia, Int. 28 at 18; Yvette, Int. 23 at 20.

²⁶ Sally, Int. 24 at 19; Jill, Int. 29 at 14.

²⁷ Iris, Int. 11 at 24; Maria, Int. 26 at 2; Julie, Int. 13; Sharon, Int. 30 at 10.

²⁸ Melanie, Int. 1 at 7; Susan, Int. 2 at 47.

²⁹ Amelia, Int. 28 at 6.

³⁰ Helen, Int. 12; Ruth, Int. 18 at 47.

³¹ Jones and Schechter (1992) *op. cit.*

³² Int. 30 at 10-11.

³³ Jenny, Int. 9 at 4.

partner.³⁴ Too often legal responses ignore these strategies. In chapters Six and Seven it is argued that domestic violence law needs to find ways of fitting in with women's use of their personal resources rather than assuming that women will alter their patterns of survival to fit with the requirements of the law.

Some women may use the law, particularly the criminal legal system, as a threat to control their partner's behaviour or "as a power resource" in the relationship with the perpetrator.³⁵ Some women threatened to call the police before the violence forced them to carry out the threat.³⁶ Becky's story suggests that threats to involve legal agencies are of limited use:

*I always said I'd call [the police] but I bluffed him so many times with that that he didn't think I would.*³⁷

Such threats, or 'power resources', may work if used at an early stage, but are not likely to be effective if used repeatedly as a long-term strategy. There is very little research about patterns of domestic violence which are changed in their early stages. Due to the shame and silence surrounding domestic violence it is difficult to identify people who may provide insights into how such changes are achieved and whether the threat of law plays any role. In her description of her experience of living with a violent man who is still her partner, Arabella Melville does not include any discussion of legal pathways among her "strategies for women who choose not to leave."³⁸ In contrast, one researcher has suggested that fear of divorce and of the legal system is one factor which allows women to remain in relationships in which the violence has ended.³⁹

All of the women who told their stories had used some of these personal strategies, but found that their situation did not improve and often became worse due to their

³⁴ Jenny Int. 9 at 6.

³⁵ Ford, D. (1991) 'Prosecution as a victim power resource: A note on empowering women in violent conjugal relationships', 25(2) *Law and Society Review* 313-334 at 329.

³⁶ Leila, Int. 22 at 6-9; Jill, Int. 29 at 9.

³⁷ Int. 20 at 10.

³⁸ Melville, A. (1998) *Difficult Men: Strategies for Women Who Choose Not to Leave* (London: Vermilion).

³⁹ Brown, J. (1997) 'Working toward freedom from violence: The process of change in battered women', 3(1) *Violence Against Women* 5-26 at 14.

increased isolation, fear and confusion. The next step for many women was to talk to someone in their informal social network. Another is that of involving agencies, both voluntary and statutory, which fall outside the everyday informal network. The method chosen for contacting research participants means that it was not possible to interview an individual who had not made contact with an outside agency. However, many of the research participants tried the other pathways before taking this route. Two women went directly to a formal agency, one a solicitor, the other the police.

3.2. Informal social networks

Informal social networks, including family, friends and work colleagues, can be very important in the lives of survivors of domestic violence.⁴⁰ Telling someone they knew was an important step for all the women in this research. Emma⁴¹ and Ann⁴² felt that it was like admitting or accepting the situation themselves. Clare said:

*It's embarrassing. It's like when your marriage fails you feel like a failure yourself.*⁴³

The sense of shame was echoed by others.⁴⁴ Iris said:

*I didn't tell nobody because I thought I'd just got rid of one bad marriage where he was violent. I thought I can't tell anybody that he's doing this to me as well . . . I felt ashamed of myself.*⁴⁵

Other barriers to confiding in someone were that the abuse had become “almost - part of life,”⁴⁶ it was private business⁴⁷ or women did not want to make the violence worse.⁴⁸

⁴⁰ Mirrlees-Black (1999) *op. cit. at* ; Kelly, L. (1996) ‘Tensions and possibilities: Enhancing informal responses to domestic violence’, in, Edleson and Eisikovits (Eds) (1996) *Future Interventions with Battered Women and Their Families* (California: Sage Publications); Mooney, J. (1993) *The Hidden Figure: Domestic Violence in North London* (Centre for Criminology, Middlesex University and Islington Council).

⁴¹ Emma, Int. 16 at 3.

⁴² Ann, Int. 5 at 29.

⁴³ Clare, Int. 14 at 17.

⁴⁴ Sally, Int. 24 at 5; Ruth, Int. 18 at 3.

⁴⁵ Iris, Int. 11 at 21.

⁴⁶ Amelia, Int. 28 at 19.

⁴⁷ Sally, Int. 24 at 11; Ann, Int. 5 at 8.

⁴⁸ Maria, Int. 26 at 25; Yvette, Int. 23 at 3; Julie, Int. 13 at 25.

Ruth said: “It’s very hard to verbalise the abuse that’s going on.”⁴⁹ Another concern was the fear of relatives retaliating for the violence⁵⁰ or that telling someone would burden them.⁵¹ Sally said that family can be “too closely involved somewhere along the line” and described her difficulties in talking to her mum about her situation:

*A stranger might have helped me to see things sooner than I did . . . A stranger hasn’t got a clue about you, a clue about your partner, you know, it’s nice for somebody to say, well, look, - you don’t have to live like this, this is not the way it’s supposed to be.*⁵²

Another barrier is the fear that the victim herself will not be believed, will be blamed for her situation, or will be let down in other ways. Lucy said:

*I saw how much you depend on other people and how other people in cases of domestic violence often fail you, really fail you badly . . . People mix it up with marital disputes . . . As the barrister said, “marital woes” . . . People don’t want to be involved in that . . . I think a lot of women are left isolated because of that . . . It took me a long time to tell people what was happening to me . . . that was why I found it so devastating when . . . my neighbour sounded like she hadn’t believed me.*⁵³

Ruth mentioned the disbelief, lack of support, blame and eventually ostracism that she faced when she sought support within her church community.⁵⁴ Joan felt that when she had told friends and family she was blamed, made to feel guilty and not believed, so that she felt “trapped.”⁵⁵ The feeling of disappointment and isolation, felt by a woman experiencing domestic violence when she was blamed or betrayed, highlights the importance of trust and not being ‘judged’ in all the pathways women took and is discussed further in Chapter Six.

⁴⁹ Int. 18 at 3.

⁵⁰ Emma, Int. 16 at 8; Maria, Int. 26 at 24; Jacqui, Int. 15 at 16; Kerry, Int. 9 at 25.

⁵¹ Jacqui, Int. 15 at 16; Kerry, Int. 9 at 25.

⁵² Sally, Int. 24 at 17-26.

⁵³ Lucy, Int. 4 at 6 and 78.

⁵⁴ Ruth, Int. 18 at 3-4, 6-7 and 18.

⁵⁵ Joan, Int. 31 at 2 and 4.

One of the problems women may have in talking about the violence is uncertainty about who they can trust and fears about breaches of confidentiality.⁵⁶ There are particular problems in ‘closed’ communities where confidentiality may be difficult to maintain, such as some black and Asian communities. Melanie mentioned this issue in relation to travellers⁵⁷ and Jacqui in the context of the Nationalist and Loyalist communities in Northern Ireland.⁵⁸ Informal social networks are especially important for a woman who lives in communities that exist outside the ‘mainstream’ and have their own systems of norms and norm enforcement from which law may be withheld.⁵⁹ For example, in some parts of Northern Ireland, there are social sanctions for calling the police into a community and doubts by the woman herself about whether she will receive help.⁶⁰

Other women found they received validation, support and advice from some of those they confided in. Some had breaks from their partners with help provided by friends and family.⁶¹ For Lucy, intricate secret plans were necessary to enable her to escape without her partner finding out.⁶² After staying with friends Kerry said:

*That's when I realised, no, this is my home, this is in my name, how dare he.
A kind of rebellion set in . . . proverbially a light at the end of the tunnel . . .
I'd had enough.*⁶³

It is possible that with the right level of support a woman could leave behind a life of violence without needing more than her own personal resources and the support of her informal social networks. The stories told in this research involved these pathways, but because women were contacted through various agencies, all those interviewed had also sought help from sources outside their informal social networks.

⁵⁶ Iris, Int. 11 at 34.

⁵⁷ Melanie, Int. 1.

⁵⁸ Jacqui, Int. 15 at 1 and 31.

⁵⁹ Engel, D. (1993) ‘Law in the domains of everyday life: The construction of community and difference’, in Sarat and Kearns (1993), *op. cit.* at 133.

⁶⁰ McWilliams, M. and Spence, L. (1996) *Taking Domestic Violence Seriously: Issues for the Civil and Criminal Justice Systems* (Belfast: HMSO) at 104.

⁶¹ Lucy, Int. 4; Jenny, Int. 9 at 4; Jill, Int. 29; Joan, Int. 31 at 2.

⁶² Lucy, Int. 4 at 4-5.

⁶³ Kerry, Int. 10 at 16-17.

3.3. Beyond the Informal Social Network

The problems women face in confiding in someone are particularly acute when that ‘someone’ is an outside agency. Emma said:

*It was daunting seeing the solicitor . . . In work I carried on as normal. I liked it that way because it was as if it wasn't happening. It's hard to explain but it was like it was strange to go outside the house and to admit that it was happening. The solicitor's office was like outside the house and it was like admitting outside that all was not fine. I found it very hard to deal with. I didn't want to be seen as a victim or weak or anything. It was humiliation.*⁶⁴

Emma's story shows the many different obstacles a woman faces when she approaches an outside agency. She breaks the privacy that may comfort her, she risks humiliation and being labelled as a weak victim. As well as the risk of breaches of confidentiality, not being believed and being blamed, there is also the risk that the woman herself will lose control of the situation and that the power to make plans and decisions will be taken out of her hands.

It has been suggested that the problems all women face in naming domestic violence to others may be exacerbated for women experiencing racism, language differences, poverty, bad housing and unemployment.⁶⁵ One woman in this research identified herself as formerly part of a traveller community,⁶⁶ one had lived an “alternative” travelling lifestyle,⁶⁷ and another was from the Nationalist community in Northern Ireland.⁶⁸ In these contexts formal legal responses and official agencies, particularly the police, may be perceived as hostile or racist towards the victim⁶⁹ and there may be

⁶⁴ Int. 16 at 10.

⁶⁵ Barron, J. (1990) “Not Worth the Paper ...?” *The Effectiveness of Legal Protection for Women and Children Experiencing Domestic Violence* (Bristol: Women's Aid Federation England) at 87.

⁶⁶ Melanie, Int. 1.

⁶⁷ Sharon, Int. 3.

⁶⁸ Jacqueline, Int. 15.

⁶⁹ Mama, A. (1989a) *The Hidden Struggle: Statutory and Voluntary Sector Responses to Violence Against Black Women in the Home* (London: London Race and Housing Research Unit); James Hanman, D. (1990) *Domestic Violence and the Asian Community in Hounslow* (London Borough of Hounslow, Equal Opportunities Unit) at 2.2.4.

fear of fuelling racism against the perpetrator.⁷⁰ Some communities can pressure a woman to stay in a violent relationships⁷¹ and some community elders and ‘professionals’, including doctors and lawyers, may support the perpetrator.⁷² This explains why, contrary to some practitioner’s assumptions, women may not always want to confide in a practitioner from the same ethnic community.⁷³ In some neighbourhoods, such as that where Caroline⁷⁴ lived there may also be a stigma attached to ‘grassing’ to legal authorities and in some Asian communities women risk breaking ‘izzat’ or the honour of their family and community if they reveal violence.⁷⁵

The ‘shadow of the law’⁷⁶ can be another important influence for all women contemplating contacting an outside agency. Perpetrators can use failure of legal responses to keep a woman feeling isolated and trapped. Joan’s partner taunted her, after smashing the phone to prevent her calling the police, that they would not take action anyway. Joan said:

*He [the perpetrator] said: “What do you think they’re going to do? They don’t do fuck all for domestic violence.”*⁷⁷

He also said that the doctor would regard her injuries as “self inflicted”. Joan said:

*I was so naïve in a way. I believed that the doctor wouldn’t treat me because I let him hit me.*⁷⁸

Joan did not contact either the police or a doctor on that occasion. Sharon’s partner told her that she had to have sex with him because otherwise he could go to court and

⁷⁰ James Hanman (1990) *ibid.*

⁷¹ Islington Women’s Equality Unit (1995) *The Needs and Experiences of Black and Minority Ethnic Women’s Experiencing Domestic Violence* (Islington Women’s Equality Unit).

⁷² Mama (1989) *op. cit.*, at 86; Currell, S. and Gill, A. (1998) *Silenced ‘n Caught: Unlocking the Barriers to Reporting Domestic Violence in an Asian Community* (Home Office, Police Policy Directorate) at 39.

⁷³ Currell and Gill (1998) *ibid.* at 39.

⁷⁴ Caroline, Int. 21 at 11.

⁷⁵ James-Hanman (1990) *op. cit.*, at 2.2.4.; Currell and Gill (1998) *op. cit.* at 12.

⁷⁶ Mnookin, R. and Kornhauser (1979) ‘Bargaining in the shadow of the law: The case of divorce’, 88 *Yale Law Journal* 950; Bumiller, K. (1987) ‘Victims in the shadow of the law: A critique of the model of legal protection’, 12 *Signs* 421-439.

⁷⁷ Int. 31 at 8.

⁷⁸ *ibid.*

a judge would say “this is what husbands and wives do” and that it was his ‘right’.⁷⁹ The threat of legal action against her can also be used by a violent partner as part of the fear that traps her.

One specific kind of threat (and weapon) which was not mentioned in the interviews conducted in this research is that of deportation. Some women may fear that their partner will be deported if the violence is revealed. The ‘one year’ rule in immigration law is the rule that states that a woman who comes to Britain to marry must remain in the marriage for 12 months before receiving indefinite leave to stay. During this time she cannot have ‘recourse to public funds’ which means she has no entitlement to social security or housing benefits. A woman does not receive automatic leave to remain at the end of the year. This has to be applied for by the person who sponsored her entry, usually her husband. Southall Black Sisters have pointed out that some men never apply for this leave to remain and that this can serve as a permanent threat.⁸⁰ Mama found that threats were made even when women had their own independent immigration status.⁸¹ She found examples of perpetrators calling the police, during a violent incident, for the women’s immigration status then to be investigated.⁸² In June 1999, the Home Office announced that women who leave husbands due to domestic violence during the first year of marriage may remain here indefinitely, if they entered the country on the basis of their marriage.⁸³ However, the applicant must prove domestic violence by a conviction, police caution or civil injunction.⁸⁴ Medical evidence and other professional reports are not sufficient proof.⁸⁵ This ignores the problems in gaining such legal proof, particularly for women facing language barriers and extreme social isolation and assumes a

⁷⁹ Int. 30 at 4.

⁸⁰ Southall Black Sisters (1995) *Domestic Violence or Deportation*, Campaign Leaflet. For examples of this threat being carried out see Fadyean, M. (1998) *Guardian* 23rd July; Campbell, D. (1996) *Guardian* 17th October.

⁸¹ Mama (1989a) *op. cit.* at 115 and 178.

⁸² *ibid* at 177.

⁸³ Southall Black Sisters, cited in, Bossy, J. and Coleman, S. (2000) *Womenspeak: Parliamentary Domestic Violence Internet Consultation: Report of the Main Findings* (Bristol: Women’s Aid Federation) at 55-56.

⁸⁴ *ibid.*

⁸⁵ *ibid.*

narrow definition of domestic violence. Women subject to the one year probationary period are not entitled to public funds, which limits their access to refuges, which rely on housing benefits for funding.

Rachel's story is an example of a violent partner using the law as a method of control. Rachel was pregnant and recently married when her husband's violence started. She explained why she did not confide in anyone about her experience until her son was four months old:

*I was so worried that what he was saying was going to come true. That I would lose the house, that I would lose Neil [son]. He used to say to me that if you ever go outside the house one of these days you'll never be able to get back in and I was frightened to go out . . . To be honest I didn't really know whether he could do that, whether he could lock me out, what the law was.*⁸⁶

Kate showed how threats and perceptions of law affects decision-making:

*He'd threatened so many times what he was gonna do if I left. He was gonna kill me. If I took his daughter away, he'd find me . . . He always said he was gonna tell them what a bad mother I was. He was gonna have the kids taken away. I thought because his name's on the birth certificate that he has parental responsibility in terms that he would be able to go and find me.*⁸⁷

Threats about losing the children can be part of the fear that keeps a woman trapped.

Leila said:

*There was always threats of taking me to court, trying to get Terry [their son] away from me . . . [Her partner said] "You better have a good solicitor because I'm going to take your son away from you. You're a bad mother and I'm going to prove it".*⁸⁸

Emma was silent about the abuse for many months. Her fears concerning her daughter were not the result of specific threats from her partner but were very powerful. She said:

⁸⁶ Rachel, Int. 27 at 13-14.

⁸⁷ Kate, Int. 3 at 4, 21 and 5.

⁸⁸ Leila, Int. 22 at 4 and 13; Also, Sharon, Int. 30 at 14.

*I'd have panic attacks every time his car pulled in. I'd be shaking and trembling. I didn't want to go to the doctor as I felt I was going mad and when you have children you have to be careful.*⁸⁹

The above examples show how the law can be a source of fear and part of the violence itself. This fear affects women's "legal consciousness" - the way they understand and used law⁹⁰ and is part of a complex array of reasons why women may be reluctant to talk to official agencies about their experiences. Each of the women in this research had reached out at some stage to an outside agency or individual practitioner and their experiences differed considerably. Most had had some contact with medical services.

3.4. Medical Services

It has been claimed that medical services, including general practitioners, community nurses, hospital staff, and health visitors, are the second most common agency for survivors to contact after the police.⁹¹ Medical practitioners, particularly general practitioners and health visitors, are especially important in some 'closed' communities, where they may be the only people a woman has access to.⁹² In some Asian communities a woman's relationship with the general practitioner may be an important link to the outside world. But a woman may fear that a general practitioner who is part of the 'closed' community will not provide her with a confidential service. Melanie's story shows that in some traveller communities the life style makes it difficult to see the same general practitioner consistently and build up trust and a 'medical history'.⁹³

There were examples of medical practitioners, including nurses, doctors and health visitors being sources of advice, support and providing evidence for women in legal proceedings.⁹⁴ Susan's community psychiatric nurse who was assisting her on the

⁸⁹ Int. 16 at 1.

⁹⁰ Merry, S. (1990) *Getting Justice and Getting Even: Legal consciousness Among Working Class Americans* (Chicago: University of Chicago Press) at 4-5.

⁹¹ Mirrlees-Black (1999) *op. cit.*

⁹² Baron (1990) *op. cit.* at 79.

⁹³ Melanie, Int. 1.

⁹⁴ Amelia, Int. 28, at 19; Kerry, Int. 10 at 24.

programme of withdrawal from anti-depressants, had become an invaluable source of support.⁹⁵ One of the advantages for a woman approaching a medical practitioner is the principle of patient confidentiality. Confidentiality may be breached at the discretion of the practitioner if it is necessary in the public interest to prevent a risk of death or serious harm, or if a patient cannot give or withhold consent.⁹⁶ Mandatory reporting laws in parts of the US make it a criminal offence for a medical practitioner not to report ‘non accidental’ injuries to the police.⁹⁷ Rules like this can result in reluctance by health professionals to ask the questions which could result in an obligation to report and survivors of domestic violence may be deterred from confiding in medical practitioners.⁹⁸ Rachel did not confide in her doctor because the perpetrator was also her patient.⁹⁹

Some practitioners responded to the woman’s problems as purely medical without identifying the core underlying issues. Whilst this could be considered the appropriate action, women’s stories show that when doctors acted in this way opportunities were lost to give a woman valuable information and support. Jill’s story shows that doctors can have an important role when a woman is ‘coming to the borderline’ of breaking the silence that surrounds domestic violence. Jill told her general practitioner about her partner’s “temper”, but not about the physical violence and was given a prescription for anti-depressants:

*I didn’t really want anti-depressants. I think it was a way of letting somebody know, but without letting them know.*¹⁰⁰

There were examples of women who were prescribed anti-depressants,¹⁰¹ sent to counselling¹⁰² and diagnosed with post-natal depression¹⁰³ without the issue of

⁹⁵ Susan, Int. 2.

⁹⁶ Montgomery, J. (1997) *Health Care Law* (Oxford, Oxford University Press) at 245-258.

⁹⁷ Mills, L. (1998a) *The Heart of Intimate Abuse: New Interventions in Child Welfare, Criminal Justice and Health Settings* (New York: Springer Publishing) at 81-97.

⁹⁸ *ibid*.

⁹⁹ Rachel, Int. 27, at 32.

¹⁰⁰ Int. 29 at 16.

¹⁰¹ Melanie, Int. 1; Susan, Int. 2, at 3; Sally, Int. 24 at 22.

¹⁰² Rachel, Int. 27 at 34; Becky, Int. 20 at 17.

¹⁰³ Rachel, Int. 27 at 32.

domestic violence being addressed. Becky¹⁰⁴ and Emma¹⁰⁵ found counselling to be of limited use but it was important in Lucy's process of survival in terms of giving her somebody "to talk to."¹⁰⁶ Helen's doctor told her that there were "many people worse off" than her and focused on arranging psychiatric help for her husband and did not give advice or information to Helen about available services.¹⁰⁷ Jill's health visitor suggested "relationship counselling" for her partner, but he refused to attend.¹⁰⁸

There were examples from some of the women's stories of medical practitioners failing to respond or ask questions in ways that helped a woman break her silence. Jacqui said of her general practitioner:

*It takes just one person to say something ... maybe if she ever had of asked the question then I would have told her.*¹⁰⁹

Of the women who required hospital treatment for their injuries, the issue of domestic violence was only addressed with two.¹¹⁰ In Kerry's case the person accompanying her was asked about the injuries¹¹¹ and in Iris' case she was given a domestic violence information card:

*[They] never said to me "Do you want the police involved?" I needed somebody to say that to me, but if they had said to me then I would have said at the time, "Aye, I do." But they never asked me.*¹¹²

The importance of asking questions to encourage women to 'come to the borderline' in disclosing violence was an important theme in the stories told. In other research of survivors' views, women consistently report that they want to be asked about domestic violence.¹¹³ A recent review of research on health services responses highlighted the importance of medical practitioners in providing links with other

¹⁰⁴ Becky, Int. 20 at 17.

¹⁰⁵ Emma, Int. 16 at 14.

¹⁰⁶ Lucy, Int. 4 at 66.

¹⁰⁷ Int. 12 at 29.

¹⁰⁸ Int. 29 at 14.

¹⁰⁹ Int. 15 at 38.

¹¹⁰ Melanie, Int. 1 at 37; Lucy, Int. 4 at 17; Sally, Int. 24 at 23; Becky, Int. 20 at 16.

¹¹¹ Int. 10 at 21.

¹¹² Int. 11 at 2.

¹¹³ Mullender, A. and Hague, G. (2000) *Reducing Domestic Violence ... What Works? Women Survivors' Views*, Policing and Reducing Crime Briefing Note (London: Home Office).

services and recommended that questions about domestic violence be asked as a matter of routine.¹¹⁴ Such recommendations require that medical practitioners be trained about the dynamics of domestic violence and available services so that they are able to respond appropriately. There are practical and ethical implications for practitioners taking a proactive approach to the disclosure of domestic violence, but existing evidence suggests that medical services can provide valuable opportunities for reaching survivors.

None of the general practitioners acted as gatekeepers to non-medical services or provided women with useful information, although some women had health visitors who put them in touch with other services and were a valuable source of support.¹¹⁵ Although there were some examples of supportive medical practitioners there were also wasted opportunities for women who made contact with medical services.

3.5. Helplines, Support Services and Women's Refuges

Help lines and Other Support Services

One of the problems women highlighted when they told of their attempts to reach out for help was that there was not an obvious place to go which avoided the potential implications of involvement of the police or other statutory agency. Yvette said "No one sort of told me if there're any problems come and talk."¹¹⁶ Kerry contacted an alcohol advice line for information about how to respond to her partner's drinking.¹¹⁷ Both Sharon and Joan had made contact with the Samaritans.¹¹⁸ Helen used Relate;

*because I knew that I wanted to leave and I knew I couldn't do it by myself without more help and support.*¹¹⁹

¹¹⁴ Davidson, L., King, V., Garcia, J. and Marchant, S. (2000) *Reducing Domestic Violence ... What Works? Health Services*, Policing and Reducing Crime Briefing Note (London: Home Office).

¹¹⁵ Maria, Int. 26 at 31 and 33; Caroline, Int. 21 at 32; Jill, Int. 29 at 27; Judith, Int. 8 at 2.

¹¹⁶ Yvette, Int. 30 at 47.

¹¹⁷ Kerry, Int. 10 at 19-20.

¹¹⁸ Sharon, Int. 30 at 5; Joan, Int. 31.

¹¹⁹ Helen, Int. 12 at 9.

Jenny attempted to use Relate with her partner but found that this made matters worse because her partner manipulated the sessions and blamed her for their problems. In contrast, Ruth used the national Women's Aid help line and was put in touch with someone who'd been in a refuge who provided "invaluable" support.¹²⁰ Lucy received support from Rape Crisis and the local Women's Aid help line who also gave her a list of recommended solicitors.¹²¹ When she attended a local family centre, Sharon had counselling and finally felt that somebody was listening to her.¹²²

Domestic Violence Support Groups

All the women who used a local domestic violence support group found it a valuable opportunity for sharing their feelings, supporting each other and discovering they were not alone.¹²³ Ruth said,

*It finally felt like somebody had spoke the right language . . . They made you feel like although you're on your own dealing with a lot of stuff, there was a point of contact - someone who knew what was the right thing to do. Once I linked in there I began to get a lot stronger then.*¹²⁴

Chapter Six focuses on women's experiences of legal actors who often do not seem to 'speak the same language' as survivors of domestic violence. That chapter also considers the value of support groups in more depth.

Women's Refuges

Some women had spent time in a women's refuge while they waited to be re-housed or on a more short term basis in order to escape their partner on different occasions.¹²⁵ Kate spent a day at the refuge to avoid her ex-partner's harassment during a child

¹²⁰ Int. 18 at 4.

¹²¹ Int. 4 at 81.

¹²² Int. 30 at 11.

¹²³ Caroline, Int. 21 at 12; Ruth, Int. 18 at 9; Julie, Int. 13 at 18; Helen, Int. 12 at 5 and 10.

¹²⁴ Ruth, Int. 18 at 9.

¹²⁵ Amelia, Int. 28 at 9; Maria, Int. 26 at 2; Caroline, Int. 21 at 1; Jacqui, Int. 15 at 1; Helen, Int. 12 at 22-3; Iris, Int. 11 at 4; Lorraine, Int. 7 at 1; Sarah, Int. 6 at 2; Ann, Int. 5; Jill, Int. 29 at 10.

contact dispute.¹²⁶ The refuge movement provides a pragmatic supplement to the formal legal system in terms of protection for women. Refuges provide shelter and an empowering, mutually supportive and non judgmental environment of collective living, in which women can address a complex range of issues including isolation and low self esteem:

*Safety, an end to isolation, companionship, solidarity, independence and mutual assistance are themes running through the comments of thousands of women [about their experiences of refuges].*¹²⁷

Today, Women's Aid refuges often provide services including telephone advice and outreach work so that a woman can be supported, even when she does not wish to use the housing facilities. Other contributions include support groups for survivors of domestic violence, on-going support for ex-residents, and 'drop in' services.

Women's Aid refuges make residents' participation in decision-making a core aspect of refuge life.

Survivors consistently rate refuges more positively than other services in terms of assistance, safety, and support.¹²⁸ Sharing experiences and feelings with other women can help end self blame and isolation. Maria described the value of time spent in a refuge in terms of providing protection, support, advice and friendship.¹²⁹ Jacqui said:

*I didn't want to leave the refuge. It's just that safety and the support . . . and you've always got someone to talk to no matter what time of night it is and you find that loneliness when you get housed, you know like you're in bed, you're on your own.*¹³⁰

Ann also commented on the 'supportive' nature of refuge life and was awaiting re-housing at the time of the interview. She said: "It's got me over the worst and I'm ready now to sort of go off and start again you know."¹³¹

¹²⁶ Int. 3 at 38-9.

¹²⁷ Dobash, R.E. and Dobash, R.P. (1992) *Women, Violence and Social Change* (London: Routledge) at 90.

¹²⁸ Mullender and Hague (2000) *op. cit.*

¹²⁹ Int. 26 at 13.

¹³⁰ Int. 15 at 21.

¹³¹ Int. 5.

Negative aspects of refuges include lack of privacy, comfort, lack of resources and the stress of living with other women and their children.¹³² Some women also talked of the problems of refuge life, some relating to lack of resources and others inherent in communal living, such as cleanliness and ownership of food.¹³³ Helen had stayed in a refuge on one occasion but her children wanted to go home.¹³⁴ When she left her home for a second time she stayed with her mother because she felt that going to the refuge was “such a big step.”¹³⁵ After going to a refuge, Maria did not return to her partner and now lives in her own flat after waiting in the refuge for many months in order to be re-housed.¹³⁶ She said,

*The refuge makes you strong, but when you come out you're on your own. In a way I miss it, but in a way I'm glad I'm out of it because it's such an intense environment.*¹³⁷

Sharon did not find the refuge a supportive environment and felt isolated there, partly because she arrived in the middle of the night.¹³⁸ Jenny said that the idea of going to a refuge with children had “horrificed” her.¹³⁹ Maria considered returning to her partner because she found lack of privacy in the refuge difficult, she was “lonely” and was concerned for her son’s welfare. During one violent incident, Jill was taken to a refuge by police officers and returned to her partner after spending the night there. She said that her stay in the refuge had “shocked” her partner and: “He didn’t hit me for a while after that.”¹⁴⁰ Jill found it difficult to cope with communal living and although she enjoyed talking to other women, she said she would have preferred time on her own “to sit and think with a clear mind.”¹⁴¹

The outreach services and support groups provided by some refuges, can be used to support women in the refuge, those still living with violent partners and those who are

¹³² Dobash and Dobash (1992) *op. cit.* at 226.

¹³³ Iris, Int. 11 at 14.

¹³⁴ Int. 12 art 22-3.

¹³⁵ Helen, Int. 12 (II) at 20.

¹³⁶ Int. 26 at 13-14.

¹³⁷ Int. 26 at 4 and 30.

¹³⁸ Int. 30 at 7.

¹³⁹ Jenny, Int. 9.

¹⁴⁰ Int. 29 at 29.

¹⁴¹ Int. 29 at 29.

living in independent accommodation. Such services are particularly important for ‘hard to reach’ groups such as ethnic minorities, disabled women, those with mental health problems and women living in rural areas. Many women may need one-to-one support before they feel able to leave or to join a support group. Ruth, Helen, Julie and Rachel all received individual support from specialist workers at different stages in their process of separating from the partner. The positive empathic and empowering aspects of refuges and other specialist services are discussed in Chapters Six and Seven when the issues of empathy and empowerment are considered in the context of legal responses.

3.6. Social services and services for children

Many women are apprehensive about approaching social services because of the fear that they will be blamed for failing to protect their children¹⁴² and perceive social workers to be primarily concerned with child protection.¹⁴³ Social services departments have no statutory duties in relation to women who are experiencing domestic violence, but do have duties towards children. Action can be taken to protect a child who is at risk of “significant harm”, which includes physical or sexual abuse and impairment to a child’s physical, intellectual, emotional, social or behavioural development.¹⁴⁴ Social services departments are under a duty to avoid children being taken into care and to provide services for “children in need”.¹⁴⁵

Several women mentioned that they had had positive contact with social services at some stage during their experience of domestic violence. Again this was for very different reasons. Rachel¹⁴⁶ and Becky¹⁴⁷ were both using social services for support and “somebody to talk to about it all.”¹⁴⁸ Maria had considered this but decided

¹⁴² Mullender and Hague (2000) *op. cit.*

¹⁴³ *ibid.*

¹⁴⁴ Children Act 1989 s.31 and s.47.

¹⁴⁵ *ibid* s.17 (1)(a).

¹⁴⁶ Int. 27 at 20-21.

¹⁴⁷ Int. 20 at 14.

¹⁴⁸ Int. 20 at 14.

against it because “they can get involved too much.”¹⁴⁹ Ruth was receiving help with her son’s behavioural problems from a centre for families run jointly by the National Society for Protection against Cruelty to Children (NSPCC) and social services.¹⁵⁰

Other women’s stories were more negative. Caroline went to a social services centre for help with her children and was told by a worker: “I think you enjoy being in abusive relationships”:

*It was like . . . you’ve got to sort the legal side out - you’ve got to go and get the injunction, you’ve got to get him to court, you’ve got to get him put away and then we’ll help you with the children.*¹⁵¹

Sally had been visited by a social worker after a call to the police several days before. She said that it came as a “shock” when a letter arrived from social services as she had not been warned that the police would be contacting them.¹⁵² Her immediate reaction was “they’re going to take the kids away.”¹⁵³ Becky had a similar experience when she was visited by her health visitor after the police had been called to her house, but she had been given no warning that the information would be shared.¹⁵⁴ Kate’s partner actually contacted social services himself during the dispute over contact with his daughter. He made accusations about Kate’s treatment of their daughter and her two sons. As a consequence, Kate lived under the “big shadow” of a social services investigation for many months.¹⁵⁵ The investigation ended with social services finding that the accusations had no grounds, but Kate said that her partner still “phones social services incessantly.”¹⁵⁶

¹⁴⁹ Int. 26 at 32.

¹⁵⁰ Ruth, Int. 18 at 18-20.

¹⁵¹ Caroline, Int. 21 at 33.

¹⁵² Sally, Int. 24.

¹⁵³ *ibid.*

¹⁵⁴ Becky, Int. 20 at 18.

¹⁵⁵ Int. 3 at 17-20.

¹⁵⁶ Int. 3 at 33.

3.7. Legal Advisors: Citizens Advice Bureaux and Solicitors

Seeking legal advice was difficult for women because of their fear about the personal consequences of disclosing domestic violence. One obstacle was finding a suitable solicitor. Several women acted on personal recommendations,¹⁵⁷ or already had contact with a solicitor.¹⁵⁸ Others took ‘pot luck’ with the Yellow Pages, walked into a solicitor’s office or used the list of firms given to them by the Citizen’s Advice Bureau (CAB).¹⁵⁹ The CAB can only pass on a list of contact details and cannot recommend specific solicitors.¹⁶⁰ Helen had some problems finding a suitable solicitor from the list and said that she felt the organisation should be able to recommend individuals because “different solicitors are good for different people.”¹⁶¹

Rachel sought advice from the Citizen’s Advice Bureau by telephone before she had confided in anyone else about the violence.¹⁶² She visited the CAB office when she knew that her husband would be out of town all day:

*It was the CAB that actually said that very, very rarely - you would have to do something extremely serious for them to ever take the child away from the mother and when somebody actually told me that - I thought, you know, somebody who obviously knows what they’re talking about and perhaps it is true and I’ve got to look into it more. And it was then they made an appointment to see Mrs Yates [solicitor].*¹⁶³

Rachel’s story shows that reassurance and encouragement are important factors in any response to a disclosure of violence. Rachel said that even picking up the phone to speak to a solicitor was “very difficult,” so the CAB making the appointment for her was very helpful.¹⁶⁴

¹⁵⁷ Amelia, Int. 28 at 2; Jacqueline, Int. 15 at 5.

¹⁵⁸ Maria, Int. 26 at 10; Leila, Int. 22 at 11.

¹⁵⁹ Yvette, Int. 23 at 32; Helen, Int. 12 at 21.

¹⁶⁰ Barron (1990) *op. cit.* at 90.

¹⁶¹ Int. 12 at 21.

¹⁶² Int. 27 at 2.

¹⁶³ Int. 27 at 13-14.

¹⁶⁴ Int. 27 at 6.

When a woman gathers the courage to see a solicitor it is crucial that the response does not undermine her resolve to take action. Rachel said:

*[The solicitor] reassured me that day that they would never ever take Nick [two year old son] away from me, never, and once I was actually told that I could bring everything else out and completely open up . . . Even on the first day she put my mind at rest that the chances are I would never lose the house, you know, if it goes to the court she said that because of the baby, because he's so young obviously he needs a home.*¹⁶⁵

Helen's solicitor followed their first meeting by sending her a detailed letter outlining the legal processes that she might have to deal with in the course of divorcing her husband. Helen found it very useful to be able to study these details in her own time.¹⁶⁶

Lucy's experience was less positive, despite the fact that the solicitor had been recommended by a local women's refuge:

*She [the solicitor] said I couldn't do anything because I'd only been married for 6 months so - you know, you couldn't start divorce proceedings for 6 months . . . I said, you know, should I get documentation of my injuries. She said, no, a judge would believe me, all this kind of thing.*¹⁶⁷

Several months later Lucy returned to the solicitor:

*She said I shouldn't leave my husband over Christmas because the court would view it badly and she was very professional in the kind of worst way . . . She kept saying well after this interview the clock will be ticking . . . and every moment you'll spend with me you'll have to pay, sort of thing. And it was very - kind of - rather unpleasant really.*¹⁶⁸

There were other examples of women receiving responses from solicitor which closed legal avenues to them,¹⁶⁹ by, for example, insisting on physical evidence of

¹⁶⁵ Int. 27 at 13-15.

¹⁶⁶ Helen, Int. 12 at 27-28.

¹⁶⁷ Int. 4 at 2 -3.

¹⁶⁸ Int. 4 at 5.

¹⁶⁹ Ruth, Int. 18 at 5; Sarah, Int. 6 at 3.

violence.¹⁷⁰ In Ruth's case, she felt pressurised to make decisions that she was not ready for and did not return to the solicitor after the first appointment. Her experience is considered further in Chapter Six. Jill saw different solicitors who gave conflicting advice.¹⁷¹ She eventually found a "good solicitor" by contacting a Women's Aid help line after watching a television programme about domestic violence.¹⁷²

A woman's experience of solicitors and CAB workers depended on the particular stage she had reached in her process of survival. There were examples of solicitors being contacted to achieve a specific goal, such as a written statement of child contact arrangements,¹⁷³ or to be used as a means of communication with the partner when she had left home.¹⁷⁴ In other circumstances women made contact when they were in a state of great uncertainty, looking for advice, reassurance, support and information about their options. Accounts of women's relationships with, and perceptions of, their solicitors are discussed in more detail in Chapters Six and Seven.

Some women contacted a solicitor before the police had been involved and others took that step after a suggestion by a police officer. In some areas police have access to a 24 hour legal help line, run by local solicitors for advice in situations of domestic violence. After Becky contacted the police, a domestic violence officer had arranged an appointment with a solicitor on her behalf, with her agreement.¹⁷⁵ Most women reached out to the police at some point during their experience. The police acted as 'gatekeepers' for entry into the system of support available from other agencies, like solicitors¹⁷⁶ and refuges,¹⁷⁷ as well as entry into the criminal justice system.

¹⁷⁰ Jacqueline, Int. 15 at 5.

¹⁷¹ Int. 29 at 25.

¹⁷² *ibid.*

¹⁷³ Sally, Int. 24 at 22; Leila, Int. 22 at 9; Clare, Int. 14 at 24-25.

¹⁷⁴ Maria, Int. 26 at 14; Lucy, Int. 4.

¹⁷⁵ Int. 20 at 3-4.

¹⁷⁶ Becky, Int. 20 at 3-4; Yvette, Int. 23 at 8.

¹⁷⁷ Jacqui, Int. 15 at 1.

3.8. Police

The next chapter discusses the pathway when the police were called during a violent incident. The police 'pathway' is discussed here in the context of women who made contact without their partner's knowledge whilst in the process of 'coming to the borderline'. Also considered are some of the reasons women were reluctant to contact the police.

A representative of Ruth's church had advised her that "it was better not to involve the authorities."¹⁷⁸ When Yvette's partner attempted to strangle her, she said "it didn't enter the head to ring the police."¹⁷⁹ A friend called the police on her behalf, on the morning following the incident. Yvette said:

*Even then I thought, "Oh no, not the police - not a police matter." Because you just don't think it is . . . because you're emotionally involved, because you're near enough, well, you're living with them, people think it's, you know, your problem sort of thing, you sort it out. You just don't think it's a criminal offence.*¹⁸⁰

An important aspect of women's 'legal consciousness'¹⁸¹ is that violence in the family is not criminal or a 'police matter'. The 1996 British Crime Survey found that victims' perceptions of their experiences influenced their willingness to take up available services.¹⁸² Incidents perceived as crimes were more likely to be reported to the police and 34% were reported compared to an overall reporting rate of 12%.¹⁸³ Only 17% of those who described physical violence by a partner thought that their experiences amounted to a crime.¹⁸⁴ Chapter One describes the particular problems women have in identifying an act as criminal when they had been raped or sexually assaulted by their partner. Sometimes there was a perception that involving the police

¹⁷⁸ Int. 18 at 8.

¹⁷⁹ Int. 23 at 6.

¹⁸⁰ Int. 23 at 7.

¹⁸¹ Merry (1990) *op. cit.*

¹⁸² Mirrlees-Black (1999) *op. cit.* at 63.

¹⁸³ *ibid.*

¹⁸⁴ *ibid.*

was pointless if there were no physical evidence of violence.¹⁸⁵ Maria felt “guilty” for “wasting their time”.¹⁸⁶

The police sometimes contributed to these feelings by treating the violence as a ‘domestic’ or ‘family matter’ which they could not do anything about.¹⁸⁷ On one occasion the police were called by a third party when Yvette’s partner was attacking her in the street after a row at a party. She said,

*The police were called because he had me on the floor, round the neck. The police were called and they said “Did you know this bloke?” And I said “yeah”. “Do you want to press charges?”, “No, not really, you know, like we live together.” “Will you be all right when you get home?”. “Yes, fine”.*¹⁸⁸

Yvette’s ‘legal consciousness’ was shaped by the belief that living with her attacker is explanation enough for the fact that she does not want to ‘press charges’. The previous chapter discussed how some police officers share a similar belief system and how the police responses to domestic violence may shape women’s perceptions of whether certain situations deserve police action.¹⁸⁹ Maria described police officers who saw the situation as “a domestic thing” or a “normal argument”.¹⁹⁰

Sometimes women were scared to call the police due to fear of reprisals from their partner.¹⁹¹ Jill said that she had not thought to call the police because she wanted the violence to stop and “I didn’t know if involving the police was going to make things worse.”¹⁹² Other women did not involve the police because of shame for “letting it happen.”¹⁹³ For most women this was a complex co-existence of feelings of fear, shame, hope for change and the wish to deal with the issue without outside intervention:

¹⁸⁵ Becky, Int. 20 at 11.

¹⁸⁶ Maria, Int. 26 at 39-40.

¹⁸⁷ Jacqui, Int. 15 at 1.

¹⁸⁸ Int. 23 at 2.

¹⁸⁹ Hoyle, C. (1998) *Negotiating Domestic Violence: Police, Criminal Justice and Victims* (Oxford: Clarendon Press).

¹⁹⁰ Int. 26 at 7 and 37.

¹⁹¹ Sally, Int. 24 at 5 and 25; Julie, Int. 13 at 21.

¹⁹² Int. 29 at 16.

¹⁹³ Sally, Int. 24 at 5; Also Ruth, Int. 18 at 8.

*I was just too scared to do it. You know, I'd think maybe this time he'll learn
... maybe this time his apologies are genuine.*¹⁹⁴

These complex feelings are examined more closely in Chapter Seven. The focus in these chapters is on the different stages and processes through which women come to have contact with the police.

When a woman contacts the police by telephone the first stage is interaction with control room staff.¹⁹⁵ In her research, Edwards found that controllers regularly screened domestic violence calls or accorded them low priority.¹⁹⁶ The Home Office has advised that all 'domestic' calls should result in a police officer's visit at some stage.¹⁹⁷ In her study, Hoyle found that only 4% of reports of domestic violence were resolved on the telephone and in the majority of these cases she concluded that a visit from a patrol officer was unnecessary.¹⁹⁸ In all except one of the stories told for this research, a police visit was made when they had been contacted. Rachel phoned the police, after her partner had left the house, to ensure that they would be aware of the situation in the event of him returning. She also wanted to know how much time it would take for the police to reach her. She did not need to call them again that night and did not receive a visit from an officer on that occasion.¹⁹⁹ When Yvette's friend called the police the morning after a violent incident, Yvette asked the officers to promise that they would not take formal legal action before she would tell them about her partner's violence.²⁰⁰ She was told that, if she changed her mind, the incident would be on file. She had photographs taken of her injuries and was advised to see a solicitor.²⁰¹

¹⁹⁴ Int. 22 at 10.

¹⁹⁵ See Hoyle (1998) *op. cit.*, esp. Chapter 3.

¹⁹⁶ Edwards, S. (1989) *Policing 'Domestic' Violence: Women, the Law and the State* (London: Sage Publications) at 108.

¹⁹⁷ Home Office Circular 1990/60, *Domestic Violence* (London: Home Office) at para. 12.

¹⁹⁸ Hoyle (1998) *op. cit.* at 51.

¹⁹⁹ Rachel, Int. 27 at 12-13.

²⁰⁰ Int. 23 at 45.

²⁰¹ Yvette, Int. 23 at 8 and 45.

Hoyle found that when contacting the police the vast majority of women, regardless of other desires, wanted advice and information.²⁰² The trend has been for the police to appoint domestic violence officers, or co-ordinators, and dedicated units, but there are different levels of service provided across the country.²⁰³ Some domestic violence officers focus on securing prosecutions, co-ordinating services or supporting individual women.²⁰⁴ In some areas specialist domestic violence units have been replaced with 'Community Safety Units', which deal with a range of issues, including racially motivated crime, child abuse and homophobic violence. Several women had experience of contact with a domestic violence officer and all spoke positively of that contact.²⁰⁵ Iris was given a police escort to the train station in order to leave her home town by a WPC on, what Iris referred to as the "Female and Child unit". After leaving, Iris also gave the WPC the address of the refuge where she was staying, so that the housing association could contact her without having direct knowledge of her location.²⁰⁶ Ruth had been involved with the police due to a dispute with her neighbours. When she explained the problems she had had with separating from her husband she was advised to get in touch with the domestic violence co-ordinator. The two were soon in regular telephone contact. As well as making other officers aware of Ruth's difficult situation,²⁰⁷ Ruth said of the officer: "The compassion there was evident because she understands the dynamics of what goes on."²⁰⁸

The domestic violence officer's role as a supporter, and someone to talk to, was seen as important by all the women who had used the service. This role may present a conflict between the victim's wishes and needs and the 'legal' agenda of the police service. Whilst specialist officers spend a great deal of time in the role of listener and counsellor, questions have been raised about the place of 'intelligence led policing' in

²⁰² Hoyle (1998) *op. cit.* at 197.

²⁰³ Plotnikoff, J. and Woolfson, R. (1998) *Policing Domestic Violence: Effective Organisational Structures*, Police Research Series, Paper 100, (London: Home Office).

²⁰⁴ Hoyle, C. and Sanders, A. (2000) 'Police response to domestic violence: From victim choice to victim empowerment', 40 *British Journal of Criminology* 14-36 at 28; Grace, S. (1995) *Policing Domestic Violence in the 1990s*, Home Officer Research Study 139 (London: HMSO).

²⁰⁵ Maria, Int. 26 at 40; Caroline, Int. 21 at 6; Becky, Int. 20 at 4; Ruth, Int. 18 at ; Jacqui, Int. 15 at 8

²⁰⁶ Iris, Int. 11, at 15-16.

²⁰⁷ Int. 18 at 10.

²⁰⁸ Int. 18 at 10.

this role.²⁰⁹ Some survivors of domestic violence, who regard the specialist officer as their confidante, might regard using the relationship as a source of police intelligence as a betrayal. Although this issue was not raised in any of these women's stories, doubts were sometimes expressed as to how much any police officer could be trusted when, in Sarah's words: "The police are only out to arrest people."²¹⁰ Sharon had difficulty trusting the police because she had received poor treatment in the past, due to her 'alternative' lifestyle, which involved living in squats and as a 'traveller'.²¹¹ Chapters Six and Seven discuss projects here and in other countries which provide specialist 'victim advocates' who can play a support and advocacy role for survivors and co-ordinate services without having the conflict which the law enforcement role of a police officer presents.

Sometimes contact with the police or other agencies led to practical tools of protection in the form of extra home security,²¹² a mobile phone²¹³ or home alarm.²¹⁴ Research has highlighted how, for instance, alarms may be valuable in making women feel safer and reassured that violence is being taken seriously.²¹⁵ Some alarms record events at the scene which can later be used in evidence in a prosecution, but they are often only available to women who are living apart from the perpetrator.²¹⁶ Although alarms give some women a feeling of safety²¹⁷ and allow people to remain in their own homes, Jacqui still wanted to leave home because of the "bad memories."²¹⁸ The availability of alarms may also mean that some women will feel more isolated and will miss out on the collective support and ethos of self-empowerment, which many refuges encourage.²¹⁹ In contrast, alarms may isolate women who only feel safe when

²⁰⁹ Plotnikoff and Woolfson (1998) *op. cit.* at 28.

²¹⁰ Sarah, Int. 6 at 2.

²¹¹ Int. 30 at 20.

²¹² Maria, Int. 26 at 3.

²¹³ Amelia, Int. 28 at 10; Caroline, Int. 21 at 1; Susan, Int. 2 at 8.

²¹⁴ Amelia, Int. 28 at 10; Caroline, Int. 21 at 6.

²¹⁵ Lloyd, S., Farrell, G. and Pease, K. (1994) *Preventing Repeated Domestic Violence: A Demonstration Project on Merseyside*. Police Research Group, Crime Prevention Unit Series Paper 49 (London: Home Office) at 10.

²¹⁶ Lloyd *et al* (1994) *op. cit.* at 5.

²¹⁷ Caroline, Int. 6; Jacqui, Int. 15 at 20.

²¹⁸ Jacqui, Int. 15 at 20.

²¹⁹ I am grateful to Jackie Rawlinson of Southampton Women's Aid for a discussion on this issue.

in their own house, limiting their ability to develop a new life apart from their partner. Caroline²²⁰ and Susan²²¹ highlighted the limitations of the mobile phone that involved dialling so many numbers. Leila said that she would have liked a mobile phone when she had separated from her partner, so that she could leave the house without worrying about finding a public telephone if she met him.²²² Alarms and other practical measures may be a deterrent to the perpetrator.²²³ Caroline's partner knew she had the alarm and she believed that that was "the only thing that has kept him away so far."²²⁴

For the most part, the 'pathways' described above did not involve any formal legal action and all these routes could be taken without the perpetrator's knowledge. The next chapter discusses the pathways through domestic violence law which go beyond reaching out for support to becoming involved in specific actions like an injunction application or criminal prosecution which, as Lucy described it, "draw[s] a line in the sand."²²⁵

²²⁰ Int. 21 at 23.

²²¹ Int. 2 at 10.

²²² Int. 22 at 17.

²²³ Lloyd *et al* (1994) *op. cit.* at 11, 12, 14 and 19.

²²⁴ Int. 21 at 11.

²²⁵ Lucy, Int. 4 at 82.

Chapter Four

Pathways: “Drawing a Line in the Sand”¹

The processes of “coming to the borderline” and “drawing a line in the sand” do not suggest a linear progression of action. Contacting the police or a solicitor can be an early attempt to break the silence surrounding domestic violence and part of a strategy to ‘draw a line in the sand’ by sending a message to the perpetrator and others that “enough is enough”.² This chapter considers pathways which continue from those described in Chapter Three and involve contact with legal actors and processes, which are known to the perpetrator, but which may not necessarily involve the survivor separating from him on a long term basis. The pathways here include contacting the police, becoming involved in the criminal court process, and the injunction process, which usually involves contact with solicitors. Women’s stories illustrate their constant struggle to ‘draw a line’, facing pressures from the perpetrator and others, the woman’s own confused feelings, financial, social, psychological and emotional barriers and those that the legal system itself presents.

4.1. Police

Involving the Police and Arrest

Many of the women in this research had at least one encounter with the police, but the vast majority of violent incidents were not brought to their attention. A Canadian study found that women had been assaulted an average of 35 times before contacting

¹ Lucy, Int. 4 at 40 and 82.

² Fischer, K. and Rose, M. (1995) ‘When “enough is enough”: Battered women’s decision-making around court orders of protection’, 41(4) *Crime and Delinquency* 414-429; Also, Ford, D. (1991) ‘Prosecution as a victim power resource: A note on empowering women in violent conjugal relationships’, 25(2) *Law and Society Review* 313-334.

the police.³ The 1996 British Crime survey found that of those who had been victims of domestic assault in the previous year, only 17% said the police were aware of one or more incident.⁴ In interviews with Asian, Caribbean and African women conducted by Mama, 47% of the women had not had contact with the police.⁵ Although this suggests a reluctance among ethnic minority women to trust the police, other research has indicated that women do use the police because it is the only agency available in an emergency and women fear reactions to the violence within their own communities.⁶

Some women in this research were convinced to contact the police by a friend or relative.⁷ Jenny called the police on what she described as the “last incident”, before she had decided to begin divorce proceedings.⁸ Maria called the police on the first violent incident and every subsequent one.⁹ Amelia had contact with the police twice in ten years of physical violence. On both occasions the contact was made by a friend.¹⁰ Many women’s stories involved a third party bringing the violence to the attention of the police, including neighbours,¹¹ relatives,¹² friends,¹³ or the children.¹⁴ The 1996 British Crime Survey found that the police came to know of about a third of domestic assaults from someone other than the victim.¹⁵ Yvette’s situation was fairly unusual in that a third party, who she did not know, had called the police. This was

³ Jaffe, P., Wolfe, D., Telford, A. and Austin, G. (1986) ‘The impact of police charges in incidents of wife abuse’, 1(1) *Journal of Family Violence* 37-49 at 38, cited in, Morley, R. and Mullender, A. (1994) *Preventing Domestic Violence to Women*, Police Research Group, Crime Prevention Unit Series, Paper No. 48 (London: Home Office) at 12.

⁴ Mirrlees-Black, C. (1999) *Domestic Violence: Findings from a New British Crime Survey Self-Completion Questionnaire*. Home Office Research Study 191 (London: Home Office) at 54.

⁵ Mama, A. (1989a) *The Hidden Struggle: Statutory and Voluntary Sector responses to Violence Against Black Women in the Home* (London: London Race and Housing Research Unit) at 172.

⁶ Kelly, L. (1999) *Domestic Violence Matters: An Evaluation of a Development Project*. Home Office Research Study 193 (London: Home Office) at 18.

⁷ Caroline, Int. 21 at 7; Becky, Int. 20 at 3; Clare, Int. 14 at 4.

⁸ Int. 9 at 6.

⁹ Int. 26 at 2-2.

¹⁰ Int. 28 at 2, 4 and 5.

¹¹ Maria, Int. 26 at 1; Sally, Int. 24 at 7-8; Iris, Int. 11 at 26.

¹² Leila, Int. 22 at 4 and 10.

¹³ Amelia, Int. 28 at 4 and 8.

¹⁴ Jacqui, Int. 15 at 13.

¹⁵ Mirrlees-Black (1999) *op. cit.* at 55.

when her partner had pushed her over in the street splitting her lip.¹⁶ As in other pathways, women had contact with the police under a range of circumstances, with varying needs and at different stages in their process of survival.

When a call to the police is made a woman may want immediate rescue, rather than a prosecution of the perpetrator.¹⁷ This is particularly likely if a woman is still living with her partner.¹⁸ However, if there is evidence that a crime has been committed the police are obliged, by the Home Office,¹⁹ and by many local constabulary policies to take positive action.²⁰ Though most police forces now have a definition of domestic violence that is drafted in wide terms to include non-physical abuse, the powers of the police depend on a crime being committed. Chapter Two described some of the powers available to police officers. Understandably, many women did not know the offences for which their partners were arrested and those details are not the focus of this chapter.

Decisions by officers to arrest and charge tend to depend on the severity of violence, availability of evidence and witnesses, attitudes of perpetrators, previous history and the 'wishes' of the complainant. 'Victims' wishes' may themselves be induced by "insensitive and unsupportive handling of the case and advice to complainants by the police themselves."²¹ It has also been suggested that police officers make decisions based on assessments of 'victim worthiness' and assessments of likely withdrawal, when women actually want assertive action.²² In contrast, Hoyle found that, decisions to charge were shaped "almost entirely by the victim's preferences", even in serious cases.²³ She found that women contact the police for immediate physical protection,

¹⁶ Int. 23 at 2.

¹⁷ Cretney, A. and Davis, C. (1996) 'Prosecution "domestic" assault', *Criminal Law Review* 162-174 at 172.

¹⁸ Hoyle, C. (1998) *Negotiating Domestic Violence - Police, Criminal Justice and Victims* (Oxford: Clarendon Press) at 188.

¹⁹ Home Office Circular 19/2000, *Domestic Violence*. Revision of Home Office Circular 60/90 (London: Home Office).

²⁰ Plotnikoff, J. and Woolfson, R. (1998) *Policing Domestic Violence: Effective Organisational Structures*, Police Research series Paper 100, (London: Home Office).

²¹ Edwards, S. (1996) *Sex and Gender in the Legal Process* (London: Blackstones) at 197.

²² Kelly (1999) *op. cit.*

²³ Hoyle (1998) *op. cit.* at 151.

so that their partner can be removed from the scene, ‘calmed down’ or simply warned off and scared.²⁴ Chapter Seven describes in more depth how a woman sometimes uses the law as a source of power in her relationship to communicate a message to the abuser that his violence is unacceptable and to show that others support her. The presence of the police gave some women a feeling of safety.²⁵ Yvette showed how this could be tinged with fear of the perpetrator and of the legal system itself;

*I was also scared like initially that whatever I said they could just take it out of my hands and say, well look, you know, I’m sorry we’re going to arrest him and we’re going to press charges.*²⁶

This issue of taking decisions ‘out of a woman’s hands’ is discussed in more depth in Chapter Seven. So, did the women feel that the police acted on their preferences?

Some examples of the police not taking formal action followed women’s expressed wishes. Yvette said:

*I said to the police, I don’t want him to go to prison, I just want him to wake up and realise that, you know, I’m scared of him and he needs to be stopped.*²⁷

Emma called the police after beginning divorce proceedings against her partner:

*I phoned the police to show him that I wasn’t going to put up with it any more.*²⁸

In Sally’s case informal action by the police, in terms of convincing her partner to leave the premises, followed her request.²⁹ Leila had her partner arrested on her doorstep “just to get him away.”³⁰ Rachel called the police after her partner had hit her around the head while she was feeding her son. When asked by the officer whether she wanted him arrested she said:

*I said “No I don’t really want that. I just don’t want this to carry on any more.”*³¹

²⁴ Hoyle (1998) *op. cit.* at 193-194.

²⁵ Maria, Int. 26 at 40; Yvette, Int. 23 at 43; Emma, Int. 16 at 21.

²⁶ Yvette, Int. 23 at 43.

²⁷ Yvette, Int. 23 at 49.

²⁸ Int. 16 at 7.

²⁹ Sally, Int. 24 at 8.

³⁰ Int. 22 at 6.

³¹ Rachel, Int. 27 at 17.

The police advised him to leave. He left and Rachel lived in the house alone while the divorce proceedings were completed.

The police regularly asked women whether they wanted formal action, in terms of arrest³² or the bringing of charges.³³ Usually a police officer would ask: “Do you want to press charges?.” The recent Home Office Circular recognises the complexity of experiences of domestic violence when it emphasises that it is the decision of the police, not the victim, to charge a suspect.³⁴ Women rarely actively ‘want’ to bring a criminal action against a partner due to fears of provoking further violence, existing feelings of attachment and hope, consideration of their children’s feelings, and material considerations, such as need for financial support or the belief that criminal sanctions will not be helpful.³⁵ This research suggests that, rather than ‘wanting’ to be involved in legal action, survivors want the violence to stop, to gain power in the relationship and to gain some outside support in condemning the violence. Women in this research talked of many factors influencing their decisions, including fear of the perpetrator, feelings of love for him, shame about the violence and their resort to legal action and a wish to keep the violence private, belief that arrest would not affect the violence and a fear that arrest might make matters worse.

Yvette did not want charges brought against her partner “because I was scared of him and didn’t feel that it was right.”³⁶ Sally described her range of reasons:

I suppose one, because I was frightened of what he would do . . . Two I did love him. I mean I know it sounds silly. I don’t love him now, but I still care for him because of the children. And to be honest, I didn’t want to go through court and everyone knowing my business, you know, like airing it all - in

³² Leila, Int. 22 at 5.

³³ Yvette, Int. 23 at 14 and 8; Leila, Int. 22 at 6; Jill, Int. 29 at 10; Joan, Int. 31 at 9.

³⁴ Home Office (2000) Circular 19/2000, *Domestic Violence*, revision of Circular 60/90 (London: Home Office).

³⁵ Brownlee, I. (1990) ‘Compellability and contempt in domestic violence cases’, *Journal of Social Welfare Law* 107-115 at 112; Hoyle (1998) *op. cit.* at 214.

³⁶ Int. 23 at 14.

*public - that was my business. In a way I was ashamed of myself for letting it happen.*³⁷

There was the belief that the threat of being taken to the cells did not affect the partner because it had happened before,³⁸ or that being arrested made him more angry.³⁹

Other research has found that some women's experiences suggested to them that arrest made the perpetrator more violent,⁴⁰ and that some men were not affected by arrest because they had "no regard for the law."⁴¹

Yvette had called the police after seeing her husband outside the house, in breach of an injunction. The police asked her if she wanted him arrested. Yvette said:

*Basically its a bit mixed emotions of I'm scared of him but also don't want - didn't want the pressure of putting [him] in the cells . . . because of the power of arrest he could have gone to prison as well, so that was a bit frightening . . . In a way it was like, well, if they arrest him and we leave to go to court I have to face him at court again and I was a bit wary of him going to prison. I thought, No, I don't think it's an imprisonable offence, because he hasn't broken the door and had a go at me again, sort of thing.*⁴²

Her words show the complex mix of fear, guilt and perceptions of the law's limited usefulness. Emma had called the police on several occasions and no formal action had been taken. She said:

*I didn't want him arrested to be fair on them, when they asked me. That thing that he's your husband. What would people think if I got my own husband arrested. I suppose the real reason was that I was scared of him. I thought he'll have to come out and when he does he'll be even more cross and it'll inflame the situation when he comes out again.*⁴³

One problem Emma had was being asked if she wanted her partner arrested.

³⁷ Int. 24 at 10.

³⁸ Lorraine, Int. 7 at 3; Sarah, Int. 6 at 2; Susan, Int. 2 at 38; Maria, Int. 26 at 39.

³⁹ Lorraine, Int. 7 at 3; Sarah, Int. 6 at 2; Jill, Int. 29.

⁴⁰ Hoyle (1998) *op. cit.* at 190.

⁴¹ Kelly (1999) *op. cit.* at 52.

⁴² Yvette, Int. 23 at 15.

⁴³ Emma, Int. 16 at 20.

*I would have loved them to take him away. It would have been good if they'd just arrested him. When they ask you it's so much pressure. Often he knows they are asking you if you want him arrested and if you say yes it'll be worse after. It would have taken the pressure off if they'd just done it. If it's assault they should just arrest him and take the pressure off.*⁴⁴

This notion of 'taking the pressure off' is an important factor in the pro arrest policies described in Chapter Two.

Chapter Seven describes how 'taking pressure off' may also take away control, which can prevent some women from using criminal sanctions as a source of power in their relationship and may deter others from calling the police for fear of control being taken out of their hands. Iris said that if the police made the decision to prosecute it could be "a good thing" in that the responsibility would lie with them,⁴⁵

*But then again it could be a bad thing. If you're really, really wanting to make a split on someone . . . making you suffer for years, you've got that power.*⁴⁶

Perpetrators may retaliate against women even though arrest is not in their control and when Ann's partner was arrested on one occasion, he blamed her. She also felt that action from the police was of limited use when she continued to be committed to the relationship, and she said: "While . . . he knew I would still be with him, it didn't have the effect."⁴⁷ Whilst it may be true that an action may have most effect on the perpetrator if he knows both the state and his partner are 'drawing a line in the sand', action by the police, may give a woman a sense of relief and empowerment because she has been supported. Maria expressed the fear that her partner had come to know the "routine" of being arrested and was no longer "scared" by the police because he was never charged.⁴⁸ She described how after many contacts with the police an officer told her that they would be charging her partner. She said: "For once I felt

⁴⁴ Emma, Int. 16 at 21.

⁴⁵ Int. 11 at 25.

⁴⁶ Int. 11 at 26.

⁴⁷ Ann, Int. 5 at 20.

⁴⁸ Maria, Int. 26 at 39.

you're on my side; you know. . . and it was a relief."⁴⁹ Leila said she agreed to have her partner charged because "he's got to learn this time."⁵⁰

There were some examples of the police not taking formal legal action when women said that they would have preferred that and the perception was that if there were not serious visible injuries the police did not seem interested. Melanie had experienced responses that dismissed the violence as a 'family' or 'domestic' matter.⁵¹ When Kerry's partner was vandalising her car and front door, she deliberately waited for the neighbours to call the police, "because I knew they'd class it as a domestic - what was the point?"⁵² Kerry was disappointed that when the police arrived they had not taken formal action, but had talked to her partner and put him in a taxi, which then dropped him half a mile up the road.⁵³ Emma also said that she had stopped calling the police after no action was taken on several occasions: "It was a horrible feeling because I thought even that's not doing any good."⁵⁴ Emma also said of her partner that he had become "blasé" because "he knew they wouldn't do anything."⁵⁵ Emma described how the police seemed less supportive of her when her partner gave the impression of being "calm."⁵⁶ Ann suspected the police believed her partner when he said that she was "neurotic."⁵⁷ She felt that the police responded more proactively when their authority was challenged, or when her partner became violent towards them.⁵⁸

Several women supported the suggestion that having other 'evidence' of domestic violence, such as contact with a solicitor, an injunction or a stay at a refuge seemed to make them appear more reliable complainants and led to a more proactive response.⁵⁹ Rachel told the police that she had a solicitor involved and would contact her the next

⁴⁹ Int. 26 at 38 and 24.

⁵⁰ Leila, Int.22 at 6.

⁵¹ Int. 1 at 8.

⁵² Int. 10 at 29.

⁵³ Int. 10 at 29.

⁵⁴ Int. 16 at 21; Also, Melanie, Int. 1 at 9.

⁵⁵ Int. 16 at 21.

⁵⁶ Int. 16 at 20-21.

⁵⁷ Int. 5 at 6.

⁵⁸ Ann, Int. 5 at 19-20.

⁵⁹ Pahl, J. (1982) 'Police responses to battered women', *Journal of Social Welfare Law* 337-343 at 342.

morning “and that’s when everything was full steam ahead if you like.”⁶⁰ Maria’s partner was arrested for the first time after many calls to the police. She said:

*I suppose it also helped me saying that I just got out of a woman’s refuge. They understood the situation.*⁶¹

Emma said of the police:

*Half the ones that came didn’t know that I was getting divorced. I didn’t feel they realised that I was doing something about it.*⁶²

A recent study suggested that criminal charges are more likely to be brought against a perpetrator if the couple are separated.⁶³ Women are more likely to support an arrest if they have less feelings of guilt and divided loyalties, less secrecy surrounding the violence and self confidence may have been increased by the act of separating. This research shows that even when the two are still living together, women may use police involvement as a way of communicating a message to the perpetrator and ‘drawing a line in the sand’. But the process which is set in operation by involving the police was rarely satisfying.

Process Following Police Involvement

Some women’s stories included examples of the police taking the perpetrator into custody to “calm down.”⁶⁴ This gave Iris time to pack her belongings and leave the home.⁶⁵ In Maria’s case there was a perception that this removal of her partner, without him being formally charged, suggested an attitude by the police that the violence was a “normal argument.”⁶⁶ Kerry had a similar perception when the police were called to a violent incident when she was heavily pregnant with twins. On the morning after his arrest she was telephoned by the desk sergeant telling her that her partner was coming out and she should pick him up at the police station because she

⁶⁰ Rachel, Int. 27 at 17.

⁶¹ Maria, Int. 26 at 39.

⁶² Int. 16 at 21.

⁶³ Hanmer, J., Griffiths, S. and Jerwood, D. (1999) *Arresting Evidence: Domestic Violence and Repeat Victimisation*. Police Research Series Paper 104 (London: Home Office) at 31.

⁶⁴ Maria, Int. 26 at 1; Sally, Int. 4 at 9-10.

⁶⁵ Int. 11 at 2.

⁶⁶ Int. 26 at 37.

was ‘next of kin’. She did this, but was not asked about charges being brought, nor was a statement taken.⁶⁷ A similar response was made on several occasions: “Still nobody had given me any options”⁶⁸ or “guidance”.⁶⁹

After a police officer has made an arrest, detention must be authorised at the police station by the custody officer.⁷⁰ Detention is only possible in order to gather or preserve evidence or to charge,⁷¹ not in order to separate two conflicting parties or give one some ‘breathing space’. But Hoyle’s research suggests that detention is used by officers for reasons other than those specified in legislation.⁷² The arresting officer may then interview the suspect and when she believes that there is sufficient evidence to prosecute the case, it is then put to the custody officer who decides whether or not to charge. The Thames Valley study examined 387 cases of domestic violence and the custody officer only challenged the decision of the arresting officer in one case.⁷³ The custody officer can release a suspect, caution him, postpone the decision by releasing him on bail, report him for summons or charge him. Throughout this process many women were left alone without any emotional support and rarely any practical information about the process or their options. In the case of rape charges women also had to go through the trauma of a medical examination.

Medical Examination

In a study examining women’s experiences of the criminal legal system’s response to rape, the medical examination caused the most widespread dissatisfaction.⁷⁴ Being examined by a woman was of crucial importance.⁷⁵ Susan felt that she had not been prepared by the officers for the “horrendous” experience, nor for the fact that she

⁶⁷ Int. 10 at 8.

⁶⁸ Int. 10 at 9.

⁶⁹ Int. 10 at 22.

⁷⁰ Police and Criminal Evidence Act 1984.

⁷¹ Police and Criminal Evidence Act 1984 s.37.

⁷² Hoyle (1998) *op. cit.* at 150.

⁷³ Hoyle (1998) *op. cit.* at 147.

⁷⁴ Gregory, J. and Lees, S. (1999) *Policing Sexual Assault* (London: Routledge) at 165 and 171.

⁷⁵ *ibid.*

would have no choice but to be examined by a male doctor.⁷⁶ In research considering women's experiences of medical examinations after reporting rape, Tempkin writes:

*Part of the trauma of rape for the victim is the experience of powerlessness and of loss of control over body and destiny. The medical produced a repetition of these feelings in some victims.*⁷⁷

Like Susan, those interviewed in that study put high value on the sensitivity of those involved in the examination and the importance of full explanations about the process and reasons for it.⁷⁸ Research has also highlighted the problem of a shortage of female doctors to carry out such examinations, which can impose further trauma on the complainant.⁷⁹ For Susan, the stress of the examination was quickly followed by the fear caused by her partner being granted bail.

Bail

Police have the power to attach conditions to bail, including residence requirements, curfews and exclusion from a particular locality,⁸⁰ but action for breaches are rare.⁸¹ Bail conditions gave some women valuable space away from their partners.⁸² Several women had problems with harassment from their partners when they were on bail with telephone calls, letters⁸³ and, in Clare's case, Christmas and Valentines cards "To my Wife".⁸⁴ Clare did not report these breaches because she believed her husband would tell their children that she was to blame if he was punished by the courts.⁸⁵ Jill's partner breached bail on numerous occasions, by harassing her in the street and he was eventually sent to prison for seven days.⁸⁶ Susan saw it as a "reward" for her partner when he broke the rules of the bail hostel by returning late when he was drunk,

⁷⁶ Susan, Int. 2 at 30-32.

⁷⁷ Tempkin, J. (1996) 'Doctors, rape and criminal justice', 35(1) *The Howard Journal* 1-20 at 14

⁷⁸ *ibid.* at 9-10 and 12-13.

⁷⁹ *ibid.* at 15; Gregory and Lees (1999) *op. cit.* at 168.

⁸⁰ Criminal Justice and Public Order Act 1994 s.27.

⁸¹ Kelly (1999) *op. cit.* at 49.

⁸² Leila, Int. 22 at 7; Jacqui, Int. 15 at 2; Clare, Int. 14 at 5; Julie, Int. 13 at 6.

⁸³ Amelia, Int. 28 at 8; Susan, Int. 2 at 2.

⁸⁴ Clare, Int. 14 at 6.

⁸⁵ Clare, Int. 14 at 6.

⁸⁶ Jill, Int. 29 at 17.

and was simply told by the magistrate to find somewhere else to live.⁸⁷ Allowing men to breach bail conditions undermines messages to perpetrators and survivors about the seriousness of domestic violence.⁸⁸ Some women and legal actors assume that the existence of bail conditions precludes the need to apply for an injunction, but in the case of bail women have no control over the conditions attached or over the action taken for breach.⁸⁹ Police officers, solicitors and the Legal Aid Board may assume that bail conditions are sufficient and either advise a woman not to apply for an injunction or refuse to grant her financial assistance. Lucy obtained an injunction at her own expense because she was unsure what the bail conditions for her partner would be when he was arrested and remanded in custody for attempted rape.⁹⁰ Jill's solicitor advised her that bail conditions would give her as much protection as an injunction, but she did obtain one when her partner was sentenced to probation, without conditions about not contacting her.⁹¹

Breach of the Peace

Arrests for breach of the peace were mentioned in several stories.⁹² Hoyle found that of 101 perpetrators arrested for breach of the peace, 88 were released without further action.⁹³ If someone is arrested for breach of the peace where there is reason to fear further violence they can be 'bound over' to keep the peace.⁹⁴ A 'binding over' is not a conviction or a punishment, but is a civil promise to keep the peace or more generally 'be of good behaviour' in the future. It takes place before magistrates soon after arrest. A 'bind over' can also follow the withdrawal of charges, but it is rare for such an order to ever return to court.⁹⁵ The period of 'bind over' is usually six or 12 months and breach can result in a penalty, usually of about £50 or £100. Maria felt

⁸⁷ Int. 2 at 10.

⁸⁸ Hanmer *et al* (1999) *op. cit.* at 39.

⁸⁹ Barron (1990) "*Not Worth the Paper ...?*" *The Effectiveness of Legal Protection for Ewomen and Children Experiencing Domestic Violence* (Bristol: Women's Aid Federation England) at 132.

⁹⁰ Int. 4 at 28.

⁹¹ Int. 29 at 24.

⁹² Susan, Int. 2 at 3; Maria, Int. 26 at 3 and 7; Leila, Int. 22 at 7 and 10; Karen, Int. 10 at 9.

⁹³ Hoyle (1998) *op. cit.* at 149.

⁹⁴ Justices of the Peace Act 1361.

⁹⁵ Cretny and Davis (1996) *op. cit.* at 171.

that the arrest had helped her partner to realise that he had to “behave” and she said the ‘bind over’ meant that if he came to her door she could call the police and an automatic fine would result.⁹⁶ Leila had also been told by the police that the arrest of her husband for breach of the peace meant that he would be arrested if he came into the area within the next year.⁹⁷ Kerry’s partner was arrested, for a second time, during a violent incident when she was seven months pregnant. No statement was taken from Kerry, nor was she given any advice. Her partner was presented at the magistrate’s court the next morning to be bound over to keep the peace for a year in the sum of £200.⁹⁸ Whilst such seemingly lenient treatment and exclusion from the process may cause frustration for some women, like Kerry, it at least avoids the often traumatic experience of the criminal court process.

4.2. Criminal Court Process

Process of Decision-Making

After an individual has been charged with an offence the file on the case is passed by the police to the Crown Prosecution Service (CPS). The CPS is under a duty to review all cases that are referred to it in accordance with the guidance in the Code for Crown Prosecutors.⁹⁹ Decisions are made by the CPS on the basis of the police file and statements made at the time of the offence. The idea is that the service represents the public interest and not the particular interest of one person, such as a survivor of domestic violence. The prosecutor can choose to discontinue the case or to continue with the existing charge or an alternative.¹⁰⁰ In making decisions there are two tests set out in the Code.¹⁰¹ The first is the ‘evidential test’ of whether there is, sufficient evidence and a realistic prospect of conviction.¹⁰² If this test is satisfied then the

⁹⁶ Int. 26 at 17-18.

⁹⁷ Int. 22 at 10.

⁹⁸ Int. 10 at 9.

⁹⁹ Crown Prosecution Service (1994) *The Code for Crown Prosecutors* (London: HMSO).

¹⁰⁰ Prosecution of Offences Act 1985 s.23.

¹⁰¹ Crown Prosecution Service (1994) *op. cit.* at 4.

¹⁰² *ibid* at 5-6.

prosecutor must consider the test of whether the public interest requires a prosecution.¹⁰³ These two tests are applied to all criminal prosecutions but additional guidance exists for domestic violence cases which makes clear that violence in a domestic context does not reduce its seriousness.¹⁰⁴ When a victim withdraws her statement the prosecutor is asked to consider the seriousness of the offence, the history of the relationship, the effect on any children involved in considering whether to continue and the 'interests of the victim'.¹⁰⁵ But it is made clear that sometimes the wider 'public interest' will prevail.¹⁰⁶ The Crown Prosecution Inspectorate found that decisions were made without:

*information about the ability and willingness of the victim to give evidence;
the history of the relationship and any previous incidents; the existence of civil proceedings; the composition of the family and current family arrangements;
the future of the relationship; and the likelihood of violence recurring.*¹⁰⁷

It was concluded that CPS policy was not complied with in a significant number of cases.¹⁰⁸

The relationship between the CPS and victims can be a source of frustration and dissatisfaction. Susan saw the CPS as 'her' representative,¹⁰⁹ but in law the service is a representative of the state and the victim is a witness and a mere source of evidence. The CPS do have a duty to consult the victim and take her interests into account.¹¹⁰ But the woman has no legal right to meet the prosecutor before the trial, so that the first time they meet is usually the day the victim gives evidence. The reason for this practice is the fear of accusations of influencing witness testimony. Apart from feelings of isolation and exclusion experienced by women, prosecutors do not have

¹⁰³ *ibid* at 7-9.

¹⁰⁴ Crown Prosecution Service (1995) *CPS Policy for Prosecuting Cases of Domestic Violence* (London: HMSO) at 1.

¹⁰⁵ *ibid.* at 4.

¹⁰⁶ *ibid.*

¹⁰⁷ Crown Prosecution Service Inspectorate (1998) *The Inspectorate's Report on Cases Involving Domestic Violence*, Thematic Report 2/98 May, cited in, Edwards (2000a) *Reducing Domestic Violence ... What Works? Use of the Criminal Law, Policing and Reducing Crime*, Briefing note (London: Home Office).

¹⁰⁸ *ibid.*

¹⁰⁹ Int. 2 at 16.

¹¹⁰ Home Office (1996) *Victims Charter* (London: Home Office) at 3,8.

opportunities to contextualise women's decisions and wishes and may act on appearances of 'reconciliation' presented by the perpetrator or his legal representative.¹¹¹ Several empirical studies have found that, despite the prosecutor's limited contact with the victim, a woman's decision not to give evidence tends to determine the outcome of the case.¹¹²

There is no systematic mechanism for prosecutors to ascertain whether this 'decision' is due to fear, shame and confusion, practical considerations relating to financial issues or children, feelings of guilt and attachment or a combination of all of these. Hoyle found that neither the police or prosecutors appeared to distinguish between cases where the witness withdrew from fear and where it was due to personal or "familial reasons."¹¹³ In their study of prosecuting domestic violence cases, Cretney and Davis found that almost a quarter of complainants first highlighted lack of enthusiasm for the case to the defendant or his solicitor, rather than the police or CPS.¹¹⁴ It was not unusual for a defence lawyer to tell the court that the couple were reconciled and "to produce the complainant like a rabbit from a hat."¹¹⁵ None of the women in this research described this situation, but Julie's partner had managed to have his full hearing adjourned twice by falsely claiming that there was "hope for a reconciliation," although no steps had been taken to check the facts with her.¹¹⁶

Hoyle and Sanders' study found that women usually withdraw support for prosecution because there has been some change in the partner's behaviour and it is no longer necessary, or that the costs of continuing outweigh the benefits.¹¹⁷ They identified fear of retaliation as the main reason for withdrawal.¹¹⁸ Women involved in the prosecution process experienced different pressures to withdraw from their partner

¹¹¹ Cretney, A. and David, G. (1997a) The significance of compellability in the prosecution of domestic assault', 37(1) *British Journal of Criminology* 75-87 at 87.

¹¹² Hoyle (1998) *op. cit.*; Cretney and Davis (1997) *op. cit.*

¹¹³ Hoyle (1998) *op. cit.* at 191 and 213.

¹¹⁴ Cretney and Davis (1996) *op. cit.* at 167.

¹¹⁵ *ibid.*

¹¹⁶ Int. 13 at 6 and 19.

¹¹⁷ Hoyle, C. and Sanders, A. (2000) 'Police response to domestic violence: From victim choice to victim empowerment', 40 *British Journal of Criminology* 14-36 at 23.

¹¹⁸ *ibid.*

and his friends, including an offer of money,¹¹⁹ threats,¹²⁰ emotional appeals¹²¹ and sometimes both.¹²² Women were also frightened of going to court.¹²³ Amelia's decision to "drop charges" was "half because I was scared and half because I thought he was going to change."¹²⁴ She also felt that he would be able to keep his job and would be a "better person" and be able to provide for their son.¹²⁵ Amelia felt that if he was still working he would be "keeping busy," she would know where he was during the day and he would be less likely to be trying to find and hurt her.¹²⁶ She also suspected that any sentence he received would already have been served whilst he had been remanded in custody, and so he would be out soon and be angry with her;

*So it was both things again, the scared bit - what he would do and what I thought would be best for me in the situation.*¹²⁷

Amelia's story shows how fear combines with other factors to affect decisions. Some women may believe that the threat of prosecution has bought changes in the partner's behaviour, or that a criminal conviction and the strain of the prosecution process is not worth the trauma and inconvenience involved.¹²⁸ This research shows that when women do persist in the face of these pressures, the process is usually endured with little support from legal actors. Rather than asking why women withdraw their support it may be more sensible to learn more about the decision-making processes of women who continue to support a prosecution despite these obstacles.

Several weeks before Ann's partner's trial for grievous bodily harm, he asked her to visit him in prison. He tried to convince her to withdraw her statement. She said: "He said look at me, you can help me. It's your fault I'm here really."¹²⁹ Ann also

¹¹⁹ Lucy, Int. 4 at 32.

¹²⁰ Caroline, Int. 21 at 4.

¹²¹ Lucy, Int. 4 at 50.

¹²² Amelia, Int. 28 at 15.

¹²³ Melanie, Int. 1 at 14.

¹²⁴ Amelia, Int. 28 at 15.

¹²⁵ Amelia, Int. 28 at 15.

¹²⁶ Amelia, Int. 28 at 15.

¹²⁷ Amelia, Int. 28 at 15.

¹²⁸ Cretney and Davis (1996) *op. cit.* at 172.

¹²⁹ Int. 5 at 2-3.

mentioned that she did not want to go to court.¹³⁰ She also gave another reason as to why she had considered withdrawing her statement:

*I thought that maybe in the future it might be better for me, because I thought well maybe he wouldn't hold any - too many grudges in the future, you know. Because I worry when he gets out.*¹³¹

She went on to explain why she did not in fact decide to withdraw her support for the prosecution:

*In the end I thought you can't let him get away with it . . . I think if you're a bully if you keep getting away with things you're not going to learn are you? . . . I felt that if I withdrew my statement, whatever happens to me in the future, you wouldn't have a leg to stand on in some ways . . . I think as far as the police are concerned. But then it's - you know it's my life, but the thing is I did feel personally what he's done was over and above normal behaviour and it's not right . . . But I can't withdraw it because that's the truth and - you know - if I did I'd be playing into his hands again, you know, trying to get me believing it was my fault.*¹³²

Ann's fear of her partner and the court process were outweighed by her concerns for future protection from the police, and her wish for her violent partner to take responsibility as well as resisting his attempts to blame her for his violence. As it was Ann did not have to give evidence as her partner pleaded guilty on the day of the trial. He was convicted of grievous bodily harm with intent (Ann's face is permanently scarred) and was sentenced to three years imprisonment.

Julie said that her partner did not actually ask her to drop the charges, although in the lead up to the trial he kept reminding her that he might have a criminal record and lose his job.¹³³ Julie said that she gave evidence to "stop him doing it to some other woman, in another relationship."¹³⁴ Caroline went through a complex process of decision making. She had told her partner she would not give evidence. Then she

¹³⁰ Int. 5 at 12.

¹³¹ Int. 5 at 10.

¹³² Int. 5 at 12-13.

¹³³ Int. 13 at 21-22.

¹³⁴ Int. 13 at 12 and 15; Also, Susan, Int. 2 at 29.

decided to give evidence after speaking to a domestic violence officer who said she might be able to help her partner to tackle his alcohol problems,¹³⁵

*I thought, no, I will go because it will probably help him because I was going to go in there and say he's O.K. when he's sober. He's got a drink problem. He's not a violent man when he's sober. It's just the drink makes him violent.*¹³⁶

When she told her partner about her decision he threatened her with violence if she went to court. She withdrew her statement because it was “too risky.”¹³⁷ She felt that giving evidence would “anger him even more,” that the sentence he would get would not be long and “because I couldn’t face going to court”.¹³⁸

Some women said that they wanted choice in the decision as to whether to participate in the prosecution, but not necessarily the decision about whether the prosecution went ahead. Caroline said:

*I still think its freedom of choice. You know, it's your choice. You shouldn't be heavied especially by a policeman.*¹³⁹

Caroline did not want pressure to take part in the decision but felt the case should have gone ahead without her evidence.¹⁴⁰ She also said that she would have been more willing to give evidence if she could have been in a separate room or have her statement read “and not be ripped apart by them bloody barristers.”¹⁴¹ Several weeks before she was due to give evidence, Jacqueline was very reluctant to go to court due to fear of “facing him.”¹⁴² Jacqueline had been separated from her partner for some time and did not object to the case going ahead, but she did not want to be personally involved. She said:

I thought their new policy was the police were going to take it out of your hands and they would prosecute, and take it off the woman so there was no

¹³⁵ Int. 21 at 9.

¹³⁶ Int. 21 at 8.

¹³⁷ Int. 21 at 9.

¹³⁸ Int. 21 at 3-5.

¹³⁹ Caroline, Int. 21 at 5.

¹⁴⁰ Int. 21 at 8.

¹⁴¹ Int. 21 at 13.

¹⁴² Int. 15 at 3.

*fear or no court none of that. But they're making me go and I don't want to go so I'd rather the police just done it for themselves and leave me out of it . . . they're still making the woman go, pressuring her. They [police] said if I don't go I would be arrested.*¹⁴³

Jacqueline was so distressed by the court hearing that she did not feel able to take part in a further interview. Some, like Jacqueline, may want the case to go ahead but may not want a part in it. Some may be disillusioned with the process itself and based on past experience, may doubt the likelihood of a prosecution improving their position. Others may have reasons for not wishing the case to proceed which are based on their long-term safety, and the futures of their children and partner. There is little evidence of any efforts being made to respond to individual cases on the basis of such differences. Tools, like compellability provisions and use of evidence other than witness testimony, which may help bring a case to court in the situation where a victim is reluctant to give evidence, are rarely used.¹⁴⁴ All four women who gave evidence against an abusive partner in a criminal trial found the process stressful in different ways. Delay was an issue for all the women.

Delay

The average time between reporting and trial is about eight months.¹⁴⁵ Research into survivors' experiences has found delay in the criminal system and uncertainty about dates of trial to be a major source of frustration and stress.¹⁴⁶ Susan's wait for her ex-husbands trial for rape affected her whole family as well as her own physical and mental health. She said "I wake up and the first thing on my mind is this case."¹⁴⁷ The case was a shadow over the lives of the women themselves and their children. Leila's and Ann's children had given statements to the police on occasions, but had not been called to give evidence in court.¹⁴⁸ But Susan's and Clare's sons, aged 17

¹⁴³ Int. 15 at 2.

¹⁴⁴ Hoyle (1998) *op. cit.*

¹⁴⁵ Adler, Z. (1987) *Rape on Trial* (London: Routledge and Kegan Paul) at 50.

¹⁴⁶ Barron (1990) *op. cit.* at 71; Adler (1987) *ibid* at 50.

¹⁴⁷ Susan, Int. 2, at 17 and 47; Also, Kerry, Int. 10 at 25; Jill, Int. 29 at 23.

¹⁴⁸ Leila, Int. 22 at 5; Ann, Int. 5 at 11.

and 15 respectively, were called to give evidence.¹⁴⁹ Clare's son, Tim, had spoken to his father on the phone during the lead up to the trial and at one point he said to his mother: "Do you think I can change my statement because I don't want to get dad in trouble?"¹⁵⁰ The consequences of delay in the system have been highlighted in research and as a result of several pilot studies the whole country will be implementing a fast-track system so that cases like domestic violence will be prosecuted more swiftly.¹⁵¹ One of the problems with this idea for reducing delay is that efficient systems of information exchange are not in place. Delay in the existing system can work in a woman's favour if her partner is kept in custody over night and then released on bail conditions not to contact her whilst he awaits a trial date. She can then have 'breathing space' to make decisions, but this is a limited opportunity when a woman is left unsupported, as victims often are in the criminal process.

Support During the Process

There are certain standards of service set down in the *Victim's Charter*,¹⁵² but there are no legal remedies if the provisions are breached.¹⁵³ The reality is that systems of information exchange are very poor. The police are often the agency that a woman contacts when she wishes to be updated on the progress of her partner's case. She may want to know the outcome of a case, details of bail conditions, the bail address, whether her partner has been found and arrested or charged. She may also want to know about the sentence or a due release date. It is no agency's overriding responsibility to update the victim and whilst the police are often the front-line agency which is approached for information, they themselves are not routinely informed of court results. Some women were kept informed by conscientious police officers who actively sought information, but some also found it difficult to track down even the

¹⁴⁹ Susan, Int. 2 at 18; Clare, Int. 14 at 20.

¹⁵⁰ Int. 14 at 12 and 19.

¹⁵¹ Choongh, S. (1997) *Review of Delay in the Criminal Justice System*, Research Series No 2/97 (London: Lord Chancellor's Department).

¹⁵² Home Office (1996) *Victim's Charter: A Statement of the Rights of Victims of Crime* (London: HMSO).

¹⁵³ Fenewick, H. (1996) 'The rights of victims of crime: Protection from harassment and intimidation', 60 *Journal of Criminal Law* 84-93 at 323.

most straightforward facts, such as court dates and results. Some police domestic violence units and officers supported women by generally keeping in touch,¹⁵⁴ explaining the prosecution and court process,¹⁵⁵ keeping women up to date on progress.¹⁵⁶

Hoyle and Sanders found that the emotional and practical support from domestic violence officers enabled women to continue with the prosecution process.¹⁵⁷ Consistent contact was of crucial importance to Susan. She described feelings of frustration and isolation when her calls were not returned by police officers.¹⁵⁸ But she also had an extremely positive experience. Susan could not sleep before she knew that her husband was in the bail hostel at night. Although she was told that it was “not something we normally do,” one particular officer did call her to put her mind at rest when he was on duty.¹⁵⁹ Leila’s experience was of a failure to keep her “in touch” with the process, including providing information about whether her partner had been arrested, as well as remand, bail and sentencing decisions.¹⁶⁰ This meant that she had to be very proactive in finding out information herself.¹⁶¹ Caroline also felt she could have been kept more “up to date,” but recognised that the police needed “easier access to what happens in court.”¹⁶² Susan’s struggle with the CPS to be kept up to date on the progress of her case and the status of her husband’s bail conditions included letters, phone calls and visits to a court hearing in order to get information.¹⁶³ She said, that she felt that the CPS “haven’t argued my case whatsoever.”¹⁶⁴ Susan’s one source of support during the criminal process came from Victim support.

¹⁵⁴ Jacqui, Int. 15 at 8; Lucy, Int. 4 at 67; Jill, Int. 29 at 23.

¹⁵⁵ Susan, Int. 2 at 12.

¹⁵⁶ Becky, Int. 20 at 4; Clare, Int. 14 at 14; Julie, Int. 13 at 15-16; Yvette, Int. 23 at 14-15; Jill, Int. 29 at 23.

¹⁵⁷ Hoyle and Sanders (2000) *op. cit.* at 28.

¹⁵⁸ Int. 2 at 13.

¹⁵⁹ Int. 2 at 6.

¹⁶⁰ Leila, Int. 22 at 12; Also, Susan, Int. 22 at 12.

¹⁶¹ Also, Susan, Int. 2 at 3 and 11.

¹⁶² Caroline, Int. 21 at 11.

¹⁶³ Int. 2 at 4-5, 12 and 32.

¹⁶⁴ Susan, Int. 2 at 33.

Victim Support is an independent charity, with considerable financial support from central government, that trains volunteers to offer support and information to victims of crime regardless of whether the crime has been reported. In cases of property crime, a victim support worker automatically makes contact with the victim after contact details have been passed on by the police. But in cases of rape, sexual assault, domestic violence and murder, referrals are only made by the police with the consent of the victim. Research has found that police officers rarely tell women about services provided by Victim Support, Women's Aid or Rape Crisis.¹⁶⁵ In this study very few women mentioned that victim support had had any role in their experience. Even when a crime had been reported, and an arrest made, women did not always seem aware of the service. Although Jill was given a leaflet about Victim Support, she did not make contact, because, "I always thought like I could deal with it myself."¹⁶⁶ Yvette was surprised that she had not been contacted by Victim Support, as she had when she was burgled: "I thought they would have done since now they're classing domestic violence as a crime."¹⁶⁷ Women were not always made aware of the service at the initial reporting stage and none mentioned being told about Victim Support at later stages in the process. It is then, when the initial incident is over and a woman is having to make difficult decisions, that she needs support and might be more willing to take up the service.

Women who had been in contact with victim support had different experiences. Susan had been given extensive support, including being accompanied to court. Her perception was that "outside of Victim Support you've got nobody."¹⁶⁸ Ann's Victim Support worker allowed her to "think out loud" about the pros and cons of withdrawing her statement.¹⁶⁹ But Lucy did not find her worker very helpful and only saw her on one occasion.¹⁷⁰ Victim Support helped Julie to fill in a Criminal Injuries

¹⁶⁵ Hoyle (1998) *op. cit.* at 203; Gregory and Lees (1999) *op. cit.* at 181.

¹⁶⁶ Int. 29 at 27

¹⁶⁷ Int. 23 at 47

¹⁶⁸ Int. 2 at 32.

¹⁶⁹ Int. 5 at 12-13.

¹⁷⁰ Int. 4 at 63.

Compensation form.¹⁷¹ No other woman mentioned compensation and Julie had not received a payment at the time of the interview.

Several women commented on the lack of on-going support, particularly after the criminal process was over. This was true for Lucy after her partner's acquittal and for Clare due to the aftermath of her partner's conviction, when she was dealing with her children's contact with their father and attempts to sell their joint home. After their experiences of the lack of support provided in the criminal system both Clare¹⁷² and Susan¹⁷³ said that they could understand why women withdrew support from a prosecution. Both gave evidence in court.

4.3. Criminal Court

One study of domestic violence cases found that over one third of the cases monitored resulted in a conviction, either because of a guilty plea or the prosecution's agreement to a 'bind over'.¹⁷⁴ Only four women, in this research, gave evidence in a criminal trial. That aspect of their stories is considered in more depth in Chapters Six and Seven when the experience of civil and criminal courts are considered together. In common with other research about litigants' experiences of court, the stories told reveal,

*anxiety, difficulty coping with vocabulary, uncertainty about procedure and a pervasive sense that courts are about wrong-doing.*¹⁷⁵

Participating in a criminal trial is an ordeal that is made worse by lack of contact with the prosecutor. For their part the CPS generally see the role as supporter to lie with other services such as the police and Victim Support, partly to do with fears of accusations of 'contaminating' a witness' testimony.¹⁷⁶ Yet the CPS can provide

¹⁷¹ Int. 13 at 5.

¹⁷² Int. 14 at 5 and 21.

¹⁷³ Int. 2 at 13.

¹⁷⁴ Cretny and Davis (1997b) 'Prosecuting domestic assault: Victims failing courts, or courts failing victims?' 36(2) *The Howard Journal* 146-157 at 149.

¹⁷⁵ Genn, H. (1999) *Paths to Justice: What People Do and Think About Going to Law* (Oxford: Hart Publishing) at 225.

¹⁷⁶ *ibid.*

guidance and preparation for the process that is uniquely important to a woman when the only face she may know in the court room is that of the prosecutor. The neutrality of all court staff is central to the adversarial court process and this can add to a woman's sense of loneliness and isolation.¹⁷⁷

Survivors of domestic violence can be accompanied to court by a Victim Support volunteer or police officer. The Witness Service support all witnesses in the Crown Court. Susan was accompanied to court by the Victim Support worker who had helped her throughout the process, but the other women had not used the service or had found it unhelpful. Lucy had a positive experience with the police officer who accompanied her, but the support was limited because the officer was called as a witness. The two could not talk after Lucy had given evidence – a key time when support was needed. A police officer's support may be “geared to sustaining her commitment to the prosecution effort,”¹⁷⁸ rather than paying attention to the woman's interests and wishes, which do not necessarily coincide with those of the prosecution. The Witness Service provided help for Clare on the day of the trial.¹⁷⁹ Visits can be arranged before hand to familiarise the witness with the process. Susan went to observe a court case to familiarise herself with the surroundings and the process of cross-examination.¹⁸⁰ Although there is a specific offence of pre-trial intimidation of witnesses in the case of physical as opposed to verbal threats,¹⁸¹ a woman has no right to a segregated waiting area in court and legal protection has been described as “patchy.”¹⁸² The trauma of waiting in the same room as a defendant is an aspect of many victims' court experience.¹⁸³

It is against the ethics of the bar to prepare a witness for trial, so whilst the barrister might introduce him or herself to the complainant, they will not discuss the details of

¹⁷⁷ Rock, P. (1991) ‘The victim in court project at the Crown Court at Wood Green’, 30(4) *Howard Journal* 301-310 at 308.

¹⁷⁸ Cretney and Davis (1997b) *op. cit.* at 151; Also, Kelly (1999) *op. cit.* at 71.

¹⁷⁹ Clare, Int. 14 at 9.

¹⁸⁰ Int. 2 at 18-19.

¹⁸¹ Criminal Justice and Public Order Act 1994 s.51(1).

¹⁸² Fenwick (1996) *op. cit.* at 84.

¹⁸³ Gregory and Lees (1999) *op. cit.*

the case.¹⁸⁴ All the women involved in criminal prosecutions were surprised that they had not met the Crown Prosecutor before the day of the trial and that they received so little preparation for the experience of giving evidence.¹⁸⁵ Neither Lucy nor Clare had received any preparation for the court process, and neither had had support from any organisation like Victim Support, although both used the Witness Service when they were at court. Susan received on-going visits from a Victim Support worker who she talked to before the trial about her fears of court.¹⁸⁶ But even the help that she received was limited because workers from Victim Support, and others who can provide support like Rape Crisis and Women's Aid, are also vulnerable to accusations of witness 'coaching' and can be cross-examined in court on their relationship with a woman.¹⁸⁷

Experiences of the court itself had similarities in civil and criminal contexts. The court building was regarded as a frightening place and the process itself was one that Susan, Clare, and Lucy all experienced as traumatic.¹⁸⁸ Even when a perpetrator pleaded guilty it was "stressful" waiting to see if he would change his plea.¹⁸⁹ When a case was adjourned the whole traumatic process of mental preparation had to begin again.¹⁹⁰ None of the women who gave evidence were prepared for the experience and understood neither the general structure of the adversarial process, form and content of legal language, or the constraints imposed by rules of evidence and procedure.¹⁹¹ Survivors of domestic violence have similar experiences to other victims involved in criminal prosecutions in that they find their credibility undermined.¹⁹² But this routine work by defence barristers in an adversarial legal

¹⁸⁴ Gregory and Lees (1999) *op. cit.* at 74-75.

¹⁸⁵ Lucy, Int. 4 at 52, 71 and 72.

¹⁸⁶ Int. 2, at 21.

¹⁸⁷ Gregory and Lees (1999) *op. cit.* at 79; Adler (1987) *op. cit.* at 164-165.

¹⁸⁸ Susan, Int. 2 (telephone call); Lucy, Int. 4; Clare, Int. 14 at 10-12.

¹⁸⁹ Julie, Int. 13 at 20.

¹⁹⁰ Julie, Int. 13 at 23; Lucy, Int. 4 at 46-47.

¹⁹¹ Brereton, D. (1997) 'How different are rape trials? A comparison of the cross examination of complainants in rape and assault trials', 37(2) *British Journal of Criminology* 242-262 at 242.

¹⁹² Cretney and Davis (1997b) *op. cit.* at 151.

system may have particularly devastating effects on a woman who is in the process of surviving domestic violence.¹⁹³

In Chapter Seven there is a more detailed discussion of how cross-examination reproduces the domination and abuse of power that is central to domestic violence.¹⁹⁴ Tactics by the defence include minimising and denying the violence and portraying it as a problem of the relationship rather than the responsibility of the perpetrator.¹⁹⁵ Women in this research heard themselves described as 'jealous', 'drunk', 'hysterical' and 'unreliable'. Survivors of domestic violence involved in a prosecution for rape face the same secondary victimisation as all rape victims, but there may be more problems with credibility due to the relationship with the perpetrator, which makes it easier for the defence to suggest consent.¹⁹⁶ In a system in which a victim has no formal link to the prosecution or right to her own legal representation, she may have to look on as key points are not raised or the defence allegations and inaccuracies are not challenged. The close relationship the defendant often appears to have with his legal representatives may add to a woman's sense of isolation and betrayal.¹⁹⁷ The words and attitudes of judges can also minimise and magnify the trauma of a trial¹⁹⁸ and this again is described in more detail in Chapter Seven.

Prosecution barristers can underplay the violence and distort women's stories to fit reduced charges, which do not reflect the actual violence used.¹⁹⁹ In the process of 'charge bargaining' (or 'plea bargaining') the prosecutor may agree to reduce the charge or give a sentence discount in return for the defendant pleading guilty. Charge bargaining is a widespread practice in domestic violence cases and one study found

¹⁹³ *ibid.*

¹⁹⁴ Matoesian, G. (1993) *Reproducing Rape: Domination Through Talk in the Courtroom* (Cambridge: Polity Press).

¹⁹⁵ *ibid.*

¹⁹⁶ Yllo, K. (1999) 'The silence surrounding sexual violence: The issue of marital rape and the challenges it poses for the Duluth Model', in, Shepard, M. and Pence, E. (Eds) (1999) *Co-ordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond* (California: Sage Publications).

¹⁹⁷ Gregory and Lees (1999) *op. cit.* at 79.

¹⁹⁸ Adler (1987) *op. cit.* at 52.

¹⁹⁹ Cretney and Davis (1997b) *op. cit.* at 151-152.

that that out of 11 charges of wounding with intent only one suspect was convicted on that count.²⁰⁰ Charges can even be negotiated at court itself when defence and prosecutors reach agreements by talking outside the courtroom. These practices may save witnesses from the trauma of a full trial as well as the expense to the state, but may be perceived by women as trivialising their experience of violence.²⁰¹ This can cause feelings of injustice on the part of a victim who feels let down when such ‘bargains’ are struck without her involvement. She has no enforceable right to participation or consultation in such decisions.²⁰² As with so many aspects of legal pathways, failure to explain the reasons for charge reduction result in misunderstandings and feelings of frustration for women.

Verdicts and Sentencing

From the perspectives of some survivors, criminal prosecution is not about punishing the perpetrator, but about being protected and having their account of the violence validated.²⁰³ Jill was frustrated when the CPS agreed that her partner could plead guilty to a lesser charge. As a result she had not had an opportunity to give evidence and her partner had been able to deny using a knife to threaten her.²⁰⁴ Joan was unsure of the final result of her partner’s prosecution, because she believed that he had appealed against his conviction. She was frustrated about the accusations that she had given him a black eye and she felt that he had “got away with it.”²⁰⁵ Clare’s partner was accused of attempted rape and indecent assault, but was only found guilty of common assault.²⁰⁶ Clare said:

*I didn’t really want him to go to prison - he was the kids’ father. It was the fact that they found him not guilty that angered me. I know he done it. Tim [15 year old son] knows he done it.*²⁰⁷

²⁰⁰ *ibid* at 148.

²⁰¹ *ibid.* at 148-149.

²⁰² Fenwick (1997) *op. cit.* at 327.

²⁰³ Barron (1990) *op. cit.* at 71.

²⁰⁴ Int. 29 at 18, 22 and 23.

²⁰⁵ Int. 31 at 10-11.

²⁰⁶ Int. 14 at 1.

²⁰⁷ Int. 14 at 15.

Lucy's partner was acquitted of attempted rape, after spending two weeks in prison on remand, but she still felt that in continuing with the case she had "drawn a line in the sand", because "he knows now, he knows I'm going to do something."²⁰⁸ Though they were disappointed by the prosecution process, Joan and Jill both felt it was important that their partners now knew they could not 'get away with' the violence.²⁰⁹ When a perpetrator is convicted the sentence he receives may also be important to a woman.

Sentencing

We know that if the relationship is on-going, prison sentences and fines can cause hardship to partners as well as the perpetrator himself.²¹⁰ Sentences depend on the particular offence in question and may include the option of a custodial or community penalty, suspended sentence or a fine. The sentence may include requirements to attend a domestic violence perpetrator programme, anger-management course or some kind of alcohol or drug treatment program.²¹¹ Breach of these requirements may result in additional penalties. When sentencing someone under the Protection from Harassment Act 1997, the court can make a 'restraining order' similar to a civil injunction prohibiting further harassment or attempts to cause fear of violence and breach of the order is a criminal offence which can result in a prison sentence.²¹² This can be particularly useful for women who are unable to afford civil proceedings, but relies on prosecuting barristers requesting the order at the sentencing stage. Kerry was the only woman who referred to the Act being used and to her knowledge the sentence her partner received was a fine.²¹³

²⁰⁸ Int. 4 at 82.

²⁰⁹ Jill, Int. 29 at 30; Joan, Int. 31 at 12.

²¹⁰ Peel, M., Stewart, J., Stewart, G. and Prior, A. (1991) 'Women partners of prisoners', 30(4) *Howard Journal* 311-327; Hoyle (1998) *op. cit.* at 193.

²¹¹ Criminal Justice Act 1991 s.88(2)(1) and Powers of the Criminal Court Act 1973 Schedule 1A para 2(1).

²¹² Protection from Harassment Act 1997 s.5.

²¹³ Int. 10 at 36.

None of the women, who participated in this research, had been present at their partner's sentencing hearing. However, it is worth noting that in pleas to mitigation defence solicitors can make use of the perpetrator's relationship with the victim or bring other information about the woman herself in an attempt to reduce the sentence, classically that 'she is standing by him.' A woman has no way of challenging statements made at this hearing although the CPS are advised in guidance to challenge "unjust criticism" of the witness.²¹⁴ Jill's father had been present at her partner's sentencing hearing. Jill was concerned about the fact that she was referred to as the perpetrator's wife when they were unmarried and there had been no mention of their baby son, despite the fact that he was held by the perpetrator in order to protect himself when he was arrested.²¹⁵ The solicitor also suggested that the perpetrator had shown "remorse", but this was not how Jill saw the situation.²¹⁶

Research suggests that sentences in domestic violence cases do not reflect the seriousness of the violence.²¹⁷ Cretney and Davis found that complainants felt strongly about this, especially when comparing sentences with other crimes.²¹⁸ The same study found that conditional discharge was used more frequently in domestic violence than other cases of violence and whilst community sentences and imprisonment were used less, the latter sanctions were more likely if the couple were not living together as a couple.²¹⁹ A significant proportion of domestic violence cases were concluded with a 'bind over', including cases in which the woman withdrew or failed to attend court and when a case could have been presented to the court and the woman had come to give evidence.²²⁰

²¹⁴ Crown Prosecution Service (1993) *Statement on the Treatment of Victims and Witnesses by the CPS* (London: HMSO) at 3.

²¹⁵ Int. 29 at 16 and 24.

²¹⁶ *ibid.*

²¹⁷ Cretney and Davis (1997b) *op. cit.* at 153; Edwards, S. (1989) *Policing 'Domestic' Violence: Women, the Law and the State* (London: Sage) at 228-232; Rumney, P. (1999) 'When rape isn't rape: Court of Appeal sentencing practice in cases of marital and relationship rape', 19(2) *Oxford Journal of Legal Studies* 243-269.

²¹⁸ Cretney and Davis (1997b) *ibid* at 153.

²¹⁹ *ibid* at 152-153.

²²⁰ *ibid* at 170-171.

Often victims are not informed of the results of sentencing hearings, or the date on which offenders will be released.²²¹ Leila did not know the detail of the sentences her partner had received.²²² Clare knew her partner had a “conditional discharge” but did not know what that meant.²²³ Jill was frustrated when her partner was given a sentence of 32 months in prison for burglary, but only 18 months probation for the attack on her.²²⁴ The partners of Caroline,²²⁵ Kerry,²²⁶ Sarah²²⁷ and Ann²²⁸ had been given prison sentences for their violence. Becky’s partner had been fined²²⁹ and Julie’s partner received a probation order, £300 fine and an order to attend a domestic violence perpetrator’s course.²³⁰ Julie’s partner had attended the programme whilst awaiting trial, but Julie was unsure of his progress as she had not been in contact with him since he had attended.²³¹ She felt that her partner’s non custodial sentence was “fair” and she had not wanted him to go to prison.²³² Sally mentioned her partner had attended an ‘anger-management’ course but this did not have an affect on his behaviour.²³³ Although not involved in a criminal prosecution, Ruth attended a local support group, which was linked with the perpetrators’ programme run by the Probation Service. Her partner volunteered to take part in the programme, when attempting to reconcile with Ruth, but he did not attend regularly.²³⁴

None of the women in this research had direct contact with the Probation Service, although those that attended the support group had indirect contact through the support group worker. Probation officers can play a key role in challenging violence and helping women to link with other services and acting in a supportive role, but

²²¹ Gregory and Lees (1999) *op. cit.* at 159.

²²² Leila, Int. 22 at 7.

²²³ Int. 14 at 6.

²²⁴ Jill, Int. 29 at 17.

²²⁵ Int. 21 at 7.

²²⁶ Int. 10 at 26.

²²⁷ Int. 6 at 3.

²²⁸ Int. 5 at 2.

²²⁹ Int. 20 at 10.

²³⁰ Int. 13 at 9.

²³¹ Int. 13 at 16-17.

²³² Int. 13 at 15.

²³³ Sally, Int. 24 at 18.

²³⁴ Ruth, Int. 18 at 22.

there are ethical problems with an agency working with offenders fulfilling duties to the victim.²³⁵ Probation officers may also seek the views of victims on sentences and an offender's release, but there is no guarantee that concerns will be acted on and it may result in the raising of false hopes, a false sense of security or an extra burden of responsibility.²³⁶

Cretney and Davis found that even when cases resulted in convictions, there were few in which they could find any benefit to the complainant.²³⁷ They remind us that "criminal prosecution is not *meant* to serve the interests of crime victims."²³⁸ In theory the civil system of court orders is *meant* to serve individuals, but the reality for survivors seeking the help of civil orders is quite different.

4.4. Solicitors and the Injunction Process

Just as police officers are gate-keepers to the criminal system, they can also lead a woman to a civil pathway by advising her to contact a solicitor and giving her information about her options. Sometimes police advice to a woman to, "get an injunction with a power of arrest," reveals a lack of understanding about the limits on availability.²³⁹ Some police officers advised women to contact a solicitor²⁴⁰ and in Becky's case the domestic violence officer had made an appointment with a local solicitor on her behalf.²⁴¹ Other women visited a solicitor without involving the police. Solicitors play an important role as gate-keepers to the process of obtaining civil orders, but for most women injunctions did not feature in their stories and contact with a solicitor was mostly in relation to divorce or child contact proceedings, which are discussed in Chapter Five.

²³⁵ Williams, B. (1996) The Probation Service and victims of crime: Paradigm shift or cop out?', 18(4) *Journal of Social Welfare and Family Law* 461-474.

²³⁶ Fenwick (1996) *op. cit.* at 92.

²³⁷ Cretney and Davis (1997b) *op. cit.* at 155.

²³⁸ *ibid.*

²³⁹ Barron (1990) *op. cit.* at 115.

²⁴⁰ Maria, Int.26 at 3; Becky, Int. 20 at 15; Rachel, Int. 27 at 7.

²⁴¹ Int. 20 at 4.

Court orders are often a last resort following a range of help-seeking efforts,²⁴² and the stories told for this research support that finding. Seeking an injunction is “an enormous step which requires considerable courage and desperation.”²⁴³ The previous chapter highlighted how revealing violence to others has implications for a woman in terms of facing up to her situation. One study found that in seeking a court order,

*[women] had to overcome their fear of leaving the relationship permanently because they knew that obtaining the order would signal the end of their relationship.*²⁴⁴

Other barriers include fear of the abuser retaliating and the fear and shame of appearing in court.²⁴⁵ In research examining survivors’ decision-making around seeking court orders, most women said that were “tired of the abuse” and linked that with making a change in their lives.²⁴⁶ For the majority of the women in that study, the order was a last resort after other sources of help failed, whilst smaller numbers said that the abuser’s failure to seek help for violence or alcohol and drugs problems influenced the decision to obtain an order.²⁴⁷ Many also said that family, friends, police and other agencies had encouraged them to obtain an order. For some women perceptions of the violence were changing, with physical and emotional abuse becoming more severe and more frequent and growing concerns about the effects of the violence on the children.²⁴⁸ This encouraged them to take the step of seeking a court order.²⁴⁹ The civil system may be preferable to the criminal one, when a woman wishes to have more control over the legal process or does not want criminal sanctions against her partner, either to avoid increasing his violence or to ensure continued financial support.²⁵⁰

²⁴² Horton, A., Simionidis, K. and Simionidis, L. (1987) ‘Legal remedies for spousal assault: Victim characteristics, expectations and satisfaction’, 3(2) *Journal of Family Violence* 265-279 at 275.

²⁴³ Barron (1990) *op. cit.* at 37.

²⁴⁴ Fishcher and Rose (1995) *op. cit.* at 418.

²⁴⁵ *ibid.*

²⁴⁶ *ibid* at 416.

²⁴⁷ *ibid.*

²⁴⁸ *ibid.*

²⁴⁹ *ibid.*

²⁵⁰ Gondolf, E., McWilliams, J., Hart, B. and Sterling, J. (1994) ‘Court response to petitions for civil protection orders’, 9 *Journal of Interpersonal Violence* 503-517 at 504.

It has been suggested that court orders may be more beneficial for women who seek them at an early stage in the pattern of violence, which may allow them to change the “power dynamics of the relationship.”²⁵¹ But it is not possible to identify how many injunctions are obtained at a relatively early stage in the process of experiencing domestic violence. Maria mentioned that her solicitor was prepared to serve an injunction on her partner if there were any more incidents of harassment.²⁵² In Chapter Seven there is a more detailed discussion of how court orders can be a “psychological as well as legal victory,” in allowing a survivor to demonstrate a public act of strength to the perpetrator.²⁵³ Chapters Six and Seven consider the importance of solicitors’ relationships with survivors, in terms of listening, speaking in language she understands and treating her with respect.²⁵⁴

A crucial barrier to obtaining an injunction is money. Injunction proceedings can cost a non-legally aided client hundreds of pounds and are particularly expensive when they are contested. Some of the women interviewed qualified for legal aid, but had concerns about future repayments.²⁵⁵ Lucy was not able to meet the financial criteria because she was working.²⁵⁶ One option for a woman is self-representation in the injunction application process. Lucy attempted to represent herself in a child contact dispute after losing confidence in her solicitor during injunction and divorce proceedings. She was unprepared for the complexity of court language and conventions as well as the legal rules themselves. A local solicitor who heard about her experience from a colleague offered free representation. Her experience is described in more detail in Chapter Seven.

Some women had obtained injunctions before the Family Law Act 1996 and others after, but this chapter uses the new terminology of ‘non molestation’ and ‘occupation’

²⁵¹ Schollenberg, E. and Gibbons, B. (1992) ‘Domestic violence protection orders: A comparative review’, 10 *Canadian Journal of Family Law* 191-238 at 233.

²⁵² Maria, Int. 26 at 21.

²⁵³ Fischer and Rose (1995) *op. cit.* at 424.

²⁵⁴ *ibid.*

²⁵⁵ Amelia, Int. 28 at 13; Rachel, Int. 27 at 17 and 24; Sally, Int. 24 at 15; Yvette, Int. 23; Helen, Int. 12; Kerry, Int. 10 at 24; Kate, Int. 3 at 40.

²⁵⁶ Int. 4 at 42-43.

orders. Remedies under the Protection from Harassment Act 1997 may be useful if the partners have never lived together or if there is no proof of a threat of actual physical violence and this can result in damages as well as an injunction. None of the women in this research mentioned using this Act. But Jill's solicitor had advised her of the potential for using the 1997 Act if the harassment continued.²⁵⁷ Some women had obtained occupation orders, usually in the process of divorce and a couple had bail conditions and had decided that an injunction would not add to their protection. There often seemed to be confusion over the effects of an injunction, so that it was sometimes difficult to discover which kind of injunction a woman had applied for or received. Becky said,

*I got an injunction out on him, which I thought stopped him coming up here, but it never. No one told me that. It was just an order so I didn't get harassed by him, which . . . ran out at the weekend.*²⁵⁸

Caroline believed that she had 'broken' the injunction when she let her partner into the house when he was sober.²⁵⁹ Her story is considered further in Chapter Six

Barron's research found that some solicitors discouraged injunction applications and gave incorrect advice.²⁶⁰ These stories involve mixed experiences with solicitors relating to injunctions. When Jacqueline first visited a solicitor she was told that she needed "physical bruises and physical wounds" before the solicitor could help.²⁶¹ Caroline had not renewed her injunction on the day it "ran out" because her partner was in prison. When he was due for release her solicitor told her that she would have to wait for him to "foul up" before getting another injunction.²⁶² The fact that Clare had applied for an injunction on the day before her husband attempted to rape her was not bought up in a later criminal case.²⁶³ As in other research,²⁶⁴ this study found that some women had problems finding their partners in order to have an injunction

²⁵⁷ Int. 29 at 23.

²⁵⁸ Int. 20 at 4; Also, Yvette, Int. 23 at 15.

²⁵⁹ Int. 21 at 25-6.

²⁶⁰ Barron (1990) *op. cit.* at 111.

²⁶¹ Int. 15 at 5; Also, Becky, Int. 20 at 15; Lucy, Int. 4 at 11.

²⁶² Int. 21 at 20.

²⁶³ Clare, Int. 14 at 10.

²⁶⁴ Barron (1990) *op. cit.* at 111.

served.²⁶⁵ Kerry and Lorraine had injunctions issued in an emergency or *ex parte* - in the absence of the respondent.²⁶⁶

Experiences of ‘injunction courts’ were similar to those of ‘criminal courts’, and as with other litigants, women in this research tended not to distinguish between the two, associating both with anxiety, an alien world and a sense of having done something wrong.²⁶⁷ Women also experienced harassment and abuse when waiting in court in the same area as the perpetrator and had problems due to the lack of child care facilities, as other research into survivors’ experiences has revealed.²⁶⁸ There was a lack of understanding of court procedures, such as the practice in some proceedings, that a barrister represents a client in court, rather than the solicitor. Women were surprised when they were left alone at court or when a representative from the solicitor’s office arrived instead of the person who they were used to dealing with. Chapter Seven highlights the pain of the trial process, in criminal and civil contexts, describing the sense of isolation and exclusion that women experienced in both.

In an ‘injunction court’ hearing the court may accept an ‘undertaking’ by the perpetrator, which is a voluntary agreement by him not to harass the applicant. This does not involve admitting to any allegations and a power of arrest cannot be attached, although breach of the undertaking is enforceable.²⁶⁹ Such undertakings are administratively convenient for legal representatives and the judge and avoid the need for a woman to give evidence in court. There is evidence that pressure is applied by legal actors on women for undertakings to be accepted²⁷⁰ and it has been said that they are often “regarded with derision by the men and with resentment by the women.”²⁷¹ After the hearing which followed the grant of an *ex parte* injunction, Kate’s partner gave an undertaking, but she was not told by her solicitor that no power of arrest

²⁶⁵ Leila, Int. 22 at 13. ; Yvette, Int. 23; Jacqui, Int. 15 at 26; Caroline, Int. 21 at 1.

²⁶⁶ Kerry, Int. 10; Lorraine, Int. 7 at 3.

²⁶⁷ Genn (1999) *op. cit.* at 231.

²⁶⁸ Barron (1990) *op. cit.* at 43 and 45.

²⁶⁹ Family Law Act s.46(4).

²⁷⁰ Barron (1990) *op. cit.* at 108-109.

²⁷¹ *ibid.* at 111.

could be attached until after the undertaking had been accepted.²⁷² Helen said that after the judge refused an occupation order her husband made an undertaking not to harass her, “which was an important thing for me.”²⁷³ During her divorce Helen’s application for an occupation order was rejected because the house was considered large enough for her partner to continue living there. Finally both were restricted to their own bedrooms and undertook not to harass each other.²⁷⁴ Jenny made a similar cross-undertaking during her divorce.²⁷⁵ This practice of cross-undertakings has been highlighted as potentially abusive in blaming women for the abuse.²⁷⁶ Under the Family Law Act 1996, a court cannot accept an undertaking in any case where it would attach a power of arrest to an order.²⁷⁷ We have yet to see if this will reduce the number of undertakings accepted.²⁷⁸

Injunctions can provide women with “peace of mind” and “breathing space.”²⁷⁹ Caroline said that the injunction made her feel “safer.”²⁸⁰ Jacqui described a court order as “just having something to back you up” which “makes you more stronger.”²⁸¹ Several stories included the granting of an injunction with a power of arrest that makes it possible for the perpetrator to be arrested if the injunction is breached.²⁸² Chapter Two discussed how these powers are more frequently attached by courts since the Family Law Act 1996 came into force, but reactions to injunctions differ between police officers and some may be reluctant to arrest even when a power is attached.²⁸³ Yvette’s partner was arrested for breach of an injunction, which involved her in the “frightening” experience of going to court.²⁸⁴ Lorraine’s partner was arrested due to breaching an injunction. Although he was released the following day, this gave her

²⁷² Int. 3 at 25-26.

²⁷³ Int. 12(II) at 15.

²⁷⁴ Int. 12 at 2-3.

²⁷⁵ Int. 9 at 7.

²⁷⁶ Barron (1990) *op. cit.* at 57-58.

²⁷⁷ Family law act 1996 s.46(3).

²⁷⁸ Lockton and Ward (1997) *op. cit.* at 76.

²⁷⁹ *ibid* at 74.

²⁸⁰ Caroline, Int. 21 at 25; Jacqui, Int. 15 at 17; Caroline, Int. 21 at 25.

²⁸¹ Int. 15 at 20.

²⁸² Iris, Int. 11 at 18-19; Yvette, Int. 23 at 11; Jacqui, Int. 15 at 17.

²⁸³ Barron (1990) *op. cit.* at 67-68.

²⁸⁴ Yvette, Int. 23 at 10 and 16.

enough time to get her children back.²⁸⁵ Caroline initially did not want to apply for an injunction because she knew that her partner would be “invited” to the hearing,²⁸⁶ but she eventually did get an order with a power of arrest.²⁸⁷ Barron found that a high percentage of breaches do not reach court and those that do rarely result in prison sentences for contempt.²⁸⁸ The practical and emotional influences on women’s decisions to co-operate with a criminal prosecution may affect decisions to enforce an order by calling the police or returning to court.²⁸⁹ There is also evidence of legal representatives filtering cases so “only the most serious, flagrant and persistent breaches” reach court.²⁹⁰ One limitation of the system is that there is no means of periodic review of injunctions in the courts. The partners of both Kate²⁹¹ and Jacqui²⁹² looked for them as soon as the injunction had expired. The limitations of injunctions and possibilities for court orders and processes which better serve survivors needs is discussed further in Chapters Six and Seven.

* * *

With all of these different attempts to make a stand against the abusive partner and ‘draw a line in the sand’, including police involvement, arrest, prosecution and use of civil injunctions, it is possible that a woman is continuing her relationship. There were several women who were involved in criminal prosecutions, and had been awarded injunctions, but were still living in the hope of making the relationship work. The next chapter deals with several pathways through domestic violence law which usually indicate that a woman has abandoned that hope and is trying to create a new life. These pathways are of the divorce process, child contact proceedings and the consequences of leaving home.

²⁸⁵ Int. 7 at 3.

²⁸⁶ Int. 21 at 20; Also, Becky, Int. 20 at 7.

²⁸⁷ Int. 21 at 25.

²⁸⁸ Barron (1990) *op. cit.* at 70.

²⁸⁹ Fischer and Rose (1995) *op. cit.* at 417.

²⁹⁰ Kewley, A. (1996) ‘Pragmatism before principle: The limitations of civil law remedies for the victims of domestic violence’, 18(1) *Journal of Social Welfare and Family Law* 1-10 at 5.

²⁹¹ Int. 3 at 26.

²⁹² Int. 15 at 18.

Chapter Five

Pathways: “Creating a new life”¹

Pathways through domestic violence law may be limited to those described in Chapters Three and Four. However, in order to “create a new life” outside the relationship with the abusive partner, or as a result of trying to start again, many of the women who participated in this research experienced additional pathways. These included the divorce process, dealing with their ex-partner’s applications for contact with their children and leaving home, which often involved social security and housing law provisions. The stories related here continue to reveal the diversity of pathways through domestic violence law. The chapter begins by discussing a pathway relevant to married women only - that of divorce

5.1. Divorce Process

For survivors of domestic violence, not being married avoids the need for divorce and the limited ‘rights’ of unmarried fathers may work to a woman’s advantage by avoiding child contact proceedings.² Whilst marriage is sometimes considered valuable in giving women financial security in a relationship, in a domestic violence situation it can prolong the difficult process of separation. Lucy regretted marrying her partner because “it gave him a lot more legal control over the situation”.³ Some women may find divorce impossible for religious reasons and may always be tied in marriage to the abuser.⁴ For most people the decision to divorce is a difficult one and

¹ Jenny, Int. 9 at 21.

² Saunders, H. (2000) *Briefing Paper on Domestic Violence and Child Contact* (Bristol: Women’s Aid Federation England) at 7-8.

³ Lucy, Int. 4 at 2.

⁴ Mama, A. (1989a) *The Hidden Struggle: Statutory and Voluntary Sector Responses to Violence Against Black Women in the home* (London: London Race and Housing research Unit) at 124.

involves a long process of consideration. Several women in this research had begun the process of divorce more than once.⁵ Emma said:

*The first time I went for divorce he talked me round and said it would never happen again.*⁶

Ruth was not involved in divorce and did not intend to be:

*As a Christian my faith did not allow me to be at peace with going through with either a legal separation or a divorce.*⁷

Ruth also did not trust her husband to be honest about his finances and, being the wage earner, she feared that she would be worse off if she divorced.⁸ Research suggests that women do suffer in the divorce process when their husbands do not disclose assets.⁹ For the other married women, the divorce process was an important part of the legal response to domestic violence.

Domestic violence during marriage is a common feature in applications for divorce.¹⁰ It continues to play a role in the divorce process as the survivor negotiates for assets after separation in a “climate of fear.”¹¹ In recent years there has been a shift in the ‘ideal’ of divorce from being a ‘clean break’ end to a marriage to the contemporary notion of divorce as a process which allows the couple to establish a new relationship, providing them with opportunities for growth and personal fulfilment.¹² In Chapter Two there is a brief summary of the Family Law Act 1996 provisions changing divorce law by removing the concept of fault and making the process of mediation central to the process. However, the women interviewed for this research talked of divorce under the existing law.

⁵ Amelia, Int. 28 at 5 and 12; Helen, Int. 12 at 2.

⁶ Int. 16 at 3.

⁷ Int. 18 at 5.

⁸ Int. 18 at 6.

⁹ Davis, G., Cretney, S. and Collins, J. (1994) *Simple Quarrels* (Oxford: Clarendon Press).

¹⁰ Kaganas, F. and Piper, C. (1994) ‘Domestic violence and divorce mediation’, *Journal of Social Welfare and Family Law* 265-278.

¹¹ Kurz, D. (1996) ‘Separation, divorce and woman abuse’, 2(1) *Violence Against Women* 63-81 at 76.

¹² Fineman, M. (1988) ‘Dominant discourse, professional language, and legal change in child custody decision-making’, 101(4) *Harvard Law Review* 727-774.

In chapters Six and Seven the relationships between women and their solicitors is considered in more depth. Women resented delays in responses to letters and telephone calls, feeling concern that their solicitors were not more proactive in pursuing cases. There was general concern about the lack of explanation about the divorce process. A petition for divorce can only be made after one year,¹³ which presents difficulties for women like Lucy. Her partner's violence was severe during the first few months of their marriage. The person petitioning for the divorce has to show that the marriage has 'irretrievably broken down'.¹⁴ This must be established by showing one of five 'facts: the spouse's adultery, unreasonable behaviour, desertion for two years, or having lived apart for two years (with the partner's consent), or five years when there is no consent.¹⁵ Only Helen mentioned legal grounds of the divorce that was based on her partner's "unreasonable behaviour" due to relationships with other women.¹⁶ She said that she had tried to keep his behaviour out of the process by trying to base the divorce on a period of separation, but the fact that she had cooked and washed for her husband made this impossible. She said: "Yet why shouldn't I do it, it makes my life easier."¹⁷

Delay is a consistent feature of the divorce process¹⁸ and one of the most difficult aspects for Helen was "the slowness of everything."¹⁹ Jenny said, "I'm really angry with the legal system because it's taken so long."²⁰ Delay was sometimes tied up with financial issues in the division of assets and future agreements as to on-going support for children. Legislation governing the divorce process emphasises that in reaching decisions, courts should have regard to all the circumstances of the case, but firstly to the welfare of children.²¹ The court has to consider the possibility of a 'clean break'

¹³ Matrimonial Causes Act 1973 s.1(1) as amended by Matrimonial and Family Proceedings Act 1984.

¹⁴ *ibid.*

¹⁵ Matrimonial Causes Act 1973 s.1(2); For more detail, see, Lowe, N. and Douglas, G. (1998). *Bromley's Family Law* (Ninth Edition) (London: Butterworths) at Chapter Seven.

¹⁶ Int. 12 at 19.

¹⁷ Int. 12 at 8.

¹⁸ Davis *et al* (1994) *op. cit.* at 139.

¹⁹ Int. 12 at 25; Also, see Ann, Int. 5; Amelia, Int. 28 at 16.

²⁰ Int. 9 at 10.

²¹ Matrimonial and Family Proceedings Act 1984 s.25A.

between the parties.²² Helen was anxious that her husband should not have on-going financial commitments to her so that they could have a “clean break”.²³ Chapter Two discussed the trend towards mediation in the divorce process, particularly in the reforms of the Family Law Act 1996, which are not yet in operation.

There is a great deal of evidence to suggest that many agreements are reached outside court, usually between legal representatives, avoiding some of the delay involved in waiting for court hearings and reaching an agreement rather than having one imposed by the court. Jenny was influenced to reach agreement by the fear that the legal costs would be awarded against her, as can happen if a formal offer is declined and at the court hearing the amount awarded is no more than was originally offered.²⁴ For Lucy the divorce process dragged on for several years, whilst arrangements were made for her to ‘buy out’ her ex-husband from the mortgage. This delay was partly due to the mortgage company and her husband’s reluctance to sign a transfer. Lucy said:

I found a letter from [his] solicitor saying, you know, “I see you want to delay things.” And obviously they just colluded in not answering letters and . . . he went away on a lot of conferences. Nothing could be done when he’s gone away.

Other research has recognised that prolonging the stress and cost of litigation can be used as an exercise of power by one party in the divorce.²⁵ The trauma of the delay may be exacerbated if the parties continue to live in the same house.

During the divorce process, Lucy’s husband was living in the same house as her and their daughter and only left when he was arrested for the attempted rape of Lucy. She said: “It is extremely hard to live in the same house as someone you have grown to hate.”²⁶ Rachel lived in the same house as her husband during most of the divorce process, and spent several months sleeping on the sofa. He left after a violent incident

²² *ibid.*

²³ Int. 12 at 7.

²⁴ Davis *et al* (1994) *op. cit.* at 17-18.

²⁵ *ibid* at 58.

²⁶ Lucy, Int. 4 at 16.

when Rachel called the police and they convinced him to leave.²⁷ She has had on-going financial problems due to her partner's refusal to support her and her son.²⁸ Emma's husband also stayed in the family home throughout the divorce. Helen returned to the marital home with her children after she was unable to find affordable alternative accommodation and living with her sister became impractical. When she participated in the research she was still living in the same house as her husband and was in the process of applying for an injunction so that the divorce could be completed with her and her husband living separately.²⁹ Jenny and her husband ran a business from home. For 18 months of the divorce her husband spent his working days in the conservatory. She described it as "the worst imaginable eighteen months." Jenny described how she would try to spend all day out of the house. The fact that her husband would be at the house until half past eleven at night meant that she could not have friends to visit. Clare's husband was convicted of assaulting her while they lived in the same house during the divorce process, but Clare was still waiting for the sale of their house a month after his conviction.³⁰

During divorce child contact issues are dealt with in separate proceedings to disputes over financial issues.³¹ Some women will find themselves involved in different proceedings that overlap and have implications for one another. In one week, during Lucy's divorce, after her husband's arrest for attempted rape, she was involved in hearings relating to an injunction and child contact.³² On-going problems over which party is to remain in the marital home and who is to make financial contributions to the parent who lives with the children means that disputes over children and financial arrangements are intimately connected. In Jenny's case her husband did not pay maintenance for the first year after the divorce and there was delay in the proceedings when the Magistrate's Court said that the case was too complicated for them to deal with and had to go to the County Court.³³ She discussed her frustration as she had to

²⁷ Rachel, Int. 27.

²⁸ Rachel, Int. 27 at 2-3.

²⁹ Helen, Int. 12 at 4.

³⁰ Int. 14 at 25.

³¹ Davis *et al* (1994) *op. cit.* at 11-12.

³² Lucy, Int. 4 at 27-8.

³³ Int. 9 at 11-12.

endure separate proceedings, involving different court appearances and different judges, which dealt with over-lapping issues. Every court appearance involved the trauma of contact with her husband, which added considerably to the stress of the court process itself. Unmarried and married women may also become involved in proceedings relating to children concerning financial support, issues of 'parental responsibility' and contact disputes.

5.2. Legal proceedings Relating to Children

5.2.1. Financial Support for Children

Several women referred to problems relating to the perpetrator's financial support of the children. The Child Support Agency (CSA), established under the Child Support Act 1991, has the role of enforcing absent parents' duty to support their children. Parents who do not co-operate with the agency have their benefits reduced, unless they can show 'good cause', such as a risk of harm to them or their children.³⁴ Women had different attitudes towards seeking financial support from their partners. Leila did not want maintenance from her partner and after she explained her situation to the CSA, and gave them a police incident number, she was not contacted again.³⁵ Ann said: "In some ways I don't want [money] because that's a further tie."³⁶ Jacqui did not want money from her partner as she feared he would then want to see the children.³⁷ Yvette's partner had refused to pay money after she had refused a contact visit.³⁸ Rachel's³⁹ and Kerry's⁴⁰ respective partners had not returned paperwork to the agency. Sally's partner was working abroad and the CSA had said this made it difficult to claim money from him.⁴¹

³⁴ Davis, G., Wikeley, N. and Young, R. (1998) *Child Support in Action* (Oxford: Hart) at 46-50.

³⁵ Int. 22 at 15.

³⁶ Int. 5 at 17.

³⁷ Int. 15 at 28.

³⁸ Int. 23 at 13.

³⁹ Int. 27 at 3.

⁴⁰ Int. 10 at 37.

⁴¹ Int. 24 at 7; Also, Kate, Int. 3 at 22.

5.2.2. Applications for Parental Responsibility and Contact

There has been increased attention to the issue of contact between fathers and children in cases of domestic violence.⁴² In the last decade the change of policy emphasis in divorce law from past fault to a pragmatic focus on the future has corresponded with the ideal of consensual shared parenting, parental responsibility and the ‘best interests of the child’ in legal proceedings related to children.⁴³ The Children Act 1989 replaced the proprietorial concepts of ‘custody’ and ‘access’ with the notion of ‘parental responsibility’ and preference for the words ‘residence’ and ‘contact’ to focus on the shared aspect of parenting and emphasise responsibilities over rights. This is based on the belief that it is generally in the best interests of children to have contact with both parents. There is strong case law to suggest that contact will “almost always be granted”⁴⁴ and applications for contact are refused in less than 2% of applications.⁴⁵

This research found that in the lead up to separation, when women ‘come to the borderline’ and attempt to ‘draw lines in the sand’, they feel that they are condemned for trusting their partner and believing his promises. So, women are criticised when they allow their partner into the house in breach of an injunction or withdraw support from a prosecution. Then, after separation, in contact proceedings and divorce, when women are trying to ‘create a new life’ they are encouraged by legal actors to trust their partner and act in the best interests of their children by facilitating contact and trying to reach compromises.

⁴² Radford, L., Sayer, S. and Aid for Mothers in Contact Action (AMICA) (1999) *Unreasonable Fears? Child Contact in the Context of Domestic Violence: A Survey of Mothers’ Perceptions of Harm* (Bristol: Women’s Aid Federation England); *Dispatches*, 15th April 1999, Channel 4 (produced by Lynn Ferguson).

⁴³ Cahn, N. (1991) ‘Civil images of battered women: The impact of child custody decisions’, 5 *Vanderbilt Law Review* 1041-1097; Smart, C. and Neale, B. (1997) ‘Experiments with parenthood’, 31(2) *Sociology* 201-219.

⁴⁴ Master on the Rolls in *Re O (A Minor) (Contact: Imposition of Conditions)* [1996] 2 FLR 124; Also, *Re H (Contact principles)* [1994] 2 FLR 969; Advisory Board on Family Law: Children Act Sub-Committee (1999) *A Consultation Paper on Contact Between Children and Violent Parents: The Question of Parental Contact in Cases Where There is Domestic Violence* (London: Lord Chancellor’s Department).

⁴⁵ Court Service figures cited in, Saunders (2000) *op. cit.* at 2.

Rather than relying on contact with both parents, the well-being of children after their parents' separation is dependent on a wide range of complex issues including socio-economic and psychological factors and the stability and quality of care provided by the residential parent.⁴⁶ The way the parents relate to each other affects the success of shared parenting.⁴⁷ Domestic violence can prevent meaningful shared decision-making and influence the perpetrator's role as a parent.⁴⁸ There is evidence of links between physical and sexual abuse and the psychological and emotional effects of domestic violence on children before and after separation.⁴⁹ Cahn discusses cases in which abusers who have killed their partners are subsequently awarded contact with and residence of their children.⁵⁰ There have been a number of cases in this country of fathers killing their children after relationships with the children's mother had ended and during contact disputes.⁵¹ Kate had stayed in the same refuge as a woman whose partner killed his four children and himself on a contact visit.⁵² In 1996 Imtiaz Begum was stabbed to death in a railway station by her partner when collecting her son from a contact visit. Her four children were later found dead.⁵³ In 1999 Julian Philpott killed his two sons and himself after a contact order had been made, despite the fact that Philpott was due to appear in court on charges of threatening to kill his ex partner and causing her actual bodily harm.⁵⁴ This year Frank Fairless killed his two sons and himself whilst on a contact visit.⁵⁵ Women's Aid have used the murder of Georgina McCarthy, by her husband, to show how contact proceedings can be used as a form of violence and can also help perpetrators to locate women who are trying to escape. Georgina was killed in front of her son, who was then abducted and returned

⁴⁶ Smart and Neale (1997) *op. cit.* at 204.

⁴⁷ *ibid.*

⁴⁸ Walker, L. and Edwall, G. (1987) Domestic violence and determination of visitation and custody in divorce', in, Sonkin, D. (Ed) (1987) *Domestic Violence on Trial: Psychological and Legal dimensions of Family Violence* (New York: Springer).

⁴⁹ Radford *et al* (1999) *op. cit.* at 14-16.

⁵⁰ Cahn (1991) *op. cit.* at 1077-1081.

⁵¹ For example, *Guardian* (2000) 'Man facing custody loss killed son, 7', 11th February.

⁵² Int. 3 at 38.

⁵³ Radford *et al* (1999) *op. cit.* at 1.

⁵⁴ Saunders (2000) *op. cit.*

⁵⁵ Carter, H. (2000) *Guardian*, 18th April.

a few days later. He has now been adopted. His father is serving life imprisonment.⁵⁶ When women are trying to create a life away from the abuser, shared parenting can be lethally dangerous and prevent the important psychological separation from the perpetrator. Yet domestic violence is still not considered a key issue in child contact decision-making.

Legal proceedings relating to children, actual, threatened or feared, were of crucial importance to many of the women who participated in this research. Disputes over contact with children and court proceedings, which often extend over long periods of time, are ways in which a perpetrator can continue violence after separation.⁵⁷ Jacqui's partner had expressed no interest in seeing his children since the separation. No legal proceedings had been instituted, but she feared that he might make a legal claim relating to the children in the future.⁵⁸ Jacqui's story links this fear of future child-related disputes and other legal proceedings. She had spent many months in several refuges and had recently moved to a new home with her three children. She was shopping when she met her ex-partner who assaulted her. As a result of this a prosecution hearing was pending and Jacqui was adamant that she wanted nothing to do with the case. This is not surprising given the possibility of re-establishing contact with her partner and their children. Refusing to co-operate with a prosecution may be part of a woman's safety plan, by forming a bargain with the ex-partner - she will not testify if he leaves her alone.⁵⁹ When women discuss their experiences of domestic violence, legal proceedings relating to children are often heavily criticised.⁶⁰ For women in this research criticisms related to applications for parental responsibility and for child contact.

⁵⁶ Women's Aid Federation England (1998) 'Sequence of events leading up to the murder of Georgina McCarthy' (Unpublished paper on file with author).

⁵⁷ Walker and Edwall (1987) *op. cit.*; Kurz (1996) *op. cit.* at 76; Mahoney, M. (1991) 'Legal images of battered women: Redefining the issue of separation', 90 *Michigan Law Review* 1-94 at 44; Radford *et al* (1999) *op. cit.* at 18.

⁵⁸ Int. 15 at 28.

⁵⁹ Mills, L. (1998) *The Heart of Intimate Abuse - New Interventions in Child Welfare, Criminal Justice and Health Settings* (New York: Springer Publishing) at 151.

⁶⁰ Islington Women's Equality Unit (1995) *The Needs and Experiences of Black Minority Ethnic Women's Experiences of Domestic Violence* (London: Islington Women's Equality Unit).

Applications for 'parental responsibility'

The issue of parental responsibility for children is different depending on whether the parents are married, although there have been suggestions by the Lord Chancellor that this situation be changed so that married and unmarried fathers have the same rights.⁶¹ Married partners automatically share parental responsibility for their children,⁶² but an unmarried father must either reach agreement with the mother and register the agreement with the court or apply for a court order awarding him parental responsibility.⁶³ This gives the father the legal rights of a parent including the right to consent to medical treatment on behalf of his child, to receive periodic school reports and to know his child's doctor. He also has a right to a say in the child's religious upbringing, extended stays abroad and adoption. A parental responsibility order does not give rights to contact with the children and this is dealt with in court proceedings if the parents cannot agree. Sharon was relieved she had not married her partner because she felt that would have made it more complicated with him having automatic parental responsibility.⁶⁴ Maria's partner had threatened to apply for parental responsibility and she feared interference from him in everyday matters like their son's hair cut and permission for holidays.⁶⁵

Kate's story shows that the 'rights' inherent in the concept of 'parental responsibility' can have important implications for a woman who does not want her ex-partner to know where she is living. Kate's ex-partner applied for parental responsibility and she reluctantly gave her consent when she knew that this was the only way he could consent to medical treatment for their daughter when she was visiting him. Kate was concerned that periodic school reports would give her partner updates as to her whereabouts, even if the court eventually refused contact.⁶⁶ When her partner did have parental responsibility he immediately used it to challenge her about their daughter's inoculations and requested a list of all her baby sitters so that he could have

⁶¹ Dyer, C. (1998) *Guardian*, 10th March.

⁶² Children Act 1989 s.2(1).

⁶³ Children Act 1989 s.2(2).

⁶⁴ Int. 30 at 17.

⁶⁵ Int. 26 at 16-17.

⁶⁶ Int. 3 at 39-40.

them police checked.⁶⁷ Yvette wished to change her daughter's surname, from her partner's to her name, to avoid the embarrassment that came from the difference. Her barrister convinced her to exchange an agreement of parental responsibility for her partner's consent to their daughter's change of name. Jill's partner pressurised her to register their son using his name rather than Jill's, but since leaving him she has had it changed by deed poll.⁶⁸ Georgina McCarthy was killed by her husband in May 1998, after not being able to flee the country and hide, partly due to not being able to change her son's surname and also because of other issues relating to child contact proceedings.⁶⁹

Child Contact Proceedings

As with parental responsibility, an order for contact or for residence of a child, known as a 'section 8 order',⁷⁰ is only necessary if the parents cannot reach an agreement. Some contact cases involving domestic violence are agreed outside court.⁷¹ In the *Unreasonable Fears* study of survivors experiences of child contact disputes, one in five women were advised by solicitors not to mention the violence and more than half said that they were persuaded by lawyers to give in to applications for contact "for the sake of the children".⁷² All the cases in this research involved some kind of legal process in making contact arrangements, although most women had tried informal arrangements first, which had broken down. Informally arranged contact may present more risks to children's safety because there is no public surveillance and accountability.⁷³ The Family Law Act 1996 requires that a court considers exercising its Children Act 1989 powers in the divorce process, but does not require that the spouses have made satisfactory arrangements for their children as a condition

⁶⁷ Int. 3 at 31-2.

⁶⁸ Int. 29 at 13.

⁶⁹ WAFE (1998) *op. cit.*

⁷⁰ Children Act 1989 s.8.

⁷¹ Radford *et al* (1999) *op. cit.* at 11; Hester, M., Pearson, C., and Radford, L. (1997) *Domestic Violence: A National Survey of Court Welfare and Voluntary Sector Mediation Practice* (Bristol: Policy Press) at 7.

⁷² Radford *et al* (1999) *op. cit.* at 23.

⁷³ Radford *et al* (1999) *ibid* at 20.

precedent to a divorce or separation being made.⁷⁴ This means that, generally, contact with a violent parent, however damaging and dangerous, is permitted whilst the parents appear to ‘agree’. Married and unmarried fathers (with or without parental responsibility) do not require the permission of the court to make an application.⁷⁵ The Court of Appeal has held that as a matter of principle domestic violence is not a bar to an order for contact.⁷⁶ In the Family Law Act 1996, there exists a presumption that a child generally benefits from contact with both parents,⁷⁷ but the Act also provides that any risk of violence to the parents or children from the other party should “so far as reasonably practicable, be removed or diminished.”⁷⁸ Neither the 1989 nor the 1996 Acts mention domestic violence as a specific issue to consider when making an order.

Many survivors of domestic violence attempt informal arrangements and do not obstruct contact between their partners and children.⁷⁹ There is no evidence to support the conclusion that hostility to contact is common amongst mothers.⁸⁰ In fact, there is evidence of great concern by mothers to preserve relationships between fathers and their children.⁸¹ In their study Hester and Radford found that most women initially supported contact for various reasons. Some because children themselves wanted contact or because they felt the children needed to know their father. Other reasons were to ensure fathers took responsibility for their children or to help soften the anger of the children about the separation. Some believed the partner was a “good father” or wished for their children to maintain cultural or religious links with their father, his family or community.⁸²

⁷⁴ Family Law Act 1996 s.11.

⁷⁵ Children Act 1989, s.10.

⁷⁶ *Re M (minors) (contact)* [1998] *Times*, 13th February.

⁷⁷ Family Law Act 1996 s.11(4).

⁷⁸ *ibid* s.1(d).

⁷⁹ Davis *et al* (1994) *op. cit.* at 59.

⁸⁰ Hester and Radford (1996) *Domestic Violence and Child Contact Arrangements*, Social Policy Research 100 (York: Joseph Rowntree Foundation).

⁸¹ Smart, C. (1991) The legal and moral ordering of child custody’, 18(4) *Journal of Law and Society* 485-500; Radford *et al* (1999) *op. cit.* at 16.

⁸² Hester and Radford (1996) *op. cit.*

All but two of the women eventually involved in legal proceedings relating to the children had tried to agree arrangements for contact without the involvement of the court. Sally wanted her sons to see their father regularly and “build up a relationship with him” but her partner had not contacted her solicitor to arrange contact as she had suggested to him.⁸³ Yvette was using her solicitor to pursue her partner to arrange contact with his son, Ben, because she knew how happy it made him to see his father.⁸⁴ Research has indicated that women generally only attempt to restrict or prevent contact when they feel their children’s physical safety or their own is in jeopardy and fears that their children will be emotionally abused or neglected.⁸⁵ Most of the women in this research who disputed contact were concerned about staying or visiting rather than supervised contact, although objections to any form of contact were expressed by Kerry and Rachel.

Women gave different reasons for opposing contact. Some feared for their own or their children’s safety⁸⁶ or had partners who had threatened to abduct or harm the children.⁸⁷ Joan’s knowledge of how violent her partner could be and how suddenly he “flipped” made it impossible for her to trust him. She felt she would be risking her daughter’s life to allow contact.⁸⁸ Several women’s experiences suggested that their partners were more interested in reviving the relationship or reasserting control over them than in seeing their children. Some were suspicious of the motivations of their partners who had shown little interest in the children prior to the legal proceedings.⁸⁹ Rachel⁹⁰ and Emma⁹¹ both commented that Christmas and their children’s birthdays had passed without being acknowledged by the children’s fathers. Some women had doubts about their partners’ ability to care for the children.⁹² Maria said: “My biggest

⁸³ Int. 24 at 15.

⁸⁴ Int. 21 at 24 and 31.

⁸⁵ Hester and Radford (1996) *op. cit.* at 89; Radford *et al* (1999) *op. cit.* at 16.

⁸⁶ Rachel, Int. 27 at 30; Jenny, int. 9 at 18; Joan, Int. 31 at 15.

⁸⁷ Rachel, Int. 27 at 30; Yvette, Int. 23 at 12; Leila, Int. 22 at 13-14.

⁸⁸ Int. 31 at 15.

⁸⁹ Ruth, Int. 18 at 44; Amelia, Int. 28 at 9; Maria, Int. 26 at 15; Yvette, Int. 23; Melanie, Int. 1 at 18; Jill, Int. 29 at 13; Joan, Int. 31 at 6.

⁹⁰ Int. 27 at 3.

⁹¹ Int. 16 at 2.

⁹² Yvette, Int. 23; Amelia, Int. 28 at 21; Leila, Int. 22 at 13-14.

worry is that he could turn Nick [her son] against me.”⁹³ She said: “when he’s got Nick he’s still got a part of me.”⁹⁴ Jenny said that she was constantly fearful during contact visits that her children would be physically or emotionally harmed.⁹⁵ Yvette was concerned about building her daughter’s expectations of contact when she would be let down by her father.⁹⁶ She was also concerned that her daughter would not blame her in the future for obstructing contact.⁹⁷ Joan’s partner had either failed to turn up or had been late for contact visits.⁹⁸ Kate’s partner had already been physically violent towards his daughter and had failed to return home with her at the agreed time, resulting in a police search.⁹⁹ Sharon’s son returned from contact visits with his clothes saturated with urine and repeated abusive remarks made about his mother by his father.¹⁰⁰ His father also convinced him to reveal the address of the place where he and his mother were living, which she had been trying to keep a secret from him.

The Hester and Radford research found that a number of women had been assaulted by ex-partners when taking or collecting children from contact visits.¹⁰¹ There is also evidence that children on contact visits with perpetrators of domestic violence experience physical and sexual violence, neglect and emotional harm, including attempts to undermine respect for their mother.¹⁰² Despite the valid reasons mothers often have for objecting to contact, there are prevailing beliefs, among some legal actors, that women are ‘hostile’ for irrational, unfounded and sometimes malicious reasons. These beliefs may focus on the characterisation of the woman as a ‘clinging and overly dependent’ mother, as ‘greedy’ in terms of using the child as a bargaining chip to secure a financial settlement or as ‘vindictive’ in using the children to punish

⁹³ Int. 26 at 20.

⁹⁴ Maria, Int. 26 at 20.

⁹⁵ Jenny, Int. 9 at 18; Joan, Int. 31 at 15.

⁹⁶ Int. 23 at 26; Also see Ruth, Int. 18 at 44.

⁹⁷ Int. 23 at 22.

⁹⁸ Int. 31 at 15.

⁹⁹ Int. 3.

¹⁰⁰ Int. 30 at 15.

¹⁰¹ Hester and Radford (1996) *op. cit.*

¹⁰² Radford *et al* (1999) *op. cit.* at 20-21.

the husband.¹⁰³ There is evidence that mothers are pathologised by legal actors as acting with ‘selfishness and short-sightedness’¹⁰⁴ and deluding themselves that they are acting in the child’s best interests.¹⁰⁵ There has been a tendency for judges to sideline hostility to contact.¹⁰⁶ The reasons for it, such as a history of violence by the father, are then “ignored or trivialised.”¹⁰⁷ It has been suggested that courts tend to focus more on the mother’s parenting skills and mental health than the father’s exercise of parental responsibility, psychological stability and sometimes his history of violence.¹⁰⁸

There have been some examples of one parent’s hostility to contact being taken into account in deciding the child’s best interests and judges accepting that forcing contact in such a situation can itself be emotionally harmful to the child.¹⁰⁹ There have also been signs of courts acknowledging that some views labelled ‘implacable hostility’ may be genuine and rational objections to contact.¹¹⁰ There have been calls to focus on the reasons for a parent’s hostility to contact, and sometimes the effects of the actual hostility itself¹¹¹ in determining the whole context of a contact application and the child’s best interests. Recent reported cases suggest that emphasis may now be more directed towards the violent father’s need to demonstrate that he is “a fit person to exercise contact.”¹¹² It has been suggested that courts should focus on how individuals have performed their responsibilities as parents in the past, rather than their pledges for the future,¹¹³ taking account of parents who do not maintain contact or show themselves to be “implacably irresponsible.”¹¹⁴ The stories told in this and

¹⁰³ Fineman (1988) *op. cit.* at 766.

¹⁰⁴ Ingman, T. (1996) ‘Contact and the obdurate parent’, *Family Law*, 615-7 at 617.

¹⁰⁵ Wallbank, J. (1998) ‘Castigating mothers: the judicial response to ‘wilful’ women in disputes over paternal contact in English law’, 20(4) *Journal of Social Welfare and Family Law* 357-376 at 367.

¹⁰⁶ *Re J (A Minor) (Contact)* [1994] 1 FLR 729.

¹⁰⁷ Wallbank (1998) *op. cit.* at 367.

¹⁰⁸ Wallbank (1998) *ibid.*; Hester and Radford (1996) *op. cit.* at 90.

¹⁰⁹ *Re D (A Minor) (Contact: Mother’s Hostility)* [1993] 2 FLR 1 at 7.

¹¹⁰ Hale J in *Re D (Contact: Reasons for Refusal)* [1997] 2 FLR 48 at 53.

¹¹¹ Wilson J in *Re P (Contact Discretion)* [1998] 2 FLR 696 at 703-4.

¹¹² *Re M (Minors) (Contact: Violent Parent)* [1999] 2 FCR 56 at 68.

¹¹³ Fineman (1988) *op. cit.* at 770-774.

¹¹⁴ Smart and Neale (1997) *op. cit.*

other research suggest low levels of involvement in the care of children by perpetrators of domestic violence prior to separation.¹¹⁵

Parents' applications for contact with their children are heard at every level of the family court system, including magistrates in the Family Proceedings Court and by judges of the High Court. The judge is required to make a decision having regard to the best interests of the child. The Children Act 1989 guides the decision-making process in relation to disputes about the contact and residence of children. A contact order can be made whenever a question about a child's welfare arises in the course of family proceedings, including divorce and injunction proceedings.¹¹⁶ The Act states that "the child's welfare shall be the court's paramount consideration."¹¹⁷ The parents' interests are only relevant if they are relevant to the child.¹¹⁸ The Act states that delay in determining questions of contact is likely to prejudice the welfare of the child.¹¹⁹ It also includes a checklist of issues to be considered when deciding whether contact is in the best interests of the child.¹²⁰ This 'checklist' includes the child's wishes and feelings, physical, emotional, and educational needs, the effect of changes of circumstance, the age, sex and background of the child and any other relevant characteristic that the court considers relevant.¹²¹ The court also considers the risk of harm to the child and the capabilities of each parent in meeting the child's needs.¹²² The court can only make an order if that would be better for the child than making no order at all.¹²³ The judge is assisted in deciding a child's best interests, by a Family Court Welfare officer's report, which can contain evidence which is hearsay or otherwise inadmissible.¹²⁴ The judge is required to take the welfare report into account, but she is not obliged to follow the recommendations, although this does seem to generally be the case.

¹¹⁵ Radford *et al* (1999) *op. cit.* at 21.

¹¹⁶ Children Act 1989 s.8(3) and (4).

¹¹⁷ *ibid* s.1(1).

¹¹⁸ In *Re O* (contact: Imposition of conditions) [1995] 2 FLR 124.

¹¹⁹ *ibid* s.1(2).

¹²⁰ *ibid* s.1(3).

¹²¹ *ibid.*

¹²² *ibid.*

¹²³ *ibid* s.1(5).

¹²⁴ *ibid* s. 7(4).

Depending on local court practice the first ‘directions’ appointment or hearing involves the Family Court Welfare officer meeting with the parties individually or jointly, and sometimes with their solicitors and a judge.¹²⁵ If there is no agreement at the directions hearing and mediation is either not available or the parties cannot mediate then the court decides the outcome.¹²⁶ National Standards and Guidance for officers identify issues such as the importance of screening for domestic violence, seeing the parties separately, considering the safety of the parties, offering the opportunity for a woman to bring a supporter and considering the need for non-disclosure of addresses.¹²⁷ Although there is growing awareness of domestic violence among officers, there have been suggestions that some are not proactive in identifying domestic violence and do not always recognise the importance of separate meetings.¹²⁸ Hearings and other meetings can involve direct and indirect abuse of the mother and child. The Lord Chancellor’s Department has recommended that there should be separate waiting areas available during contact proceedings in which domestic violence is alleged,¹²⁹ but the reality is that many courts do not have adequate provision for this. Kate described the stressful process of having to take her young daughter to court and sit in a waiting area near to the child’s father who called her over to sit with him.¹³⁰

Whilst preparing the report for the court the officer may meet with the children, the parents and anyone involved in the child’s life and make use of the expertise of other practitioners such as child psychologists, as well as checking police and social services records. However, practices vary between officers and some may not see the children or ascertain their views.¹³¹ Although it is the task of the court to decide whether or not domestic violence has occurred, research has shown that court welfare

¹²⁵ Hester *et al* (1997) *op. cit.* at 18.

¹²⁶ *ibid.*

¹²⁷ National Standards for Probation Service Family Court Welfare Work (1994) *op. cit.*

¹²⁸ Joseph Rowntree Foundation (1997) *Family Court Welfare and Voluntary Sector Mediation in Relation to Domestic Violence*, Social Policy Research 117 (York: Joseph Rowntree Foundation).

¹²⁹ Advisory Board on Family Law, Children Act Sub-Committee (1999) *op. cit.* at 28.

¹³⁰ Int. 3 at 29.

¹³¹ Radford *et al* (1999) *op. cit.* at 19.

officers' knowledge about domestic violence is sometimes inadequate.¹³² There is no legal obligation for the officer to actively check for domestic violence and the *Unreasonable Fear?* study found that sometimes the issue was not even mentioned in welfare reports.¹³³

The relationship with her family court welfare officer was a positive experience for Kerry,¹³⁴ but there was also some criticism about the responses of particular officers by Yvette and Lucy.¹³⁵ These relationships are discussed further in Chapter Six and Seven. Although there have been suggestions that responses to domestic violence need to be improved by training, mixed experiences described in this research suggest that rather than family court welfare officers in general, much depends on the response of individual officers.¹³⁶ Kate and Lucy were critical of particular court welfare officers and exceedingly complementary about others. Both had asked to change officer at some point.¹³⁷ Yvette felt that the family court welfare officer did not have any understanding of domestic violence because he could not comprehend why she did not want her partner to collect their daughter from her home.¹³⁸ Kate was told by a family court welfare officer that he could not take account of incidents that had happened prior to her ex-partner's application to the court, which included a time when he had thrown his six week old daughter on the floor when she was six weeks old.¹³⁹

Women are sometimes under pressure to make concessions and compromises due to their traditionally assumed role as 'peacemaker' in the family.¹⁴⁰ Even women's own

¹³² Hester *et al* (1997) *op. cit.*

¹³³ Radford *et al* (1999) *op. cit.* at 23.

¹³⁴ Int. 10.

¹³⁵ Yvette, Int. 23 at 23.

¹³⁶ Radford *et al* (1999) *op. cit.* at 30.

¹³⁷ Lucy, Int. 4 at 15-16 and 33; Kate, Int. 3 at 14.

¹³⁸ Int. 23 (telephone).

¹³⁹ Int. 3 at 8.

¹⁴⁰ Hilton, N. (1991) 'Mediating wife assault: Battered women and the "new family"' *Journal of Family Law* 29-53 at 35-36.

solicitors sometimes apply pressure in their advice to women to agree to contact.¹⁴¹ When her ex-partner applied for parental responsibility, the Family Court Welfare Officer advised Kate that she would be “deemed unreasonable” by the court if she were to object to this claim. Not surprisingly, under such pressure, she “caved in” and did not make the judge aware of the full circumstances of the history of violence. She said:

*I thought, I just want the judge to see that I'm a reasonable human being. I don't want him to think that I'm vindictive, I want him to see that I'm putting [my daughter] first.*¹⁴²

After accepting the advice given to her about the importance of appearing co-operative and reasonable, Kate and her family have endured three years of inadequate, disruptive and sometimes dangerous contact arrangements. Kate was resentful about the advice she had accepted, and blamed herself for not taking a stand at the time. She had lost faith in the idea that co-operating in the system, or attempting to compromise was in any way worthwhile. Now she says that she would advise another woman, going through similar proceedings, that she should let the courts decide and refuse all of her ex-partner's requests.¹⁴³ This was the advice given to Sharon by her solicitor when he did not arrive at the first court hearing relating to contact and advised her, by telephone, to “say no to everything.”¹⁴⁴ The issue of women's relationships with their solicitors is considered in more depth in the next part of the thesis.

In a recent Lord Chancellor's Department consultation paper it was stated that the current legal framework contains all the necessary mechanisms for dealing with domestic violence in relation to preventing, limiting or terminating contact.¹⁴⁵ However, there is evidence that domestic violence is not routinely enquired about by legal representatives, court welfare officers or judges.¹⁴⁶ Women are often expected

¹⁴¹ Rights of Women (1998) *Contact Between Children and Violent Fathers: In Whose Best Interests?* (London: ROW); Smart and Neale (1997) *op. cit.* at 333.

¹⁴² Int. 3 at 31.

¹⁴³ Int. 3 at 45-46.

¹⁴⁴ Int. 30 at 24.

¹⁴⁵ Advisory Board on Family Law: Children Act Sub-committee (1999) *op. cit.* at 7.

¹⁴⁶ Barnett, A. (1999) 'Disclosure of domestic violence by women involved in child contact disputes', *Family Law* 104-107.

to raise the issue spontaneously, even if this in the presence of the violent partner.¹⁴⁷ In fact, Kate's story shows that women may be discouraged from raising the issue for fear of appearing 'vindictive' or 'unreasonable'.¹⁴⁸ There is evidence that legal actors lack understanding of the dynamics of domestic violence and the level of fear women feel so that mothers are expected to overcome fear and distrust to facilitate contact.¹⁴⁹ In the *Unreasonable Fear?* study direct visiting contact had been ordered in 75% of cases, even when abuse to the child was alleged or the child had witnessed violence towards the mother and the child objected to contact.¹⁵⁰ In only 4% of cases was contact refused despite the fact that almost half the women in the survey had injunctions against the perpetrator and one in five of the perpetrators had criminal convictions for violence against the partner.¹⁵¹ In 30% of cases mothers reported judges saying that domestic violence was irrelevant.¹⁵²

One of the problems a woman may face in contact proceedings is that of proving violence, particularly if she has no 'legal' evidence such as a criminal conviction or a court order. She may have friends or relatives who support her story but if she has kept the violence to herself, as is often the case, it may simply be a case of her word against his. In Rachel's case her sister was supporting her ex-husband's claim for contact because she did not believe that Rachel could have suffered so much without telling her.¹⁵³ The cases in which contact was eventually refused all involved particularly conscientious attempts by family court welfare officers, solicitors and women themselves to seek out every possible support for their story. In Kerry's case a local publican gave evidence of the violence of the father concerned. Months before the contact dispute, Amelia had withdrawn support from a prosecution of her partner and the charges had subsequently been dropped. The detective in charge of the case gave evidence in the child contact hearing to express his concerns about the father's violence. A social worker gave evidence in Rachel's case that from her assessment

¹⁴⁷ *ibid.*

¹⁴⁸ Cahn (1991) *op. cit.* at 1068; Wallbank (1998) *op. cit.*

¹⁴⁹ Radford *et al* (1999) *op. cit.* at 7.

¹⁵⁰ *ibid* at 17.

¹⁵¹ *ibid* at 18 and 23.

¹⁵² *ibid* at 23.

¹⁵³ Int. 27.

her two year old son had experienced and witnessed abuse.¹⁵⁴ In all these cases contact was eventually refused. For other women, contact was granted, sometimes with conditions attached.

The court has the power to impose conditions on the contact order¹⁵⁵ including whether the contact is direct (staying, visiting or supervised contact)¹⁵⁶ or indirect (by phone or letter).¹⁵⁷ Conditions can include asking the residential parent to send photographs and reports on the child's progress or to read out letters from the non-resident parent.¹⁵⁸ It has been suggested that conditions might include pre-requisites to contact such as the violent father seeking medical advice, psychotherapy or attending an special course to help stop the violence.¹⁵⁹ In the *Unreasonable Fear?* study indirect contact was ordered in only 8% of cases,¹⁶⁰ but that too can be an opportunity for emotional abuse of both the mother and child. At the interviews, Jill and Joan showed letters and cards sent by their ex-partners to their children, neither of whom could read and one of whom was not yet old enough to understand the words. Both men had written lengthy descriptions of their feelings for the children's respective mothers that did not appear to be intended for the child.¹⁶¹ The issue of most concern, to many of the women who told their stories, was the question of unsupervised, visiting and staying contact. Many women had been granted orders for supervised contact, but orders for supervised contact often lead to unsupervised visits without any evidence of change on the part of the perpetrator, through, for instance, attending a domestic violence perpetrators' programme.¹⁶² Supervised contact itself raises practical issues of how supervision of visits works in practice.

A Family Assistance Order by the court enables professional supervision of contact by a Family Court Welfare officer or officer of the local authority, but this requires the

¹⁵⁴ Int. 27 (telephone).

¹⁵⁵ Children Act 1989 s.11(7).

¹⁵⁶ *Re M* (Contact: Supervision) [1997] *Times*, 10th June 1997.

¹⁵⁷ *A v L* (Indirect Contact) [1998] 1 FLR 361.

¹⁵⁸ *Re O* (Contact: Imposition of conditions) [1995] 2 FLR 124.

¹⁵⁹ Advisory Board on Family Law: Children Act Sub-Committee (1999) *op. cit.* at 16 and 21.

¹⁶⁰ Radford *et al* (1999) *op. cit.* at 27.

¹⁶¹ Joan, Int. 31 at 17; Jill, Int. 29.

¹⁶² Radford *et al* (1999) *op. cit.* at 28.

consent of the parents and can only have effect for six months or less so is not a long term solution.¹⁶³ Also, if the local authority does not have the resources to operate this service it is not required to do so.¹⁶⁴ No such orders were mentioned in the stories told here. Contact can also be supervised by friends and relatives, but lack of training and supervision, the risks involved and responsibility placed on those supervising means this is rarely an adequate long-term solution.¹⁶⁵ Lucy mentioned problems finding a friend to arrange contact hand-over and her family lived too far away.¹⁶⁶

Most women who were granted supervised contact used contact centres. These are neutral places where contact or the hand-over of the child and the contact itself is supervised, usually by untrained volunteers, and the centres may not necessarily be in the immediate area of the parents. Courts may not be aware of the standard of service or the practical limitations of these centres, which can result in inappropriate referrals.¹⁶⁷ Women were generally disappointed by the level of supervision offered in contact centres.¹⁶⁸ In Kate's case the centre could only be reached by travelling on two different buses which was expensive, time consuming and stressful.¹⁶⁹ The centres described were usually staffed by volunteers rather than trained practitioners like court welfare officers, which some women had expected.¹⁷⁰ There did not seem to be any attempt to prepare mothers for this reality. Several women expressed concern that men had opportunities during the visits for emotional abuse of the child by questioning them about their mother's movements and talking to the child in an inappropriate manner. The *Unreasonable Fear?* Study showed a high proportion of physical, sexual and emotional abuse and neglect even during supervised contact.¹⁷¹

Under the Family Law Act a court hearing an application for contact can also make a non-molestation order, even though no application has been made by either of the

¹⁶³ Children Act 1989 s.16.

¹⁶⁴ *Re C* (Family Assistance Order) [1996] 1 FLR 425.

¹⁶⁵ Radford *et al* (1999) *op. cit.* at 27.

¹⁶⁶ Int. 4 at 40.

¹⁶⁷ Radford *et al* (1999) *op. cit.* at 27.

¹⁶⁸ Int. 23 at 27; Kate, Int. 3 at 8.

¹⁶⁹ Int. 3 at 8; Also, Sharon, Int. 30 at 18.

¹⁷⁰ Yvette, Int. 23 at 19.

¹⁷¹ Radford *et al* (1999) *op. cit.* at 27-28.

parents.¹⁷² No woman's story of child contact proceedings referred to a non-molestation order being issued by the court independently of any request by the mother. Nor were there any examples of an application for contact being dealt with during emergency injunction proceedings.¹⁷³ In Yvette's case the judge did warn her partner, at the injunction hearing, that continued breaches could result in a prison sentence and jeopardise his contact with his daughter.¹⁷⁴

Amelia's story illustrates one example of pathways in the criminal and civil systems overlapping in a positive way. As described in the previous chapter, she had withdrawn her support for a prosecution for a variety of reasons including her assessment that her ex-partner would be less of a problem to her if he kept his existing job, rather than losing it as a result of a criminal record. The case had not reached court and Amelia's ex-partner was arguing in the contact proceedings that this was because there had been no violence. The court welfare officer had concerns about this father and managed to make contact with the police officer in charge of Amelia's case.¹⁷⁵ The police officer offered to give evidence in the child contact proceedings which enabled him to give an account of his concerns about the man involved and to testify as to the true reasons for the case not reaching court. No order for contact was given by the court.¹⁷⁶ Kerry's partner's application for contact with their three year-old twins was also turned down when a local publican gave evidence about the father's violence.¹⁷⁷ Rachel's ex husband was denied contact with their two year-old son and was also denied leave to appeal against the decision. The *Unreasonable Fear?* study found that cases of contact being refused involved either severe, persistent and proven violence and allegations of child abuse, although other cases where both these elements existed contact was awarded.¹⁷⁸

¹⁷² Family Law Act 1996 s.42.

¹⁷³ Rights of Women (1998) *op. cit.*

¹⁷⁴ Int. 23 at 18.

¹⁷⁵ Int. 28 at 17.

¹⁷⁶ Amelia was interviewed before the final hearing, but with her consent the Family Court Welfare Officer was able to give an update on the judge's final decision.

¹⁷⁷ Kerry, Int. 10 at 15 and telephone.

¹⁷⁸ Radford *et al* (1999) *op. cit.* at 25.

Women can be imprisoned for breaching court orders which demand that they allow contact or for discussing a court welfare report¹⁷⁹ and an officer of the court or the police can be used to transfer a child physically at contact time. In one well-publicised case, a mother was imprisoned for six weeks and her children placed in foster care when she refused contact between her four-year-old daughter and her ex-partner who had a history of severe violence. While she was in prison the father was permitted, by the Court of Appeal, to have contact supervised by social workers.¹⁸⁰ Another woman was sentenced to six weeks in prison when she refused to allow unsupervised contact between her children and their alcoholic father. After two nights in prison she allowed contact.¹⁸¹ No woman in this research had been in this situation but some lived in the shadow of such threats. Rachel had begun to make plans to go into hiding to prevent contact and had discussed with her solicitor the possibility of going to prison.¹⁸² Jill said that she would rather go to prison than agree to contact.¹⁸³

The stage at which all those women were interviewed for this study, during or shortly after child contact proceedings, means that it is not possible to trace the long term reality of contact orders, but there is evidence that after contact orders are made there is often failure to maintain contact.¹⁸⁴ This suggests that some perpetrators use the contact application procedure as a route to contact with the woman and a form of abuse by ensuring periodic court hearings and the constant stress of an on-going dispute.¹⁸⁵ Lucy said that her partner used the contact application as “a tool” to force her to return to the area.¹⁸⁶ Even when contact had been refused to Sharon’s partner, she said that she didn’t feel secure due to the fear that proceedings would be bought again.¹⁸⁷ It is possible for a judge to issue an order preventing further applications without the permission of the court,¹⁸⁸ but the courts have made it clear that this is to

¹⁷⁹ Saunders (2000) *op. cit.* at 7.

¹⁸⁰ *A v A* [1997] Fam Law 62.

¹⁸¹ *Z v Z* [1996] Fam Law 225.

¹⁸² Int. 27; Also, Kate, Int. 3 at 16.

¹⁸³ Jill, Int. 29 at 17.

¹⁸⁴ Hester and Radford (1996) *op. cit.*

¹⁸⁵ Cahn (1991) *op. cit.* at 1042.

¹⁸⁶ Int. 4 at 16.

¹⁸⁷ Sharon, Int. 30 at 21.

¹⁸⁸ Children Act 1989 s.91(14).

be sparingly used.¹⁸⁹ Rachel had taken great comfort from the judge's refusal to grant her ex-husband leave to appeal against contact with their son.

Issues about child contact are particularly important when a woman does not want her partner to know her whereabouts. Courts can make a 'seek and find' order for the whereabouts of a child to be revealed if a parent seeks contact.¹⁹⁰ One third of the survivors, who were interviewed in the *Unreasonable Fear?* study, had had their address revealed as a result of court proceedings, even when living in a refuge and so obviously fleeing violence.¹⁹¹ Even when addresses are not revealed locations of court hearings can give clues to a perpetrator about where his partner is. Despite recognition by police, social services and the courts of the danger posed by the husband of Georgina McCarthy, he was able to trace her through information about court hearings. She was killed by him on 9th May 1998 in front of their two year old son and her husband, Paul Russell was later sentenced to life imprisonment.¹⁹²

At the time of the interviews, the participants whose partners were not aware of their whereabouts had not been involved in contact disputes, but Iris and Jacqui were both concerned about this possibility in the future. Ann was waiting for her ex-partner's release from prison to see if this issue would come up. She was particularly concerned that although he did not know her new address he did know the children's school address and she feared he would follow them to their new home.¹⁹³ Leaving home also raises other issues for many survivors of domestic violence.

5.3. Leaving home

Stories told in other chapters have emphasised how separation is a process and different for each woman, involving complex emotional and practical pressures. Emma's experience of legal responses during the process of separating from her

¹⁸⁹ *Re P* (section 91(14) Guidelines) [1999] 2 FLR 573.

¹⁹⁰ Family Law Act 1986 s.33.

¹⁹¹ Radford *et al* (1999) *op. cit.* at 19.

¹⁹² Women's Aid Federation England (1998) *op. cit.*

¹⁹³ Ann, Int. 5.

partner showed how the ‘agendas’ of those in different parts of the system can cause confusion. She described her confusion when her solicitor had advised her to remain in her home during the divorce process, whilst the police had said it was dangerous and that she should leave.¹⁹⁴ She decided that keeping her daughter in her own familiar bedroom was an important reason to stay. Maria felt “lonely” when living in a refuge and seriously considered leaving.¹⁹⁵ Jacqui talked about the “loneliness” of being re-housed after months living in a refuge.¹⁹⁶ Rachel described how her sense of isolation and loss of confidence and the stigma she perceived in “being a single mum” made it difficult for her to make new friends after separating from her violent husband.¹⁹⁷ Helen left her home with her children, but their wish to return to friends, school and familiarity influenced the choices she made in returning and living in the same house as her husband during the divorce process.¹⁹⁸ At one stage in her relationship Jenny left her husband but returned: “I felt insecure and missed being at home in my own environment.”¹⁹⁹ Iris described how she left her partner on several occasions but missed him and wondered if he would ring and “take me home.”²⁰⁰

At the stage when Kerry left to stay with friends, her feelings towards the home had a different effect, undermining rather than enhancing her attachment to her partner:

*That’s when I realised no this is my home, this is in my name, how dare he? A kind of rebellion set in.*²⁰¹

Kerry returned to her home and has remained there through the course of several criminal prosecutions and continuous harassment from her ex-partner. During the divorce, Emma was reluctant to leave her home because she wanted to maintain a sense of security for her daughter by keeping the child in her own bedroom. After her divorce was finalised and her partner had left, Emma said:

¹⁹⁴ Emma, Int. 16 at 13 and 20.

¹⁹⁵ Int. 26 at 13.

¹⁹⁶ Int. 15 at 21.

¹⁹⁷ Int. 27 at 33 and 22.

¹⁹⁸ Int. 12 at 6.

¹⁹⁹ Int. 9 at 4.

²⁰⁰ Int. 11 at 5.

²⁰¹ Int. 10 at 16.

*I hate this house because of all the memories . . . I could never settle here. I won't stay here. It's haunted for me.*²⁰²

Yvette explained that she was willing to give up her home to her partner because she could never feel safe there.²⁰³ Amelia had fled from her partner to a secret address which he had discovered. She said: "I don't feel like this is home now that he knows where I am."²⁰⁴ Some women's feelings make it important for them to remain at home. For others separation from the home, is a crucial, albeit painful, step in the process of survival.

Sometimes a woman will decide that the only way to create a new life is to leave her home and escape her partner. Rather than focusing on the violence itself, by using the criminal justice system and injunctions, some women focus on the practicalities of finding somewhere to start a new life which involves many different agencies, including local authority housing providers, benefits agencies and refuges. In Helen's case she stayed with her sister whilst looking for private rented accommodation for herself and her two sons, but after failing to find anything suitable that she could afford, she returned to the marital home to live there during the divorce process.

Some women went straight to a local refuge, or one in another part of the country, and others stayed with family or friends. Chapter Three discussed the range of benefits provided by refuges, but there is widespread shortage of refuge provision and under funding.²⁰⁵ Women who have difficulty accessing public funds due to immigration rules may not be able to secure a place in a refuge because they rely on rent income from housing benefit.²⁰⁶ Some women were placed in temporary re-housing rather than a refuge and most women have limited financial resources so turn to the social rented sector to find a permanent new home.²⁰⁷ Negotiating the complex housing

²⁰² Int. 16 at 3-4.

²⁰³ Int. 23 (telephone).

²⁰⁴ Int. 28 at 21.

²⁰⁵ Levison, D. and Harwin, N. (2000) *Reducing Domestic Violence . . . What Works? Accommodation Provision*, Policing and Reducing Crime Briefing Note (London: Home Office); *Guardian* (2000) 'Women who flee violence lack shelter', 8th January.

²⁰⁶ Bossy, J. and Coleman, S. (2000) *Womenspeak: Parliamentary Domestic Violence Internet Consultation; Report of the Main Findings* (Bristol: Women's Aid Federation England) at 21.

²⁰⁷ Levison and Harwin (2000) *op. cit.*

rules can be a difficult struggle. This was particularly true for Ann who had to be very persistent in order to be re-housed in suitable accommodation for her family's needs.²⁰⁸ Just as in other pathways through domestic violence women often encounter incorrect advice, lack of understanding, unnecessary obstacles and delays in receiving help.²⁰⁹ The law in this area is extremely complex and only the main issues are highlighted here.²¹⁰

There are legal powers for landlords to seek possession of a tenancy when a woman flees her home due to violence.²¹¹ Homelessness legislation makes it possible for a woman fleeing domestic violence to be permanently re-housed.²¹² The housing charity, Shelter, has cited domestic violence as one of the chief causes of homelessness.²¹³ When a woman leaves home due to domestic violence she is not considered to be intentionally homeless and she does not cease to be homeless when living in a refuge.²¹⁴ A woman at risk from violence may also move away from the area where she originally lived and receive assistance in another area.²¹⁵ Guidance to housing departments recommends sympathetic treatment of survivors of domestic violence and that women not be required to have proof of violence, such as a conviction or court order, before being considered homeless.²¹⁶ Although local authorities must take account of the Code it does not have statutory force and is not adhered to by some, although others do rely on women's definitions and re-house women who have suffered from non physical forms of violence.²¹⁷ This research was conducted in areas with housing policies which generally accept women's accounts of

²⁰⁸ Ann, Int. 5 at 24-25.

²⁰⁹ Mullender, A. and Hague, G. (2000) *Reducing Domestic Violence ... What Works: Women Survivors Views*, Policing and Reducing Crime Briefing Note (London: Home Office).

²¹⁰ For more detail, see, Lowe, N. and Douglas, G. (1998) *Bromleys Family Law* (Ninth Edition) (London: Butterworths) 216-224.

²¹¹ Housing Act 1996 s.145, introducing Ground 2A Schedule "Housing Act 1985.

²¹² Housing Act 1996 s.177 and s.178.

²¹³ Brindle, D. (2000) 'Violence driving women from their homes', *Guardian*, 16th March.

²¹⁴ *R v Ealing LBC exp. Sidhu* [1982] 80 LGR 534.

²¹⁵ *R v Kensington and Chelsea Royal LBC*, exp. Hammell [1989] 1 All ER 1202.

²¹⁶ Department of Environment and Department of Health (1996) *Code of Guidance on Parts VI and VII of the Housing Act 1996: Allocation of Housing Accommodation and Homelessness* (London: Department of Environment and Department of Health).

²¹⁷ Hague, G. (1996) 'Domestic violence and housing', *Rights of Women Bulletin* (Summer) 17-20 at 18.

violence. This may explain why women's stories did not mention problems in proving violence in relation to re-housing and court orders tended not to be used to help resolve housing problems as Barron found in her research.²¹⁸ The main problem women had when leaving home was the complexity and delay of waiting to be re-housed and problems in keeping their whereabouts secret. When a woman is seeking to be re-housed she needs to apply to be put on the housing register in order to access permanent accommodation.²¹⁹

Benefits agencies and housing departments may be used by perpetrators to find a partner who is trying to escape.²²⁰ Both Maria and Caroline called the police when their respective partners harassed them after they moved in to their new homes.²²¹ When Yvette's partner broke into the home they had shared before their separation, she called the police but was told it was a "civil matter" because they had a joint mortgage.²²² Later the police were present when she took her belongings from the house in order to move into temporary accommodation.²²³ She decided to leave the home and at the time of the interview was waiting for the house to be sold.

Women experienced varied responses from local authority housing providers. For Amelia they helped arrange a place for her in a local housing association refuge which arranged for her pets to be cared for.²²⁴ Yvette was provided with temporary accommodation after spending some time staying with her mum and has been waiting for seven months for a permanent move.²²⁵ Leila was provided with a place at a "single mother's hostel"²²⁶ and was later re-housed when she was getting harassing phone calls from her partner.²²⁷ Maria's local housing officer told her about the

²¹⁸ Barron, J. (1990) "Not Worth the Paper...?" *The Effectiveness of Legal Protection for women and Children Experiencing Domestic Violence* (Bristol: Women's Aid Federation England) at 72.

²¹⁹ Part VI Housing Act 1996.

²²⁰ Radford *et al* (1999) *op. cit.* at 19.

²²¹ Maria, Int. 26 at 38; Angie, Int. 21 at 16.

²²² Int. 23 at 10.

²²³ Int. 23 at 11.

²²⁴ Int. 28 at 22.

²²⁵ Int. 23 at 48.

²²⁶ Int. 22 at 4.

²²⁷ Int. 22 at 16.

refuge and explained how it is possible for one party to a joint tenancy to transfer the tenancy into her sole name.²²⁸ This enables a woman to access safe accommodation through a transfer or exchange without going on a waiting list. Maria explained the pressure she felt during this process;

*In fact it frightened me because it was me signing the form and it was me taking him out of the home. I said yeah, but its going to cause revenge, he's going to go mad . . . but the council says: "No for us to re-house you this needs to be done because both of you are on the tenancy."*²²⁹

Maria has since been disappointed by the local authority for not prosecuting her partner for damage to the house and he now has a larger house than her through a housing association.²³⁰ Jill was trapped in her flat when her partner refused to sign the tenancy over to her, but eventually she was moved to another property, by the local council.²³¹

There were some supportive responses by local authorities, but one important difference between their help and that provided in a Women's Aid refuge described in Chapter Three, is that the focus is usually solely on the problem of housing rather than helping to provide other support. Women's Aid refuges are being replaced by local housing association and local authority refuges that may be unable to provide support or outreach services which are so crucial to women's survival. At the time of the interview Rachel was in the process of divorcing her violent husband and was feeling lonely and isolated and in desperate need of support. The Women's Aid refuge thirty miles away was able to offer the outreach support she needed, but which her local housing association refuge was unable to provide.²³² The next part of the thesis considers further how domestic violence law tends to neglect this kind of help which Melanie said had literally 'saved her life'.²³³

²²⁸ Part IV Housing Act 1996; Family Law Act 1996.

²²⁹ Int. 26 at 8.

²³⁰ Int. 26 at 8-9.

²³¹ Int. 29 at 18.

²³² Rachel, Int. 27.

²³³ Melanie, Int. 1.

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This description of the range of possible pathways through domestic violence law shows how different each woman's journey is. The women's experiences also show that particular legal responses and legal actors can have both positive and negative effects in a woman's life. Legal responses can appear to improve an individual woman's situation, but this may come with other costs that may not have been predicted by the legal actors, who had implemented procedures, or the woman herself. Sometimes the law adds to a woman's confusion and difficulties and at other times it is a 'therapeutic' agent, which helps to heal and serve her in the process of survival. The next two chapters consider these 'therapeutic opportunities' in more depth. Chapter Six examines how legal actors respond to the emotional aspects of women's process of survival and considers the possibility of expanding the role of empathy in domestic violence law. Chapter Seven explains how legal actors and processes can silence a woman and empower her. In both chapters practical suggestions are made for how the anti-therapeutic effects of law could be addressed, but the focus is less on changes to legal rules than on the attitudes and cultures which shape the way we think about the 'jobs' of domestic violence law.

Part Three

Therapeutic Possibilities?

Chapter Six

Therapeutic Possibilities? Emotion and Empathy

*I said to my doctor: "The legal team was OK, but I didn't really like any of them." They know the law, but I suppose you can't expect them to put themselves in someone else's shoes. The law doesn't have any emotion.*¹

*Empathy, human stories, and different voices should be woven into the tapestry of legal scholarship, legal training, legal formulation, legal counselling and advocacy, and law application and enforcement.*²

Domestic violence law tends to be viewed in an 'instrumental' way as a form of protection or as a way to end violence. The pathways described in the previous chapter suggest that for survivors law may also be a means of overcoming silence and isolation. It can be used to communicate a message to the perpetrator and can be part of creating a new life. The remainder of this thesis argues that, in failing to see domestic violence law as survivors see it, we are missing the opportunity to develop responses which link in with women's processes of survival and separation. Chapter One described how women's construction of self is often shattered by the experience of domestic violence.³ A central need for women leaving a violent relationship is the "reclaiming of self."⁴ Herman argues that "disempowerment and disconnection from others" are at the core of experiences of trauma and that recovery requires empowerment and the creation of "new connections."⁵ Marguiles refers to this as the

¹ Emma, Int. 16 at 23.

² Massaro, T. (1989) 'Empathy, legal storytelling and the rule of law: New words, old wounds?'. 87 *Michigan Law Review* 2099-2127 at 201.

³ Herman, J. (1992) *Trauma and Recovery* (New York: Basic Books) at 51.

⁴ Merritt-Gray, M. and Wuest, J. (1995) 'Counteracting abuse and breaking free: The process of leaving revealed through women's voices', 16 *Health Care for Women International* 399-412 at 399.

⁵ Herman (1992) *op. cit.* at 133.

need for “access, connection and voice.”⁶ Whilst a sense of empowerment, or ‘voice’, and connection are inextricably linked, this chapter focuses on legal pathways as a means of connecting with others and breaking the isolation of domestic violence. Chapter Seven goes on to consider how law can be a source of empowerment for survivors.

At the heart of forming ‘connections’ with survivors of domestic violence lie legal responses which take account of each woman’s individual emotional journey. This chapter begins by considering the complex relationship between law and emotion. Secondly, extracts from women’s stories are used to describe how law responds to their emotions in the context of domestic violence. Finally, the concept of empathy is discussed and consideration given to some practical possibilities for incorporating empathic responses into domestic violence law, which encourage connection, break down isolation and help women to reclaim a sense of self.

6.1. Law, Emotions and Surviving Domestic Violence

6.1.1. Law and Emotion

In Chapter Two there was a discussion of the value which law attaches to autonomy, individualism and abstraction rather than intimacy, relationships and connection.⁷

The prevailing view is that:

*law is reason, that emotion is antithetical to reason and law, that reason and law must control, suppress, and dominate emotion, and that emotion or passion is dangerous.*⁸

Traditional understandings of law are that separation from emotion helps to prevent legal actors from exhibiting bias or prejudice, because they are less likely to identify

⁶ Margulies, P. (1995) ‘Representation of domestic violence survivors as a new paradigm of poverty law: In search of access, connection, and voice’, 63 *George Washington Law Review* 1071-1104.

⁷ West, R. (1993) ‘Jurisprudence and Gender’, in, Smith, P. (Ed) (1993) *Feminist Jurisprudence* (Oxford: Oxford University Press).

⁸ Henderson, L. (1988) ‘The dialogue of heart and head’, 10(1/2) *Cardozo Law Review* 123-48 at 123.

closely with those before them.⁹ In mainstream discourse law is “cleansed of emotion”¹⁰ in order to avoid corrupting the legal process with its chaos and irrationality.¹¹ The unpredictability, particularity and subjectivity of emotion tend to be viewed as the antipathy of the supposed reason, certainty and objectivity of legal rules and it has been said that we lack a “jurisprudence of the emotions.”¹²

The predominant strategy of law is to suppress emotions through textual rules and depersonalised procedures. It has been said that, “rules, not persons, are the ordinary subject matter of legal study.”¹³ Legal education is “laced with the expectation that reason and emotion work against each other”¹⁴ and tends to have “a strong bias against emotion.”¹⁵ The traditional image of a lawyer is of a professional who avoids personal connection and is thus able to represent any client and is not responsible for the effect of such representation on a third party.¹⁶ In their study of relationships between divorce lawyers and their clients, Sarat and Felstiner found a tendency by lawyers to separate the reason and logic of law from the emotion and intuition of their clients.¹⁷ Courts are designed to establish equality between the parties by legal representation, prescribed times and manners of speaking¹⁸ and legal advocates help to insulate judges from the individual parties before them.¹⁹ It is considered

⁹ Delgado, R., Dunn, C., Brown, P., Lee, H., and Hubbert, D. (1985) ‘Fairness and formality: Minimising the risk of prejudice in alternative dispute resolution’, *Wisconsin Law Review* 1359-1404 at 1368.

¹⁰ Henderson (1987) ‘Legality and empathy’, 85 *Michigan Law Review* 1574-1653 at 1575.

¹¹ Murphy, J. (1993) ‘Lawyering for social change: The power of the narrative in domestic violence law reform’, 21(4) *Hofstra Law Review* 1243-93 at 1254.

¹² Goodrich, P. (2000) ‘Book review of Petersen, H. (1998) (Ed) *Love and Law in Europe* (Aldershot: Dartmouth)’, 63(1) *Modern Law Review* 134-137 at 134.

¹³ Noonan, J. (1976) *Persons and the Masks of the Law* (New York: Farrar, Straus and Giroux) at 612.

¹⁴ Bezdek, B. (1992) ‘Silence in the court: Participation and subordination of poor tenants’ voices in the legal process’, 20 *Hofstra Law Review* 533-608 at 594.

¹⁵ Batt, J. (1990) ‘Law, science and narrative: Reflections on brain science, electronic media, story and law learning’, 40 *Journal of Legal Education* 19-46 at 25.

¹⁶ Cahn, N. (1992) ‘Styles of lawyering’, 43 *Hastings Law Journal* 1039-1069 at 1063.

¹⁷ Sarat, A. and Felstiner, W. (1995) *Divorce Lawyers and Their Clients: Power and Meaning in the Legal Process* (New York: Oxford University Press) at 6.

¹⁸ Delgado *et al* (1985) *op. cit.* at 1388.

¹⁹ Pillsbury, S. (1989) ‘Emotional justice: Moralising the passions of criminal punishment’, 74(4) *Cornell Law Review* 655-710 *op. cit.* at 666-667.

newsworthy when a judge shows emotion by shedding a tear about a case before him.²⁰

Law is often assumed to exist in a different sphere to the domain of personal and relational feelings²¹ and it has been said that it is “jarring” to see the word ‘love’ in legal scholarship.²²

*The emotional intensity of interpersonal problems is one reason why they seem troublesome and out of place in the court.*²³

Emotions are sometimes portrayed as defying definition and going beyond speech and language.²⁴ In contrast, law relies on a special legal form of language to work and requires definite shared meanings, which often exclude the history of relationships and the emotional connections between people which can be difficult to express in legal terminology. In their ethnographic study of a small claims court Conley and O’Barr developed two categories to describe the mismatch between some people’s expectations of law and the legal response in reality. “Rules talk” was used by litigants who presented disputes in accordance with set rules that applied regardless of the relationship between the parties, omitting motivations and feelings.²⁵ “Relational talk” was used by those who focussed on the social status and historical relationship between the parties and saw law as providing broad remedies.²⁶ It is suggested that those least familiar with the legal system are most likely to use “relational talk” which creates discord between the expectations of litigants and judges who favour “rules talk.”²⁷

²⁰ Whittingham, J. (2000) ‘Judge weeps over crack boy aged 12’, *The Sun*, 24th June.

²¹ Peter Goodrich (1996) ‘Law in the courts of love: Andreas Capellanus and the Judgements of Love’, 48(3) *Stanford Law Review* 633-75.

²² Massaro (1989) *op. cit.* at 2123.

²³ Merry, S. (1990) *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans* (Chicago: University of Chicago Press) at 98.

²⁴ Raes, K. (ed) (1998) ‘On love and other injustices’, Love and law as improbable communications’, in Petersen, H. (Ed) (1998) *Love and Law in Europe* (Dartmouth: Ashgate).

²⁵ Conley, J. and O’Barr, W. (1990) *Rules Versus Relationships: The Ethnography of Legal Discourse* (Chicago: University of Chicago Press) at 58.

²⁶ *ibid* at 58-9.

²⁷ *ibid* at 123.

Sarat and Felstiner found that clients in divorce cases “talk past” their lawyers when they try to explore marriage failure with narratives of blame and responsibility, which lawyers tend to respond to with silence and evasion.²⁸ Lawyers would claim that such issues are legally irrelevant, but this thesis argues that the responses of legal actors to women’s exploration of their feelings are of crucial importance in domestic violence law. Some responses may lead clients to feel that lawyers do not understand or empathise with them.²⁹ The certainty and order of legal language is difficult to reconcile with complex human emotions and the prevailing image is, in Emma’s words, that “the law doesn’t have any emotion.”³⁰

Despite this image, the relationship between law and emotions is a complex one. For example, pre-nuptial contracts are not legally enforceable and are often considered anti-love, undermining romance and signifying distrust and pessimism.³¹ Yet marriage, which is central to the ideal vision of love, is not possible without entering into a legally structured relationship.³² Paradoxically, lack of love is not a ‘ground’ for divorce, which requires external evidence of marriage break up such as adultery, unreasonable behaviour, or physical separation.³³ In the context of domestic violence legal actors may take account of emotional factors by not enforcing criminal law and by encouraging the use of private civil remedies.³⁴ Emotional links between the parties can be used by the defence in a criminal case to argue for acquittal and may be used by judges and lawyers to justify more lenient sentences.³⁵ Family law also focuses on emotions when it attempts to eliminate anger and bitterness with less adversarial methods of dispute resolution. Mediators also attempt to suppress and

²⁸ Sarat and Felstiner (1995) *op. cit.* at 30-33.

²⁹ *ibid* at 51.

³⁰ Emma, Int. 16 at 23.

³¹ See Marston, A. (1997) ‘Planning for love: The politics of prenuptial agreements’, 49(4) *Stanford Law Review* 887-916; Bix, B. (1998) ‘Bargaining in the shadow of love: The enforcement of pre marital agreements and how we think about marriage’, 40 *William and Mary Law Review* 145-207.

³² Raes (1995) *op. cit.* at 29.

³³ Matrimonial Causes Act 1973 s.1(2).

³⁴ Busch, R. and Robertson, N. (1993) “‘What’s love got to do with it?’ An analysis of an intervention approach to domestic violence”, 1 *Waikato Law Review* 109-140.

³⁵ Cretney, A. and Davis, G. (1997b) ‘Prosecuting “domestic” assault’, *Criminal Law Review* 162-174 at 153.

control the emotions of the parties.³⁶ Divorce lawyers try to eliminate clients' emotions from the legal process, while also warning that the emotions of judges might affect the outcome of cases.³⁷ In criminal law account is taken of the supposed irrationality and lack of control of emotions like jealousy, anger and fear in concepts of self defence and provocation.³⁸ Despite the effect which emotions inevitably have on jurors,³⁹ they are sometimes urged by judges to "insulate the legal decision from emotive influence" to avoid injustice and irrationality.⁴⁰

The "protective distancing mechanisms" which many legal actors use is sometimes considered necessary to shield them from the pain inflicted by the coercive force of law.⁴¹ However, focus on reason and denial of emotion's place in law prevents legal actors being self-reflexive, which may make it more difficult to avoid personal subjective judgements or to take responsibility for their actions.⁴² Pillsbury argues that legal actors are inevitably influenced by emotions, but the "myth of dispassion" allows this influence to be "driven underground."⁴³ Merry comments that:

*[Legal responses] ignore the emotional side of family . . . problems. But feelings usually constitute the heart of the problems and constantly bubble up during discussions in court and mediation.*⁴⁴

Another danger lies in the way that this separation from emotion affects people's perceptions of what the law can offer them.

This chapter argues that we need to move away from the dichotomies in law between reason and emotion so that "we can focus proper attention on the realities of people's

³⁶ Merry (1990) *op. cit.* at 147.

³⁷ Sarat and Felstiner (1995) *op. cit.* at 106.

³⁸ Pillsbury (1989) *op. cit.* at 678; Kahan, D. and Nussbaum, M. (1996) 'Two conceptions of emotion in criminal Law', 96(6) *Columbia Law Review* 269-374.

³⁹ Pagelow, M. (1981) *Woman Battering: Victims and Their Experiences* (London: Sage Publications) at 190.

⁴⁰ Pillsbury (1989) *op. cit.* at 655; Also, Carter, H. and Heaney, P. (2000) "'Put aside emotions" judge tells Shipman trial jurors', *Guardian*, 11th January.

⁴¹ Saughnessy, J. (1988) 'Gilligan's Travels', 7 *Journal of Law and Inequality* 1-27 at 24.

⁴² Minow, M. and Spelman, E. (1988) 'Passion for justice', 10 *Cardozo Law Review* 37-76 at 52.

⁴³ Pillsbury (1989) *op. cit.* at 684.

⁴⁴ Merry (1990) *op. cit.* at 10.

lives.”⁴⁵ In the context of divorce it has been observed that while emotions are crucial to clients’ definitions of their case, it is only a definition that excludes emotion, which is acceptable to the lawyer.⁴⁶ O’Barr and Conley conclude that:

*the law has come to define the problems of ordinary people in ways that may have little meaning for them, and to offer remedies that are unresponsive to their needs as they see them.*⁴⁷

Survivors ‘goals’ often conflict with those of legal actors⁴⁸ and most “conclude that the court is not a place where their problems can be addressed.”⁴⁹ Mackinnon writes:

*Mostly women feel that the law is not about them, has no idea who they are or what they face or how they think or feel, has nothing to say to them and can do nothing for them.*⁵⁰

Such feelings were expressed in many of the stories told for this research. Why do survivors of domestic violence believe that law ‘is not about them’?

6.1.2. Survivors of Domestic Violence, Emotion and Law

It is true that “the intense emotional nature of domestic violence makes it one of the most perplexing areas of law enforcement.”⁵¹ In Chapter One a description was given of some of the complex emotional, psychological and behavioural effects of surviving domestic violence and separating from a violent partner. Yet the popular understanding is still that feelings of attachment and the fear of violence cannot co-exist.⁵² Law and legal actors have difficulty with ambiguity and there is sometimes a

⁴⁵ Olsen, F. (1985) ‘The myth of state intervention in the family’, 18(4) *University of Michigan Law Review* 835-864 at 864.

⁴⁶ Felstiner and Sarat (1995) *op. cit.* at 132.

⁴⁷ Conley and O’Barr (1990) *op. cit.* at 177.

⁴⁸ Hoyle, C. (1998) *Negotiating Domestic Violence: Police, Criminal Justice and Victims* (Oxford: Clarendon Press) at 204.

⁴⁹ Cretney and Davis (1997b) *op. cit.* at 154.

⁵⁰ MacKinnon, C. (1993) ‘Reflections on law in the everyday life of women’, in, Sarat, A. and Kearns, T. (1993) *Law in Everyday Life* (Ann Arbor: University of Michigan Press).

⁵¹ Sanders (1988) *op. cit.* at 364.

⁵² Littleton, C. (1989) ‘Women’s experience and the problem of transition: Perspectives on male battering of women’, *University of Chicago Legal Forum* 23-57 at 46; Mahoney, M. (1991) ‘Legal images of battered women: Redefining the issue of separation’, 90 *Michigan Law Review* 1-94.

tendency to simplify human experience in order to render consistent judgements⁵³ which can block empathy with people's emotions.⁵⁴ Law is "founded on the fictions of formal equality and mutual free agency"⁵⁵ so the legal understanding of choice for survivors of domestic violence is usually fairly simple⁵⁶ - she leaves or she stays. The reality is that all the choices involved in domestic violence involve ambivalent feelings.

Choices faced by survivors, like many decisions, are limited by economic, social, religious, cultural and legal considerations. Women's decisions are shaped by a combination of different emotional forces, including fear and feelings of attachment and 'rational' assessments of their situation. Reason and emotion are "components of thinking and decision-making that interact."⁵⁷ Reason says to go – it's dangerous, the children are badly affected by the violence. It is also rational to stay - it would be better for the children, for me, it's important to keep the family and relationship in tact, we need a home, we need the money. Emotion says to go - I don't love him, I love the children, I love myself, I hate him, I fear him, I don't trust him any more. Feelings also drive the impulse to stay - I love him, I pity him, I love the idea of the relationship, I love the children, I love my home.

Legal actors may avoid survivors' emotions in domestic violence cases because they feel unable to respond to the complex issues involved, which are rarely amenable to legal 'solutions'. Legal actors' and researchers' definitions of 'success' in the context of legal responses to domestic violence focus on outcomes, such as arrests, court orders, convictions and sentences, or a favourable divorce settlement.⁵⁸ Such narrow

⁵³ Tobin, E. (1997) 'Imagining the mother's text: Toni Morrison's *Beloved* and contemporary law', in, St. Joan, J. and Bennington, A. (Eds) *Beyond Portia: Women, Law and Literature in the United States* (Boston: Northeastern University Press) at 140.

⁵⁴ Henderson (1987) *op. cit.* at 1589.

⁵⁵ Mahoney, M. (1992) 'Exit: Power and the idea of leaving in love, work and the confirmation hearings', 65 *South California Law Review* 1283-1319, at 1317.

⁵⁶ Cahn, N. (1993) 'Inconsistent stories', 81(7) *Georgetown Law Journal* 2475-2531 at 2524.

⁵⁷ Henderson (1988) *op. cit.* at 46.

⁵⁸ Tyler, T. (1990) *Why People Obey the Law* (New Haven; Yale University Press) at 71; Cretney, A. and Davis, G. (1996) 'Prosecuting "domestic" assault', *Criminal Law Review* 162-174 at 172; Cahn (1993) *op cit.* at 2491.

definitions are driven by organisational and cultural issues, such as performance indicators and ideas about 'real' policing or 'real' crime. Law's narrow definition of 'assistance' is "denoted in terms of the helper's role rather than the victim's needs."⁵⁹ When a woman seeks legal assistance there is often a contradiction between legal actors' definitions of success and failure and women's goals.⁶⁰ Caroline described her feelings when her husband was arrested:

*They got their result and they didn't care who they left behind and what was going through my mind or anything.*⁶¹

The existence of an identifiable legal product or process in relation to domestic violence is rarely a simplistic and unqualified 'success' for the survivor involved. Legal processes often involve a great deal of trauma and most legal products are limited in how far they respond to women's actual needs. For survivors of domestic violence evaluations of legal responses are far more complex.

Theories of procedural justice suggest that when citizens interact with legal authorities they are not *only* concerned with the outcome of their interactions, but also with the fairness of the procedure. This includes being allowed to state their case, being fairly listened to, lack of bias and legal actors giving reasons for decisions.⁶² The theory suggests that citizens' emotional reactions to law are important.⁶³

*The ability of legal authorities to function effectively depends on their sensitivity to the concerns of those with whom they deal.*⁶⁴

Personal experiences of legal actors and procedures affect citizens' views of the legitimacy of law and trust in legal actors.⁶⁵ This has important implications for survivors of domestic violence who may doubt the appropriateness of using legal tools

⁵⁹ Ford, D. (1991) 'Prosecution as a victim power resource: A note on empowering women in violent conjugal relationships', 25(2) *Law and Society Review* at 331; Also, Borkowski, M., Murch, M. and Walker, V. (1983) *Marital Violence: The Community Response* (London: Tavistock Publications) at 116.

⁶⁰ Shepard, M. and Pence, E. (1999) (Eds) *Coordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond* (California: Sage) at 11.

⁶¹ Caroline, Int. 21 at 10.

⁶² Tyler (1990) *op. cit.* at 6 and 7.

⁶³ *ibid* at 75.

⁶⁴ *ibid* at 84.

⁶⁵ *ibid* at 106 and 151.

and may have difficulties in trusting due to their experiences. The interpersonal dimension of legal pathways can also “reinforce citizens’ positive self image and sense of personal worth” and can enhance feelings of security.⁶⁶ Interactions with legal actors have the potential to connect women with others and encourage a sense of worth by showing that they are valued.

Women’s accounts of domestic violence law suggest that taking legal pathways is only sometimes about finding solutions, but is generally about seeking support.

Herman argues that such support is crucial for all survivors of trauma:

*their sense of self has been shattered. That sense can only be rebuilt as it was built initially, in connection with others.*⁶⁷

Research repeatedly emphasises the importance to survivors of practitioners who listen, ask directly about abuse, and respond with sympathy, and believing, non judgmental understanding, are respectful of women’s different stages of survival and know the importance of confidentiality.⁶⁸ Survivors consistently rate refuges more positively than other agencies in terms of safety, assistance, attitudes of staff and the opportunity to share experiences and feelings with other women.⁶⁹ The experiences of some survivors suggest that judgmental attitudes and insensitive, disbelieving approaches by legal actors and other practitioners impede help-seeking.⁷⁰ In Seuffert’s research, the sense that lawyers did not understand the dynamics of domestic violence was a consistent theme in survivor’s stories.⁷¹ Women’s experiences of legal responses to rape illustrate the importance of sensitive and supportive responses to a woman’s self image.⁷² In Baker’s research survivors of domestic violence “overwhelmingly” cited police “ineffectiveness and rudeness” as

⁶⁶ *ibid* at 150 and 164.

⁶⁷ Herman (1992) *op. cit.* at 61.

⁶⁸ Mullender, A. and Hague, G. (2000) *Reducing Domestic Violence ... What Works? Women Survivors’ Views*, Policing and Reducing Crime Briefing Note (London: Home Office); Davidson, L., King, V., Garcia, J. and Marchant, S. (2000) *Reducing domestic violence ... What works? Health Services*, Policing and Reducing Crime, Briefing Note (London: Home Office).

⁶⁹ Mullender and Hague (2000) *ibid.*

⁷⁰ *ibid.*

⁷¹ Seuffert, N. (1994) ‘Lawyering and domestic violence: A feminist integration of experiences, theories and practices’, in, Stubbs, J. (Ed) (1994) *Women, Male Violence and the Law* (Sydney: Institute of Criminology) at 90.

⁷² Gregory, J. and Lees, S. (1999) *Policing Sexual Assault* (London: Routledge) at 178.

the reason why they resisted involving the police.⁷³ Sometimes legal responses intensify women's isolation and loss of self, making them question their own sense of reality and accept responsibility for the abuse.⁷⁴

When survivors seek help, a central need is for "caring"⁷⁵ and a sense of validation for their actions, perceptions and complex reality.⁷⁶ The legal process can be a positive and empowering experience when women feel listened to, understood and supported.⁷⁷ In this research women often vividly recalled comments made by legal actors and the positive or negative effects those words had in the process of survival.

*What a judge and counsel say in court and in chambers has important consequences for how a woman can redefine herself and change her situation.*⁷⁸

Survivors of domestic violence put a high value on empathy and attempts by legal actors to understand their situation, with legal representation judged according to "time spent giving personal attention and sensitivity to the woman's situation."⁷⁹ Barron found women attached much value to solicitors who were sympathetic, reassuring, treated the client with respect.⁸⁰ Pahl found that the police officers who were viewed most positively were not necessarily those who adopted an extreme law enforcement role, but those who "responded most appropriately" to her particular situation.⁸¹ Yet understanding, sensitivity, patience and validation of survivors'

⁷³ Baker, P. (1997) 'And I went back: Battered women's negotiation of choice', 26(1) *Journal of Contemporary Ethnography* 55-74 at 68.

⁷⁴ Merritt-Gray and Wuest (1995) *op. cit.*

⁷⁵ Jones, A. and Schechter, S. (1992) *When Love Goes Wrong: What To Do When You Can't Get Anything Right* (London: Victor Gollancz) at 322.

⁷⁶ Merritt-Gray and Wuest (1995) *op. cit.* at 404.

⁷⁷ Chaudhuri, M. and Daly, K. (1992) 'Do restraining orders help? Battered women's experience with male violence and legal process', in, Buzawa, E. and Buzawa, C. (Eds) (1992) *The Changing Criminal Justice Response* (Westport Connecticut: Auburn House) at 246; Also, Barron, J. (1990) "Not Worth the Paper...? The Effectiveness of Legal Protection for Women and Children Experiencing Domestic Violence" (Bristol: Women's Aid Federation England) at 74.

⁷⁸ *ibid.*

⁷⁹ Chaudhuri and Daly (1992) *op. cit.* ; Also, Doy, E. and Maitland, L. (1996) *Norwich Challenging Abuse of Women and Children: Views from the Sharp End* (Women Policy Research Unit: University of East Anglia) at 19.

⁸⁰ Barron (1990) *op. cit.* at 92.

⁸¹ Pahl, J. (1982) 'Police responses to battered women', *Journal of Social Welfare Law* 337-343 at 343; Glass (1995) *op. cit.* at 210.

perceptions and concerns are neglected aspects of evaluating the ‘success’ of legal responses to domestic violence. Also they often missing from women’s experiences of legal pathways.

6.2. Survivors’ Experiences of Legal Responses to Their Emotions

This research supports the suggestions of other studies that there is much variation in the service offered by individual legal actors⁸² and “receiving meaningful assistance is generally a random event.”⁸³ Women’s stories suggest that legal actors often fail to understand the ambiguous and changing emotions involved in the process of survival. The following discussion considers legal responses to feelings of fear, distrust and anger. It then goes on to consider responses to feelings of hope, guilt and confusion. Thirdly, the issue of legal responses to women’s individual journeys is discussed. Consideration is then given to the way legal responses fail to address women’s needs to talk about their feelings or to ‘move on’ from the experience of violence. At the end of this part of the chapter some examples are highlighted of survivors’ experiences of understanding and support.

6.2.1. Fear, Distrust and Anger

Given domestic violence law’s tendency to focus on protection one might have expected the law to be relatively effective in responding to women’s feelings of fear and distrust of the perpetrator. However, the chapters in Part Two revealed how legal actors often fail to acknowledge the degree of fear experienced by survivors of domestic violence⁸⁴ and sometimes regard domestic violence as a symptom of general problems in the relationship.⁸⁵ Women were disbelieved and their realities denied when they came to the borderline of revealing violence, attempted to draw lines in the

⁸² Grace, S. (1995) *Policing Domestic Violence in the 1990s*, Home Office Research Study 139 (London: HMSO).

⁸³ Erez, E. and Belknap, J. (1998) ‘In their own words: Battered women’s assessment of the criminal processing system’s responses’, 13(3) *Violence and Victims* 251-268.

⁸⁴ Busch and Robertson (1993) *op. cit.* at 116.

⁸⁵ *ibid*; Cretney and Davis (1997b) *op. cit.*

sand and tried to create a new life. Incomprehension and hostility by legal actors can compound a survivor's feelings of fear, distrust and isolation.⁸⁶

Chapter Two shows that fear is an important aspect of the reasons why women are reluctant to pursue prosecutions and yet prosecutors and police officers do not distinguish between this and other reasons.⁸⁷ The fear and danger of 'separation assault'⁸⁸ is not clearly understood, particularly in relation to divorce and child contact pathways. Attempts at separation often have far-reaching consequences for women experiencing domestic violence, including increased danger and determined efforts by the perpetrator to maintain control over his partner, sometimes through legal proceedings.⁸⁹ Yet, several women in this study were required by courts to live with their partners during the process of divorce, which led to the sexual assault of Clare and the attempted rape of Lucy.⁹⁰ Fear and distrust can make it difficult for a survivor of domestic violence to accept contact between her children and ex-partner.⁹¹ Yet in the context of legal proceedings relating to children, legal actors, including women's own representatives, Family Court Welfare Officers and judges, expect women to overcome their fears and facilitate contact.⁹² Some women requested restrictions to be placed on contact which were not granted, and which increased their fear of physical and psychological harm to their children.⁹³

It has been suggested that anger is one feeling which influences a woman to separate from a violent partner⁹⁴ and that it is difficult for her to feel hatred and hostility until

⁸⁶ Herman (1992) *op. cit.* at 62.

⁸⁷ Kelly, L. (1999) *Domestic Violence Matters: An Evaluation of a Development Project*, Home Office Research Study 193 (London: Home Office) at 55; Hoyle (1998) *op. cit.*

⁸⁸ Mahoney (1991) *op. cit.*

⁸⁹ *ibid.*

⁹⁰ Helen, Int. 12; Lucy, Int. 4; Clare, Int. 14; Rachel, Int. 27.

⁹¹ Cahn, N. (1991) 'Civil images of battered women: The impact of domestic violence on child custody decisions', 44(5) *Vanderbilt Law Review* 1041-1097.

⁹² Radford, L., Sayer, S. and Aid for Mothers in Contact Action (AMICA) (1999) *Unreasonable Fears? Child Contact in the Context of Domestic Violence: A Survey of Mothers' Perceptions of Harm* (Bristol: Women's Aide Federation England) at 28.

⁹³ Rachel, Int. 27 at 3; Emma, Int. 16 at 6; Yvette, Int. 23 at 29; Jenny, Int. 9 at 18; Maria, Int. 26 at 20.

⁹⁴ Ferraro, K. and Johnson, J. (1983) 'How women experience battering: The process of victimisation', 30 *Social Problems* 325-339 at 335.

she is safely out of the relationship.⁹⁵ Several women described how it was not possible to feel emotions like hate anger or revenge even then.⁹⁶ Walker suggests that there is a need to blame and disassociate from the abuser and to feel anger towards him or at least indifference.⁹⁷ Julie's story is an unusual example of legal responses helping a survivor to express such feelings. She said that at one point when waiting for the trial, she needed "to have some anger or hate."⁹⁸ She arranged to see photographs of her injuries taken by the police: "I thought well if I see the pictures it might make me realise what he's done."⁹⁹ A combination of seeing the photographs, and undertaking painful dental treatment, helped to change Julie's feelings:

*I started getting all this anger coming out in the last two weeks. I think it was because I saw my teeth as they originally were in that photograph, you know, they were all raw.*¹⁰⁰

The existence of such feelings can also be used against a woman by legal actors because they do not fit the image of the passive victim or they suggest vindictiveness and revenge. Susan was advised by a Victim Support worker not to show her anger to the jury in her husband's trial for rape.¹⁰¹ Both the presence and absence of emotion can be used to corroborate or contradict a woman's story of trauma.¹⁰² A woman not showing any emotions like fear may be considered a suspect 'victim', whilst showing anger can indicate vindictiveness.

In contrast, some family law responses to domestic violence in the divorce or child contact process, as well as failing to understand feelings of fear and distrust, attempt to eliminate feelings like those which Julie felt she needed to help her to continue with the legal process. In the context of divorce anger may be important in preserving a sense of self and separating from the partner and may help to give energy and dignity

⁹⁵ Lempert, L. (1997) 'The line in the sand: Definitional dialogues in abusive relationships', in, Straus, A. and Corbin, J. (Eds) (1997) *Grounded Theory in Practice* (California: Sage).

⁹⁶ Yvette, Int. 23, at 13; Julie, Int. 13 at 11 and 20.

⁹⁷ Walker, L. (1984) *The Battered Woman Syndrome* (New York: Springer) at 87.

⁹⁸ Int. 13 at 11 and 20.

⁹⁹ Int. 13 at 11.

¹⁰⁰ Int. 13 at 11.

¹⁰¹ Int. 2 at 21.

¹⁰² Gregory and Lees (1999) *op. cit.* at 189-190.

in reconstructing a new life.¹⁰³ It has been suggested that some degree of conflict, polarisation and imputation of blame is necessary for a true psychological separation from the former partner.¹⁰⁴ The present focus on reducing conflict may work against the needs of some divorcing people, like survivors of domestic violence, for whom conflict and separation may perform a positive function.¹⁰⁵ One danger of mediation and other alternative dispute resolution methods, such as restorative justice conferences, is that they encourage the parties to consider each other's feelings, which may undermine a woman's process of survival and separation.

6.2.2. Hope, Guilt and Confusion

In some ways, fear is the easiest emotion for law to respond to and Littleton says that when women talk of their experience in terms of "love, faith and fear", the law hears only fear.¹⁰⁶ One example is that a witness statement can only be read in court, as opposed to the individual appearing in person, if the witness is not able to give evidence "through fear."¹⁰⁷ This fails to acknowledge the other emotions, such as confusion, hope and guilt, that may prevent a woman from giving evidence. Chapter One described how hope for change in the partner, a sense of failure, guilt and lack of confidence are important features in women's processes of survival.¹⁰⁸ Loss of hope in the relationship, and for change in the partner, is often one factor in allowing separation.¹⁰⁹ Just as the women who told their stories had had great hopes for their marriages and relationships, some also hoped they could salvage some degree of 'normality' for the future after separating from their partners.

¹⁰³ Day- Sclater, S. (1997) 'Narratives of divorce', 19(4) *Journal of Social Welfare and Family Law* 423-441 at 435.

¹⁰⁴ *ibid.*, referring to Vaughan, D. (1987) *Uncoupling: Turning Points in Intimate Relationships* (Oxford: Oxford University Press).

¹⁰⁵ *ibid.*; Also, Sarat and Felstiner (1995) *op. cit.* at 164-165; Fineman, M. (1988) 'Dominant discourse, professional language and legal change in child custody decision-making', 101(4) *Harvard Law Review* 727-774 at 731.

¹⁰⁶ Littleton (1989) *op. cit.* at 44.

¹⁰⁷ Criminal Justice Act 1988 s.23(3)(b).

¹⁰⁸ Ferraro and Johnson (1983) *op. cit.*; Barnett, O. and LaViolette, A. (1993) *It Could Happen to Anyone: Why Battered Women Stay* (California: Sage Publications).

¹⁰⁹ Ferraro and Johnson (1983) *op. cit.* at 332; Marden, M. and Rice, M. (1995) 'The use of hope as a coping mechanism in abused women', 13(1) *Journal of Holistic Nursing* 70-82 at 76.

Emma, speaking after her divorce had been finalised and when she was happy at the start of a new relationship, revealed how enduring feelings of hope and faith can be:

*The man I thought he was he wasn't at all. I didn't really know him. A little part of me still expects him to knock on the door and say he's sorry.*¹¹⁰

Yvette was still negotiating the arrangements for post-separation parenting at the time of the interview. She said:

*You've got to try and forget about what's happened and concentrate on what is going to happen in the future and what I would like in the future is for it to be quite nice . . . What I would like is a normal type of situation whereby Tim [ex-partner] would come and collect Beverley [daughter] and we'd have a chat and say: "What you doing?" and "Where you going today?" I know it's going to take a long time and I know this time next year I'm still going to be wanting it.*¹¹¹

Amelia said that she did not want to proceed with a criminal prosecution even after separating from her partner "half because I was scared and half because I thought he was going to change."¹¹² Awareness by legal actors of the dynamics of domestic violence can help to ensure that legal responses do not undermine the process of survival by encouraging hope¹¹³ and exacerbating feelings of guilt and confusion.

It has been suggested that domestic violence perpetrator programmes, and other legal interventions, can offer 'false hope' for changes in the partner's behaviour which never happen.¹¹⁴ Some women described how giving their partner 'another chance' was influenced by his willingness to seek professional help for his violence.¹¹⁵

Caroline said that she was only going to give evidence against her partner in a criminal trial to "help him" with the violence by asking for him to be given a place in

¹¹⁰ Int. 16 at 2.

¹¹¹ Int. 23 at 28; Also, Lucy, Int. 4 at 21.

¹¹² Amelia, Int. 28 at 15.

¹¹³ Hanna, C. (1998) 'The paradox of hope: The crime and punishment of domestic violence', 39(5) *William and Mary Law Review* 1505-1584.

¹¹⁴ Gondolf, E. and Fisher, E. (1988) *Battered Women as Survivors: An Alternative to Treating Learned Helplessness* (Massachusetts: Lexington Books) *op. cit.* at 87; Davies, J. and Lyon, E. (1998) *Safety Planning with Battered Women: Complex Lives/Difficult Choices* (London: Sage) at 46.

¹¹⁵ Amelia, Int. 28 at 14; Sally, Int. 24 at 20.

an alcohol rehabilitation clinic or “anger course.”¹¹⁶ The perpetrator attending treatment is one of the strongest predictors of a woman returning¹¹⁷ and men may use attendance as a way of manipulating both survivors and legal actors to believe that they have changed.¹¹⁸ The importance of hope, in the stories told for this research, suggests that women must be fully informed about the limited effectiveness of all responses to domestic violence, including arrest, prosecution, injunctions and perpetrator programmes. Evidence of men manipulating women through attendance on a programme makes it crucial for there to be support services for survivors.¹¹⁹ Recognising that her partner is unable to stop the abuse may be critical for a woman reclaiming her sense of self.¹²⁰ For some women the failure of counselling or other ‘treatment’ to change their partner’s violence may be the confirmation that, in Amelia’s words, the relationship is “not going to work.”¹²¹ The availability of such programmes may therefore be a means of empowering women to move towards separation.

Feelings of guilt, and hope for change in the partner, can make it easy to be pulled back into the relationship and believe in a hopeful future. Chapter One shows that ‘emotional blackmail’ and the guilt that such pressure relies on is an important aspect of women’s decision-making. Kate said:

*I felt so guilty for leaving him even after everything, I felt really guilty, I’d taken his baby girl away and he told me how much that hurt and I felt really guilty.*¹²²

Lucy’s partner spent two weeks in prison on remand and was later acquitted of attempted rape.

¹¹⁶ Caroline, Int. 21.

¹¹⁷ Gondolf and Fisher (1988) *op. cit.* at 4.

¹¹⁸ *ibid*; Pagelow (1981) *op cit*; Busch, R. and Robertson, N. (1997) ‘The gap goes on: An analysis of issues under the Domestic Violence Act 1995’, 17 *New Zealand Universities Law Review* 337-378; Gondolf and Fisher (1988) *op. cit.* at 87.

¹¹⁹ Busch, R. and Robertson, N. (1994) “‘Ain’t no mountain high enough (to keep me from getting to you)’” An analysis of the Hamilton Abuse Intervention Pilot Project’, in, Stubbs (1994) *op. cit.* at 50-51,

¹²⁰ Merritt-Gray and Wuest (1995) *op. cit.* at 406.

¹²¹ Int. 28 at 14.

¹²² Int. 3 at 45; Also, Emma, Int. 16 at 1; Sharon, Int. 30 at 13.

*All my friends were: "Why are you feeling so guilty?" I said: "You know, I loved this person once and now I've put them in prison."*¹²³

Guilt and feelings of attachment, even after separation, explain why some women, like Jenny, may not want punitive action against their partners, such as a prison sentence.¹²⁴ Yvette explained why she did not 'press charges' against her former partner.

*I wouldn't be able to live with myself knowing that Terry [former partner] is in prison because - deep down - I do feel something for him . . . You can't switch off your feelings even though what he did was really bad. You can't just switch it off like a light especially when you've got a child to look after as well.*¹²⁵

Legal proceedings may also be an opportunity for the perpetrator to exploit and manipulate women's emotional uncertainty in subtle ways.¹²⁶

The emotional aspects of legal proceedings are often neglected, and difficult situations can be made worse by the insensitivity of legal actors. Yvette felt that the court welfare officer was 'siding' with her husband when he suggested that the harassment after separation was because the man was 'upset'.¹²⁷ An incident described by Emma revealed a deep lack of understanding of the complex process of surviving domestic violence.

*There was one point during the divorce hearings when the barristers had to move me in the court because he [her husband] was getting aggressive and abusive. The barristers said: "It's because he's still in love with you". I thought they just don't understand, that's the last thing I needed him to say, I needed him to say: "Don't put up with it". I used to tell myself that he didn't mean to hurt me and he loved me.*¹²⁸

¹²³ Int. 4.

¹²⁴ Jenny, Int. 9 at 6.

¹²⁵ Yvette, Int. 23 at 43; Also, Clare, Int. 14 at 6.

¹²⁶ Fischer, K., Vidmar, N. and Ellis, R. (1993) 'The culture of battering and the role of mediation in domestic violence cases' 46 *SMU Law Review* 2117-2174.

¹²⁷ Yvette, Int. 23 at 26; Also, Lucy, Int. 4 at 33.

¹²⁸ Int. 16 at 9.

At this point Emma needed support in separating from her abuser and in overcoming her feelings of attachment. For Caroline the prospect of actually seeing her partner in person after a period of separation was a source of real concern because she was uncertain of how she would feel when she saw him.¹²⁹ In Rachel's case, her partner came to court wearing his wedding suit - a choice of clothing that she considered symbolic. On one occasion Jill was taken to a woman's refuge by the police.¹³⁰ Whilst there the police telephoned her to ask that she make contact with her partner, because he had threatened to 'jam' their phone lines if she did not. Jill did this and her partner was able to pressurise her to return with threats to kill himself. It is stories like this that illustrate the lack of understanding many legal actors have about the complex emotional pressures applied by perpetrators.

Sharon described how her solicitor did not turn up to the first child contact hearing and then left her during the lunch time of the next hearing which left her feeling isolated and vulnerable.¹³¹ Yvette described her mixed feelings at the court hearing in which she applied for an injunction against her ex-partner.

Obviously the solicitor and the judge deal with this every day, but it was happening to me and to think that it was Tim, the father of Beverly [their daughter] and the bloke that I was gonna marry. It was all sort of emotional and I thought ,God, I can't do this.

She continued with the application and the injunction was granted by the judge.

*After that, after we came out of the room my solicitor said: "How do you feel?" I said, "A bit relieved, scared, and upset. A bit mixed up really".*¹³²

She went on to describe her feelings during the weekend, when she was waiting for the injunction to be served.

All along I'm thinking how Tim would be feeling. So I got upset . . . thinking he's gonna be really upset . . . I don't know why I thought about how he was feeling, I just did. Don't know. I try not to now though. Try not to think about how he's feeling. I've got to concentrate on how I'm feeling.

¹²⁹ Int. 21 at 16.

¹³⁰ Int. 29 at 10.

¹³¹ Int. 30 at 21.

¹³² Also, Jill, Int. 29 at 30.

It is important that legal actors are aware of how difficult certain legal proceedings can be in terms of the complex range of feelings involved.

Survivors' emotions can be used by perpetrators¹³³ and others to defend and explain the actions of violent men, and in order to manipulate survivors and legal actors in ways that can undermine a woman's efforts to free herself of the violent relationship.¹³⁴ The experiences described above show that this is important in formal legal forums, but informal proceedings may give an abuser more opportunities to manipulate, blame, beg and cajole his partner by exploiting her feelings of attachment.¹³⁵ This is potentially destructive at a time when she may be attempting to overcome feelings of attachment and fear. This failure by legal actors to understand the range of feelings experienced by women is linked with a failure to respond to women at their different stages of survival, particularly in regard to the uncertainty women often feel about leaving their partners and taking legal pathways.

6.2.3. Women's Individual and Complex Journeys

One of the limitations of law for survivors of domestic violence is the perception that legal actors do not understand the complexity of domestic violence.¹³⁶ The search in legal proceedings for one objective, fixed and stable 'truth' makes it difficult to

¹³³ Hearne, J. (1998) *The Violences of Men: How Men Talk About and How Agencies Respond to Men's Violence to Women* (London: Sage Publications).

¹³⁴ Pagelow (1981) *op. cit.* at 197; Busch, R. (1993) "'Was Mrs Masina really 'lost'?" An analysis of New Zealand judges' attitudes towards domestic violence' 7(4) *Otago Law Review* 17-50; Busch, R. (1994) "'Don't throw bouquets at me ...(judges) will say we're in love": An analysis of New Zealand judges' attitudes towards domestic violence', in, Stubbs (1994) *op. cit.*

¹³⁵ Astor, H. (1994) 'Swimming against the tide: Keeping violent men out of mediation', in Stubbs (1994) *op. cit.*; Fischer, Vidmar and Ellis (1993) *op. cit.*; Hilton, N. (1991) 'Mediating wife assault: Battered women and the "new family"' 9 *Canadian Journal of Family Law* 29-53; Hudson, B. (1998) 'Restorative justice: The challenge of sexual and racial violence', 25(2) *Journal of Law and Society* 237-56; Lerman, L. (1984) 'Mediation of wife abuse cases: The adverse impact of informal dispute resolution on women', 7 *Harvard Women's Law Journal* 57-113; Stubbs, J. (1997) 'Shame, Defiance, and Violence against women: A critical analysis of "communitarian" conferencing' in Cook, S. and Bessant, J. (Eds) (1997) *Women's Encounters with Violence: Australian Experiences* (California: Sage Publications).

¹³⁶ Seuffert (1994) *op. cit.* at 90; Baker, P. (1997) "'And I went back": Battered women's negotiation of choice', *Journal of Contemporary Ethnography* 55-74 at 56.

respond to the ambiguous feelings which may mean a woman telling a different story of her situation from one day to the next.¹³⁷ Women who delay telling their stories or change their accounts over time are often “discredited as liars.”¹³⁸ This is despite the fact that normal responses to trauma involve minimising, normalising, self blame and developing an account over time.¹³⁹ Schepple argues that reflection tends to aid accuracy and survivors of domestic violence “often need to take time to understand what has happened to them” and yet the law generally favours the first version of events.¹⁴⁰ Legal actors often impose a ‘script’ on a woman that demands she leave her abuser and co-operate fully with legal proceedings.¹⁴¹ Survivors’ stories suggest that this ‘script’ is “overly narrow and inadequate,” because there is a lack of co-ordinated support to enable women to leave and because it fails to respond to women at each stage in the process of survival.¹⁴²

Several women talked about the process of survival and separation in terms of their “own journey”¹⁴³ over which others had little control. Many recognised that legal actors could have limited influence at some stages, because, in Ann’s words: “everyone’s got to make their own decisions when the time is right.”¹⁴⁴ For Amelia separation was about being “ready in yourself to give up on the relationship.”¹⁴⁵ Leila said: “It’s something within yourself.”¹⁴⁶ Ann said, “If you’ve still got strong feelings for somebody you will still hope things will get better.”¹⁴⁷ Helen said, of the decision to leave the relationship, “it can only come from within you.”¹⁴⁸ Ruth said of domestic violence, “when you’re in it you can’t see for yourself what’s right and

¹³⁷ Cahn (1993) *op. cit.* at 2478 and 2486-2487.

¹³⁸ Schepple, K. (1992) ‘Just the facts Ma’am: Sexualised violence, evidentiary habits and the revision of truth’, *New York Law School Law Review* 123-172 at 126.

¹³⁹ Herman (1992) *op. cit.*

¹⁴⁰ Schepple (1992) *op. cit.* at 168-169.

¹⁴¹ Baker (1997) *op. cit.* at 56.

¹⁴² *ibid.*

¹⁴³ Ann, Int. 5 at 29.

¹⁴⁴ Ann, Int. 5 at 29 and 18.

¹⁴⁵ Leila, Int. 28 at 14-17.

¹⁴⁶ Leila, Int. 22 at 17; Also, Jill, Int. 29 at 26.

¹⁴⁷ Ann, Int. 5 at 30.

¹⁴⁸ Helen, Int. 12 at 23.

wrong.”¹⁴⁹ Amelia described why she would have found it harmful to become involved in the legal system before she was ‘ready’.

*I would feel bad at the end of the day because I was letting them down when I went back. It would have felt like I had wasted their time where now I feel grateful for them and I feel like I haven't wasted their time.*¹⁵⁰

But can legal actors play a role in helping a woman to feel ‘ready’?

This chapter argues that legal actors and legal services can, and do, play a role in helping women in these individual and complex journeys. Research has found that many survivors:

*[e]ncounter a difficult period of indecision and uncertainty about how best to draw lines and resolve conflicts with someone with whom they are still intimately connected.*¹⁵¹

Part Two shows that this period of indecision can be part of a woman’s survival strategies.¹⁵² It also reveals how women’s priorities change during the process of survival. A woman might call the police or visit a solicitor and then later prefer to focus on housing needs or those of the children rather than devote her energies to a prosecution or injunction application.¹⁵³ Sharon described one point in her relationship.

*I just couldn't make any decisions. I think I had so much self doubt that I didn't know what to do.*¹⁵⁴

Yvette explained the importance of not feeling ‘pressure’ to act by police officers who had given her time to think about her situation whilst encouraging her to consider the positive message it would send to her partner if he didn’t ‘get away with it’.¹⁵⁵ For some women simply being told to leave the partner was not helpful.¹⁵⁶ In fact, over

¹⁴⁹ Ruth, Int. 18 at 5.

¹⁵⁰ Amelia, Int.28 at 20.

¹⁵¹ Fischer, K. and Rose, M. (1995) When “enough is enough”: Battered women’s decision-making around court orders of protection’, 41(4) *Crime and Delinquency* 414-429 at 426.

¹⁵² Jones and Schechter (1992) *op. cit.* at 302.

¹⁵³ Borkowski *et al* (1983) *op. cit.* at 124.

¹⁵⁴ Sharon, Int. 30 at 5.

¹⁵⁵ Yvette, Int. 23 at 45.

¹⁵⁶ Leila, Int. 22 at 17; Amelia, Int. 28 at 20; Caroline, Int. 21 at 35.

emphasis on leaving sometimes leads women to terminate contact with service providers in the belief that they do not understand.¹⁵⁷

One important fact for legal actors to remember is the emotional consequences for a woman who ‘comes to the borderline’ and takes a legal pathway. It is necessary for many women to overcome feelings of shame in order to tell someone about the violence and to take steps to leave their partner.¹⁵⁸ For Emma going to the solicitor’s office did not just involve seeking advice about divorce, but also “admitting outside that all was not fine.”¹⁵⁹ Similar feelings are involved in contacting the police and other agencies. Attitudes, comments and assumptions of legal actors can be “harmful and demoralising” causing “deeper despair than the abuse itself” and exacerbate a woman’s feelings of powerlessness.¹⁶⁰ In contrast, understanding, appreciation of a woman’s situation, persistence and compassion can be critical to a woman’s process of survival and participation in the legal system.¹⁶¹ This research shows that the response a woman receives from a legal actor may shape her future help-seeking efforts, decision-making and sense of self worth.

Judgmental and blaming attitudes by legal actors and over emphasis on leaving can discourage a woman from seeking help and undermine her attempts to separate from the perpetrator.¹⁶² Emma’s perception that her hope “things would get better” and her determination to “work at it” would not be understood led her to change her solicitor on her second application for divorce “due to embarrassment that it had got worse.”¹⁶³ Caroline was very distrustful of a particular police officer whom she felt had judged her, dismissed her views and pressured her to take steps for which she was not ready. She compared him with her solicitor.

¹⁵⁷ Hamby, S. (1998) ‘Partner Violence: Prevention and Intervention’, in, Jasinski, J. and Williams, L. (1998) *Partner Violence: A Comprehensive Review of Twenty Years of Research* (California: Sage) at 237.

¹⁵⁸ Ferraro and Johnson (1983) *op. cit.* at 337.

¹⁵⁹ Int. 16 at 10.

¹⁶⁰ Erez and Belknap (1998) *op. cit.* at 263.

¹⁶¹ *ibid* at 264.

¹⁶² Fischer and Rose (1995) *op. cit.* at 426; Hamby, S. (1998) ‘Partner Violence: Prevention and intervention’, in Jasinski and Williams (1998) *op. cit.* at 237.

¹⁶³ Int. 16 at 3, 8 and 9.

*She's very very nice . . . very understanding . . . And again she listened - she listened to what I wanted and what I was saying and didn't try to tell me what I should be doing. She took me for what I was and understood that he was nice when he was sober whereas a lot of people will say he's not nice when he's sober - the drink like brings the real person out. Which I don't think is right.*¹⁶⁴

This non-judgmental support and understanding was important to Caroline. She rejected the intervention offered by the police officer, but continued seeking advice from her solicitor. It has also been suggested that when legal actors focus on leaving and emphasise the negative aspects of a violent relationship and dismiss the survivor's story of a positive history with the abuser, her repressed feelings may brew influencing the desire to return to the partner.¹⁶⁵ In contrast, feeling free to talk about the 'loving' husband and the 'violent' one may help to clarify decisions.¹⁶⁶

Of all legal actors, judges are perceived as most removed from our "messy lives."¹⁶⁷ The court process in itself often results in "frustration and dissatisfaction" for litigants and legal customs and rules of evidence restrict women's abilities to tell their story and describe their feelings and experiences.¹⁶⁸ Also, judges often do not respond to the stories told to them or give reasons for their decisions.¹⁶⁹ Helen said of the divorce hearing:

*[The judge] didn't even look at us . . . what's wrong with: "Good morning?" We just weren't human beings . . . Why is it so sort of referential? These people are dealing with our lives . . . [It was] very matter of fact . . . totally impersonal . . . just routine . . . There they are playing with our lives and the children's lives and that makes me angry.*¹⁷⁰

¹⁶⁴ Int. 21 at 23-4.

¹⁶⁵ Mills, L. (1998) 'Hope for law: Narratives, therapy and intimate abuse practice', 16 *Behavioural Science and the Law* 525-533; Also, Goldner, V., Penn, P., Sheinberg, M. and Walker, G. (1990) 'Love and violence: Gender paradoxes in volatile attachments', 26(4) *Family Process* 343-363 at 34.

¹⁶⁶ Greenbaum, L. (1991) 'Who's afraid of the big bad wolf? Confronting wife abuse through folk stories', 35(5) *Social Work* 414-419 at 418.

¹⁶⁷ Minow and Spelman (1988) *op. cit.* at 74.

¹⁶⁸ Conley and O'Barr (1990) *op. cit.* at 14.

¹⁶⁹ Davis, G., Cretney, A. and Collins, J. (1994) *Simple Quarrels* (Oxford: Clarendon Press) at 238.

¹⁷⁰ Helen, Int. 12 (II) at 12-13; Also, Emma, Int. 16 at 6.

The lack of compassion and understanding shown by judges was an important aspect of some women's experiences of legal responses and is discussed further in the next chapter. One of the flaws in our present understanding of domestic violence law is that it does not place value on understanding feelings and assisting women in their individual journeys, but rather imposes its definition of the situation and requires women to meet that. Two examples come from the stories of Ruth and Caroline.

Ruth was reluctant to seek a divorce for religious and financial reasons and she was concerned that involving the legal system in the problems of her partner's contact with their children would make her situation worse.¹⁷¹ She described her meeting with a social worker, who focussed on legal 'solutions', rather than discussing the range of options open to Ruth.

*She advised me that the only way to straighten it out was to go through the legal route and I was just devastated at that advice. It involved more money, more commitment . . . I thought oh my goodness everything is down to me . . . And there was a point where of course it is my responsibility because I'm a parent, but it wasn't the only route and she made it sound that it was the only route available.*¹⁷²

Ruth also described her first and last visit to a solicitor, which involved a similar inflexible approach.

*She started off being very efficient. She quickly turned into a very bulldozing solicitor who wanted you to make decisions today, now, while you're here: "Which way do you want to go?" The whole process is decisions and you're actually in the worst possibly state to be making a decision that is going to affect your family, probably for the rest of their lives. So, you know, that type of solicitor is extremely unhelpful and very expensive . . . The ideal solicitor would be someone who was understanding of the situation, they could give you more time to make the decisions.*¹⁷³

¹⁷¹ Ruth, Int. 18 at 38.

¹⁷² Ruth, Int. 18 at 37.

¹⁷³ Ruth, Int. 18 at 5.

As well as narrow advice and unsupportive responses, another aspect of legal actors failing to understand the complex feelings and practical realities of surviving domestic violence is the inflexible legal solutions provided.

At one point in her relationship Caroline agreed that her partner could visit her, but only when he was sober. She described the reaction of the police when she attempted to have her injunction enforced during a violent incident.

*Well they said I was being silly to myself letting him in . . . "You can't let him in just because he's sober - you've got the injunction . . . It's there for your benefit, it's there for your protection - use it." They didn't understand that he was a different bloke when he was sober - as far as they were concerned whether he was drunk or not I should get him arrested when he turns up.*¹⁷⁴

Another feeling which is not understood is the shame of domestic violence and the desperate desire by women to keep it hidden from the neighbours and others, which may sometimes appear to be prioritised over the question of safety.¹⁷⁵ Caroline said:

*I would let him in just so the neighbours didn't see what he was doing - screaming and shouting on the front grass. It was embarrassing and the police couldn't understand that either. They'd say . . . what was worse, having him outside screaming and shouting or having him in the house beating ten buckets out of you. But to me it was easier to let him in because at least nobody saw . . . I didn't want people to know as I'd just moved here - end up with a bad reputation, so it was easier to let him in even though I knew what it was going to be like.*¹⁷⁶

Caroline's story shows how women find it difficult to use inflexible orders when subject to harassment and persistent emotional pressure from the perpetrator and influenced by practical issues like their children, financial situation and the wish simply to keep the violence from their neighbours.¹⁷⁷ Baker's research found that in resisting the dominant cultural 'script' to leave violent partners, women do make

¹⁷⁴ Int. 21 at 26.

¹⁷⁵ Emma, Int. 16 at 21; Maria, Int. 26 at 38; Caroline, Int. 21 at 16; Helen, Int. 12 at 23.

¹⁷⁶ Caroline, Int. 21 at 16; Also, Helen, Int. 12 at 23.

¹⁷⁷ Baker (1997) *op. cit.* at 63-66.

active attempts to control the violence and sometimes use injunctions as a resource when their personal methods fail.¹⁷⁸

There appears to be little understanding of the dynamics of domestic violence and no conception of the need for a gradual process of separation, or acknowledgement of the fact that a woman may need to make various attempts to ‘manage’ the violence before she accepts an end to the relationship. One judge has commented that injunctions are being ‘abused’ when women return to violent partners and that:

*the applicant’s repeated condonation of violence by the respondent should be a significant factor in deciding whether she is entitled to protection from the court at all.*¹⁷⁹

Similar attitudes are shown by judges, police officers and prosecutors towards women who withdraw support from a prosecution.¹⁸⁰ Edwards found that police officers blamed women for allowing men into the home and felt “they had forfeited their right to protection when the man became violent.”¹⁸¹ Legal actors lack empathy with the complex economic, social, psychological and emotional reasons why women do not support criminal prosecutions blaming women’s ‘fickleness’.¹⁸² Views like this illustrate the rhetoric of the privacy of the family which preclude a woman from using legal tools to deal with her ‘private’ problems.¹⁸³ A survivor of domestic violence is expected to enter the legal arena on law’s inflexible terms or not at all.¹⁸⁴ The ‘terms’ which law offers often do not pay attention to two major needs in the emotional process of surviving domestic violence – the need to talk and the need to move on.

¹⁷⁸ *ibid.*

¹⁷⁹ Gerlis, S. (1994) ‘It’s my *ex parte* and I’ll cry if I want to’, 24 *Family Law* 38.

¹⁸⁰ Ford, J., Rompf, E., Fragher, T. and Weisenfluh, S. (1995) ‘Case outcomes in domestic violence court: Influence of judges’, 77 *Psychological Reports* 587-594 at 588; Cretney, A. and Davis, G. (1997a) ‘The significance of compellability in the prosecution of domestic assault’, 37 (1) *British Journal of Criminology* 75-89 at 81.

¹⁸¹ Edwards, S. (1989) *Policing ‘Domestic’ Violence: Women, the Law and the State* (London: Sage Publications) at 107.

¹⁸² *ibid* at 104.

¹⁸³ McCann (1985) ‘Battered women and the law: Limits of legislation’, in, Brophy, J. and Smart, C. (Eds) (1985) *Women in Law: Explorations in law, Family and Sexuality* (London: Routledge) at 92.

¹⁸⁴ Cretney and Davis (1997a) *op. cit.* at 81-82.

6.2.4. Survivors' Need to Talk

Part Two shows that the process of survival is experienced differently by different women, and at some points women may require practical help, at others more emotional support and just someone to talk to.¹⁸⁵ The therapeutic value of talking and telling one's story has been recognised as an important element in recovering from trauma,¹⁸⁶ although it may not be helpful for all individuals.¹⁸⁷ In *Opening Up: The Healing Power of Expressing Emotions*, Pennebaker describes the 'liberating' experience of confessing, disclosing and talking which reduces the physical and psychological stress of inhibition.¹⁸⁸ Pennebaker also describes the emotional release, relief and contentment in writing about negative experiences in diaries.¹⁸⁹ In *Writing as a Way of Healing*,¹⁹⁰ DeSalvo describes the mental and physical effects of the act of writing, which has been found to result in a quieting of the body, a slowing of the pulse and a calming of the breathing. Writing and talking about an event is said to allow for a change of perspective,¹⁹¹ summarising the event to make it less overwhelming¹⁹² and externalising a traumatic experience preserves the memory and value of it giving less reasons to rehearse the event actively.¹⁹³ The process of writing and talking can also help problem-solving.¹⁹⁴

When a woman has managed to compress her experience into "more understandable packages," she can "begin to move beyond the trauma."¹⁹⁵ This point was illustrated when Susan said that the more she talked about her experience it "takes a little piece

¹⁸⁵ Glass (1995) *op. cit.* at 272; Hoyle (1998) *op. cit.* at 197; Kelly (1999) *op. cit.* at 28.

¹⁸⁶ Herman (1992) *op. cit.* at 1.

¹⁸⁷ Newburn, T. (1993) *The Long Term Needs of Victims: A Review of the Literature*. Research and Planning Unit Paper 80 (London: Home Office) at 27 and 37.

¹⁸⁸ Pennebaker, J. (1997) *Opening up: The Healing Power of Expressing Emotions* (London: Guildford Press).

¹⁸⁹ *ibid* at 41.

¹⁹⁰ DeSalvo, L. (1999) *Writing as a Way of Healing: How Telling stories Transforms Our Lives* (London: The Women's Press).

¹⁹¹ Pennebaker (1997) *op. cit.* at 95.

¹⁹² *ibid* at 97.

¹⁹³ *ibid* at 98.

¹⁹⁴ *ibid* at 191.

¹⁹⁵ *ibid* at 185.

out of me and I think like, chuck that little piece away again now.”¹⁹⁶ Jill described the cathartic experience of writing an account of her experience of domestic violence for the solicitor. She said that because she had not talked about the violence with anyone, it had “built up inside” and during the process of writing she was able to cry.¹⁹⁷

Support for the therapeutic value of disclosure assumes a certain kind of writing and talking about negative experiences. DeSalvo emphasises the importance of not censoring your writing and recording thoughts and feelings without constraint,¹⁹⁸ or ‘free writing.’¹⁹⁹ Pennebaker describes the need to discuss feelings about events, rather than focusing on narrating experiences and venting emotions.²⁰⁰ Herman warns against a “premature demand for certainty” and the need “learn to live with ambiguity while exploring at a tolerable pace.”²⁰¹ She says that the role of the therapist “is to be an open-minded, compassionate witness, not a detective.”²⁰² Legal responses tend to rely on a different kind of disclosure, confession or ‘complaint.’ Survivors have to think carefully before they speak, because their words may be used against them, and misinterpreted at a later date. Chapter Four describes how legal actors, including prosecutors and Victim Support workers are not permitted to discuss the content of evidence before court. Even talking in informal networks can be dangerous if one is a witness involved in legal proceedings. A friend of Susan’s and her counsellor were called by the prosecution to give evidence at her husband’s trial for rape.²⁰³ Domestic violence officers may promise confidentiality, but their law enforcement role makes this difficult in practice.²⁰⁴ Exploring the pattern of violence and women’s feelings may also require a type of questioning which a court could condemn as ‘leading,’ but which others working with survivors of domestic violence might consider supportive,

¹⁹⁶ Susan, Int. 2 at 23.

¹⁹⁷ Int. 29 at 30.

¹⁹⁸ DeSalvo (1999) *op. cit.*

¹⁹⁹ Pennebaker (1997) *op. cit.* at 189.

²⁰⁰ *ibid.*

²⁰¹ Herman (1992) *op. cit.* at 180.

²⁰² *ibid* at 180.

²⁰³ Int. 2.

²⁰⁴ Morley, R. and Mullender, A. (1994) *Preventing Domestic Violence to Women*, Police Research Group, Crime Prevention Unit Series Paper No.48 (London: Home Office) at 19.

affirming, exploratory and therapeutic.²⁰⁵ This kind of talking also requires the training, energy and time which many legal actors do not possess.²⁰⁶

One danger for legal actors is that they may focus on the judicial value of testimony at the expense of the confessional and spiritual dimensions of telling a story of trauma.²⁰⁷ The women in Hoyle's study felt that police officers had not spent enough time with them listening and discussing their problems.²⁰⁸ The separation process often involves a woman re-examining her own sense of self, sometimes shaking confidence in her ability to make choices and decisions. It also means coming to terms with the loss of a relationship, home and the loss of all the hopes and dreams of that relationship, including the hopes for her children's future. Emma described the process as being "like a bereavement"²⁰⁹ and Helen said it was a "grieving process."²¹⁰ It has been suggested that separation from a partner, in terms of divorce, can be a "positive and transformative," as well as painful, experience:

*For this transformative potential to be realised requires that people have the opportunity to piece together their own stories and that conflicts and polarisations be allowed to emerge so that they can be worked through and integrated into the life history.*²¹¹

This process sometimes requires a woman to talk about the positive and negative aspects of her relationships. Helen said that things became easier for her once she accepted that "by getting rid of the bad I was getting rid of some of the good as well."²¹² Yet women are rarely given opportunities to share sadness at losing their relationship.²¹³

²⁰⁵ Kelly (1999) *op. cit.* at 23-24.

²⁰⁶ Massaro (1989) *op. cit.*

²⁰⁷ Herman (1992) *op. cit.* at 181.

²⁰⁸ Hoyle (1998) *op. cit.* at 198.

²⁰⁹ Emma, Int. 16 at 14.

²¹⁰ Helen, Int. 12 at 17.

²¹¹ Day Slater (1997) at 426.

²¹² Helen, Int. 12 at 23.

²¹³ Mills (1999) 'Killing her softly: Intimate abuse and the violence of state intervention', 113(2) *Harvard Law Review* 551-613 at 598.

Herman describes how law may harm survivors of trauma, by failing to value the important mourning process and focussing instead on ideas of revenge, forgiveness and compensation.²¹⁴ She describes these legally sanctioned, forms of recovery from trauma as “fantasies” because none are substitutes for the power of mourning to heal. Revenge is frustrating and painful and can also be self-destructive.²¹⁵ Forgiveness is painful and difficult and relies on the perpetrator seeking forgiveness and earning it through confession, repentance and restitution.²¹⁶ She also suggests that law can give no adequate compensation for trauma, that “[m]ourning is the only way to give due honour to loss” and that recovery may require abandoning hope of ever being compensated.²¹⁷

To complicate matters further, it has been suggesting that talking about a trauma can be damaging for some people.²¹⁸ The stage of remembrance and mourning, whilst important in the process of recovery from trauma, is also a time of immense pain which often “plunges the survivor into profound grief.”²¹⁹ Victim Support were of limited use to Lucy who only had one contact with the service.

*It was like I talked to her and I got very upset and then she went away and that was it you know . . . I did wonder about bringing it all back and then going away again.*²²⁰

Melanie stopped attending counselling sessions:

*because she [the counsellor] was bringing up things I was trying to forget . . . I said to her “I’m alright while I sit here talking to you but . . . as soon as you’re gone and I’m left here on me own, I’ve got it all around me again.”*²²¹

There are risks when legal actors become involved in survivors’ emotional healing process, which is one reason why law attempts to separate itself from the emotional

²¹⁴ Herman (1992) *op. cit.* at 188-190.

²¹⁵ *ibid.*

²¹⁶ *ibid.*

²¹⁷ *ibid.*

²¹⁸ Hall, S. (2000) ‘Intensive counselling may damage disaster victims’, *Guardian*, 6th January.

²¹⁹ Herman (1992) *op. cit.* at 188.

²²⁰ Int. 4 at 63.

²²¹ Int. 1 at 31.

aspects of people's lives. This separation is dangerous when legal pathways lengthen the process of healing by preventing a woman from 'moving on.'

6.2.5. The Need to Move On

Most people who have experienced trauma reach a stage when they need to leave that part of life behind and move on. Talking about trauma enables the grief to lose its 'vividness' so that there is less need to talk.²²² Some women actively wish not to talk about their experiences of domestic violence, which explains why so few survivors feel able to take part in research. Although the participants in this study were willing to talk for the purposes of research there was a perception that this would "help other people"²²³ and for some it was seen as a form of 'end' before they moved on from their experience.²²⁴ Emma said that, "it's in the past now and I want to leave it like that."²²⁵ Julie said she was going to go to one last support group meeting because "I don't want to keep dragging it up."²²⁶ Helen had not pursued a complaint about her solicitor because "it gets to the stage when you just want to bury it."²²⁷ Kate commented on the problem of having to repeatedly explain her story when she was assigned different family court welfare officers.²²⁸

The pain of delay was a recurring theme in the stories women told about their pathways through domestic violence law, yet the importance of this issue seems not to be fully recognised in either civil or criminal proceedings. Herman says of a survivor of trauma that:

Her efforts to re-establish a sense of safety will most likely be undermined by the intrusions of legal proceedings; just as her life is stabilising, a court date is likely to revive intrusive traumatic symptoms . . . [T]he survivor has to

²²² Herman (1992) *op. cit.* at 195.

²²³ Yvette, Int. 23 at 47; Also, Melanie, Int. 1 at 31; Iris, Int. 11 at 1.

²²⁴ Emma, Int. 16; Julie, Int. 13; Jenny, Int. 9.

²²⁵ Int. 16 at 9.

²²⁶ Int. 13 at 26.

²²⁷ Int. 12 at 30.

²²⁸ Int. 3 at 9.

*expect a marked disparity between her own timetable of recovery and the timetable of the justice system.*²²⁹

Jenny found the lengthy divorce traumatic because, “I wanted to be separate from him as soon as possible by that point.”²³⁰

*I felt that my life was on hold for more than two years . . . Every time I went to court I was just a wreck, you know I just lived from day to day . . . your whole life revolves around your court case. You find yourself talking about it, eating it, sleeping it, going over it.*²³¹

Rachel said of the child contact proceedings: “It’s playing on my mind day and night now”²³² and “I just want to basically try and look forward to get on with things.”²³³

When waiting for the trial of her ex husband for rape, Susan said:

*When all this happened, I sort of put little boxes into me head and sorted each little one out and can close the lid on them . . . But I’ve got one box left now and that’s this trial and everything and I can’t close that until its over and done with . . . I wake up and the first thing on my mind is this case.*²³⁴

The final part of this chapter and Chapter Seven considers how the trauma of the delay and intrusion of legal processes could be alleviated. One way is by enabling a woman to continue with the emotional process of separation, without relying entirely on an external legal event to bring her a sense of ‘closure.’

The stories women told in this research suggests that law is limited in its ability to respond to the emotional needs of women who are experiencing a life changing process. It may be that law cannot help with the loneliness and feelings of uncertainty about the future which are so important in the stories of survivors of domestic violence. Maria felt “lonely” when living in a refuge and seriously considered leaving but the support of other residents helped her to find the strength the stay there.²³⁵ Jacqui talked about the “loneliness” of being re-housed after months living in a

²²⁹ Herman (1992) *op. cit.* at 165.

²³⁰ Jenny, Int. 9 at 17.

²³¹ Jenny, Int. 9 at 10.

²³² Rachel, Int. 27 at 30.

²³³ Rachel, Int. 27 at 5.

²³⁴ Susan, Int. 2 at 23-4 and 48.

²³⁵ Int. 26 at 13.

refuge.²³⁶ Rachel talked about her sense of isolation and loss of confidence and the stigma she perceived in “being a single mum” made it difficult for her to make new friends after separating from her violent husband.²³⁷ She said:

*I'd love to sort of like be able to sort of talk it over with somebody who's been through the same and that they know exactly how I feel and, you know, like vice versa.*²³⁸

The final part of this chapter considers whether legal mechanisms are able to address this loneliness and need to talk which is such an important feature of some women's stories of domestic violence. But what of women's experiences of legal responses which had a positive impact on their emotional journeys?

6.2.6. Survivors' Experiences of Understanding and Support

This study, like others, reveals that small acts of kindness are very important.²³⁹ Women's descriptions of legal actors who helped them in the process of survival tended to focus not on legal tactics or achievements but on individuals who listened, were reliable, understanding and did not 'judge'.²⁴⁰ When Caroline described the primary ways in which two WPCs had helped her she talked of the way they “listened.”²⁴¹ Kerry said that she had found her court welfare officer “very fair,” because “she took time to listen and observe.”²⁴² Emma's positive relationship with her barrister was tied up with her perceptions of the representative's competence in legal matters.

*The barrister is really friendly and tells you what is going on. Like when we were waiting all day to go into court, she explained everything to me. I feel she listens and she knows what she's doing.*²⁴³

²³⁶ Int. 15 at 21.

²³⁷ Int. 27 at 33 and 22.

²³⁸ Rachel, Int. 27 at 31; Also Yvette, Int. 23 at 51.

²³⁹ Hoyle (1998) *op. cit.* at 200.

²⁴⁰ Caroline, Int. 21 at 33; Also, Emma, Int. 16 at 15.

²⁴¹ Int. 21 at 6.

²⁴² Int. 10.

²⁴³ Int. 16 at 15.

There were several examples of legal actors showing deep understanding for a woman's feelings during the process of separation. Emma said that she "felt better" when one police woman told her that "she had known someone in the police who had been through it."²⁴⁴ In Lucy's story of her husband's trial for attempted rape, her references to a particular "kind" and "fantastic" police woman emphasised how unusual true empathy was during her pathways through the legal system.²⁴⁵ Lucy's cross-examination had been so traumatic that the police woman, who was still due to give evidence, had asked her husband to telephone Lucy to reassure her that she had support.²⁴⁶ Ruth's confidence in the police was restored when two police constables "listened", "explained things clearly" and were "very supportive."²⁴⁷ Ruth also described the "compassion" of a domestic violence officer who seemed to understand the "dynamics of what goes on."²⁴⁸

Legal actors are in a good position to help build a woman's confidence, validate her feelings and give her hope for a future apart from her partner. Yvette described how she felt in need of "confirmation" from those around her that she was doing the "right thing" in leaving her partner.²⁴⁹ The Citizens Advice Bureau and then a solicitor were the first people who Rachel told about the violence.

*Once I'd actually confided in somebody and I realised that they were there to help me, you know, I suppose I had the strength to carry on with the divorce.*²⁵⁰

Helen's son was crying as they were leaving their home and her solicitor happened to telephone.

*[She said] I had to do the best thing for the children, what I thought was the best thing for the children in the long run - and actually that was what helped me out the door that day.*²⁵¹

²⁴⁴ Emma, Int. 16 at 21; Also, Helen, Int. 12 at 4.

²⁴⁵ Lucy, Int. 4 at 67.

²⁴⁶ *ibid.*

²⁴⁷ Int. 18 at 16.

²⁴⁸ Ruth, Int. 18 at 17.

²⁴⁹ Yvette, Int. 23 at 40.

²⁵⁰ Rachel, Int. 27 at 2.

²⁵¹ Helen, Int. 12 at 3.

Ruth described the first time she discussed her experiences with a Women's Aid refuge worker who she met after contacting a telephone help line.

*Suddenly someone was talking the right language, telling me what was right, what was wrong in terms of acceptable behaviour. . . [saying] you're OK, you're not going mad, you are normal and your first priority is to protect the children and get yourself through this and that gave me a lot of strength to see the wood for the trees.*²⁵²

Kate had had a negative experience with her first family court welfare officer, but spoke highly of the next one who was assigned to her case. He asked specific questions about domestic violence and arranged a meeting with Kate separately from her partner so that she could speak without being intimidated by him.²⁵³ Kate said:

*[The family court welfare officer] said "If you have the slightest reason to think that he's going to endanger her stop [contact]. It's up to the court to carry the burden of proof not you." Whereas I'd been told all along: "Prove it, give some proof, how can you prove this?". . . Which is what gave me the courage to - stop it this time, to say "No . . . he's turning on her verbally. He's not going to have her." And he was brilliant.*²⁵⁴

Joan also said that she valued her family court welfare officer because she was able to talk "through things" with her.²⁵⁵ These stories show how important the words of legal actors can be in a woman's process of survival.

Whilst the image of judges tends to focus on their impartiality, objectivity and final judgements, survivors' stories suggest displays of understanding and support in the court process are also important. Kate gave a fond description of the judge who heard the *ex parte* injunction application when her solicitor had sent a representative who "didn't quite know" the answers to the judge's questions.

So I kept chipping in saying: "Oh no, no, that's not right" . . . And so he talked to me in the end. He was really nice . . . He was very worried. He said, "Yes" to the injunction . . . But he said: "As it's Christmas and he's not

²⁵² Int. 18 at 5.

²⁵³ Int. 3 at 47.

²⁵⁴ Int. 3 at 48.

²⁵⁵ Joan, Int. 31 at 19.

getting to see his daughter he might feel even more violent.” He said: “So you really take care.” He was lovely. He was really good.²⁵⁶

Jacqui spoke of the injunction hearing when the judge assured her that the refuge address would be kept confidential.

The judge was really really nice . . . Asked me was I O.K. and all. I was quite shocked like for a judge, but he was dead nice.²⁵⁷

Kate and Jacqui’s positive experiences were with judges who listened, spoke directly to them and responded on a personal level to their situations. Such responses encourage trust of legal actors, which is so important to perceptions of law²⁵⁸ and may be particularly important to a woman who has lost trust in her partner and possibly, her perceptions of the world. There are ways in which legal actors can help survivors to regain a sense of confidence in themselves and a feeling of connection with others by responding to their emotions, but how might these positive responses become a core part of domestic violence law?

6.3. Therapeutic Possibilities for Empathy

This thesis argues that the way legal actors tend to think about domestic violence law is at odds with the way that legal pathways are experienced by survivors. Cahn has suggested that legal actors should learn to think about ‘success’ on three different levels.²⁵⁹ Firstly, the traditional view of success as an actual legal ‘product’.²⁶⁰ Secondly, that with or without legal proceedings a woman ends the violence in her life.²⁶¹ Finally, she returns to her partner but feels she can return to the lawyer or other practitioner for help.²⁶² It has been said of women who used refuges during their process of survival:

²⁵⁶ Int. 3 at 25.

²⁵⁷ Int. 15 at 17-18; Also, Jill, Int. 29 at 17.

²⁵⁸ Evans, K., Fraser, P. and Walklate, S. (1996) ‘Whom can you trust? The politics of grassing on an inner city housing estate’, 44(3) *The Sociological Review* 361-380.

²⁵⁹ Cahn (1993) *op. cit.* at 2491.

²⁶⁰ *ibid.*

²⁶¹ *ibid.*

²⁶² *ibid.*

*[T]hey were exposed to alternatives and new ideas; They found out that other people outside their homes can and do care for their welfare ... they may return to the man that abused them, but they do not return the same women they were when they left.*²⁶³

Legal actors could learn much from workers in women's refuges who do not define their 'success' in terms of women who do not return to violent partners. Instead an intervention can be judged as to whether it shifts power in a woman's favour through personal insight, strengthened resolve, information, access to other agencies or an alliance with legal actors.²⁶⁴

The theory of procedural justice suggests that we need to see law's effectiveness in terms of its ability to confirm to people that they are valued and will receive respect and help from legal authorities.²⁶⁵ It has been noted that many clients do not only want legal action from their legal representatives, but also want kindness, sensitivity, loyalty, respect, warmth, advice, understanding and validation of their perceptions, concerns and decisions.²⁶⁶ Women put high value on the affective as well as the instrumental aspects of legal responses. Women's stories show that positive legal action is not sufficient and survivors require that legal actors, in Ruth's words, "are human enough to have compassion."²⁶⁷ In this thesis 'compassion' and the similar needs and values emphasised in women's stories are encompassed in the word, 'empathy.'

6.3.1. Empathy

Lynne Henderson suggests that it is only through empathy - feeling the feelings of others, that legal decision-makers can respond to people's individual circumstances.²⁶⁸

²⁶³ Pagelow (1981) *op. cit.* at 219-220.

²⁶⁴ Kelly (1999) *op. cit.* at 16.

²⁶⁵ Tyler (1990) *op. cit.* at 175.

²⁶⁶ Ellman, S. (1992) 'Empathy and approval', 43 *Hastings Law Journal* 991-1015 at 994; Waits, K. (1998) 'Battered women and their children: Lessons from one woman's story', 35(1) *Houston Law Review* 29-108 at 51-52.

²⁶⁷ Ruth, Int. 11 at 17.

²⁶⁸ Henderson (1987) *op. cit.* at 1592.

Although the words empathy, love, altruism and sympathy are often used interchangeably, empathy is the specific psychological phenomenon of feeling the emotion of another.²⁶⁹ Empathy requires that one affectively and cognitively imagines oneself in the position of another,²⁷⁰ analogising with similar experiences of ones own.²⁷¹ Empathising with another is not necessarily about agreeing with their views or acting on their wishes, but showing understanding of another person's position.

*Empathetic lawyering aspires to a vision of lawyers capable of overcoming their own limitations of perspectives, so as to see or feel the world as other persons do.*²⁷²

Employers generally are tending to place higher value on 'emotional intelligence' or 'people skills.'²⁷³ These interpersonal and communication capabilities combine skills in empathy, self-awareness, decisiveness, conscientiousness and integrity.²⁷⁴

'Emotional intelligence' has been described as the ability of individuals and organisations to show empathy, which is said to involve "reading the feelings of others" and "handling those feelings artfully."²⁷⁵ An affective style of lawyering is an approach which stresses mutuality, care, empathy and "connection" between individuals and legal actors.²⁷⁶ Affective advocacy aims to reach women on an emotional level to develop a deeper and more empowering relationship, which allows a woman to explore her strengths, vulnerabilities and the risks of the violence she faces.²⁷⁷ It involves legal actors spending time with clients, being willing to self disclose and being attentive to the needs of interpersonal relationships.²⁷⁸ Whilst the language of empathy, emotional intelligence and affective lawyering has immediate human appeal, why should such concepts be central to domestic violence law?

²⁶⁹ *ibid* at 1579.

²⁷⁰ *ibid*.

²⁷¹ *ibid* at 1581-2.

²⁷² Ellman (1992) *op. cit.* at 1003.

²⁷³ Goleman, D. (1999) *Working with Emotional Intelligence* (New York: Bantum Books).

²⁷⁴ *ibid*.

²⁷⁵ *ibid* at 28.

²⁷⁶ Marguiles (1995) *op. cit.* at 1094; Mills, L. (1996) 'On the other side of silence: Affective lawyering for intimate abuse', 81 *Cornell Law Review* 1225-1263.

²⁷⁷ Mills (1998) *op. cit.*

²⁷⁸ *ibid*.

It has been argued that we need to develop an understanding of law and justice which incorporates notions of care and empathy, so that legal decision-making responds to the complexity of people's lives by accounting for feelings and emotion.²⁷⁹ The image of law as separate from emotion means that survivors of domestic violence often see law as irrelevant to their complex emotional reality. It has been suggested that lawyering with an ethic of care at its centre would include:

*More appreciation for the relational context in which the client's problem arises, more understanding of the totality of our client's experience and more listening to her.*²⁸⁰

Failing to listen and to develop an understanding of emotion in the process of surviving domestic violence risks law being violent or ineffective and it has been said that "[w]ithout connection, lawyering is neither affective nor effective."²⁸¹

*Law takes place on a human field and to lose sight of this reality in the search for predictability and control results in abuse of the human, as well as suppression or repression of the knowledge provided by the emotions.*²⁸²

Knowledge of the emotions is also crucial in allowing legal processes to respond to a woman's particular stage in the process of survival. It has been suggested that knowledge of the lives of others is the only path to true community and justice²⁸³ and that connection provides the "potential for transformation."²⁸⁴ Contrary to the perception of emotional factors as destructive influences on rationality, empathy may enhance decision-making.²⁸⁵

*Emotions and empathy should be officially recognised as influences on judges [and] as a valid source of information.*²⁸⁶

Goleman argues that these skills are crucial in allowing organisations to match the

²⁷⁹ Massaro (1989) *op. cit.* at 2104; Also, West (1997) *Caring for Justice* (New York: New York University Press) at 207; Cahn (1992) *op. cit.* at 1065-1066.

²⁸⁰ Cahn (1992) *ibid* at 1049.

²⁸¹ Marguiles (1995) *op. cit.* at 1094.

²⁸² Henderson (1988) *op. cit.* at 128.

²⁸³ St Joan and Bennington (1997) *op. cit.* at 218.

²⁸⁴ Cahn (1992) *op. cit.* at 1061.

²⁸⁵ Goleman (1999) *op. cit.* at 171.

²⁸⁶ Henderson (1988) *op. cit.* at 147.

client's needs and desires to the product or service offered.²⁸⁷ Empathy is a powerful tool, not just in enhancing people's self worth, but in encouraging trust and communication with legal actors²⁸⁸ and enabling joint decision-making.²⁸⁹ Women may not be totally honest about their situation if they feel criticised or judged, which can present problems for all legal actors.²⁹⁰ Lopez argues that empathy can awaken a sense of outrage which can fuel the search for solutions.²⁹¹ But whilst empathic responses have therapeutic possibilities, there are also dangers.

There are risks attached to unreflecting empathy, or the pretence of understanding, which can damage trust.²⁹² Empathy itself "seems counterintuitive in a world defined as legal."²⁹³ Not only does it suggest emotion, which has traditionally been considered the antithesis of legal reasoning, it also allows for too much uncertainty in the adversarial search for one 'correct' answer.²⁹⁴ The literature on the need for a role for empathy in law has been criticised for not giving guidelines to legal actors as to how to assign priorities when individual needs conflict.²⁹⁵ Empathy does not tell legal actors how to act in individual cases, but it has the potential to alert decision-makers and advisors to the moral choices before them.

*Empathy may enable the decision-maker to see other 'right' answers, or a continuum of answers, or it may simply make the decision-maker aware that what once seemed like no choice or a clear choice is instead a tragic one. To mask the tragedy of choice by taking refuge in rules does not negate the tragedy.*²⁹⁶

One danger of empathy lies in privileging some stories over others.²⁹⁷ Some legal

²⁸⁷ Goleman (1999) *op. cit.* at 43.

²⁸⁸ Ellman (1992) *op. cit.* at 991.

²⁸⁹ Murphy (1993) *op. cit.* at 1334.

²⁹⁰ *ibid* at 1346.

²⁹¹ Lopez, G. (1992) *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (Boulder: Westview Press) at 101.

²⁹² Goleman (1999) *op. cit.* at 168; Lopez (1992) *op. cit.* at 101.

²⁹³ Henderson (1987) *op. cit.* at 1580.

²⁹⁴ Murphy (1993) *op. cit.* at 1258.

²⁹⁵ Massaro (1989) *op. cit.* at 2125.

²⁹⁶ Henderson (1987) *op. cit.* at 1653.

²⁹⁷ Massaro (1989) *op. cit.* at 2117.

actors may empathise more easily with the perpetrator than with the survivor.²⁹⁸

Massaro argues that the question is not whether legal actors should empathise, “but with whom should we empathise – why, when, and according to what procedures?”²⁹⁹

This thesis does not provide definitive answers to this difficult question. The “concentration, dedication, energy” and time involved in empathising means that we need to set priorities and legal actors cannot reasonably be expected to relate to everyone they come into contact with “in any deep empathic sense.”³⁰⁰ This thesis argues that survivors of domestic violence should be a priority in this context because empathy is so important to the process of survival and separation and because that process is crucial to the future role of domestic violence law. This plea is not ‘empathy for empathy’s sake’, but empathy with the goal of empowering women to end their experience of violence, enabling legal actors to meet the survivor where she is rather than where we might wish her to be.³⁰¹ But even if we agree that empathy is crucial in domestic violence, how do we go about making it a central part of legal practice for legal actors who may not consider it important and might not know how to even begin?

Traditional legal ways of thinking in terms of abstractions helps legal actors to insulate themselves from human pain and to escape responsibility for it.³⁰² So, in arguing for a role for empathy in the practice of law there are formidable cultural barriers to contend with. As an essentially emotional experience empathy cannot be ordered, but we can require that legal actors “make an empathic effort.”³⁰³ The ability to empathise does not depend on gender³⁰⁴ and seems to be more dependent on

²⁹⁸ Waits, K. (1985) ‘The criminal justice system’s response to battering: Understanding the problem, forging the solutions’, 60(2) *Washington Law Review* 267-329 at 314; Hanna, C. (1996) ‘No right to choose: Mandated victim participation in domestic violence prosecutions’, 109 *Harvard Law Review* 1850-1910 at 1878.

²⁹⁹ Massaro (1989) *op. cit.* at 2110.

³⁰⁰ *ibid* at 2125.

³⁰¹ Mills (1996) *op. cit.*

³⁰² Henderson (1987) *op. cit.* at 1590. Also, Cover, R. (1992) ‘Violence and the word’, in, Minow, M., Ryan, M. and Sarat, A. (Eds) (1992) *Narrative, Violence and the Law: The Essays of Robert Cover* (Ann Arbor: University of Michigan Press).

³⁰³ Pillsbury (1989) *op. cit.* at 695.

³⁰⁴ Cahn (1992) *op. cit.* at 1061.

learning and experience.³⁰⁵ It has been claimed that those who have suffered pain are more likely to have the capacity to show empathy and that it is easier for people to empathise with those who are most like themselves.³⁰⁶ Despite these obstacles, imaginative training and education can encourage a legal actor to see domestic violence from the perspective of the survivor. Meaningful empathy takes practice and hard work and can be a painful, draining and frustrating process.³⁰⁷ To identify too strongly with another person's painful situation also risks paralysis and the inability to provide support. Discussed below are some methods used in other professions to help practitioners to manage the emotional distress they may feel when empathising with another's pain, without forfeiting the positive aspects of empathy.³⁰⁸ The fact that such programmes are almost unheard of in legal training highlights the lack of value attached to empathy in legal arenas.

6.3.2. Education, Training and Guidelines for Legal Actors

Existing legal training relating to domestic violence tends to focus on legal rules and the question of what domestic violence is, often neglecting the issue of what it feels like. To allow meaningful empathy it is important for legal actors to see stories of domestic violence in the context of their own lives in order to understand, for instance, how difficult it is to end any relationship.³⁰⁹ Legal actors need to rethink ideas of 'leaving' and 'staying' to understand the full dangers and emotional consequences of separation.³¹⁰ Fischer and Rose recognised the "internal hesitation" that many survivors experience in answering the question, "is this situation bad enough to justify leaving?"³¹¹ If law is to assist women in answering that question it needs to develop an understanding of the economic, social, psychological and emotional attachment described by women and support those who remain with their

³⁰⁵ Henderson (1987) *op. cit.* at 1583; Okin, S. (1989) *Justice, Gender and the Family* (London: Basic Books) at 21.

³⁰⁶ Henderson (1987) *ibid* at 1583.

³⁰⁷ *ibid* at 1651.

³⁰⁸ *ibid* at 170.

³⁰⁹ Barnett and La Violette (1993) *op. cit.* at xxii-xxv; Loseke, D. and Cahill, S. (1984) 'The social construction of deviance: Experts on battered women', 31 *Social Problems* 296-310 at 304.

³¹⁰ Mahoney (1991) *op. cit.* at 64.

³¹¹ Fischer and Rose (1995) *op. cit.* at 414.

partners, acknowledging that both staying and leaving can be normal responses to domestic violence.³¹² It has been suggested that some women may, for example, stop using injunctions because they have communicated a message to the perpetrator about his violence.³¹³

It may be that the frustration of legal actors would be reduced if they learnt to see use of legal tools as a process rather than a single event.³¹⁴ Rather than condemning ambivalence, uncertainty and return to the abuser, legal actors would be able to see legal pathways as steps in the process of leaving.³¹⁵ Just as refuge workers expect women to return repeatedly to a violent partner, so police, solicitors, judges and others should see leaving as a process³¹⁶ and reluctance to end a relationship as a normal rather than a deviant and exceptional response to domestic violence.³¹⁷ Crucially, legal actors must learn to see legal responses through the eyes of survivors of domestic violence in order to re-conceptualise notions of ‘success’ and ‘failure’.³¹⁸

Stories and narratives are a powerful means of facilitating empathy,³¹⁹ in that they can disrupt traditional myths and assumptions about domestic violence.³²⁰ Henderson uses the term “empathic narrative” to describe the practice of creating understanding of a human situation by putting narratives into a legal framework.³²¹ People do not tend to identify their own lives or those of living people with the “coldness” of statistics³²² and narratives can connect the legal decision-maker to experiences outside his own. Several feminist scholars have challenged traditional approaches to legal writing by combining academic commentary with accounts of their own personal

³¹² Loseke and Cahill (1984) *op. cit.*; Mahoney (1992) *op. cit.* at 1285.

³¹³ Fischer and Rose (1995) *op. cit.* at 427.

³¹⁴ *ibid.*

³¹⁵ *ibid.*

³¹⁶ Merritt-Gray and Wuest (1995) *op. cit.*

³¹⁷ Mahoney (1992) *op. cit.* at 1288.

³¹⁸ Cretney and Davis (1996) *op. cit.* at 174.

³¹⁹ Massaro (1989) *op. cit.* at 2105; Abrams, K. (1991) ‘Hearing the call of stories’, 79 *California Law Review* 971-1052.

³²⁰ *ibid.*

³²¹ Henderson (1987) *op. cit.* at 1591.

³²² Minow, M. (1990) ‘Words and the door to the land of change: Law, language, and family violence’, 43 *Vanderbilt Law Review*, 1665-1699 at 1685.

experiences of domestic violence³²³ and stories of survivors have been used as tools in domestic violence law reform.³²⁴ Batt argues that narrative and story telling are crucial to the learning process from early childhood and enhance both cognitive and affective knowledge.³²⁵

Both real and fictional narratives can encourage empathy with the experience of domestic violence and open discussion about the sensitive issues involved.³²⁶ In Hampshire Constabulary police officers receive a day of training from Women's Aid refuge workers which includes general awareness raising and discussions with two survivors of domestic violence about their experiences. Some officers also spend time working in the local refuge. Training programmes and law school courses can use autobiography,³²⁷ literature,³²⁸ film,³²⁹ and theatre³³⁰ to help capture the complexity of domestic violence. It has been said that literature can be "transformative" for legal actors in assisting them in rethinking their views of the world.³³¹ It also allows insights into the complex and varied lives of others.³³² A course for judges in the United States uses literature to enhance understanding of domestic violence.³³³ Legal education could adapt courses in other disciplines such as a module developed for medical students, which uses literature, film and autobiography to help doctors understand experiences of living and dying from cancer.³³⁴ The most direct way of enabling students to learn is from everyday experiences of working with survivors of

³²³ Mahoney (1991) *op. cit.*

³²⁴ Murphy (1993) *op. cit.*; Also, Minow (1990) *op. cit.*

³²⁵ Batt (1990) *op. cit.* at 22-23.

³²⁶ Murphy (1993) *op. cit.*; Seuffert (1994) *op. cit.* at 94.

³²⁷ Ahluwalia, K. and Gupta, R. (1997) *Circle of Light* (Harper Collins); Ashworth, A. (1998) *Once in a House on Fire* (Picador); Also, Venable Raine, N. (1999) *After Silence: Rape and My Journey Back* (London: Virago); Nuttall, M. (1998) *It Could Have Been You* (London: Virago).

³²⁸ St Joan and Bennington McElhiney (1997) *op. cit.*; Quindlen, A. (1999) *Black and Blue* (London: Arrow Books); Doyle, R. (1996) *The Woman Who Walked into Doors* (Jonathon Cape).

³²⁹ Batt (1990) *op. cit.*; *Once Were Warriors* (director Lee Tamahori); *Nil by Mouth* (director Gary Oldman).

³³⁰ For example, the Geese Theatre Company's production *Stay*.

³³¹ Boyd White, J. (1989) 'What can a lawyer learn from literature?' 102 *Harvard Law Review* 2014-2047 at 2019.

³³² St Joan and Bennington (1997) *op. cit.*

³³³ Minow (1990) *op. cit.* at 1689.

³³⁴ Midgley, S. (2000) 'Touch of real drama', *Guardian*, 25th April.

domestic violence. Law clinics in which law students gain practical experience of representing and advising clients, including survivors of domestic violence, are the norm in the United States and are becoming more common in Britain.³³⁵ Empathy training could also be linked to an emphasis on the ethics of lawyering so that lawyers learn to accord with their own ethics³³⁶ and base their decisions, not on legal rules, but on their client's story.³³⁷

In line with many progressive lawyering techniques described in Chapter Two, openness to knowledge from the social sciences can enhance understanding of issues like domestic violence and put individual survivors' lives into a wider context.³³⁸ Law courses are emerging which incorporate inter-disciplinary perspectives on law.³³⁹ For instance, psychological knowledge is crucial to lawyering as the practice itself is about "interaction with and persuasion of human beings."³⁴⁰ Joan Meir integrates psychological and legal perspectives in relation to domestic violence and describes a law course taught jointly by a psychologist and a lawyer.³⁴¹ She suggests that understanding of the psychological dimensions of domestic violence and knowledge about body language can enhance legal arguments and advocacy, cross-examination, interviewing and counselling skills, as well as helping to develop a relationship with the client.³⁴²

³³⁵ Bryant, S. and Arias, M. (1992) 'A battered women's rights clinic: Designing a clinical program which encourages a problem-solving vision of lawyering that empowers clients and community', *Washington University Journal of Urban and Contemporary Law* 207-222; Also, Cunningham, C. (1993) 'Sometimes you can't make a dent, but they know you've been there: the lawyer as God's witness (Book Review)', 106 *Harvard Law Review* 1962-1979 at 1978; Pritchard, S. (1999) 'Law students: Free at last', *Independent*, 29th April.

³³⁶ Cahn (1993) *op. cit.* at 2500-2501.

³³⁷ *ibid* at 2502.

³³⁸ Babb, B. (1997) 'An interdisciplinary approach to family law jurisprudence: Application of an ecological and therapeutic perspective', 72 *Indiana Law Journal* 775-808.

³³⁹ Wexler, D. (1996) 'Some thoughts and observations on the teaching of therapeutic jurisprudence', 35(2) *Revista de Derecho Puertorriqueno* 273-287.

³⁴⁰ Meir, J. (1993) 'Notes from the underground: Integrating psychological and legal perspectives on domestic violence in theory and practice', 21 *Hofstra Law Review* 1295-1366 at 1332.

³⁴¹ Meir (1993) *ibid.*

³⁴² *ibid* at 1324.

It is important for legal actors to be self-reflective in order to operate as effective representatives and empathise with the lives of women who experience domestic violence.³⁴³ Unlike psychologists, lawyers are not usually prepared to be aware of the dangers of transference, counter-transference and desensitisation that comes from connection between the practitioner and client.³⁴⁴ ‘Counter transference’ can occur when an individual’s own experiences affect their relationship with another individual and they either identify too strongly with or become overly detached from that person.³⁴⁵ Batt suggests that legal actors and law students should be taught to ‘audit’ themselves by asking how clients make them feel and react and analysing the reasons for this.³⁴⁶ Legal actors may be able to learn from the psychological professions who deal with the emotional effects of their work through peer support, feedback and professional supervision.³⁴⁷

‘Expert’ evidence, relating to theories like Battered Woman Syndrome, Post Traumatic Stress Disorder and Rape Trauma Syndrome, is another method of educating judges and jurors in particular cases about the dynamics of domestic violence.³⁴⁸

*The reliance on expert witnesses is immensely useful as a transition device between the world today and a world in which women’s stories have more power as a source of fact.*³⁴⁹

It has been suggested that as a “transition device” testimony should focus on the social reality, such as the silence surrounding domestic violence, lack of alternative living

³⁴³ Mills (1996) *op. cit.*; (1998); Mills, L. (1997) ‘Intuition and insight: a new job description for the battered woman’s prosecutor and other more modest proposals’, 7 *UCLA Women’s Law Journal* 183-199.

³⁴⁴ Meir (1993) *op. cit.* at 1348.

³⁴⁵ *ibid* at 1349-1356.

³⁴⁶ Batt (1990) *op. cit.* at 38.

³⁴⁷ Meir (1993) *op. cit.* at 1354.

³⁴⁸ Dutton, M. and Goodman, L. (1994) ‘Post Traumatic Stress Disorder among battered women: Analysis of legal implications’, 12 *Behavioural Sciences and Law* 215-234; Raitt, F. and Zeedy, K. (1997) ‘Rape Trauma Syndrome: Its corroborative and educational roles’, 24(4) *Journal of Law and Society* 552-568; Dutton, M. (1993) ‘Understanding women’s responses to domestic violence: A redefinition of Battered Woman’s Syndrome’, 21 *Hofstra Law Review* 1191-1242; Also, White, L. (1990) ‘Subordination, rhetorical survival skills and Sunday shoes: Notes on the hearing of Mrs G’, 38(1) *Buffalo Law Review* 1-58 at 18 and 55.

³⁴⁹ Schepple (1992) *op. cit.* at 171.

arrangements, risks of leaving home and the emotional value attached to the family, as opposed to psychological theories of domestic violence.³⁵⁰ This enables a move away from individualising the problem of domestic violence and pathologising the ‘victim’, to acknowledging the pressures and lack of options faced by women.³⁵¹ There is always a danger that expert witnesses will impose a single image of how women ‘should’ react when the reality is of diverse experiences and diverse reactions.³⁵² One way of avoiding this danger and emphasising that women have different strategies for survival is by appointing ‘experts’ who work with survivors everyday, such as refuge workers.³⁵³ Such strategies could be useful in explaining why a woman has delayed reporting violence, why she is reluctant to attend court and the way legal proceedings, such as those relating to children can be used as a form of abuse.³⁵⁴

6.3.3. The Value of Listening and Words

This chapter has argued that survivors of domestic violence value being listened to and the words that are spoken in response to their stories. For survivors of domestic violence, “words may be doors to the land of change.”³⁵⁵ The responses a woman receives from those she tells are critical in her continuing to tell and to seek solutions.³⁵⁶ Words spoken by legal actors and the feelings they induced are often vividly recalled.³⁵⁷ They can encourage trust in legal actors, help overcome isolation and help a woman to make sense of her situation.³⁵⁸ Mills examined how women came to leave violent partners and found that most had ‘insights’ which challenged

³⁵⁰ *ibid*; Schuller, R. and Hastings, P. (1996) ‘Trials of battered women who kill: The impact of alternative forms of expert evidence’, 20(2) *Law and Human Behaviour* 167-187; Mahoney (1991) *op. cit.* at 60.

³⁵¹ *ibid*; Loseke and Cahill (1984) *op. cit.* at 306.

³⁵² Schepple (1992) *op. cit.* at 171.

³⁵³ Hanna (1996) *op. cit.* at 1905.

³⁵⁴ Cahn (1991) *op. cit.* at 1086.

³⁵⁵ Minow (1990) *op. cit.* at 1699.

³⁵⁶ Merritt-Gray and Wuest (1995) *op. cit.* at 410.

³⁵⁷ Fischer and Rose (1995) *op. cit.* at 426; Also, Barron (1990) *op. cit.* at 44; Kelly (1999) *op. cit.* at 30.

³⁵⁸ Cahn (1993) *op. cit.* at 2480.

their partner's definition of the situation.³⁵⁹ Before helping to provide such "insights" it is crucial that legal actors encourage women to tell their stories and listen to what they are told.

The previous chapters show how important words are to survivors of domestic violence. Use of words like 'victim', 'battered woman' and 'rape' are "alien to the self image and self knowledge"³⁶⁰ of most survivors and may deter women from identifying their experiences as domestic violence and from seeking help and using services. Some questions, like those relating to childhood experiences of violence, may be perceived by a woman as blaming.³⁶¹ Changing language and asking questions sensitively is important, such as asking about 'unwanted sexual experience,' rather than 'rape'.³⁶² The manner in which 'choices' are presented to a woman has an impact on her decisions. Hanna suggests that police officers be taught to ask a woman whether she will 'tell the truth', rather than whether she 'wants to press charges'.³⁶³ Encouraging women to talk about their experiences and build trust requires sensitive, but proactive questioning.³⁶⁴ Women have difficulty disclosing domestic violence particularly if no one asks them about it.³⁶⁵ Routine screening is important, particularly in proceedings relating to divorce and child contact where women may be under pressure not to disclose violence and to compromise in processes like mediation.³⁶⁶ One 'preventive lawyering' technique would be to raise the issue of domestic violence in proceedings relating to mortgages and housing arrangements,

³⁵⁹ Mills, T. (1985) 'The assault on the self: Stages in coping with battering husbands', 8 *Qualitative Sociology* 103-123 at 115.

³⁶⁰ Mahoney (1991) *op. cit.* at 93.

³⁶¹ Jones and Schechter (1992) *op. cit.* at 307.

³⁶² Mahoney, P. and Williams, L. (1998) 'Sexual assault in marriage: Prevalence, consequences and treatment of wife rape', in, Jasinski and Williams (1998) *op. cit.* at 159.

³⁶³ Hanna (1996) *op. cit.* at 1903.

³⁶⁴ Mullender and Hague (2000) *op. cit.*

³⁶⁵ Barnett, A. (1999) 'Disclosure of domestic violence by women involved in child contact disputes', *Family Law* 104-7.

³⁶⁶ Hester, M., Pearson, C., and Radford, L. (1997) *Domestic Violence: A National Survey of Court Welfare and Voluntary Sector Mediation Practice* (Bristol: Policy Press) at 61; Kaganas, F. and Piper, C. (1994) 'Domestic violence and divorce mediation', *Journal of Social Welfare and Family Law* 265-278 at 272-3.

pre-marriage or cohabitation agreements, divorce and child contact issues and the making of wills.

A proactive approach to identifying survivors of domestic violence also comes with dangers. Confidentiality is often important to a woman who may feel ashamed, confused and distrusting of the world around her. 'Information-sharing' between agencies, particularly in matters of crime and disorder is encouraged by legislation.³⁶⁷ But information shared too widely can undermine a woman's trust and confidence in legal actors and her sense of control if she knows that information has been passed on to others without her being consulted. The acclaimed 'community approach' to domestic violence in Duluth, and emulated in Hamilton, New Zealand, is explicit in privileging concerns about victim safety over issues of confidentiality and privacy.³⁶⁸ While this is an important principle, it is crucial that practices on information sharing put women's consent at the centre and develop transparent policies so that a woman understands the circumstances under which information will be shared. She may then feel free to tell her story and the legal actor's role as listener becomes crucial.

Legal actors are often 'task oriented,' rather than 'people oriented' and tend to translate human stories into legal frameworks in order to find solutions in law. When legal actors approach a woman's problems with predetermined outcomes and approaches, they risk being perceived as judgmental.³⁶⁹ Such approaches also prevent good quality or 'active' listening, which requires an interactive process of asking questions, paraphrasing and summarising the story and checking for misunderstandings and clarification. Verbal skills are more readily associated with legal practice than listening and yet the latter is crucial to building relationships and fully exploring individuals' problems so that legal products fit particular people's needs. In the Battered Women's Rights Clinic in New York students focus on methods of interview which prevent them from translating their client's stories into

³⁶⁷ Crime and Disorder Act 1998 s.115.

³⁶⁸ Busch and Robertson (1993) *op. cit.* at 119.

³⁶⁹ Waits (1998) *op. cit.* at 46.

legal frameworks too quickly.³⁷⁰ The tendency to prematurely identify a particular legal route risks ‘misdiagnosis’ of a survivor’s needs.

Listening to a woman’s story enables legal actors to make decisions about the most appropriate action to take and to assess risk accurately, with an awareness that women can underestimate the danger they face.³⁷¹ But effective intervention with survivors of domestic violence requires more than listening. It requires enabling and encouraging women to move on either in how they view their situation, how seriously they regard it or in terms of the practical resources they have available.³⁷² Knowledge about the dynamics of domestic violence can enable legal actors to give a woman information to understand her feelings and actions in a wider social context.³⁷³ Ellman suggests that it can sometimes be useful for lawyers to show “positive judgement and endorsement of part or all of the client’s world view” – what he calls “approval.”³⁷⁴ Encouraging words might include expressions of admiration for a woman’s willingness to leave the violent relationship and to regain control over her life.³⁷⁵ In taking legal pathways some women may look to legal actors for approval and reinforcement of their decisions.³⁷⁶ Some judges in specialist domestic violence courts in America make it a central aspect of their practice to talk directly to the parties before them.³⁷⁷ It has been suggested that judges can connect with individuals in therapeutic ways, even when a particular legal decision does not favour the person, by explaining reasons in terms that acknowledge the losing party’s conception of the situation.³⁷⁸ Encouraging the hope for the future that a woman can survive outside the violent relationship may be

³⁷⁰ Bryant and Arias (1992) *op. cit.* at 218.

³⁷¹ Wilson, M., Johnson, H., and Daly, M. (1995) ‘Lethal and nonlethal violence against wives’, 37 *Canadian Journal of Criminology* 331-361 at 335.

³⁷² Kelly (1999) *op. cit.* at 37.

³⁷³ Dutton, D. and Painter, S. (1981) ‘Traumatic bonding: The development of emotional attachments in battered women and other relationships of intermittent abuse’, 6 (1-4) *Victimology: An International Journal* 39-55.

³⁷⁴ Ellman (1992) *op. cit.* at 993.

³⁷⁵ Chaudhuri and Daly (1992) *op. cit.* at 244.

³⁷⁶ Fischer and Rose (1995) *op. cit.* at 423.

³⁷⁷ I am grateful to Judge Amy Karan, Dade County Domestic Violence Court, Florida for our conversation about this issue.

³⁷⁸ Minow and Spelman (1988) *op. cit.* at 57.

another way of having a therapeutic effect on her emotional well being.³⁷⁹ This hope can be built upon by legal actors who are able to help a woman to make use of her different survival strategies.³⁸⁰

It has been suggested that in helping to empower and heal survivors of domestic violence, it is necessary to accept women's definitions of their coping strategies, to appreciate the life long nature of the recovery process and that there may be a time lag before advice is acted upon.³⁸¹ Dutton highlights the need to examine each individual's strategic responses to violence, so responses can be adapted to suit individual women.³⁸² For instance, a woman whose cognitive style relied on logic might benefit from the suggestion that they work through cost-benefit analysis of the relationship.³⁸³ People recovering from trauma often need to focus on concrete and achievable goal setting³⁸⁴ and having a 'plan' is important in helping a woman to gain confidence. Safety planning is one way of legal actors responding to a woman's individual situation. Safety plans involve a detailed exploration of the risks a particular woman may face and the possible courses of action and resources available to her in minimising those risks. Such plans can include lists of telephone numbers and addresses for emergencies and on-going support, safe places for important documents, including address book, copies of court orders or other legal documents, passports, birth certificates, photographs and children's favourite clothes and toys.³⁸⁵ Women might be encouraged to arrange an independent source of money, such as a bank account or to teach their children how to call the emergency services or agree a code word for when the plan would be put into action. In some situations legal actors might be able to help a woman arrange extra home security, or make neighbours aware of the potential danger. Legal actors helping a woman to make a safety plan

³⁷⁹ Marden and Rice (1995) *op. cit.* at 79.

³⁸⁰ Lempert (1996) *op. cit.*; Gondolf and Fischer (1988) *op. cit.*

³⁸¹ Jones and Schechter (1992) *op. cit.* at 299.

³⁸² Dutton, M. (1996) 'Battered women's strategic response to violence: The role of context', Edleson, J. and Eisikovits (Eds) (1996) *Future Interventions with Battered Women and Their Families* (London: Sage).

³⁸³ *ibid* at 121.

³⁸⁴ Herman (1992) *op. cit.* at 169.

³⁸⁵ Waits (1998) *op. cit.* at 106-107.

should be careful not to raise unrealistic expectations that she will be able to protect herself. Some women may need more emotional than practical support.

Legal responses do not usually allow for reflection of women on their relationship. Encouraging a woman to speak about her emotions builds trust and overcomes her feelings of isolation and we know that talking in itself can be empowering and healing.³⁸⁶ Narrative therapy is a method of counselling being developed by therapists in New Zealand, in which the ‘helper’ does not respond to a ‘problem story’ with interpretation, insight or intervention but helps “the client develop a story he or she prefers.”³⁸⁷ It has been suggested that legal actors might allow a woman to explore the negative and positive dimensions of her relationship so that she is able to make informed decisions “based on both the sufferings and competencies of the relationship.”³⁸⁸ This can enable the critical reflection on the relationship in order to begin the process of separation,³⁸⁹ lead to more lasting decisions, guide the practitioner in the kind of information she needs to pass on and strengthen the trust between the two. It has been argued that law has no way of hearing women’s stories of love and hope, and it is important that legal responses take both connection *and* danger seriously when women talk about it.³⁹⁰

Although there are analogies between counsellors and legal actors in some of the suggestions presented here, legal actors need to be careful to know the limits of their expertise. The stories told by women in this research suggest that opening up certain issues may be dangerous, particularly when they require long-term commitment to be worked through. Legal actors need to be careful not to raise false expectations of on-going support, which may result in a feeling of abandonment when the legal proceedings are concluded. Chapter Four also highlights the dangers in relying on

³⁸⁶ Pennebaker (1997) *op. cit.*

³⁸⁷ Mills, L. (1998c) ‘Hope for law: Narrative therapy and intimate abuse practice: Book review of Monk, G., Winslade, J., Cocket, K. and Epston, D. (Eds) (1997) *Narrative Therapy in Practice: The Archaeology of Hope* (San Francisco: Jossey Bass)’, 16 *Behavioural Science and the Law* 525-533 at 527. Book review of Monk, G., Winslade, J., Cocket, K. and Epston, D. (Eds) (1997) *Narrative Therapy in Practice: The Archaeology of Hope* (San Francisco: Jossey Bass).

³⁸⁸ Mills (1998) *ibid* at 531.

³⁸⁹ Mills (1999) *op. cit.* at 598.

³⁹⁰ Mahoney (1991) *op. cit.* at 20.

those whose core function is law enforcement to provide support. Often legal actors will not be able to provide the opportunities for women to “explore, name and redefine what has happened to them.”³⁹¹ This may be due to time constraints, conflicts of interest or because a particular individual does not have the necessary skills. The suggestions made here are ideas for adopting an approach favoured by many Women’s Aid refuge workers who will present a woman with information and choices, allow her to explore her options and feelings at her own pace and support her in the choice she makes. The stories told by participants in this research show that the decision-making process is a lengthy one and may require on-going support outside the confines of the legal process. Within one of the fundamental limitations of domestic violence law may lie its most promising therapeutic possibilities in enabling and encouraging women to use specialist services.

6.3.4. On-Going and Specialist Support Groups and Services

Survivors of domestic violence, particularly in the early stages of help-seeking, need to realise that they are experiencing abuse, that it is wrong and that it is not their fault.³⁹² A major unmet need for women experiencing domestic violence is support services and “someone to talk to.”³⁹³ It has been suggested that satisfaction with legal processes in general could be enhanced by the provision of “opportunities for unrestrained story telling.”³⁹⁴ It is also likely that support for women using legal tools, rather than the compulsion of law will make domestic violence law more relevant in women’s lives.³⁹⁵ The most well established existing source of support is Victim Support, but this was only used extensively by one woman in this research and tends to be associated with ‘victims’ involved in the criminal system rather than survivors of domestic violence specifically. Services that are separate from the legal

³⁹¹ Kelly, L. (1988) ‘How women define their experiences of violence’, in, Yllo, K. and Bograd, M. (Eds) (1998) *Feminist Perspectives on Wife Abuse* (California: Sage Publications) at 130.

³⁹² Brown, J. (1997) ‘Workings toward freedom from violence: The process of change in battered women’, 3(1) *Violence Against Women* 5-26 at 18.

³⁹³ Sorsby, A. and Shapland, J. (1995) *Responding to Victims of Domestic Violence* (University of Sheffield: Centre for Criminological and Legal Research) at 2 and v.

³⁹⁴ Conley and O’Barr (1990) *op. cit.* at 177.

³⁹⁵ Cretney and Davis (1997a) *op. cit.* at 88.

system avoid the conflict of interest that may exist for legal actors who have a law enforcement role.³⁹⁶ They also provide opportunities to reach women who do not become involved with the criminal system or find contact with legal actors intimidating. Domestic violence survivors' support groups and specialist advocates are two such services that are highly valued by women.³⁹⁷

A woman may start her life of physical separation from her abuser at the same time as legal proceedings end. In recognising the process of survival as a lengthy one, Women's Aid refuges provide support groups for women starting out in their own home,³⁹⁸ which are often open to all survivors. Domestic violence support groups provide a safe environment for a woman to work through her feelings, make decisions, construct definitions of the relationship that is separate from that imposed by the abuser and break down feelings of isolation.³⁹⁹ Group discussions allow a woman to restore her social bonds, re-establish friendships and gain a sense of belonging⁴⁰⁰ and put what she may believe to be an individual problem into a social context.⁴⁰¹ Groups allow a woman to reflect on decisions and experiences and remember the positive as well as negative aspects of their relationship, providing a safe environment where she can express anger, grief and her hopes for the future. When one woman relates her story in a group situation, others may be able to make connections with their own lives, see their situation more clearly and realise that they are not alone.⁴⁰² Films and other stories can be used to avoid the need for self disclosure while at the same time helping women explore issues, make sense of their experiences and discuss alternative solutions to difficult situations as well as breaking down feelings of isolation.⁴⁰³

³⁹⁶ Morley and Mullender (1994) *op. cit.* at 20.

³⁹⁷ Joseph Rowntree Foundation (1998) *Lessons from the Domestic Violence Intervention Project* (York: Joseph Rowntree Foundation).

³⁹⁸ Levison, D. and Harwin, N. (2000) *Reducing Domestic Violence ... What Works? Accommodation Provision, Policing and Reducing Crime Briefing Note* (London: Home Office); Also, Littleton (1989) *op. cit.* at 56.

³⁹⁹ Lempert (1997) *op. cit.* at 153; Busch and Robertson (1993) *op. cit.* at 127.

⁴⁰⁰ Herman (1992) *op. cit.* at 215.

⁴⁰¹ Lempert (1996) *op. cit.* at 283.

⁴⁰² Glass (1995) *op. cit.* at 157-158.

⁴⁰³ Greenbaum (1991) *op. cit.*

Support groups take different forms with many linked with domestic violence perpetrator programmes or with a local refuge. In Duluth there are different survivors groups focussing on assisting women in making decisions, educating women about the dynamics of domestic violence, the effects on children, the legal process and details of perpetrator programmes.⁴⁰⁴ Many survivors in Duluth identified the educational groups “as the most significant factor in their struggle to end the violence.”⁴⁰⁵ It has been suggested that women be encouraged to break the silence surrounding domestic violence by establishing meeting groups which make no reference to domestic violence, but, for instance, offer companionship for mothers and their children and provide information about services.⁴⁰⁶ Opportunities for education and employment are also important in some women’s development of self-esteem, connection with others and creation of a new life.⁴⁰⁷ It is important to remember that women may be at different stages in the process of recovery and support groups can be overwhelming for some women, particularly in the early stages of survival.⁴⁰⁸ For a range of reasons women may need individual support, sometimes in addition to that provided in a group setting.

Advocacy services provide support, information and advice and may help a woman by liaising with other legal, housing and benefits agencies, providing a ‘human link’ between survivors and formal systems.⁴⁰⁹ Advocates can also help demystify court processes, keep women informed about developments and organise practical issues such as child care and transportation.⁴¹⁰ The ideal of advocacy is to “help a woman

⁴⁰⁴ Shepard, M. (1999) ‘Advocacy for battered women: Implications for a co-ordinated community response’, in, Shepard and Pence (1999) at 118.

⁴⁰⁵ Pence, E. and Shepard, M. (1988) ‘Integrating feminist theory and practice: The challenge of the battered woman’s movement’, in, Yllo and Bograd (1988) *op. cit.* at 290; Also, Bowker, L. (1983) *Beating Wife Beating* (Lexington, MA: DC Health), cited in, Brown (1997) *op. cit.* at 13.

⁴⁰⁶ Bush, T. and Hood-Williams, J. (1995) ‘Domestic violence on a London housing estate’, *Research Bulletin* No. 37, 11-18 at 17; Merritt-Gray and Wuest (1995) *op. cit.* at 411.

⁴⁰⁷ *ibid.*

⁴⁰⁸ Herman (1992) *op. cit.* at 217.

⁴⁰⁹ Soler, E. (1987) ‘Domestic violence is a crime: A case study: San Francisco Family Project’, in, Sonkin, D. (1987) *Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence* (New York: Springer Publishing) at 30.

⁴¹⁰ Busch and Robertson (1993) *op. cit.* at 123-4.

achieve her personal goals in the legal system,” rather than facilitating institutional goals that do not always coincide with women’s wishes or interests.⁴¹¹ This is discussed further in the next chapter, but here the emphasis is on advocates as a source of empathy, who can provide an opportunity for women to talk through their feelings in a safe, confidential and non-threatening environment. There are several advocacy projects in this country, most of which use the Duluth model of community intervention. The ‘Domestic Violence Matters’ project in Islington involved a team of civilian workers, available out of working hours, who followed up incidents of domestic violence reported to the police with support, advice and information to women in order to help them at crisis points and sometimes through the legal process.⁴¹² The Domestic Violence Intervention Project in Hammersmith and Fulham combined an education programme for violent men with proactive responses for survivors including telephone advice and support, counselling, safety-planning, support groups and advocacy.⁴¹³ The HALT project in Leeds provides support for women going through the civil or criminal legal process. Other advocacy and outreach support services are provided by national organisations such as Southall Black Sisters and local branches of Women’s Aid.

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Responding to each individual’s complex process of survival with empathy and enabling women to discover a new sense of self by connecting with others is one ‘therapeutic possibility’ for domestic violence law. But women’s stories show that connection is not enough. Survivors also need “voice” or a sense of empowerment.⁴¹⁴ All aspects of the process of survival are intimately linked, but the next chapter focuses on how legal responses might empower a woman when she looks to the law for strength and for the perpetrator and others to hear her voice.

⁴¹¹ Shepard and Pence (1999) *op. cit.* at 10.

⁴¹² Kelly (1999) *op. cit.*

⁴¹³ Hammersmith and Fulham Domestic Violence Forum (1998) *Standing Together Against Domestic Violence: The Pilot Project to Develop a Co-ordinated Community Response in Fulham* (Hammersmith and Fulham Domestic Violence Forum); Joseph Rowntree Foundation (1998) *op. cit.*

⁴¹⁴ Marguiles (1995) *op. cit.* at 1098.

Chapter Seven

Therapeutic Possibilities? Silence and Empowerment

*It was like I wasn't even there.*¹

*They learned to listen to themselves again, to hear the sound
of their own voices, rather than the voice of the controlling
partner that had silenced them.*²

One characteristic of domestic violence is the silencing of the abused person's sense of self through social isolation, criticism, control, physical, verbal and psychological abuse.³ During this process the perpetrator often imposes his definition of the relational situation and the parties identities,⁴ so that the survivor's "life and her self are completely socially constructed by him."⁵ He relies on the silence of his partner and others in order to continue the pattern of violence.⁶ For the pattern to be broken the silence must end and the victim needs to build new understandings and definitions free of those of the perpetrator.⁷ The previous chapter highlighted some ways in which legal responses can assist in this process by sensitivity to a woman's complex and changing emotions, connecting her with the outside world, establishing trust and providing her with opportunities to talk about her experiences. For some women a

¹ Caroline, Int. 21 at 27.

² Jones, A. and Schechter, S. (1992) *When Love Goes Wrong: What To Do When You Can't Do Anything Right* (London: Victor Gollancz) at 128.

³ Lampert, L. (1997) 'The line in the sand: Definitional dialogues in abusive relationships', in, Straus, A. and Corbin, J. (Eds) (1997) *Grounded Theory in Practice* (California: Sage Publications); Fischer, K., Vidmar, N. and Ellis, R. (1993) 'The culture of battering and the role of mediation in domestic violence cases', 46 *South Methodist University Law Review* 2117-2174.

⁴ Lampert (1997) *ibid*.

⁵ Fischer, K. and Rose, M. (1995) 'When "enough is enough": Battered women's decision-making around court orders of protection', 41(4) *Crime and Delinquency* 414-429 at 425.

⁶ Herman, J. (1992) *Trauma and Recovery* (New York: Basic Books).

⁷ Mills, L. (1998c) 'Hope for law: Narratives, therapy and intimate abuse practice: Book review of Monk, G., Winslad, J., Cocket, K. and Epston, D. (Eds) (1997) *Narrative Therapy in Practice: The Archaeology of Hope* (San Francisco: Jossey Bass)', 16 *Behavioural Sciences and the Law* 525-533

related aspect of creating a new life free of violence is to feel more powerful. This chapter discusses the role that the law plays in empowering survivors and also in replicating the experience of silence and disempowerment that is so central to domestic violence.

The chapter begins by considering the relationship between law, power and survivors of domestic violence. This is followed by a description of the experiences of silence and empowerment in women's pathways through law. The third part of the chapter suggests some 'therapeutic possibilities' for domestic violence law as a source of empowerment for survivors of domestic violence.

7.1. Law, Power and Survivors of Domestic Violence

The power of the law exists not only in its potential to be used against wrongdoers, but to silence some people's stories.⁸ Chapter Two described how the history of domestic violence law has been to silence the stories of survivors in favour of those of perpetrators. Abuse of power is central to domestic violence and it has been argued that all responses must "confront and redress that power."⁹ Existing approaches to domestic violence law, in theory at least, do attempt to confront that power by protecting survivors and condemning perpetrators. It has also been suggested that even taking a legal pathway is empowering for a survivor.

*By making a public complaint or accusation, [she] defies the perpetrator's attempt to silence and isolate her, and she opens the possibility of finding new allies.*¹⁰

Indifference by legal actors can reinforce a perpetrator's sense of power when he knows that his partner has not found 'allies'¹¹ and increases her sense of isolation and

⁸ Sarat, A. and Kearns, T. (1993) *Law in Everyday Life* (Ann Arbor: University of Michigan Press) at 30.

⁹ Dobash, R.E. and Dobash, R.P. (1992) *Women, Violence and Social Change* (London: Routledge) at 212.

¹⁰ Herman (1992) *op. cit.* at 210.

¹¹ Dobash, R.E. and Dobash, R.P. (1979) *Violence Against Wives: A Case Against the Patriarchy* (London: Open Books) at 206.

powerlessness.¹²

In contrast, action by the state can enhance a woman's "sense of personal power,"¹³ by showing the abuser that society will not tolerate his violence.¹⁴ Law has the potential to empower a woman by taking action against the perpetrator¹⁵ and with its authority and power giving her an image of "dignity, honour and self respect."¹⁶ Legal action can also be empowering by ensuring that someone else knows about the violence and as a public record for the future.¹⁷ Survivors sometimes use legal pathways as a tool to enhance their power in the relationship or as a form of communication to the perpetrator.¹⁸ After obtaining court orders some women report "an enhanced sense of control" in the relationship and other aspects of their lives.¹⁹ For some survivors legal pathways, such as the injunction and divorce processes, are necessary to end the relationship, rather than strengthen it.²⁰ In divorce and child contact proceedings women find the trial process stressful, but may also benefit from traditional adversarial adjudication, with more protection from the perpetrator's violence and abuse of power and a greater sense of satisfaction than in less public and more informal proceedings.²¹ But Christie has argued in the criminal system, victims are

¹² *ibid* at 222.

¹³ Douglas, M. (1987) 'The Battered Woman Syndrome', in, Sonkin, D. (Ed) (1987) *Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence* (New York: Springer Publishing) at 47.

¹⁴ Merry, S. (1990) *Getting Justice and Getting Even: Legal Consciousness Among Working Class Americans* (Chicago: University of Chicago Press) at 39.

¹⁵ Meir, J. (1993) 'Notes from the underground: Integrating psychological and legal perspectives on domestic violence in theory and practice', 21(4) *Hofstra Law Review* 1295-1366 at 1344.

¹⁶ Sarat, A. and Kearns, T. (1993) 'Beyond the great divide: Forms of legal scholarship and everyday life', in, Sarat and Kearns (1993) *op. cit.* at 59.

¹⁷ *ibid.*

¹⁸ Fischer and Rose (1995) *op. cit.* at 421.

¹⁹ *ibid* at 422.

²⁰ Merry (1990) *op. cit.* at 39; Horton, A., Simionidis, K. and Simionidis, L. (1987) 'Legal remedies for spousal assault: Victim characteristics, expectations and satisfaction', 2(3) *Journal of Family Violence* 265-279 at 276.

²¹ Kurz, D. (1996) 'Separation, divorce and woman abuse', 2(1) *Violence Against Women* 63-81 at 79; Davis, G., Cretney, S. and Collins, J. (1994) *Simple Quarrels* (Oxford: Clarendon Press) at 225; Fineman, M. (1988) 'Dominant discourse, professional language and legal change in child custody decision-making', 101(4) *Harvard Law Review* 727-774 at 770; Delgado, R., Dunn, C., Brown, P., Lee, H. and Hubbert, D. (1985) 'Fairness and formality: Minimising the risk of prejudice in alternative dispute resolution', *Wisconsin Law Review* 1359-1404.

excluded and their conflicts become “other people’s property.”²² The stories in this research illustrate this exclusion and silencing of law in different legal forums and show that whilst law has the potential to empower survivors it also has dangers.

Some women are reluctant to ‘name’ domestic violence and take legal pathways, based on a “model of protection”, for fear of relinquishing their sense of self and accepting the powerless image of being a ‘victim’.²³ The role of ‘victim’ may be contradictory to the assertiveness and creativity required in order to leave a violent relationship.²⁴ In the context of domestic violence law, women risk losing control of a process or outcome and may be stigmatised as victims, or criticised for ‘using’ or ‘abusing’ the legal process. There is also the danger of becoming dependent on legal actors and systems. Herman argues that disempowerment is at the heart of psychological traumas, like domestic violence, and that interventions that take power away from the survivor do not foster her recovery.²⁵ The delay of legal processes can also create a feeling that she has no control over the system and no one is listening to her.²⁶ The court process itself can be experienced as a source of profound disempowerment.

The vision of the law court is as a source of justice, but as many survivors of domestic violence know, the system is “not about truth or falsity, but winning and losing.”²⁷ The adversarial trial has been described as a “hostile environment” in which “aggressive argument and psychological attack” replace physical force.²⁸ Perpetrators are often urged by legal representatives and procedures not to apologise or show

²² Christie, N. (1977) ‘Conflicts as property 17(1) *British Journal of Criminology* 1-15.

²³ Bumiller, K. (1987) ‘Victims in the shadow of the Law: A critique of the model of legal protection’, 12 *Signs* 421-439.

²⁴ Ferraro, K. and Johnson, J. (1983) ‘How women experience battering: The process of victimisation’, 30 *Social Problems* 325-339 at 337.

²⁵ Herman (1992) *op. cit.* at 133.

²⁶ Sarat, A. (1990) “‘The law is all over ...’: Power, resistance and the legal consciousness of the welfare poor’, 2 *Yale Journal of Law and Humanities* 343-379 at 361; Adler, Z. (1987) *Rape on Trial* (London: Routledge) at 163.

²⁷ Matoesian, G. (1993) *Reproducing Rape: Domination Through Talk in the Courtroom* (Cambridge: Polity Press) at 32.

²⁸ Herman (1992) *op. cit.* at 72.

remorse for their violence, but to deny it.²⁹ Lawyers use their power over language to silence the story of ‘the other side’ in favour of their own version of events and the practice of cross-examination is all about domination – very much like domestic violence.³⁰ Compromise, and the other skills of communication, such as discussion, negotiation and apology, which are valued in other settings, are not encouraged and communication styles which do not fit the predominant ‘talk’ of legal actors tend to lack credibility.³¹ Language used in court “bears little or no relation to people’s natural narratives.”³² For instance, relating words spoken by others is natural to story telling, but is only permitted in limited circumstances.³³ The legal preference for visual over aural evidence, insistence on a consistent perspective and drawing lines between fact and hearsay or opinion, “run contrary to the conventions of everyday story telling.”³⁴

Women experiencing domestic violence often feel mystified and disempowered by the legal procedure, “which is about her but in which she, literally, has no say.”³⁵ The stories told here suggest that even when women achieved the outcome they desired, such as a court order, the legal process were still perceived negatively.³⁶ What came across in many descriptions of legal processes was the lack of fairness, justice and care and compassion. Women lacked a sense of being empowered by the process. Formal education and observation of other legal actors³⁷ teach legal actors ‘legal

²⁹ Cohen, J. (1999) ‘Advising clients to apologise’, 72 *Southern California Law Review* 1009-1069 at 1010.

³⁰ Matoesian (1993) *op. cit.*

³¹ Conley and O’Barr, W. (1990) *Rules Versus Relationships: The Ethnography of Legal Discourse* (Chicago: University of Chicago Press); Bennett, W. and Feldman, M. (1984) *Reconstructing Reality in the Court Room* (New Jersey: Rutgers).

³² Bezdek, B. (1992) ‘Silence in the court: Participation and subordination of poor tenants’ voices in the legal process’, 20 *Hofstra Law Review* 533-608 at 588.

³³ *ibid* at 589.

³⁴ Conley and O’Barr (1990) *op. cit.* at 177; Also, Schepple, K. (1989) ‘Foreword: Telling Stories’, 87 *Michigan Law Review* (1989) 2073-2127 at 2089.

³⁵ Barron, J. (1990) “Not worth the Paper...?” *The Effectiveness of Legal Protection for Women and Children Experiencing Domestic Violence* (Bristol: Women’s Aid Federation England) at 129.

³⁶ Barron (1990) *op. cit.* at 73 and 123; Doy, E. and Maitland, L. (1996) *Norwich Challenging Abuse of Women and Children: Views from the Sharp End* (Women’s Policy Research Unit, University of East Anglia) at 18.

³⁷ Bezdek (1992) *op. cit.* at 586.

habits', which often disadvantages outsiders who try to tell their stories.³⁸ Legal actors often perpetuate the idea that law is a 'special' world, separate from that familiar to 'outsiders'³⁹ and may become so imbued in the language and 'habit' of law that they overlook the disempowering effects of the court experience.⁴⁰

Even if a woman can overcome these obstacles and sees legal action as a source of power, with that also comes the burden of responsibility. So she is either "defenceless before law's violence or responsible at some level for setting it into motion."⁴¹ One of the challenges for domestic violence law is to move away from the dichotomy between survivors feeling powerless before law or feeling guilty and responsible for legal action taken against the perpetrator. As previous chapters have suggested, women may feel empowered by different approaches, with some preferring control over legal action and others preferring the burden of responsibility to be lifted.⁴² Given survivors' different needs it may be inevitable that the law will fail to be 'therapeutic' for some women.⁴³ The focus of this chapter is the question of whether we can develop approaches to domestic violence, which lift some of the 'burden' of legal action from survivors whilst making their empowerment central to the process.

Empowerment has become an important theme in research examining people's everyday experiences of the operation of law and survivors of domestic violence law, like others, struggle against the obstacles in legal pathways to have their voices heard.⁴⁴ Christie has described the law as potentially "one of the more important ritual encounters in life."⁴⁵ The previous chapter discussed the theory of 'procedural justice' in terms of the importance people attach to the way they are treated by legal actors and to having a role in the process of decision-making. 'Procedural justice' research has found that:

³⁸ Schepple (1989) *op. cit.* at 2084 and 2094.

³⁹ Davis *et al* (1994) *op. cit.* at 207.

⁴⁰ Schepple (1989) *op. cit.* at 2095.

⁴¹ Berns, S. (1999) *To Speak as a Judge: Difference, Voice and Power* (Dartmouth: Ashgate) at 174

⁴² Erez, E. and Belknap, J. (1998) 'In their own words: Battered women's assessment of the criminal processing system's responses', 13 *Violence and Victims* 251-268 at 264.

⁴³ *ibid* at 264.

⁴⁴ Sarat (1990) *op. cit.* at 363-4 and 379.

⁴⁵ Christie (1977) *op. cit.* at 3.

*People value having the chance to state their case, irrespective of whether their statement influences the decisions made by legal authorities.*⁴⁶

This research suggests that survivors value legal outcomes and also have “a tremendous desire to present their side of the story”⁴⁷ for “interpersonal reasons” as well as to influence final results.⁴⁸ It has been suggested that when people have an opportunity to speak, even after a decision has been made, this affects their perceptions of fair judgements.⁴⁹ The opportunity to tell one’s story is sometimes more important than the legal result.⁵⁰

*Some losers report that the chance to tell their story to the judge made the whole event worthwhile, whereas some winners . . . go away dissatisfied because their story went untold.*⁵¹

Conley and O’Barr claim that some litigants desire official validation of their situations and that the process itself may be a form of therapy.⁵²

We are still in the early days of understanding the meaning of empowerment in survivors’ lives and in research on legal responses to domestic violence this issue is often overlooked.⁵³ But this research supports the theory that legal pathways are about much more than the legal result. Some women view a legal process as a ‘catharsis’ even if they are disappointed in the result.⁵⁴ For a survivor of domestic violence, a legal pathway can become:

⁴⁶ Tyler, T. (1990) *Why People Obey the Law* (New Haven: Yale University Press) at 116.

⁴⁷ *ibid* at 147.

⁴⁸ *ibid* at 134.

⁴⁹ Lind, A., Kanfer, R., and Earley, P. (1990) ‘Voice, control and procedural justice: Instrumental and non instrumental concerns in fairness judgements’, 59 *Journal of Personality and Social Psychology* 952-959, cited in, Paternoster, R. and Brame, R., Bachman, R. and Sherman, L. (1997) ‘Do fair procedures matter? The effects of procedural justice on spouse assault’, 31(1) *Law and Society Review* 163-204 at 166.

⁵⁰ Tyler (1990) *op. cit.* at 163.

⁵¹ Conley and O’Barr (1990) *op. cit.* at 130.

⁵² *ibid* at 177.

⁵³ Mills, L. (1998) ‘Mandatory arrest and prosecution policies for domestic violence: A critical literature review and the case for more research to test victim empowerment approaches’, 25(3) *Criminal Justice and Behaviour* 306-318.

⁵⁴ Herman (1992) *op. cit.* at 211.

*a symbol of her own internalised strength; it represents the time she stood up to her abuser . . . a symbol for feeling better about [herself], as a turning point for change, or as a vision of a better life in the future.*⁵⁵

In the context of criminal prosecutions, when a case is dismissed the survivor can still see it as a satisfactory outcome because the proceedings have prompted a change in the relationship or a reassessment of her own situation.⁵⁶ For the women interviewed by Walker the legal result was less important than “the whole process of feeling as though the balance of power had changed.”⁵⁷ Chapter Six reveals that women’s feelings of empowerment, and the establishment of therapeutic connections outside the violent relationship, depends on the nature of the process. People’s sense of satisfaction relies on ‘finding new allies’ in that legal system and if lawyers and judges exclude the parties, the ‘ritual’ of law is likely to be disappointing.⁵⁸ So what role does empowerment play in legal pathways?

The understanding of ‘empowerment’ in this thesis is similar to that of the women’s refuge movement: a personal and collective process involving mutual support and self help.⁵⁹ But the term has now become a popular ‘buzz’ word which is used to describe a range of responses to survivors of domestic violence, including the provision of services like home alarms, injunctions and mobile telephones.⁶⁰ This research acknowledges the value of these tools for protection, but focuses on the empowering potential of legal processes, rather than outcomes. As Marguiles writes: “voice is not a thing.”⁶¹ Giving a woman a sense of empowerment is not an act, but a process that involves building relationships between her and others in which her voice is central. Recently, Hoyle and Sanders have used the term ‘victim empowerment’ to

⁵⁵ Fischer and Rose (1995) *op. cit.* at 424.

⁵⁶ Davis, R. and Smith, B. (1981) ‘Crimes between acquaintances: The response of criminal courts’, 6 (1-4) *Victimology: An International Journal* 175-187 at 185.

⁵⁷ Walker, L. (1984) *The Battered Woman Syndrome* (New York: Springer) at 143.

⁵⁸ Davis *et al* (1994) *op. cit.* at 64.

⁵⁹ Morley, R. (1993) Recent responses to ‘domestic violence’ against women: A feminist critique’, in Page, R. and Baldock, J. (Eds) (1993) 5 *Social Policy Review* (Social Policy Association) at 198.

⁶⁰ Rock, P. (1994) ‘The social organisation of a Home Office initiative’, 2(2) *European Journal of Crime, Criminal Law and Criminal Justice* 141-167 at 163; Home Office (1998) at 21-22.

⁶¹ Marguiles, P. (1995) ‘Representation of domestic violence survivors as a new paradigm of poverty law: In search of access, connection and voice’, 63 *George Washington Law Review* 1071-1104 at 1098.

argue for survivors of domestic violence to have ultimate control over decisions relating to criminal prosecution.⁶² This suggestion is considered later in the chapter, but in terms of Hoyle and Sanders' understanding of 'empowerment,' this thesis considers whether it is necessarily empowering to have decision-control or whether true empowerment is more complex than that.

This chapter considers the affective lawyering approaches to developing empowering relationships between women and legal actors. But the concept of empowerment discussed here is not only about these individual relationships. Restorative justice and rebellious lawyering focus on building empowering connections between survivors and other people. It has been argued that the term 'empowerment' has come to reflect individualistic concepts of mastery and control over concerns of communion and co-operation and that we should develop "a vision that encompasses not only empowerment but also community."⁶³ The final part of the chapter suggests some possibilities for fulfilling this 'vision'. So, what are women's experiences of legal responses as a source of silence and empowerment?

7.2 Survivors' Experiences of the Silence and Empowerment of Law

This part of the chapter begins by highlighting the complex issue of empowerment in the process of decision-making in the criminal system. This is followed by a discussion of women's experience of exclusion and silence in criminal and civil processes. In both contexts the court experience was generally one of disempowerment. Finally, examples are highlighted of occasions when women were able to use the legal process as a source of empowerment.

⁶² Hoyle, C. and Sanders, A. (2000) 'Police response to domestic violence: From victim choice to victim empowerment', 40 *British Journal of Criminology* 14-36.

⁶³ Riger, S. (1993) 'What's wrong with empowerment?', 21(3) *American Journal of Community Psychology* 279 -292 at 290.

7.2.1. Process of Decision-Making in the Criminal System

Chapter Four revealed the feelings of powerlessness experienced when a woman has the courage to contact an outside agency, like the police, only for her experience to be minimised, denied or ignored. She then “becomes someone not worthy of state involvement.”⁶⁴ Several women described their frustration when their account of violence was not acted upon. Emma described one incident when the police were called.

*A policeman said something I remember. He said, “According to your husband, it was tit for tat.” I thought if you’re starting to say things like that to me, you’re not taking me seriously. Even for him to repeat what he had said was bad. I didn’t ring them after that for ages. If the police are talking like that I thought he really is getting away with it.*⁶⁵

Hoyle suggests from her observations that police officers act in terms of dichotomies of ‘offence’ or ‘no offence’, so do not see it as part of their job to condemn the behaviour of the perpetrator.⁶⁶ Responses like that experienced by Emma, confirm a woman’s sense of isolation and powerlessness.

In contrast, a proactive response, like arrest or prosecution, can empower a woman when it has a positive effect on the perpetrator’s violence. Some women said that the process of arrest and prosecution had ‘drawn a line’, which showed the perpetrator that he could not ‘get away with it’ anymore.⁶⁷ Kelly found that criminal intervention made women feel stronger and supported, whilst lack of action increased the sense of hopelessness and feeling trapped.⁶⁸ In one study a letter or verbal warning to the perpetrator and regular police patrols near their home helped women to feel less isolated and vulnerable and empowered them with the knowledge that a person in a

⁶⁴ West, R. (1997) *Caring For Justice* (New York: New York University Press) at 145

⁶⁵ Int. 16 at 22.

⁶⁶ Hoyle (1998) *op. cit.* at 197.

⁶⁷ Jill, Int. 29 at 30; Joan, Int. 31 at 12.

⁶⁸ Kelly, L. (1999) *Domestic Violence Matters: An Evaluation of a Development Project*, Home Office Research Study 193 (London: Home Office) at 52.

position of power and authority was taking action.⁶⁹ There is evidence that action against perpetrators by legal actors can play an important role, but this study supports the arguments of those who argue that the police and other legal actors “do not in and of themselves ‘empower’.”⁷⁰ Hoyle and Sanders conclude that prosecution is most likely to have a deterrent effect when “combined with complementary actions by the victim.”⁷¹ This thesis does not focus on the effect of legal action on the perpetrator, but examines women’s perceptions and asks whether legal responses empower ‘in and of themselves’.

The following response, to a research contact letter, was received by a woman who will be called Stephanie:⁷²

Since the time I had my husband arrested and taken to court it has been completely calm in the household. I think that it shocked him into realising that even if I was pleased to keep quiet about it, the police saw it in a different light. I would really not like to rock the boat by dragging up the past over again. I wish you all the best with the research but would like to decline to participate.

These few words reveal the complexity of criminal responses to domestic violence. The writer sees it as important that the perpetrator saw action being taken by the police independently of her, but she also says: “I had my husband arrested and taken to court.” Ann’s story also reveals the complexity of state action against domestic violence. Her husband blamed her when he was arrested and the violence continued, because in her view “while . . . he knew I would still be with him it didn’t have the effect.”⁷³ These stories illustrate the fact that there is not a simple distinction in domestic violence law between the survivor taking action against the violence and the state acting.

⁶⁹ Hanmer, J., Griffiths, S. and Jerwood, D. (1999) *Arresting Evidence: Domestic Violence and Repeat Victimisation*, Police Research Series Paper 104 (London: Home Office) at 37-39.

⁷⁰ Stanko, E. (1995) Policing domestic violence: Dilemmas and contradictions’, 55 *Australian and New Zealand Journal of Criminology* 31-44 at 39.

⁷¹ Hoyle and Sanders (2000) *op. cit.* at 27.

⁷² See Appendix One.

⁷³ Ann, Int. 5 at 20.

It is possible that the effectiveness of criminal action against perpetrators is related to the extent to which survivors are empowered by such action. Maybe legal action has an effect when the perpetrator knows that the law *and* his partner have ‘had enough’. Unfortunately most evaluations of the ‘effectiveness’ of arrest focus on the perpetrator and miss crucial elements relating to the woman’s feelings, attitudes and actions. But one study suggests that after perpetrators were arrested, victims were less likely to experience further violence when they perceived that the police were concerned and willing to listen.⁷⁴ However, the hypothesis that the recidivism rate decreased when victims perceived police interest because the victim felt empowered by the interaction, could not be tested from the available data.⁷⁵ Women’s stories in this research suggest that they need to feel that the use of legal power is about serving them and giving them power, not just acting against the perpetrator.

Chapter Six shows how important it is for women to make their own decisions along the journey of surviving domestic violence. For some women this included decisions about the criminal system. Sarah believed that people should be entitled to “drop charges.”⁷⁶ Ann knew throughout the wait for the trial that she could withdraw her statement.

*I could make my own choices, because I don't like people making them for me . . . I hate that type of system thing, I don't like that you know, once they've got a sort of - they're in - you're sort of - on some - but - like I say . . . I could have stopped but I didn't and I'm glad I didn't now.*⁷⁷

Ford suggests that a woman may make a complaint to the police and later withdraw support for a prosecution as a rational “strategy for managing her situation.”⁷⁸ He suggests that depriving women of control over the process may be disempowering in leaving her the choice of not reporting violence or experiencing the coercion of law.⁷⁹

⁷⁴ Sherman, L. and Berk, R. (1984) ‘The Minneapolis Domestic Violence Experiment’, 1 *Police Foundation Reports* 1-8.

⁷⁵ Sherman, L. (1992) *Policing Domestic Violence: Experiments and Dilemmas* (New York: Free Press) at 90.

⁷⁶ Int. 6 at 4.

⁷⁷ Int. 5 at 15-16.

⁷⁸ Ford, D. (1991) ‘Prosecution as a victim power resource: A note on empowering women in violent conjugal relationships’, 25 *Law and Society Review* 313-334 at 316.

⁷⁹ *ibid* at 316-317.

The theory is that the threat of prosecution enables a woman to bargain with the perpetrator, but Ford argues that the use of this “power resource” depends on a woman being prepared to act on the threat and having ultimate control over the decision.⁸⁰

The “power resource” theory is supported by a study which found that a woman was at lowest risk of repeat violence when she had the power to withdraw but continued, than if she either withdrew support from prosecution or was prevented from doing so.⁸¹ Importantly, she was at most risk when she had the control over the prosecution but did not pursue it. Whilst it is important for women to feel empowered by legal processes, there are also real problems when legal actors regard women’s ‘choices’ as unproblematic.

Whilst some women do use arrest and prosecution to ‘bargain’ with the perpetrator, other women’s sense of powerlessness will prevent them using ‘power resources’ like the criminal system in the first place.⁸² Often decisions relating to legal proceedings are made because a woman lacks power. Chapter Four discussed how police and prosecutor’s decisions not to pursue perpetrators are often a result of women withdrawing support for a prosecution.⁸³ Reasons for not supporting arrest or prosecution differ from one woman to another. A particular woman’s reasoning often changes over time. Some women fear reprisals from their respective partners or their supporters. Some do not want their partners to be subjected to a criminal prosecution because that will cause him pain and for practical reasons because they need financial support, which relies on the partner being able to work. Some women also feel ashamed and want to keep the violence private. Women who have separated from a partner may feel that criminal sanctions have nothing to offer them or fear that a prosecution will make the violence worse. Another theory is that women withdraw

⁸⁰ *ibid* at 318-9.

⁸¹ Ford, D. and Regoli, M. (1992) ‘The preventive impacts of policies for prosecuting wife batterers’, in Buzawa, E. and Buuzawa, C. (Eds) (1992) *Domestic Violence: The Changing Criminal Justice Response* (Westport, Connecticut: Auburn House) at 204.

⁸² Hoyle and Sanders (2000) *op. cit.* at 30.

⁸³ Hoyle, C. (1998) *Negotiating Domestic Violence: Police, Criminal Justice and Victims* (Oxford: Clarendon press) at 213; Cretney, A. and Davis, G. (1995) *Punishing Violence* (London: Routledge); Hoyle and Sanders (2000) *op. cit.*

support for a prosecution because the system has served their needs and for them a discontinued case is not a 'failure', despite the assumptions of legal actors.⁸⁴

Chapter Four also shows that women's reasons for not supporting criminal action, may be more to do with the system itself which fails to provide her with support and protection and may even lead to her being further victimised by legal actors in court.

Some women did not object to their partners being arrested or prosecuted but felt strongly that they should not be required to give evidence. Jacqui and Sarah had been told that they would be arrested if they did not go to court.⁸⁵ Jacqui said:

*I don't want to go, so I'd rather the police just done it for themselves and leave me out of it.*⁸⁶

Ann was pleased when her partner pleaded guilty and she was not required to give evidence in court. She said: "They can all carry on, I don't want to be involved in it."⁸⁷ Caroline felt strongly that a case should go ahead without relying on the woman's testimony.⁸⁸ These sentiments illustrate the danger in the suggestion by Hoyle and Sanders that victims of domestic violence should have ultimate control over prosecution decisions, so that criminal law, like the civil system is "at the service of the victim."⁸⁹ This proposal overlooks the fact that some women value the criminal system for the fact that action can be taken which does not burden them with the responsibility. Later in this chapter it is also revealed that neither the criminal nor the civil system 'serves' women. This thesis argues that it is the process of decision-making in the criminal legal system that we should change, not shift the responsibility for those decisions.

Chapter Two discussed how recent approaches to domestic violence law reform have focussed on legal actors in the criminal system taking action independently of

⁸⁴ Cretney, A. and Davis, G. (1996) 'Prosecuting "domestic" assault', *Criminal Law Review* 62-174 at 173; Also, Hoyle and Sanders (2000) *op. cit.*; Hoyle (1998) *op. cit.* at 183.

⁸⁵ Jacqui, Int. 15 at 3; Sarah, Int. 6 at 2.

⁸⁶ Int. 15 at 2.

⁸⁷ Int. 5 at 13.

⁸⁸ Int. 21 at 8.

⁸⁹ Hoyle and Sanders (2000) *op. cit.* at 221.

survivors' preferences.⁹⁰ The focus of many proponents for pro arrest policies is on the perceived interests of victims as a group rather than the wishes and interests of particular individuals.⁹¹ It is much easier to justify taking decisions about arrest independently of the victim, than making similar decisions about prosecution, because the latter involves a woman in the process. The move towards state criminal prosecution and enhanced evidence gathering, which does not rely on victim testimony, acknowledges the difficulties faced by women in co-operating with criminal prosecutions.⁹² But there is danger of overlooking the fact that the sanctions imposed on a perpetrator, after a conviction, can have a detrimental effect on a woman's life if her partner is sent to prison and can no longer provide financial support or if he is fined and she has to pay. There are also other dangers of prosecution policies.

Yvette began by saying that she wished that she had not had to make the decision about having her partner arrested, because "I'm emotionally involved, it's like another pressure."⁹³ She said that she wished that the police had taken action without her having the responsibility.

*But then I think if it was like that, knowing what I'm like I probably wouldn't have phoned the police because I would have thought, no, because if I phone the police they're going to arrest him. It's like a vicious circle type thing.*⁹⁴

Taking decision-making control from women in order to show the unacceptability of violence to men means that some survivors will not feel able to use legal pathways. Others will feel encouraged to involve criminal justice agencies because they know

⁹⁰ Hanna, C. (1996) 'No right to choose: Mandated victim participation in domestic violence prosecutions', 109 *Harvard Law Review* 1849; Hanna, C. (1998) 'The paradox of hope: The crime and punishment of domestic violence', 39(5) *William and Mary Law Review* 1505-1584; Mills, L. (1997) 'Intuition and insight: A new job description for the battered woman's prosecutor and other more modest proposals', 7 *UCLA Women's Law Journal* 183-199; Mills, L. (1998b) 'Mandatory arrest and prosecution policies for domestic violence: A critical literature review and the case for more research to test victim empowerment approaches', 25(3) *Criminal Justice and Behaviour* 306-318; Mills, L. (1999) 'Killing her softly: Intimate abuse and the violence of state intervention', 113(2) *Harvard Law Review* 551-613.

⁹¹ Hoyle (1998) *op. cit.* at 215

⁹² Hanna (1996) *op. cit.*

⁹³ Int. 23 at 45.

⁹⁴ Int. 23 at 45.

that the responsibility for decisions will not rest with them. Could there be a way of allowing the ultimate responsibility for criminal decisions to lie with legal actors, whilst also involving women in those decisions and creating a process which gives a survivor a sense of empowerment rather than exclusion? Firstly, if empowerment is so important in surviving domestic violence why should the ultimate decision in the criminal process not lie with the woman herself?

Hoyle and Sanders' 'victim empowerment' model proposes that prosecution decisions should lie with the victim, but that she should be provided with a range of support mechanisms in making her decisions, such as specialist police officers.⁹⁵ The model is limited in that it views 'empowerment' as an individualistic *act* – the decision to prosecute. In this thesis empowerment is understood as a collective *and* individual *process*. The collective interests of survivors of domestic violence and all citizens are best served by a criminal system that condemns violence and does not allow the existence of a relationship between perpetrator and victim to lessen that condemnation. The criminal system is based on the idea that some behaviour is harmful to society as a whole. To give a survivor of domestic violence control, that other individual victims do not have, risks portraying domestic violence as a lesser wrong. But what of the individual survivors who, as Hoyle and Sanders recognise, do not feel that they are served by the criminal system?

This thesis argues that the process is more important to women than a legal act, such as deciding whether or not to prosecute a perpetrator. Survivors' complex emotions, described in the previous chapter and throughout the rest of this one, reveal how difficult women find it to take decisive legal action against their partners when experiencing fear, confusion, guilt and hope. A woman may be relieved when responsibility for a decision is taken out of her hands, and possibly even more so if she is left out of the process entirely. Hoyle and Sanders' model does not acknowledge that 'empowering' women with the responsibility of such a decision, not only facilitates internal emotional pressures, but endangers her by giving the

⁹⁵ Hoyle and Sanders (2000) *op. cit.* at 32.

perpetrator power. After all, he has far more chance of intimidating her into stopping the process, than he would if the decision was left to legal actors.

It is also problematic to see ultimate control over the criminal process as empowering for individual women. The strategy of using that control in the relationship with the perpetrator is unlikely to be effective if threats are made repeatedly and not carried out or if the partner does not fear criminal sanctions. The strategy also increases violence when the perpetrator uses intimidation to eliminate the threat of action held over him by his partner. To encourage strategies like these may also give a woman false hope that her actions can control the violence, when evidence suggests that this is highly unlikely. The “power resource” theory may empower some survivors who want to drop charges because law has worked to their advantage. But in many other cases women will withdraw because of fear, guilt and emotional pressures or because the system leaves them feeling confused, frustrated and desperate to move on.⁹⁶ This thesis argues that women are disempowered by legal responses, not only because they are left out of decisions, but because the whole process excludes them. The process should be changed not the responsibility for decisions. The Duluth community intervention approach to domestic violence is often used as an example of an integrated approach to domestic violence that has survivors interests at its centre.⁹⁷ In Duluth the philosophy of responses to domestic violence is that this issue is a community problem and that it is the responsibility of the community to respond to it.⁹⁸ Is there any way that we can value collective empowerment by sending a clear message that violence is unacceptable, whilst also taking account of individual women’s different situations and empowering all women in their process of survival?

This thesis has argued for a move away from dichotomised thinking, such as that which asks whether decision-making power should be in the hands of the state *or* the victim. Chapter Four shows that police decisions to arrest are often based on

⁹⁶ Bennett, L., Goodman, L. and Dutton, M. (1999) ‘Systemic obstacles to the criminal prosecution of a battering partner: A victim perspective’, 14(7) *Journal of Interpersonal Violence* 761-772.

⁹⁷ Shepard, M. and Pence, E. (Eds) (1999) *Co-ordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond* (California: Sage).

⁹⁸ *ibid.*

simplistic evaluations of a woman's expressed choices, which may not account for the complexity of her situation. Also, there are few opportunities for women to explain the influences on their 'choices' to crown prosecutors, which can include intimidation, practical considerations or other more emotional reasons such as reconciliation with the perpetrator or concerns relating to children. Cases are usually discontinued when a woman withdraws her support regardless of the reasons for that withdrawal.⁹⁹ That means that the pressures which perpetrators apply allow them to escape punishment. Also, opportunities are being lost to assist women in the process of survival. Often prosecutors will have limited knowledge of an individual woman's situation and involving her could result in better decisions. Also, knowledge about 'procedural justice', discussed in Chapter Six and earlier in this chapter, shows that people value having their voices heard even when final decisions are not in their favour. Even if a prosecutor acted against a woman's wishes and a prosecution went ahead with her as a compelled witness, this might not be experienced as such a violation if she felt that her voice had been heard in the decision-making process. The final part of this chapter suggests possibilities for legal actors sharing *power* with women in the criminal system, while at the same time retaining the ultimate *responsibility* for decision-making. Some of the suggestions highlight the exclusionary nature of the existing criminal process for survivors of domestic violence.

7.2.2. Exclusion in the Criminal Legal Process

Chapter Four discussed the dissatisfaction and frustration that many women felt about their exclusion from the criminal legal process. This led both Susan and Clare to say that they could understand why women withdrew from prosecutions, even when they wanted action to be taken against the perpetrator. A central problem highlighted in Chapter Four was the lack of information during the process and the fact that there was no contact with the Crown Prosecution Service (CPS). This led to experiences of being excluded and silenced.

⁹⁹ Hoyle (1998) *op. cit.*

Susan described an incident before her ex-husband's trial for rape when his solicitors attempted to subpoena her medical records to show that she was mentally disordered at the time of the offence. Naturally she wanted the information disclosed to be as restricted as possible and asked, in a letter to the CPS, that her doctor give a statement about her mental health rather than her entire medical history being made available. After discovering the date of the hearing, she met the CPS solicitor outside court:

*I said: "Can you tell me what happened?" And she [the CPS solicitor] said: "Who are you?" And I told her and she said: "What an earth are you doing here?" I said: "Pardon". "Do you know you've got no right to be here, you shouldn't even be here?" I said: "Hang on, this is about me. I've got every right to know what's going on."*¹⁰⁰

Susan's letter had not been received by the CPS barrister. The solicitor commented that the letter would have made no difference to the outcome, but Susan was adamant that that was not the point. She had simply wanted her point of view to be heard and the fact that it had not affected her confidence in the CPS and the entire legal system.

Clare also felt powerless in her experience of the criminal process during her husband's trial for attempted rape and assault. She said:

*It would have been easier, I think, if they told me what evidence they had and what evidence he had . . . It would have been easier I think if you did speak to the prosecutor before hand. If he'd have explained everything - what sort of questions you'd be asked. Because he [her ex-husband] got all that - he got all that treatment. He had his barrister or whatever you call it.*¹⁰¹

Lucy saw the prosecution barrister when the original trial was adjourned, but four months later, was not even able to see him on the morning of the trial itself and felt that she had not been given enough advice and support.¹⁰² Susan was adamant that she should have been able to keep in touch with the CPS throughout the case:

*They are the ones that are going to court and you should be allowed to put your feelings over to them, you know, your fears and your worries.*¹⁰³

¹⁰⁰ Int. 2 at 4.

¹⁰¹ Int. 14 at 22.

¹⁰² Int. 4 at 52.

¹⁰³ Int. 2 at 32.

Susan felt that her case had not been argued adequately and that it would have helped to have one person dealing with her case.¹⁰⁴

Chapter Four shows how women lack support during the lead up to a criminal trial. Susan described one conversation she had with a Victim Support worker, which reveals the kind of concerns women deal with about not being heard in court:

I said: "What if I want to voice my opinion?" And she said: "You just unfortunately don't get the opportunity to do that." . . . You know you don't get the opportunity to say anything, you've just got to sit there and answer "yes" or "no" . . . [The Victim Support worker said:] "If you do feel - you know - there's a certain point which you feel you want to give a more detailed . . . answer to . . . you can turn to the judge and just say: "'Excuse me, your honour, may I be given permission to answer that in more detail.'" But she said: "Don't do it too often." I said: "Well it's just in case something came up and I don't want to be sitting there frustrated thinking, well I want to say this and I want to say that."

The experience of a criminal trial with its reliance on adversarial methods and the central role of the state in the prosecution means that victims often feel excluded. We might expect a survivor of domestic violence to have a more positive experience of the civil trial process, in which a victim is more free to present 'her' case and often has her own legal representative, but perceptions of exclusion were often similar in both contexts.

7.2.2. Exclusion in the Civil Process

In theory, women's experiences of legal representation and civil responses to domestic violence should enable her to have control and power in the process, but in these legal pathways survivors of domestic violence often feel silenced. Lawyers claim to represent their clients, but advocacy means literally, to speak on someone else's behalf. The reality of the advocacy process is that the lawyer translates the client's

¹⁰⁴ Int. 2 at 32-33.

story and “routinely silence and subordinate” the person in the process.¹⁰⁵ This has been recognised as the experience of survivors of domestic violence.¹⁰⁶ When lawyers shape their client’s story they may assume they are acting in the client’s best interests, but may have an adverse affect the on the client’s feelings of self worth, “when she sought to tell her own story in her own voice.”¹⁰⁷ The previous chapter discussed how legal actors tend to define issues according to legal rules and outcomes, whilst people usually understand their disputes in a more complex personal and social context.¹⁰⁸ Chapter Five shows that legal actors, including solicitors, family court welfare officers and judges silence women’s stories of domestic violence in divorce and child contact proceedings because, in the legal context, they are part of the history of the relationship. Alfieri argues that when a lawyer aims solely to ‘win’ they often impose dependency and a sense of powerlessness on their client.¹⁰⁹

One of the key problems in civil proceedings is that women often enter the system at times of crisis and with very little knowledge about their legal position. In her study of people’s use of civil law, Genn concludes that “they did not want to be *empowered* they wanted to be saved.”¹¹⁰ Barron’s research showed a lack of understanding of injunction proceedings by many survivors and feelings of helplessness.¹¹¹ This study found similar feelings, but does not suggest that women choose between empowerment and ‘being saved’. Their stories suggest a need for advice, protection, *and* empowerment. This thesis argues that we need to think about legal responses in a way that avoids these dichotomies.

¹⁰⁵ Cunningham, C. (1992) ‘The lawyer as translator, representation as text: Towards an ethnography of legal discourse’, 77 *Cornell Law Review* 1298-1387 at 1301; Also, Alfieri, A. (1991) ‘Reconciling poverty law practice: Learning lessons of client narrative’, 100 *Yale Law Journal* 2107-2147; Lopez, G. (1992) *Rebellious Lawyering: One Chicanos Vision of Progressive Law Practice* (Boulder: Westview Press); White, L. (1990) ‘Subordination, rhetorical survival skills, and Sunday shoes: Notes on the hearing of Mrs G’, 38 *Buffalo Law Review* 1-58.

¹⁰⁶ Barron (1990) *op. cit.* at 39.

¹⁰⁷ Cahn (1993) ‘Inconsistent stories’, 81(7) *Georgetown Law Journal* at 2523.

¹⁰⁸ Conley and O’Barr (1990) *op. cit.*; Sarat, A. and Felstiner, W. (1995) *Divorce Lawyers and Their Clients: Power and Meaning in the Legal Process* (New York : Oxford University Press) at 108-134

¹⁰⁹ Alfieri (1991) *op. cit.* at 2146-2147.

¹¹⁰ Genn, H. (1999) *Paths to Justice: What People Do and Think about Going to Law* (Oxford: Hart Publishing) at 100.

¹¹¹ Barron (1990) *op. cit.* at 48-49.

Jenny regretted taking her solicitor's advice to stay in the family home after enduring many months of sharing the house with her husband. She recognised that she had been in a crisis situation.

*You go with their advice because you don't know any different at the time. You know you are so bombarded, you are going through an emotionally upsetting time, anyway, you're not clear thinking.*¹¹²

Emma said of her solicitor that: "she does tell me things, but I don't understand the law."¹¹³ Melanie said that her solicitor's explanations "wouldn't go in," "I couldn't think straight."¹¹⁴ Helen's solicitor recognised this when she followed up their initial meeting with a letter, which summarised their discussion about the divorce process and explained the various legal rules and procedures involved.

Women experienced their stories of domestic violence being silenced when solicitors advised that formal legal action was not possible or encouraging a woman to reach agreement with the perpetrator, through, say, accepting an undertaking in an injunction hearing. Caroline's solicitor convinced her to 'give in' to her partner's applications for parental responsibility and contact on the basis that he would not use it any way because he was so unreliable.¹¹⁵ Emma did not want her partner to have contact with their daughter.

*But the solicitor said it was best to keep it as normal as possible for her because he said it would be a regular thing in her life.*¹¹⁶

Kate was told by a family court welfare officer that he could not take account of the history of domestic violence.¹¹⁷ Kate also accepted his advice that she would be "deemed unreasonable" by the judge if she objected to her partners claim for parental responsibility.¹¹⁸ When legal actors encourage women to put aside the history of domestic violence, in the best interests of the children, this builds on strong social

¹¹² Int. 9 at 15.

¹¹³ Int. 16 at 11.

¹¹⁴ Int. 1 at 20.

¹¹⁵ Int. 21 at 28.

¹¹⁶ Int. 16 at 14.

¹¹⁷ Int. 3 at 8.

¹¹⁸ Int. 3 at 31.

pressure on women to make sacrifices as mothers and to be the peacemakers in their relationships.¹¹⁹ Becky accepted her partner's contact with their daughter, partly because she did not want to give the impression that she was preventing the child from seeing her father.¹²⁰

Women are silenced when legal representatives pressurise them to accept certain legal 'solutions'. Whilst some legal actors see a court case as a 'failure,' because the parties have not reached agreement,¹²¹ some survivors of domestic violence may regard it as a necessary step in the process of empowerment and creating a new life. Maria wanted the contact dispute with her partner, Chris, to be decided by a judge, rather than being resolved through the two solicitors, "on a bit of paper."¹²²

*I said [to the solicitor], it needs to go in front of a judge, it needs a judge to be in front of Chris and say . . . "She's got these rights and you've got these rights." And it all needs to be put down and said to him by a judge exactly what he can and cannot do. But my solicitor seemed to think that because of the state I was in, he thought I wasn't ready to go to court. I said: " Yeah, but if you put me in a courtroom I can fight this out in a courtroom." And it never did go to court.*¹²³

Maria saw the judge and the court as potentially effective communicators of the limits which the law, and she herself, were placing on Chris's behaviour, and she was "angry" when the solicitors decided the matter between themselves.¹²⁴

Another way in which women were silenced in the decision-making process was when they were not kept informed of legal developments or decisions were taken without their participation.¹²⁵ In Chapter Four, situations were described in which women were awarded injunctions without having the effects explained. Lucy's solicitor

¹¹⁹ Hilton, N. (1991) 'Mediating wife assault: Battered women and the "new family"' 9 *Canadian Journal of Family Law* 29-53; Fineman (1988) *op. cit.*

¹²⁰ Int. 20 at 8.

¹²¹ Davis *et al* (1994) *op. cit.* at 95.

¹²² Int. 26 at 21.

¹²³ Int. 26 at 20.

¹²⁴ Int. 26 at 21.

¹²⁵ Barron (1990) *op. cit.* at 47.

accepted an undertaking on her behalf without explaining to her that it was not possible to have a power of arrest attached to such an agreement. Emma said:

A lot of the time the solicitors don't tell you things and it's horrible . . .

*They're so professional and I feel I don't know what's going on.*¹²⁶

This feeling of exclusion was prominent in all stories relating to the court process, in both the criminal and civil systems.

7.2.3. Silence in Court

Not being there

Women are literally silenced when they are excluded from the court process entirely. Becky had not been required to give evidence at her partner's criminal trial because he pleaded guilty. She said that she would have liked to have been there, or at least to have known more about the case, "all that had been said, how long it took, everything like that."¹²⁷ When Caroline discovered details of the story her partner had told at his trial when she had decided not to give evidence, she wished that she had gone ahead and corrected the lies told about her.¹²⁸ Jill was angry that her partner had pleaded guilty to a reduced charge, which involved him denying that he had threatened her with a knife. She said:

*I didn't actually get a chance to actually say what really happened . . . I really would have liked to have had my say in that court.*¹²⁹

Lucy and Clare had given evidence in their husbands' trials, but both regretted that they had not stayed to hear the other evidence that had been presented to the court.

Lucy particularly wished she had heard her neighbours give evidence for the defence because she was anxious to know "exactly what they said."¹³⁰ She was considering paying for a transcript of the trial, but had been warned of the tortuous process of

¹²⁶ Int. 16 at 11.

¹²⁷ Int. 20 at 20.

¹²⁸ Caroline, Int. 21 at 12.

¹²⁹ Int. 29 at 18 and 23.

¹³⁰ Int. 4 at 68.

gaining permission to receive that information.¹³¹ She knew that reading the transcript would be difficult:

*In some ways it might be awful for me to read it but in other ways perhaps these sort of 'wonders', these little things that you think about.*¹³²

For Lucy many questions had been left unanswered by her ex-husband's trial, which she felt made it more difficult to come to terms with the result. One of Clare's regrets about the trial was that she had not been there to observe all the evidence and understand how the acquittal had happened.

*Obviously through the whole court case he was talking to his lawyer. I could have had my say with the prosecutor as well . . . I'd stay for the whole trial - definitely - you can defend yourself then, whereas I wasn't there, I couldn't. If ever I had to speak to somebody who was going through it I'd advice them to stay for the whole trial.*¹³³

Chapter Four explains how Clare's expectations that she would have the same access to the prosecution barrister as her ex-husband had to his legal representative would not have been fulfilled. In fact, prosecution barristers tend to avoid contact with witnesses and there is no provision for victims to sit with the prosecutor in court to highlight inconsistencies in the defence case. Fear also prevents some women from being involved in court proceedings.

Fear, Intimidation, Humiliation and Silence in Court

Intimidation and threats are weapons that perpetrators of domestic violence use in ensuring the victim's fear and silence in court. Caroline's partner had threatened her with physical violence in court if she gave evidence.¹³⁴ Women, whether they were threatened explicitly or not, were afraid of their partner's reaction when they were in court. Chapter One also shows that the "culture of battering" is often subtle, so that legal actors may miss the fear that even a look from the perpetrator can instil in his partner:

¹³¹ Int. 4 at 54.

¹³² Int. 4 at 54.

¹³³ Int. 14 at 9 and 22.

¹³⁴ Int. 21 at 4-5.

*A gesture that seems innocent to an observer is instantly transformed into a threatening symbol to the victim of abuse. It is a threat that carries weight because similar threats with their corresponding consequences have been carried out before.*¹³⁵

Jacqueline was scared of even ‘facing’ her partner when giving evidence.¹³⁶ Jill did not attend her partner’s sentencing hearing because she did not want to be in the same room as him.¹³⁷ Sharon said of the perpetrator that “even just to hear the voice it chills you.”¹³⁸ Rachel described avoiding her husband’s eyes “staring into me” during a divorce court hearing and the difficulty of sitting in the same room during the child contact hearing.¹³⁹ Emma described the “daunting” feeling of walking up the steps to the court, partly due to the building itself and partly due to the fear of meeting her partner.¹⁴⁰ Her partner wore his wedding suit to court: “It was horrible for me reminding me of that time.”¹⁴¹

The intimidation of the courtroom is a method by which law itself silences victims of domestic violence.¹⁴²

*If one set out be design to devise a system for provoking intrusive post-traumatic symptoms, one could not do better than a court of law.*¹⁴³

Becky accepted child contact arrangements with her partner partly because she did not want the dispute to go to court.¹⁴⁴ Several women mentioned the feelings of dread and intimidation they had about the courtroom itself, which, in Yvette’s and Kate’s stories resulted in feelings of paralysis.¹⁴⁵ Lorraine found court frightening because it is “as if you’ve done something wrong.”¹⁴⁶

¹³⁵ Fischer *et al* (1993) *op. cit.* at 2120.

¹³⁶ Int. 15, at 3; Also, Melanie, Int. 1 at 44.

¹³⁷ Int. 29 at 23.

¹³⁸ Int. 30 at 22.

¹³⁹ Int. 27 at 27-8.

¹⁴⁰ Int. 16 at 12.

¹⁴¹ Int. 16 at 12.

¹⁴² White (1990) *op. cit.* at 33-37; Barron (1990) *op. cit.* at 48; Fischer and Rose (1995) *op. cit.* at 418-9.

¹⁴³ Herman (1992) *op. cit.* at 72.

¹⁴⁴ Int. 20 at 8.

¹⁴⁵ Yvette, Int. 23 at 42-3; Kate, Int. 3 at 24.

¹⁴⁶ Int. 7 at 5.

Humiliation and shame also silence women in the public forum of a court,¹⁴⁷ seeing the use of law as representing “a failure to negotiate the relationship on their own.”¹⁴⁸ Jenny’s experience of the divorce court as “daunting” was due to sitting opposite her husband and “discussing personal lives.” She said that she felt “naked,” “stripped down,” “degraded” and “uncomfortable.”¹⁴⁹ Emma described how she “kept strong emotionally” in order to give evidence and then cried through the rest of the child contact hearing: “I couldn’t cope and I was embarrassed”.¹⁵⁰ Lucy described how “embarrassing” it was to describe the sexual element of the violence.¹⁵¹ Caroline did not report sexual assault by her partner “because I couldn’t face going to court.”¹⁵² Sally did not want to go to court for various reasons including the fact that she was ashamed of herself for “letting it happen” and did not want to air it all in public.¹⁵³

Several women referred to their fear of speaking in court and their wish for the lawyer to speak for them. Bezdek suggests that when silence in court is freely chosen it may be a “form of empowered speech.”¹⁵⁴ But for the women in this research the ‘choice’ to be spoken for was usually not ‘freely’ made but due to fear, shame and lack of confidence in their ability to speak in a public and formal legal forum. Melanie felt that there should be someone to speak for a witness in a criminal trial if she is too frightened to do so.¹⁵⁵ Helen described one conversation with her barrister during the divorce hearing.

I was being asked by my barrister did I want my day in court to stand up and say what Mark [husband] had been doing . . . If I could have had a divorce

¹⁴⁷ Chaudhuri, M. and Daly, K. (1992) ‘Do restraining orders help? Battered women’s experience with male violence and legal process’, in Buzawa and Buzawa (1992) *op. cit.* at 245.

¹⁴⁸ Fischer and Rose (1995) *op. cit.* at 420.

¹⁴⁹ Int. 9 at 16.

¹⁵⁰ Int. 16 at 12.

¹⁵¹ Int. 4 at 61.

¹⁵² Int. 21 at 3.

¹⁵³ Int. 24 at 10.

¹⁵⁴ Bezdek (1992) *op. cit.* at 581.

¹⁵⁵ Int. 1 at 43.

*from my husband without ever having to say why I'd be happy . . . I don't want to antagonise him.*¹⁵⁶

Yvette referred to her reluctance to tell her painful story.

*As far as I'm concerned I'd told my solicitor everything and now I felt like I don't want to keep on repeating it all in front of judges and things like that.*¹⁵⁷

For Yvette one of the main concerns she had for speaking in court was the presence of her ex-partner's family.

*I'm always scared that his family are sitting there judging it all and thinking yeah you're lying . . . That's the only thing that concerns me when I go to court, that I might have to say something in court . . . I think I'm scared of making a mistake and if he asked me a question I think that I would just go blank.*¹⁵⁸

Women's desire for representation in court is partly to do with fear of intimidation and the wish to avoid the humiliation of describing their experiences in public and also due to lack of confidence to speak in the strange world of the court.

Lack of legal knowledge and confidence and entering the system in times of crisis means that women are often left with no choice but to be spoken for. Emma described how she cried through a child contact court hearing after giving evidence and said that "It's a horrible feeling like everything's going on around you."¹⁵⁹ Caroline's story reveals the complexity of women's wish to be heard *and* to be represented. She said that she did not want to talk during the injunction hearing, but said of her experience in court:

*It was like I wasn't even there. It was just him [the judge] and my solicitor discussing me and my problems and that was it, and I could have been outside the room, I didn't feel I was there - I was sat there like a plum.*¹⁶⁰

When asked how she felt about this, Caroline said:

¹⁵⁶ Int. 12 (II) at 15.

¹⁵⁷ Int. 23 .

¹⁵⁸ Int. 23 at 42.

¹⁵⁹ Int. 16 at 12.

¹⁶⁰ Int. 21 at 27.

*I really didn't mind - I wouldn't have known what to have said anyway - I was quite pleased that she did all the talking for me.*¹⁶¹

Caroline did not have knowledge of the legal language and rituals required by courts and when her solicitor represented her she was saved the ordeal, but her story of the court experience, like that of other women, describes feelings of being excluded, silenced and ignored. In the context of civil and criminal proceedings women described feeling silenced by their partners' legal representatives, or, 'the other side.'

Feeling Silenced by 'The Other Side'

Women usually experienced the court as a foreign world, with a different language and style of communication and without the social rituals we are used to.¹⁶² There are no introductions, speech conventions are rigidly observed and governed by rules of evidence, interruptions are rare and judges tend not to speak directly to the parties involved.¹⁶³ Traditional styles of cross-examination involve minimising and denying the violence, discrediting the survivor, asking unconnected questions, confusing her and causing her to doubt herself. The aim, in the words of one barrister, is "to undermine the woman's personality".¹⁶⁴ In contrast to the cognitive interview techniques used by the police to improve recall, lawyers style of cross-examination, using closed questions to seek short answers impairs the accuracy of witness evidence¹⁶⁵ and makes it difficult for survivors to offer a complete account of their complex experiences.¹⁶⁶

The women who gave evidence in a criminal trial felt that their voices had been lost in what Lucy referred to as the "game" of the criminal trial process.¹⁶⁷ Clare recalled how her husband's barrister had said that her husband had "tapped" rather than "hit"

¹⁶¹ Int. 21 at 27.

¹⁶² Maley, Y. (1994) 'The language of the law', in, Gibbons, J. (Ed) (1994) *Language and the Law* (New York: Longman).

¹⁶³ White (1990) *op. cit.* at 9; Davis *et al* (1994) *op. cit.* at 228-236.

¹⁶⁴ Tempkin, J. (1998) 'Rape in Court', *Guardian*, 27th October.

¹⁶⁵ Carson, D. (1990) *Professionals and the Courts* (Birmingham: Ventura).

¹⁶⁶ Mahoney, M. (1991) 'Legal images of battered women: Redefining the issue of separation', 90 *Michigan Law Review* 1-94 at 40-41.

¹⁶⁷ Int. 4 at 84.

her on the head.¹⁶⁸ In Lucy's case the defence barrister suggested that she was an alcoholic, "a feminist who hated men" and that she had not been "beaten to a pulp."¹⁶⁹

*They [defence barristers] say something: "Were you always yelling at your husband?" It's hard - the word 'yelling' and you know - it paints a picture of you. You want to give your side of the story . . . And you know, you can see what's going on.*¹⁷⁰

Lucy described her attempts to answer the defence barrister's questions in full:

*She said to me: "Really you should just answer 'yes' or 'no.'" But they were leading questions, so I didn't want to and maybe sometimes I said too much . . . And at one point I can't remember what I was saying and the judge said to me not to talk for so long.*¹⁷¹

Lucy also said: "it made it worse because she was smiling all the time."¹⁷² The barrister's tactics included the introduction of confusing detail and accusations that Lucy had not confided in anyone about the violence.¹⁷³ Lucy described the cross-examination as a "very personal thing," "extreme character assassination"¹⁷⁴ and like "psychological warfare" which "made me feel like I was just really a terrible person."¹⁷⁵ When she was accused of giving her partner a black eye, Joan said: "I felt like I was the one in the dock."¹⁷⁶ Clare's response to her court experience was to be nervous and upset and then "angry" at the cross-examination tactics.¹⁷⁷ This experience of silencing was echoed in women's descriptions of the adversarial features of the civil court.

Emma described her "resentment" towards her husband's barristers in the contact hearing: "I wanted to say something but you've just got to sit there and stay quiet".¹⁷⁸

¹⁶⁸ Int. 14 at 11.

¹⁶⁹ In. 4 at 51-60 and 64.

¹⁷⁰ Int. 4 at 57.

¹⁷¹ Int. 4 at 56-57.

¹⁷² Int. 4 at 50.

¹⁷³ *ibid.*

¹⁷⁴ Int. 4 at 1.

¹⁷⁵ Int. 4 at 58-59.

¹⁷⁶ Int. 31 at 10-11.

¹⁷⁷ Int. 14 at 10-11.

¹⁷⁸ Int. 16 at 6.

She felt “wronged” when a particular barrister asked closed questions “and then she’d be quiet and make me look stupid.”¹⁷⁹ Jenny’s experience echoed that of Lucy in the criminal court.

*And then they’ll point out something that you’ve done that’s been bad and you feel like this awful person and you come home and you cry and you don’t sleep for weeks.*¹⁸⁰

Like Lucy, Jenny began to question herself as to whether she was answering questions correctly.¹⁸¹ It is not only the ‘other side’ in court who cause survivors to feel silenced, but also their own legal representatives and crown prosecutors.

Feeling as if you are ‘not there’

The emphasis on maintenance of order in the court means that direct ‘argument’ between the parties is discouraged and talk takes place between legal representatives.¹⁸² In some situations, in order to maintain credibility with the court, legal representatives will distance themselves from their client’s story.¹⁸³ In fact, lawyers are trained *not* to let clients tell their stories but to create the most persuasive story which will make sense to the judge or jury and win the ‘game’.¹⁸⁴ Lawyers become the filters of the legally relevant story so that other details that may undermine or confuse their chosen account are excluded. In the present system, there is little to be gained by the lawyer who frees the client or witness to tell her story. Human stories are rarely persuasive accounts of one unambiguous and decisive truth.¹⁸⁵ White describes a particular client’s experience of the court process as one of “intimidation”, “humiliation” and “objectification” when she was not able to have her complex story heard, but instead had to portray herself as a victim.¹⁸⁶ The survivor of domestic violence, like other victims who enter court, is forced to adopt strategies to

¹⁷⁹ Int. 16 at 19.

¹⁸⁰ Int. 9 at 11.

¹⁸¹ Int. 9 at 11.

¹⁸² Davis *et al* (1994) *op. cit.* at 182.

¹⁸³ *ibid.* at 193.

¹⁸⁴ Carson (1990) *op. cit.*

¹⁸⁵ Henderson, L. (1987) ‘Legality and empathy’, 85 *Michigan Law Review* 1574-1653 at 1591.

¹⁸⁶ White (1990) *op. cit.* at 32 and 49.

construct a narrative that establishes “her innocence,” rather than revealing the whole complex story.¹⁸⁷

The need for persuasive accounts explains why prosecuting barristers make such little use of re-examination when witnesses have had their stories distorted by the defence. Re-examination may suggest to a jury that the witness has ‘slipped up’ and may give her opportunities to ‘dig herself deeper.’ Even if this is not the case, re-examination and raising objections to certain lines of questioning draws attention to aspects of a witness’s story that the prosecution might prefer to ignore. Lucy said that when she had given her evidence her barrister did not ask her further questions, so, “I thought maybe I’d done alright.”¹⁸⁸ She said that she had expected him to highlight the inaccurate suggestions made by the defence barrister and was frustrated by the prosecuting barrister’s failure to give her an opportunity to put right the accusations made about her.¹⁸⁹ Over a year later she was still haunted by the picture painted of her in court.

The risks of using a “non legal voice” in any legal proceedings¹⁹⁰ helps to explain why survivors are silenced in different arenas of domestic violence law and why people are more likely to have a successful legal outcome if they have an advocate.¹⁹¹ Despite the potential for civil courts to allow survivors’ voices to be heard, women also indicated feeling silenced in that context. Lucy felt that her experience of domestic violence had been ignored in the child contact court.

They didn’t seem to be very interested in the fact that he had hit me . . .

*Basically the way they seemed to think is that he was horrible to me, he did these things to me . . . but, you know, he should still have contact with her.*¹⁹²

During her divorce hearing regarding finances, Jenny said that discussion of the

¹⁸⁷ Bumiller K. (1990) ‘Fallen angels: The representation of violence against women in legal culture’,

¹⁸⁸ *International Journal of the Sociology of Law* 124-142 at 133.

¹⁸⁹ Int. 4 at 71; Also, Clare, Int. 14 at 10.

¹⁹⁰ Int. 4 at 71.

¹⁹¹ Cahn (1993) *op. cit.* at 2517.

¹⁹² *ibid.*

¹⁹³ Int. 4 at 38-39.

violence was “dismissed,” “they’re not interested in that.”¹⁹³ In Joan’s case she felt that during the child contact dispute her solicitor did not believe her account of the violence until her partner was convicted of assaulting someone else. She said:

*When you go into court telling your solicitor all this stuff and you’re not sure whether she believes you or not that’s frightening.*¹⁹⁴

Barron found that some survivors felt that they had not been able to tell their story when speaking through their solicitor and were left with feelings of anger when things were left unsaid and solicitors and judges “sorted things out between themselves.”¹⁹⁵

Kerry left the child contact hearing feeling that she would have liked to have said more.¹⁹⁶ Sharon’s husband was not being called to give evidence by his solicitor. Her representative suggested that there would be ‘nothing to gain’ by her giving evidence.

*And then I sort of said thank goodness for that, you know, I don’t want to be called. And then I felt in relation to some of the things he was saying . . . I want to be called because you feel like you want to set the record straight, especially when you’re hearing lies and it makes you feel so angry. But I didn’t get to do that and I wouldn’t really have wanted to. It was only to, like I said, to set the record straight.*¹⁹⁷

She explained that the reason she had not wanted to give evidence was due to the way barristers “twist things”, “in a way that makes you doubt your own sense of rationality.”¹⁹⁸

As well as feeling excluded some women felt that their legal representatives and judges had failed to recognise matters that were of importance to them.¹⁹⁹ Yvette was generally positive about her relationship with her solicitor, but she recounted an incident in court when she did not feel that he was sensitive to her needs. During an injunction hearing Yvette’s ex-partner and his family were present. At one point the

¹⁹³ Int. 9 at 15.

¹⁹⁴ Int. 31 at 14.

¹⁹⁵ Barron (1990) *op. cit.* at 47.

¹⁹⁶ Int. 10 (telephone).

¹⁹⁷ Sharon, Int. 30 at 27.

¹⁹⁸ *ibid.*

¹⁹⁹ Davis *et al* (1994) *op. cit.* at 219-220.

solicitor said to the judge that earlier in the relationship Yvette had thought that her partner had psychological problems. His family gasped in shock.

*I thought Oh God what's he just said, he didn't have to say that . . . but it's true, I mean I did think he had problems. I didn't disagree with it, but I thought, oh, you didn't have to say that.*²⁰⁰

Yvette wanted her story to be presented in such a way that she received the protection of the law whilst maintaining reasonably amicable relations with her partner's family. It was important to her that nothing be said that would undermine her credibility with them.

Emma described the financial hearings of the divorce process, during which her husband's legal representatives suggested, incorrectly, that she was in debt.

*In the courtroom it's all legal talk and you think what are they talking about? When you realise what they are saying it is too late and you look stupid. By telling the truth you drop yourself in it, but when you try to prove it like with bills, no one cares. The judge doesn't even look at it. They should at least let you defend yourself.*²⁰¹

The allegations made about Emma did not seem important to her legal representative, nor may they have been decisive in the judge's decision, but in her eyes she had been unfairly discredited. She worked hard to show that the allegations were not true by providing evidence of her financial situation. When her attempts to establish the truth were ignored she felt "hurt." "I thought the judge wasn't interested and had taken his side."²⁰² She described one barrister who represented her as being "laid back and passive."

*I asked why he hadn't asked him [her husband] about certain things and he said it was because it seemed too petty. But I thought it's not petty to me.*²⁰³

Justice for her was about more than the legal settlement she left court with, it was about the whole process by which that settlement was reached. She said: "I wanted

²⁰⁰ Int. 23 at 50.

²⁰¹ Int. 16 at 19.

²⁰² Int. 16 at 18-19.

²⁰³ Int. 16 at 15.

him to be proved to be lying in the courtroom. I take it personally.”²⁰⁴

Helen described her experience of being silenced by her own legal representative and the judge, when her divorce hearing was adjourned during an initial court hearing.

I don't understand what goes on half the time with these things . . . I said: "Why are we agreeing to another 28 days - why?" And my solicitor . . . said: "I'll tell you it afterwards when we get outside." . . . I didn't have a clue what was going on. I didn't know what I was sat in there for.²⁰⁵ . . . I felt very angry and very frustrated. You know I had been shut up . . . as if I couldn't talk in front of the judge. He [the judge] didn't even look at us. You know, at least he could look up at you.²⁰⁶

Jenny's experience of the divorce process was similar.

In the courts you're not able to say anything. You've got to sit and listen until it's your turn to talk and then you don't get asked the things that you want to say . . . you can't ask questions. It seems you're inhibited.²⁰⁷

Kate enjoyed hearing her partner give an undertaking regarding his future behaviour towards her during the injunction process, but she also said:

He was adamant that he hadn't done anything, but if it shuts them up sort of thing . . . I felt someone was saying "Well, we've heard everything you've said and all your fears, but whether he did it or not he's doing this to shut you up."²⁰⁸

Legal representatives silence their clients in court, but the effect of the process on an unrepresented client can be even more devastating.

When Lucy first decided to leave her physically violent partner she accepted the advice of solicitors. Her first solicitor told her not to worry about getting documentation of her injuries because a judge would believe her²⁰⁹ and advised her

²⁰⁴ Int. 16 at 16.

²⁰⁵ Int. 12 at 11.

²⁰⁶ Int. 12 at 12.

²⁰⁷ Int. 9 at 18.

²⁰⁸ Int. 3 at 26.

²⁰⁹ Int. 2 at 3.

not to leave her partner over Christmas “because the court would view it badly.”²¹⁰ Her second solicitor was reprimanded by the judge in the court for not applying for an injunction before the situation reached such a desperate state that Lucy’s husband was arrested for attempted rape. Lucy was then, in her words, “stupid enough,” to represent herself during a child contact hearing. As is often the case when people enter court without legal representatives, she entered a strange world in which she could not immediately grasp an entirely different culture of communication.²¹¹ She described how the judge constantly reminded her to say the word ‘alleged.’ Lucy was not able to convince the judge to suspend her husband’s contact with their daughter. She described that feeling of not being listened to.

*As soon as we went in front of Judge Hogan he said: “Children should see their fathers.” And, you know, I mean that was it, I mean that was before I’d said anything, anybody had said anything. It was like he’d made up his mind.*²¹²

Lucy felt guilty that representing herself had made a difference to the outcome and she accepted the offer of free representation made by a local solicitor. Even when legal proceedings did result in the outcome that had been sought, some women were still unsatisfied with the process of the court hearing. The stories of Emma and Lorraine emphasise the importance of women’s perceptions of ‘procedural justice’ in their experiences of law.

Emma was granted the injunction she sought, but she still felt that her story had not been heard in the court and that her husband’s allegation that she had smashed his car windscreen had been accepted as true:

I felt the judge was horrible. He was cold, so like - so distant, like he was just doing a job and hearing both sides. I know he granted my injunction and I shouldn’t feel like that. I thought he’s meant to be a really professional and switched on man and yet he believes him . . . it was the way he talked, the way

²¹⁰ Int. 2 at 5.

²¹¹ Bawdon, F. (1998) ‘That’s the way to do it’, *The Guardian* 10th February.

²¹² Int. 4 at 38; Also, Kerry, Int. 10 at 42.

*he was. It was just like get it over, get them out, just a number, just an inconvenience.*²¹³

Emma was also upset when, after the case, her solicitor appeared to believe that she had smashed his windscreen when he said, “Never mind, at least you cost him £50.”²¹⁴

Before the hearing of Lorraine’s application for an injunction against her violent husband, she described how the solicitor discovered the name of the appointed judge and said: “You’ll be all right, you’ve got Judge Carter”. Her feeling of discomfort at this comment, which suggested to her that the judge would not be acting fairly and listening to both sides, was confirmed during the hearing. She said that the judge did not seem to care and it looked as if he just tossed a coin to see who would win. She imitated him: ““This is what you say and this is what you say.””. Then he gave his decision without reasons or explanation. She said: “he made it all seem so simple.” As is the norm in court, her solicitor had been the one to talk to the judge about what had happened to Lorraine and she did not feel that she had had the opportunity to, in her words, “air my views.”²¹⁵ There were also several examples of women’s pathways through domestic violence law in which law was a source of empowerment.

7.2.4. Law as a Source of Empowerment

A “constant theme” in one research evaluation of the divorce process found that men preferred direct negotiation, whilst women preferred to leave it to solicitors and courts.²¹⁶ With all their flaws, traditional legal responses are, for some women, a meaningful source of power in the relationship with the abuser. Several women sought the help of lawyers, not to acquire a legal product (injunction or divorce) or to defend a legal action (such as a child contact claim), but as a way of communicating

²¹³ Int. 16 at 13.

²¹⁴ Int. 16 at 13.

²¹⁵ Int. 7 at 4-5.

²¹⁶ Davis *et al* (1994) *op. cit.* at 60.

with their partner. Kate left the name and telephone number of her solicitor when she left her partner in the hope that he would be less likely to try and find her.²¹⁷

*[I was] thinking if he has somewhere to contact - you know, the solicitor, that'll ease things. He can send all his vitriol there.*²¹⁸

Maria²¹⁹ and Leila²²⁰ used the solicitor in order to set down rules for contact in “black and white.” Jenny had problems with her partner harassing her before she had contact arrangements agreed by the solicitors in writing.²²¹ After four months of harassing phone calls from her partner, Leila contacted a solicitor.

*I said: [to her partner] “I’m not stopping you seeing him [their son] but I don’t want to have to deal with it”. I said: “Go to a solicitor . . . it’s the only way you’re going to get to see and talk to him from now on.”*²²²

Some women used a solicitor to deal with issues over child contact because they did not want any further direct communication with the perpetrator.²²³ Sally did so because, “I’d rather somebody else had to speak to him, rather than me.”²²⁴ These attempts at indirect communication were sometimes resisted by partners. Caroline said that her partner “doesn’t want to arrange things between solicitors, he wants to do it all between us.”²²⁵

The notion of the law as a form of controlled communication between perpetrator and survivor that gives women a sense of power is one potential benefit of traditional legal responses. Arguments against mediation and ‘restorative justice’ approaches to domestic violence, were discussed in Chapter Two. These included their informal and less public nature, with focus on direct negotiation and compromise, which makes it easier for a perpetrator to exercise power over his partner, by intimidation and

²¹⁷ Int. 3 at 4.

²¹⁸ Int. 3 at 5.

²¹⁹ Int. 26 at 17.

²²⁰ Int. 22 at 14.

²²¹ Int. 9 at 9.

²²² Int. 22 at 9.

²²³ Clare, Int. 14 at 23; Yvette, Int. 23 at 18.

²²⁴ Int. 24 at 22.

²²⁵ Int. 21 at 31.

exploitation of her feelings of attachment, guilt, and hope.²²⁶ This could be potentially destructive at a time when she may be attempting to overcome such feelings of attachment. She may find expression of conflict, rather than ‘restoration,’ helpful in the process of separation.²²⁷ A woman is unlikely to be able to speak freely in front of an abuser who has exerted pervasive control over her life. This will inevitably affect her ability to bargain and if mediation is used in resolving issues such as child contact or financial arrangements on divorce a survivor may make concessions that are detrimental to herself or her children.²²⁸ Less formal responses like mediation do not guarantee that a woman’s voice will be heard even if she feels powerful enough to speak freely in front of the perpetrator. Like lawyers and judges, some mediators change a woman’s story and create a new one by the practice of ‘reframing’ negative feelings in positive terms in attempt to reach compromises.²²⁹ A similar observation has been made of restorative justice ‘conferences’ when a facilitator imposes their ‘script’ of the proceedings on the parties.²³⁰

In the context of divorce and child contact proceedings, some women in this research did not feel that direct communication with the perpetrator in an informal setting would help them. It was described earlier how Maria wanted the child contact dispute to be decided by a judge. Yvette and Kerry both requested to meet the family court

²²⁶ Astor, H. (1994) ‘Swimming against the tide: Keeping violent men out of mediation’, in, Stubbs, J. (Ed) (1994) *Women, Male Violence and the Law* (Sydney: Institute of Criminology); Fischer *et al* (1993) *op. cit.*; Hilton (1991) *op. cit.*; Hudson, B. (1998) ‘Restorative justice: The challenge of sexual and racial violence’, 25(2) *Journal of Law and Society* 237-56; Lerman, L. (1984) ‘Mediation of wife abuse cases: The adverse impact of informal dispute resolution on women’, 7 *Harvard Women’s Law Journal* 57-113; Stubbs, J. (1997) ‘Shame, defiance, and violence against women: A critical analysis of “communitarian” conferencing’, in, Cook, S. and Bessant, J. (Eds) (1997) *Women’s Encounters with Violence: Australian Experiences* (California: Sage Publications).

²²⁷ Day Sclater, S. (1997) ‘Narratives of divorce’, 19(4) *Journal of Social Welfare and Family Law* 423-441 at 424.

²²⁸ Astor, H. (1991) *Position Paper on Mediation* (Australia: National Committee on Violence Against Women) at 16.

²²⁹ Day Sclater (1997) *op. cit.* at 434; Also, Davis, G. (1988) *Partisans and Mediators: The Resolution of Divorce Disputes* (Oxford: Clarendon Press).

²³⁰ Young, R. and Goold, B. (1999) ‘Restorative police cautioning in Aylesbury: From degrading to reintegrative shaming ceremonies?’ *Criminal Law Review* 126-138 at 133-134.

welfare officer alone.²³¹ Yvette explained why she did not want her partner, Neil, to be present:

*I could have gone in there with Neil, but I said "No" because I'm still scared of him. And even when we were together . . . I don't suppose I was myself because I was scared that if I said anything he would knock me, not physically, you know, knock my confidence . . . I wouldn't be able to open my mouth because Neil would probably kick up a fuss and say: "Oh no, I don't agree with what you're saying." Which I don't want to hear.*²³²

Yvette's story illustrates the danger of less formal legal responses to domestic violence. Other women's stories revealed the possibility of some benefits in moving beyond traditional legal pathways.

The above discussion shows that existing legal responses are limited in their empowering potential when women feel excluded and silenced by the restrictions of formal proceedings. Many women do not feel that their voices are heard and feel disempowered by the process even when they achieve the outcome sought. Several women in this research described how valuable they found opportunities to have their voices heard by the perpetrator and others without the restrictions imposed in settings like the courtroom. At a meeting with the family court welfare officer Emma took the opportunity to tell her husband directly that he was treating their divorce like a "normal marriage breakdown," when in fact it was about violence. She said, "I said it to show that I was strong and not weak."²³³ For Jenny the process of making decisions about contact was helpful when she and her husband had a meeting with a family court welfare officer:

The actual violence side didn't come up again until recently when I had a wonderful opportunity to sit there and say you're the person who did this to me . . . It was a big sense of relief to say what happened to someone else . . . [I] sat there and said these things with the other person in the room . . . They couldn't hang up on you. They couldn't run away from you. They had to sit

²³¹ Kerry, Int. 10 at 41.

²³² Int. 23 at 24.

²³³ Int. 16 at 20.

*there and listen . . . Somebody else is now aware of really what has been going on. It's a relief to get things off your chest.*²³⁴

Throughout the divorce process, which had gone on for nearly two years, this was the first opportunity that Jenny “felt I was able to say something.”²³⁵ She said that she would have preferred to make decisions in a ‘controlled environment,’ other than a court, to save the bitterness and the feeling “you’ve been minced through the system.”²³⁶

Ruth’s story supports the idea that some women may need options outside the established legal system, which allow their voice to be heard in a controlled environment. Ruth had been having problems due to her husband’s contact with their son. She had rejected legal routes, for religious and financial reasons and because she felt the law could not meet her needs. A voluntary organisation was arranging a meeting involving Ruth, her husband and her son’s teacher and a facilitator in order to reach some agreement on ground rules for contact:

*[The other people at the meeting] are only saying what I want said and if he comes and hears it from them, then he cannot react like he would if it was me, when I try and say it on the phone or if he’s here. He’ll have to behave . . . so it’s just really, it’s the backup that I’ve wanted for a long time. I’m not saying they haven’t given me back up, it’s the timing of the thing - you have to get yourself strong enough to sort out what’s going on . . . I’m hopeful that the meeting will clear our minds that it couldn’t possibly have been said in a better way. So if they communicate to him what I want communicated, it’s a lot better than if it’s a solicitor. A solicitor saves you having face to face meetings and it’ll cost you a lot, but it’s not expressing my concern for the children.*²³⁷

The final part of this chapter considers possibilities for making the legal system more responsive to women, who, like Ruth, feel that the law is not for them.

²³⁴ Int. 9 at 17-18.

²³⁵ Int. 9 at 18.

²³⁶ Int. 9 at 13-14.

²³⁷ Int. 18 at 40-41.

Women's experiences of legal pathways do not support the notion that domestic violence law is about a choice between 'private' or 'public,' 'civil' or 'criminal', 'formal' or 'informal' responses. Present pathways involve a combination of all these elements. Survivor's stories show that existing legal responses result in feelings of frustration, anger, loss of dignity, lack of a sense of control, as well as mistrust in legal actors and law itself. Some women's stories also suggest that pathways through domestic violence law can be "an enabling factor that allows them to find their own voices again."²³⁸ In surviving domestic violence, women's search is for safe, controlled settings in which their voices can be heard and they can overcome feelings of disempowerment.

7.3. Therapeutic Possibilities: Empowerment

Empowerment is at the heart of all the 'progressive lawyering' approaches discussed in Chapter Two. Among the other focuses of therapeutic jurisprudence (TJ) is the potential empowering and disempowering effect of law. The philosophy of restorative justice is to empower communities. Affective and rebellious lawyering advocates put empowerment at the heart of their vision arguing that "lawyers must know how to work with (not just on behalf of) women."²³⁹ This thesis argues that one of the core aims of domestic violence law should be to empower survivors. The stories told here highlight the multiple experiences and needs of survivors of domestic violence, which makes it difficult for legal actors to know how best to empower. The remainder of this chapter does not give conclusive answers to this difficult problem, but suggests possibilities to enable law to be a source of individual and collective empowerment. Suggestions include ways to provide women with information about their choices, preparation for the pathways they take and on-going support throughout the process of survival and separation. Proposals are also made for ways of developing empowering partnerships between survivors and legal actors as well as processes and products which meet individual women's needs. The final part of the chapter considers some possibilities for collectively empowering survivors of domestic violence.

²³⁸ Fischer and Rose (1995) *op. cit.* at 424.

²³⁹ Lopez, *op. cit.* at 37.

7.3.1. Information

Access to law and lack of information about services and legal pathways is a major concern for survivors of domestic violence²⁴⁰ and a crucial aspect of empowerment.²⁴¹ The stories in this research show the importance for legal actors and other service providers of finding innovative ways of making contact with women experiencing domestic violence. Information about legal rights and the dynamics of domestic violence could be incorporated into sex education and citizenship classes which are to be included in the national curriculum.²⁴² Openings for disseminating this information include specialist drop-in centres, birth registration, rent books, doctors' surgeries, schools, hospitals, shopping centres, benefits and housing offices and birth registration offices. Housing providers can include clauses on domestic violence in tenancy agreements, which are then explained on signing the tenancy, so that both parties are aware of the implications.²⁴³ In Southampton, solicitors attend a local project for homeless families in order to give free legal advice about matters including domestic violence. The Leeds Domestic Violence Court, held on Tuesday afternoons in the Magistrates' Court, provides women with access to information by arranging for representatives of different services to be available whilst hearings are taken place. The provision of information is often a crucial part of the advocates role in responses like the 'Domestic Violence Matters' Project.²⁴⁴

Information is the foundation of empowerment and lack of knowledge of legal tools and services is one way in which women's voices are silenced. Part Two showed how many women did not understand decisions made on their behalf or by judges,

²⁴⁰ Doy and Maitland (1996) *op. cit.* at v and 13; Bossy, J. and Coleman, S. (2000) *Womenspeak: Parliamentary Domestic Violence Internet Consultation: Report of the Main Findings* (Bristol: Women's Aid Federation England) at 27; Also, Genn (1999) *op. cit.* at 257; Hoyle (1998) *op. cit.* at 197.

²⁴¹ Marguiles (1995) *op. cit.*

²⁴² Carvel, J. and Smiths, R. (1999) *Guardian*, 10th May.

²⁴³ National Federation of Housing Associations (1993) *Women and Violence at Home: Policy and Procedure Guidelines for Housing Associations* (London: National Federation of Housing Associations) at 30.

²⁴⁴ Kelly (1999) *op. cit.*

including the conditions of a court order or the meaning of a power of arrest, or the arrangements for bail and child contact. Many women in this study had not been informed by legal actors of services, including women's refuges and Victim Support. Giving women information empowers them to make decisions, to assess risk and challenge decisions made by legal actors and use legal tools as a meaningful source of power in their relationship with the perpetrator. There are strong arguments for it to be compulsory for, say, police officers or court officials, to give women certain specified information, rather than relying on the discretion of individuals.²⁴⁵ In the case of perpetrator programmes it is vital that women are given realistic and thorough information about the potential effects on her partner so that she is able to make informed choices rather than decisions based on false hope.²⁴⁶ As well as information about law, legal actors are in an important position to pass on information about matters like the danger of separation violence and the importance of safety planning. Supporting verbal advice and information with written summaries is also important so that women can reflect on their choices in their own time.

7.3.2. Preparation and On-Going Support

One of the reasons women feel silenced and frustrated in legal proceedings is because they are not prepared for the reality and do not understand the strange world of law. Advocacy services can provide women with the support and information that is often crucial in enabling her to give evidence.²⁴⁷ Cross-examination might not be experienced as a personal attack if the 'game' of building a persuasive and one-sided story was explained. If a woman understood the role of the Crown Prosecution Service and dangers of accusations of witness coaching, there might be less disappointment at the lack of a direct relationship with 'her' barrister. Reading materials and video-tapes can be used to prepare women for the different culture of communication in court and the nature of the adversarial system. A witness pack is

²⁴⁵ Finn, M. and Stalans, L. (1995) 'Police referrals and shelters and mental health treatment: Examining their decisions in domestic assault cases', 41(4) *Crime and Delinquency* 467-480 at 478.

²⁴⁶ Busch, R. and Robertson, N. (1993) "'What's love got to do with it? An Analysis of an intervention approach to domestic violence', 1 *Waikato Law Review* 109-140 at 127.

²⁴⁷ *ibid* at 134.

now available for children who are witnesses²⁴⁸ and Surrey police have produced a video that is used to teach police witnesses about the tactics used by defence barristers.²⁴⁹ Some projects, described in Chapter Six, incorporate opportunities for education and familiarisation prior to criminal and civil proceedings on a one-to-one basis and in groups.²⁵⁰ In 'victim-witness clinics' or 'court schools', women meet other survivors, learn about the criminal process and may be educated to see domestic violence as part of a wider social problem, which emphasises the collective community benefits as well as the individual potential of prosecution.²⁵¹ It has been suggested that the way forward in prosecuting domestic violence is to support women in the belief that it is in her interests rather than treating her as a 'tool' for achieving a legal 'success'.²⁵²

Dangers lie in preparing a woman in such away that she feels she holds responsibility to give evidence 'correctly', and feels as if she has failed when the outcome of proceedings go against her. It is crucial that women are aware of the limitations and possibilities of legal responses so that their expectations are not unrealistic.²⁵³ A survivor who believes that law is a way of achieving 'justice' or finding catharsis needs to be prepared that the end result may not be a legal victory and that even if it is, the process itself may be a struggle.²⁵⁴

*[She should] see it all as a strategy, rather than the kind of talking she could do with people she could trust . . . She shouldn't expect them to go away from it understanding why she was angry, or what she needed, or what her life was like.*²⁵⁵

²⁴⁸ Dyer, C. (1998) 'Fear of Court Appearances eased for child witnesses', *Guardian*, 19th June.

²⁴⁹ Surrey Police and Bond Solon (1997) *How Lawyers Win: A Guide for Prosecution Witnesses* (Surrey Police/Bond Solon).

²⁵⁰ Busch and Robertson (1993) *op. cit.* at 126.

²⁵¹ Hart, B. (1996) 'Battered women and the criminal justice system', in, Buzawa, C. and Buzawa, E (Eds). (1996b) *Do Arrests and Restraining orders Work?* (Thousand Oaks, California: Sage) at 106 and 109.

²⁵² Cretney and Davis (1996) *op. cit.* at 173.

²⁵³ Doy and Maitland (1996) *op. cit.* at 22.

²⁵⁴ Herman (1992) *op. cit.* at 211.

²⁵⁵ White (1990) *op. cit.* at 30.

A woman can be encouraged to realise that the portrayal of her experience in court will not be her own story but a combination of different perspectives. Advocates are free to assist a woman to grow confident in her own story, and hear her own voice so that she does not rely on the lottery of legal processes and outcomes to give her a sense of validation. Accepting the injustice of domestic violence and coming to terms with the fact that legal responses may never remedy that injustice is one means of empowerment.²⁵⁶ Women can be encouraged to see their survival and courage in attending court as an achievement in itself, rather than looking to the process or outcome of legal proceedings as a source of empowerment. In the context of more informal proceedings in which there is more direct contact with the perpetrator, preparation could improve a woman's sense of confidence and help her resist his attempts at control and manipulation.

It has been said of survivors of domestic violence that "on-going support is vital to a successful new life"²⁵⁷ and leaving can be a time of grief, depression, loneliness and vulnerability.²⁵⁸ The previous chapter described how support from legal actors tends to end when the formal process of law ends. In some Domestic Violence Courts in the US regular review hearings are incorporated into the system, which links an enforcement function with the goals of preventive lawyering.²⁵⁹ Solicitors can take a preventive lawyering approach by following injunction or child contact hearings with periodic "legal check ups." On-going support and information about her partners' progress when on a perpetrator program, in prison or on probation can help a woman make safety plans assess risk and give her a sense of power.²⁶⁰ This power can also come from legal actors who treat their relationships with a survivor of domestic violence as a partnership.

²⁵⁶ Herman (1992) *op. cit.* at 192.

²⁵⁷ Doy and Maitland (1996) *op. cit.* at 28.

²⁵⁸ Jones and Schechter (1992) *op. cit.* at 205-208.

²⁵⁹ Mills (1996a) 'On the other side of silence: Affective lawyering for intimate abuse', 81(6) *Cornell Law Review* 1225-1263 at 1235.

²⁶⁰ Hart, B. (1988) 'Beyond the "duty to warn": A therapist's "duty to protect" battered women and children', in, Yllo, K. and Bograd, M. (Eds) (1988) *Feminist Perspectives on Wife Abuse* (California: Sage Publications) at 243-4; Davies, J. and Lyon, E. (1998) *Safety Planning With Battered Women: Complex Lives/Difficult Choices* (California: Sage Publications).

7.3.3. Empowering Partnerships With Legal Actors

The theory of procedural justice, which many women's stories support, suggests the need to develop practices and procedures that increase people's control over legal decision-making.²⁶¹ It was argued earlier in this chapter that in the context of the criminal legal system, final decisions need to lie with legal actors for a range of complex reasons. But a central theme in this chapter is that we need to move away from believing that there is a simple choice between giving legal actors ultimate responsibility *or* empowering individual women. In the context of criminal and civil proceedings appropriate decisions or recommendations, about arrest, prosecution and child contact rely on an exploration of a woman's situation and feelings, assessment of risk and development of safety plans. We need to consider empowering partnerships between legal actors and survivors, not only as a means of enhancing the quality of decisions, but in terms of their psychological consequences for individuals women.²⁶²

Chapter Six suggested that legal actors need to be active in listening and discussing options with survivors' in order to avoid translating their stories into legal frameworks before they are 'ready' for legal action.²⁶³ Affective lawyering is about working in partnership with women to better understand their circumstances and needs and emphasises the need for communication and a shared language.²⁶⁴ Rebellious lawyering focuses on lawyers establishing a more egalitarian relationship with clients by brainstorming, constructing arguments and choosing options together in a co-operative effort.²⁶⁵ It requires legal actors to work with survivors and other practitioners to combine their legal expertise with other knowledge in a collective effort at problem solving.²⁶⁶ There is an increased awareness of the need to learn

²⁶¹ Tyler (1990) *Why People Obey the Law* (New Haven: Yale University Press) at 148.

²⁶² Tyler, T. (1992) 'The psychological consequences of judicial procedures: Implications for civil commitment hearings', 46(2) *SMU Law Review* 433-445 at 445.

²⁶³ Bryant, S. and Arias, M. (1992) 'Case study: A battered women's rights clinic: Designing a clinical program which encourages a problem-solving vision and lawyering that empowers clients and community', 42 *Washington Journal of Urban and Contemporary Law*, 207-222.

²⁶⁴ Mills (1996) *op. cit.*; Mills (1998a) *op. cit.*

²⁶⁵ Alfieri (1991) *op. cit.*; White (1990) *op. cit.*; Cahn (1993) *op. cit.*

²⁶⁶ Lopez (1992) *op. cit.* at 50.

creative ways of thinking.²⁶⁷ The art of creative problem solving is said to make lawyers and judges more effective by revealing “alternative new tools” and “flexibility in their use.”²⁶⁸ This involves learning to see a problem from different perspectives, rather than basing analysis on legal options and seeing a particular client’s interests in isolation. It requires that legal actors are aware of alternatives to legal pathways which relies on up to date knowledge of services and support systems which state and voluntary agencies can offer.²⁶⁹

The approach involves the legal actor and survivor working together to understand the legal implications of her situation and to “disentangle” and understand other aspects that are important to her.²⁷⁰ Women’s needs and preferences often change over time. Marguiles suggests that in situations in which a woman is uncertain about pursuing a particular course of action, a legal actor may “witness for that earlier voice” which sought the help of law.²⁷¹ Through ‘witnessing’ the survivor is reminded of the reasons why she and other women use legal products helping her “in the small steps which may add up to empowerment over time.”²⁷² True empowerment requires that legal actors surrender some of their power, by refraining from imposing objectively ‘expert’ ‘solutions’ in order to respect and respond to women’s own journeys.

These approaches need not be restricted to the civil system. In parts of the US a specialist prosecutor is assigned to each domestic violence case²⁷³ and in other common law systems contact between witnesses and prosecutors is a vital component of case preparation.²⁷⁴ Private consultation between victims and prosecutors enables

²⁶⁷ de Bono, E. (1980) *Teaching Thinking* (Harmondsworth: Penguin); Morton, L. (1998) ‘Teaching creative problem solving: A paradigmatic approach’, 34 *California Western Law Review* 375-388.

²⁶⁸ Barton, T. (1999) ‘Therapeutic Jurisprudence and creative problem solving: An essay on harnessing emotion and human connection’, (Unpublished paper on file with author) at 29; Carvel, J. (2000) ‘Pupils learn how to think’, *Guardian*, 6th January.

²⁶⁹ Lopez (1992) *op. cit.* at 37.

²⁷⁰ Barton (1999) *op. cit.* at 48.

²⁷¹ Marguiles, P. (1996) ‘The violence of law and violence against women’, 8(1) *Cardozo Studies in Law and Literature* 179-202 at 186-7.

²⁷² *ibid* at 187.

²⁷³ Cahn, N. (1992) Innovative approaches to the prosecution of domestic violence crimes: An overview’, in, Buzawa and Buzawa (1992) *op. cit.* at 171.

²⁷⁴ Kelly (1999) *op. cit.* at 246.

prosecutors to uncover intimidation and other factors influencing a woman's decision to co-operate.²⁷⁵ In Alabama the victim has the right to sit in court with the prosecutor.²⁷⁶ This would enable a woman, in partnership with the prosecutor, to point out inconsistencies in the case of the defence. If victims were allowed their own representatives in court there would be even more opportunities for them to play an active part in the process. But these approaches are not without dangers.

These practices are what some women in this research expected, but such formal partnerships may add to the burden and sense of responsibility of involvement in a prosecution and are not truly empowering unless accompanied by information and support through the process. Some advocacy services in the US provide this support and also have close links with prosecutors that may entail assisting the prosecutor and judge in making decisions about the case.²⁷⁷ In the 'victim empowerment' model envisaged by Hoyle and Sanders, they recommend specialist police officers support women in making the decision as to whether to pursue a prosecution.²⁷⁸ The previous chapter discussed how there are problems when the role as a law enforcer and as a woman's supporter conflict, as can be the case with police officers. This research suggests that women would benefit from a source of support which is independent of the criminal legal process and in which her needs are the primary goal rather than the needs of the criminal legal system.²⁷⁹ The 'Domestic Violence Matters' project was based in a police station and shows that advocates can work alongside legal actors and also independently of them.²⁸⁰ Advocates play a crucial role in empowering women to join the prosecutor in partnership decision making with education and preparation, whilst providing support even when "public and private goals" conflict.²⁸¹ A specialised system of domestic violence advocates also plays a crucial role in supporting and empowering women who are experiencing domestic violence, but who

²⁷⁵ Cretney and Davis (1996) *op. cit.* at 174.

²⁷⁶ McCarthy, T. (1994) 'Rethinking theories of victimology: Men's violence against women', in, Cook, S. and Bessant, J. (Eds) (1994) *Women's Encounters with Violence: Australian Experiences* (California: Sage Publications) at 140.

²⁷⁷ Cahn (1992) *op. cit.* at 169-171; Kurz (1992) *op. cit.* at 34-35.

²⁷⁸ Hoyle and Sanders (2000) *op. cit.* at 32.

²⁷⁹ *ibid.*

²⁸⁰ Kelly (1999) *op. cit.*

²⁸¹ Hanna (1996) *op. cit.* at 1553.

are not involved in criminal proceedings. One of the key themes in this research is the need to move beyond the reliance on criminal law to serve survivors to acknowledging the interplay between civil and criminal responses and accepting that for some women no one legal pathway will respond to all her needs.

Another potential for partnerships between women and legal actors lies in deconstructing the divisions between different parts of the system. In some parts of the United States, there are 'domestic violence courts', that combine civil and criminal remedies and some criminal courts can grant injunctions during proceedings.²⁸² In This country an unimplemented provision in the Family Law Act 1996, allows third parties, such as the police, to apply for a civil court order on a woman's behalf.²⁸³ Similar powers have been used in Australia and parts of the United States,²⁸⁴ showing perpetrators that the state considers violence to be unacceptable. This takes the onus off a woman to apply for an order sparing her the trauma, delay and cost of legal proceedings.²⁸⁵ Some Australian women have suggested that their partners were more likely to adhere to an order when taken out by an outside agency.²⁸⁶

The danger of disempowering women by giving legal actors more power has been recognised in Australia.²⁸⁷ But agencies representing survivors suggest that the benefits of the practice outweigh the risks.²⁸⁸ They also recognise the significant benefits of women applying for orders themselves, but this is when they are supported and the process itself is empowering.²⁸⁹ The Family Law Act provision does not require a woman's consent before an order is taken out and there is a danger that such a power could be used in preference to criminal sanctions.²⁹⁰ This thesis has

²⁸² Schollenberg, E. and Gibbons, B. (1992) 'Domestic violence protection orders: A comparative review', 10 *Canadian Journal of Family Law* 191-238 at 199-200; Buzawa and Buzawa (1996a) *The Criminal Justice Response* (Second Edition) (London: Sage) at 188.

²⁸³ Family Law Act 1996 s.60 .

²⁸⁴ *ibid*; Humphreys, C. and Kaye, M. (1997) 'Third-party applications for protection orders: Opportunities, ambiguities and traps', 19(4) *Journal of Social Welfare and Family Law* 403-421.

²⁸⁵ *ibid* at 406.

²⁸⁶ *ibid* at 407-8.

²⁸⁷ *ibid* at 407-8.

²⁸⁸ *ibid* .

²⁸⁹ Chaudhuri and Daly (1992) *op. cit.* at 246; Fischer and Rose (1995) *op. cit.* at 222.

²⁹⁰ *ibid* at 411-412.

emphasised the importance of providing support, information and specialist advocacy services for women going through any legal proceedings. The central issue of all legal responses to domestic violence may not be in whose name civil or criminal proceedings are taken, but the process of consulting, involving, informing and empowering women in true partnerships. Meaningful empowerment involves challenging long-standing legal rituals and cultures, particularly those in court, in order to allow empowering processes and products to develop.

7.3.4. Empowering Processes

Empowering survivors of domestic violence requires the development of new processes and products and the reform of existing ones. Judges should be aware of many survivors' need to have their voices heard. Safe waiting areas separate from the perpetrator are crucial if women are to begin overcoming the fear in order to speak. Practical measures can enable a woman to speak and ameliorate the ordeal of giving evidence. These include the use of screens, television links, and recorded video evidence and exclusion of certain individuals or groups from courtroom galleries. Specialised domestic violence courts also have the potential to be physical spaces which are 'owned' by and welcoming to the people who use them, rather than a source of fear and intimidation.²⁹¹ In Hawaii a unified civil and criminal court enables the varied needs of women to be responded to in one set of proceedings.²⁹² In the Dade County Domestic Violence Court in Florida specially trained judges hear cases and factor elements into the proceedings like the preventive law approach of post-sentencing case reviews to provide on-going monitoring.²⁹³

In the United States it is becoming more common for women to make civil claims against their partner for damages in tort for domestic violence.²⁹⁴ This is one means of a woman having her voice heard and holding the perpetrator accountable in a public

²⁹¹ Christie (1977) *op. cit.* at 3.

²⁹² Mills (1996) *op. cit.* at 1235.

²⁹³ Mills (1996) *op. cit.* at 1235.

²⁹⁴ Kohler, R. (1995) 'The battered woman and tort law: A new approach to fighting domestic violence', 25 *Loyola Law Review* 1025-1072; Feldhusen, B. (1993) 'The civil action for sexual battery: Therapeutic jurisprudence?' 25(2) *Ottawa Law Review* 203-233.

forum and receiving monetary financial compensation for the violence.²⁹⁵ The standard of proof is easier to satisfy and she also has more potential to control the presentation of her case than in criminal proceedings. But it is important that women take such pathways in full knowledge of the costs in financial terms and the dangers of prolonging trauma and the chances of a legally ‘unsuccessful’ outcome. For such pathways to be truly empowering, the traditional roles of judges and lawyers in court also need to change.

Chapter Six highlighted the role judges can play in validating a woman’s story. Women referred to the importance of judges addressing them directly. Judicial interaction with parties can increase therapeutic effectiveness by showing women that they are valued, as well as condemning the perpetrator and holding him accountable.²⁹⁶ Some women will prefer their stories to be ‘translated’ and others will wish to tell their story in their own words.²⁹⁷ It has been suggested that lawyers should allow their clients to choose the method by which their stories are heard.

*Rather than assuming that all client stories should be shaped, or assuming that they should never be shaped, lawyers should instead, perhaps, have a new and explicit obligation to explore the implications of each language choice with their clients.*²⁹⁸

Judges could facilitate this by asking a woman if she wishes her representative to speak for her and by creating an environment that enables her to speak. Empowering survivors to conduct their own civil cases is crucial for those who cannot afford legal representation or feel let down by legal actors. The campaigning and advice group, Rights of Women, are in the process of producing a self help pack for women representing themselves in injunction proceedings. ‘Law shops’ and ‘litigants in person’ workshops are being established around the country in order to give people access to legal books and advice in taking cases.²⁹⁹

²⁹⁵ *ibid.*

²⁹⁶ Fritzler, R. and Simon, L. (2000) ‘Creating a domestic violence court: Combat in the trenches’, *Court Review*, Spring, 28-39.

²⁹⁷ Cunningham (1992) *op. cit.* at 1386.

²⁹⁸ Cahn (1993) *op. cit.* at 2518.

²⁹⁹ Berlins, M. (1998) ‘Lippie, lippie shake’, *Guardian*, 20th September; Also, Salmon, J. (1998) *How to Represent Yourself in Court and Win* (London: Kogan Page).

In the context of the criminal system there has been a distinction made between victims' rights to services and procedural rights to consultation and involvement in decisions relating to prosecution, bail, custody, sentencing, parole and rights to legal representation in court.³⁰⁰ This thesis suggests that 'empowering' a woman through procedural 'rights' may also burden her with the pressure of making impossible decisions. The 'Personal Statement Scheme' will give victims of crime the opportunity to make a personal report on the impact of the crime that will then be taken into account by the police, CPS and courts.³⁰¹ Leaving aside issues of defendants' 'rights',³⁰² there is a danger that victim's expectations of control over decisions might be raised and then disappointed.³⁰³ Such schemes also give a perpetrator another way of pressurising his partner to speak on his behalf, even if it is made clear to him that she has been given no choice but to give evidence.³⁰⁴

It is also possible for victims to be cross-examined on their statements.³⁰⁵ This gives an opening for the 'other side' to undermine her credibility and question her story again. It is likely that women will also be 'judged' according to the impact of the crime and pressurised to conform to stereotypical ideas about the effects of domestic violence. It has been said that in "evaluating the worth of victims", the use of such statements may "disempower, dehumanise and silence" victims.³⁰⁶ It has been suggested that it would be better for legal actors to gain awareness of the effects of crime and the criminal process on victims generally and improve victim services rather than relying on procedural rights.³⁰⁷ For some women the right to make a 'personal statement' will be an important way of having her voice heard. The way

³⁰⁰ Ashworth, A. (1993) 'Victim impact statements and sentencing', *Criminal Law Review* 498-509; Also, Fenwick, H. (1997) 'Procedural 'rights' of victims of crime: Public or private ordering of the criminal justice process', 60(3) *Modern Law Review* 317-333.

³⁰¹ Brennan, C. (2000) 'The Personal Statement Scheme', July 7, *New Law Journal* 1021-1022.

³⁰² Bandes, S. (1996) 'Empathy, narrative and victim impact statements', 63(2) *University of Chicago Law Review* 361-412 at 395.

³⁰³ Ashworth (1993) *op. cit.* at 500.

³⁰⁴ *ibid* at 502.

³⁰⁵ Brennan (2000) *op. cit.* at 1022.

³⁰⁶ Bandes (1996) *op. cit.* at 366 and 405.

³⁰⁷ Ashworth (1993) *op. cit.*; Also, Fenwick (1997) *op. cit.*

forward is to support, inform and empower a woman to make choices in full knowledge of the dangers that all ‘rights’ can be used against her.

Like all individuals, survivors of domestic violence differ in the particular processes of empowerment that they favour.³⁰⁸ Women can find value in the formality of legal procedures as well as envisaging a role for less formal forums where their voices could be heard and communicated to the perpetrator more freely, but in a controlled environment. Less formal procedures give opportunities for more direct participation and flexibility for decision-makers to be “more sensitive to people’s interpersonal concerns.”³⁰⁹ We know that less formal legal approaches like mediation are commonly experienced by survivors of domestic violence in the context of divorce and child contact. Chapter Two described how ‘restorative justice’ approaches are being proposed as more constructive responses than present criminal sanctions.³¹⁰ Throughout this thesis explanations have been given for why methods such as mediation and other ‘restorative’ approaches are unhelpful and dangerous for many survivors of domestic violence.³¹¹ This discussion of such processes does not envisage them as an alternative to criminal sanctions, due to the dangerous messages about the seriousness of domestic violence that that would send. Nor are less formal legal responses discussed here as a means of changing a perpetrator’s behaviour. In fact it will be assumed here that ‘restorative’ responses have limited value in terms of changing such ingrained patterns of behaviour. But the stories of Jenny, Emma and Ruth suggest that alternative forums in which women’s voices can be heard do have a place in domestic violence law.

³⁰⁸ Newmark, L. Harrell, A. and Salem, P. (1995) ‘Domestic violence and empowerment in custody and visitation cases’, 33(1) *Family and Conciliation Courts Review* 30-62 at 58; Delgado, R., Dunn, C., Brown, P., Lee, H. and Hubbert, D. (1985) ‘Fairness and formality: Minimising the risk of prejudice in alternative dispute resolution’, *Wisconsin Law Review* 1359-1404.

³⁰⁹ Tyler (1990) *op. cit.* at 155.

³¹⁰ Hoyle (1998) *op. cit.* at 225; Hoyle and Sanders (2000) *op. cit.* at 32-33; Braithwaite, J. and Daly, K. (1994) ‘Masculinities, violence and communitarian control’, in Newburn, T. and Stanko, E. (Eds) (1994) *Just Boys Doing Business: Men, Masculinities and Crime* (London: Routledge).

³¹¹ Astor (1994) *op. cit.*; Fischer *et al* (1993) *op. cit.*; Hilton (1991) *op. cit.*; Hudson (1998) *op. cit.*; Lerman (1984) *op. cit.*; Stubbs (1997) *op. cit.*

There might be a way in which controlled meetings with a perpetrator and others could be developed as an addition to a woman's choices in addition to the formal legal system. Family group conferences were described in Chapter Two as a means of empowering families and communities to make decisions and find solutions to their problems. The 'Safe Space Project' in Duluth brings the group which a woman defines as her support system together to establish her physical safety and to hold the perpetrator accountable.³¹² We know little about the impact of early intervention in domestic violence but it is likely that some women would be more willing to use this kind of response than existing legal mechanisms in confronting their abusers' behaviour at an earlier stage. 'Conferences' are a means for a survivor to overcome the secrecy surrounding domestic violence and mobilising the assistance of her 'community of care.' Conferences facilitated by properly trained staff who prepare a woman and all the people whom she invites, about the dynamics of domestic violence and the process of conferencing could fulfil the need for a woman to break her silence and use her informal support network.

One problem is that proponents of the 'family group conferencing' approach are too ready to assume the supportive responses of the 'community of care.' They overlook the stigma, shame and blame that is experienced by many survivors of domestic violence. Women are often keen to keep the violence to themselves and it is likely that many survivors would resist revealing their situation in a family group conference. It is possible for a survivor to be exhilarated by her own daring and empowered by the support of her family and friends.³¹³ She may also be disappointed by the denials and anger of her 'community of care' and encounter more grief and mourning at her loss of hope.³¹⁴ Such negative reactions could also allow her to understand the pressures she has been subjected to and free her to develop realistic plans for an independent future.³¹⁵ One aim of family group conferences is to agree plans for the future. But the problem with involving perpetrators in such meetings is

³¹² Morley, R. and Mullender, A. (1994) *Preventing Domestic Violence to Women*, Police Research Group, Crime Prevention Unit Series, Paper No. 48 (London: Home Office).

³¹³ *ibid* at 201.

³¹⁴ *ibid* at 201.

³¹⁵ *ibid* at 200-202.

that women's safety plans often rely on the details being secret from the abuser and others.

The stories in this research support the role of alternative legal processes, not in terms of making decisions or safety plans, but simply as an opportunity for a woman to have her voice heard by the perpetrator in a public forum. For some women the value of legal pathways does not lie in punishment, but in forcing the partner to admit to his violence and be held accountable in a public forum.³¹⁶ Herman has suggested that public acknowledgement of a traumatic event is an important part of recovery.³¹⁷ For most women the formal legal processes did not fulfil this need. Ruth and Jenny both used mediation-type processes, in child contact disputes, to have their voices heard. Their stories show that whilst it is crucial for all legal actors to 'screen' for domestic violence, particularly in the context of informal proceedings,³¹⁸ it is also important that we do not remove choices from survivors which other women have available to them. Rather than denying that less formal responses can ever serve survivors, it may be better to focus on developing them to support women's process of healing and empowerment.

Although women would ideally like the legal system to end their partner's violence, 'restorative justice' responses are unlikely to achieve that. The stories told in this research suggest that the best hope for all legal responses to domestic violence is to empower survivors. We should work from the assumption that all responses to survivors that involve the perpetrator are fraught with danger. Women who do want to meet with the perpetrator in a controlled environment, whether to have their voice heard or to make plans for the future, should have opportunities to do so. This should only be when they "feel sufficiently powerful" in themselves to become involved in such a process.³¹⁹ Legal actors should ensure that women make their choices in knowledge of the nature of mediation, the alternatives, the risks and the dynamics of

³¹⁶ Chaudhuri and Daly (1992) *op. cit.* at 244 and 246.

³¹⁷ Herman (1992) *op. cit.* at 70 .

³¹⁸ Kaganas, F. and Piper, C. (1994) 'Domestic violence and divorce mediation', *Journal of Social Welfare and Family Law* 265-278; Raitt, F. (1996) 'Domestic violence and mediation', 18(1) *Journal of Social Welfare and Family Law* 11-20.

³¹⁹ Kaganas and Piper (1994) *op. cit.*

domestic violence.³²⁰ Any meetings or ‘conferences’ must always be co-ordinated by highly trained individuals with a thorough awareness of domestic violence and a woman should be prepared with strategies and methods to enable her to speak more freely. It should also be a requirement of the perpetrator’s participation that he has accepted responsibility for his violence, by pleading guilty to a criminal offence, refusing to challenge an injunction application or attending a perpetrator’s programme. Only with these kinds of restrictions will it be possible for less formal settings to have the potential of empowering survivors of domestic violence.

7.3.5. Empowering ‘Products’

This thesis emphasises the importance of law as a process, but its ‘products’ are also important. We need flexible packages of responses which fit the stage each individual has reached in their journey to escape domestic violence.³²¹ Most legal responses to domestic violence “are premised on an assumption that leaving and staying away from an abusive partner is always the best choice.”³²² We know that leaving is not the “exclusive safety strategy” for all women experiencing domestic violence³²³ and in failing to support other ways of dealing with a violent partner the law is missing the opportunity to respond to many human stories of domestic violence.³²⁴ The previous chapters show that separation is a process and in promoting it as a single act legal actors miss the chance to facilitate women’s exploration of the best way for them as individuals to move forward.³²⁵ Women who feel it is in their best interests to stay do not have many choices to empower them in their strategy.³²⁶ One participant in Lempert’s research said that she was often told to leave her partner, “but they don’t

³²⁰ Astor (1991) *op. cit.* at 43.

³²¹ Hoyle (1998) *op. cit.* at 221; Brown, J. (1997) ‘Working toward freedom from violence: The process of change in battered women’, 3(1) *Violence Against Women* 5-26; Gondolf, E. and Fisher, E. (1988) *Battered Women as Survivors: An Alternative to Treating Learned Helplessness* (Massachusetts: Lexington Books) at 100.

³²² Baker (1997) *op. cit.* at 71; Mills, L. (1998a) *The Heart of Intimate Abuse: New Interventions in Child Welfare, Criminal Justice and Health Care Settings* (New York: Springer Publishing) at 4.

³²³ Davies and Lyon (1998) *op. cit.* at 127.

³²⁴ Mills (1998) *op. cit.* at 4.

³²⁵ Merritt-Gray, M. and Wuest, J. (1995) ‘Counteracting abuse and breaking free: The process of leaving revealed through women’s voices’, 16 *Health Care for Women International* 399-412 at 411.

³²⁶ Baker (1997) *op. cit.* at 71.

tell you how to go back and deal with the person”.³²⁷ We need to take seriously “both the connection [women] seek and the danger they face in that quest.”³²⁸

For instance, Caroline’s story in Chapter Six shows that women use court orders as a source of power and protection even when they still feel attachment to the violent partner. Injunctions are usually based on the premise of complete separation, without allowing for the pressures and harassment, everyday practicalities of separation, and the emotional attachment that may continue to exist.³²⁹ Court orders are not only potentially empowering for women because they symbolise the unacceptability of violence, they also have the potential to structure the relationship according to a woman’s wishes, rather than those of the perpetrator - where they have contact, when and under what conditions.³³⁰ Legal representatives and judges could learn to tailor court orders to each woman’s individual circumstances, rather than expecting her to sit within ‘black and white’ legal clauses, which do not respond to the complexity of her situation.

Subject to all the reservations about the limited effectiveness of perpetrator programmes, and danger of them encouraging false hope, such ‘products’ may be a form of empowerment to women by giving them another choice in the relationship.³³¹ This is only possible if women are fully involved, informed and supported throughout the programme to prevent men bringing back distorted messages and keep her hopes realistic.³³² Use of such ‘products’ must always be guided by attention to the needs of individual women, some of whom will need time to make decisions rather than the pressure of a ‘cure’.³³³

³²⁷ Lempert, L. (1996) ‘Women’s strategies for survival: Developing agency in abusive relationships’, 11(3) *Journal of Family Violence* 269-289 at 284.

³²⁸ Littleton, C. (1989) ‘Women’s experience and the problem of transition: Perspectives on male battering of women’, *University of Chicago Legal Forum* 23-57 at 52.

³²⁹ Baker (1997) *op. cit.* at 63-66.

³³⁰ Fischer and Rose (1995) *op. cit.* at 425.

³³¹ Hanna (1998) *op. cit.* at 1549.

³³² Hamby, S. (1998) ‘Partner violence: Prevention and intervention’, in, Jasinski, J. and Williams, L. (1998) *Partner Violence: A Comprehensive Review of Twenty Years of Research* (California: Sage) at 224 and 234.

³³³ Gondolf, E. (1997) ‘Batterer programmes: What we know and need to know’, 12(1) *Journal of Interpersonal Violence* 83-98.

Child contact supervision centres can be empowering ‘products’ when they offer women skilled workers and a range of support services, information and referrals to other help.³³⁴ The Dove Centre in Southend provides services for children and helps women to devise safety plans.³³⁵ Legal actors can also help women by giving them advice about this and other information about domestic violence and services as ‘tools’ to assess the dangers that they face.³³⁶ It is only by responding to women at their different stages in the process of change and separation and making use of their survival strategies that legal interventions can be a meaningful empowering force for women.³³⁷ But even then most of the ‘therapeutic possibilities’ discussed focus on women as individuals ignoring the crucial collective aspects of real power.

7.3.6. Collective Empowerment

As well as individual sources of empowerment, Chapter Six emphasised the importance of collective empowerment through refuges and support groups. The ‘Duluth’ model of community intervention in domestic violence is based on a strong relationship between specialist groups for survivors of domestic violence and legal actors.³³⁸ This involved the latter giving away some power to women’s groups who are involved in all training.³³⁹ The ‘safety and accountability audit’ process involves representatives of women’s organisations and other agencies periodically examining the policies and practices of a particular organisation and identifying where change is needed.³⁴⁰ Such examples of empowerment are difficult to imagine in this country,

³³⁴ McManon, M., Neville-Sorvilles, J. and Schubert, L. (1999) ‘Undoing harm to children: The Duluth family visitation center’, in Shepard and Pence (1999) *op. cit.*.

³³⁵ Radford, L., Ayer, S. and Aid for Mothers in Contact Action (AMICA) (1999) *Unreasonable Fears? Child Contact in the Context of Domestic Violence: A Survey of Mothers Perceptions of Harm* (Bristol: Women’s Aid Federation England) at 31; Also, Hill, D. (2000) ‘We have contact’, *Guardian*, 16th February.

³³⁶ Gondolf and Fisher (1988) *op. cit.* at 38.

³³⁷ Brown (1997) *op. cit.* at 23.

³³⁸ Pence, E. (1999) ‘Some thoughts on philosophy’, in, Shepard and Pence (1999) *op. cit.* at 35.

³³⁹ Pence, E. and McDonnell, C. (1999) ‘Developing policies and protocols’, in, Shepard and Pence (1999) *op. cit.* at 48.

³⁴⁰ *ibid.*

where Women's Aid is rarely involved in training other agencies in domestic violence and are regularly marginalised in multi-agency domestic violence forums.³⁴¹

It has been suggested that an effective way of creating connection and a sense of 'self' for survivors of trauma is social action.³⁴² But the exclusion of survivors of domestic violence from policy making processes is even more pronounced than that of refuge workers.

*Many intervention efforts aimed at empowerment increase people's power to act, for example, by enhancing their self esteem, but do little to affect their power over resources or policies.*³⁴³

One opportunity for collective empowerment lies at multi-agency working level and in the policy making process. The Crime and Disorder Act 1998 imposes a statutory duty on local authorities to work in partnership with the police to produce an annual 'community safety plan.' This is expected to address domestic violence and to involve consultation with the local population to establish local priorities. Research shows that few multi-agency domestic violence forums have meaningful involvement and consultation with users of their services.³⁴⁴ Some forums have set up survivors advisory groups or periodic focus groups. Others recruit women with experience of domestic violence direct to the committee. To be truly empowering and respectful survivor participation needs to include financial compensation, expenses, interpreters and accessible venues with child care facilities.

In this research only Jacqueline mentioned the local domestic violence forum. She had attended a meeting, whilst staying at the local refuge, and described how she had made a contribution describing her personal experience.

And [the practitioners'] reaction was fantastic because they were talking about it as if we were just - a different group of women - you know what I

³⁴¹ Hague, G. (2000) *Reducing Domestic Violence ... What Works? Multi Agency Fora*, Policing and Reducing Crime Briefing Note (London: Home Office).

³⁴² Herman (1992) *op. cit.*

³⁴³ Riger (1993) *op. cit.* at 283.

³⁴⁴ Hague (2000) *op. cit.*

*mean, who get battered and like, 'why do they go back?' 'Why do they put up with it?'*³⁴⁵

Recently, Southampton Domestic Violence Forum arranged a focus group for survivors of domestic violence to contribute their views about local responses. The experiences of women in that group show how providing a space for women to talk about their experiences, and have their views heard, can be individually and collectively empowering. In Duluth, the 'Battered Women's Advisory Committee' meets regularly to review and discuss how suggested changes might have affected them when they used the system.³⁴⁶ In Croydon, a panel of domestic violence survivors advise the inter-agency forum as well as operating a 'friends' system to support other women.³⁴⁷ This year the Government worked with Women's Aid on the *Womenspeak* project, which enabled survivors of domestic violence to contribute evidence and information about their experiences direct to Members of Parliament via the internet.³⁴⁸ The sense of empowerment of those taking part was a key theme in the report on the project.³⁴⁹ Giving survivors a role in domestic violence policy-making is an example of meaningful empowerment and is one way of discovering 'therapeutic possibilities' for domestic violence law.

³⁴⁵ Jacqueline, Int. 15 at 11.

³⁴⁶ Pence and McDonnell (1999) *op. cit.* at 61.

³⁴⁷ Home Office (1998b) *Living Without Fear: An Integrated Approach to Tackling Violence Against Women* (London: Home Office) at 17.

³⁴⁸ Bossy and Coleman (2000) *op. cit.*

³⁴⁹ *ibid* at 19.

Chapter Eight

‘The Other Side’

I don't really understand the law.

There's a legal side.

And then there's another side.¹

This thesis began in the hope of enabling those who work in the legal system to see that world as survivors of domestic violence see it. Women's stories about their pathways through domestic violence law reveal that, in their eyes, there is a 'legal side' and then another side, which is the complex reality of their lives. Suggestions have been made for some 'therapeutic' legal reforms that would provide opportunities to respond to these complexities. Most of these reforms have already been suggested by others, or tried out elsewhere in the world and in pilot projects. The most important contribution of this thesis is the idea that for domestic violence law to truly serve women and help to heal the harm of domestic violence, we need to fundamentally rethink its role in survivors' lives. But, realistically, is it ever possible that women who have experienced domestic violence will discover a legal system that responds to that 'other side'?

Women's stories paint a picture that is both depressing and hopeful. Despite attempts by the women's movement and researchers in the last two decades to destroy the myths and prejudices that surround domestic violence, there is still evidence of a fundamental lack of understanding. Legal actors still do not respond to women's requests for help with an appreciation of the fear and danger, which is part of domestic violence. There are too few examples of legal actors who show understanding of the complex emotional attachments to their partner, children, home, family and community, with which women struggle. Domestic violence is not seen in the context of either women's financial dependency or the practical and emotional

¹ Emma, Int. 16 at 8.

implications of leaving a relationship. Attempts to change legal responses to domestic violence have focussed on policies to treat domestic violence as a crime, punish perpetrators, protect women and children and change the behaviour of violent men. Women's stories suggest that these policies are not being put consistently into practice. But even when they are, women often feel excluded and silenced by legal processes and legal actors, including those who are their official representatives. Women leave legal pathways with a sense that there are fundamental aspects of their lives which the law has missed.

Legal responses tend to overlook all that is crucial in understanding women's experiences of domestic violence. Rarely do legal actors recognise the fear, guilt, hope, shame, grief and confusion of survivors. Legal responses and those who apply them focus on separation from a violent partner as an *act*, rather than the long and difficult *process* which women describe. Law's value is usually seen as an act of power to be used against a perpetrator and the survivor's role in the legal process, particularly in the criminal system, is incidental. Often legal responses do not make use of women's knowledge of their situation or the personal resources and strategies they use in responding to the violence. Even when law is used to protect women in the form of civil injunctions, their other crucial needs during the process of survival are ignored. When survivors take legal pathways they are sometimes searching desperately to protect themselves and end their partner's violence. But mostly they are looking for much more.

Law is relevant in women's process of survival at many different stages. Legal actors are contacted by survivors as a way of breaking the silence surrounding domestic violence, talking to someone about their situation and in moving to the 'borderline' of overcoming shame and their sense of failure and self blame. Law is also about 'drawing a line in the sand', which shows the perpetrator that she has some personal power in the relationship and is supported by others. Even when women are forced down legal pathways in their attempts to create new lives separately from the perpetrator, divorce and child contact proceedings are often about more than separation. They may also be used as a way of showing her power to the perpetrator and as a means of finding new allies outside the relationship who will help her to

build the new sense of self which will enable her to create a new life. Women invariably express disappointment that legal pathways fail to meet their needs. They also show awareness of the limitations of law.

Women's stories reveal that surviving domestic violence is an individual journey involving small steps of decision-making over which only the woman herself has ultimate control. For the women in this research the fundamental limitation of law was that it was seen as a source of power, force, exclusion and violence, sometimes against their partners, but also against them. Their stories show that surviving domestic violence is about moving away from violence, exclusion and powerlessness in a search for a sense of power, inclusion and connection with a world outside the violent relationship. Law was both an integral part of these women's lives and yet nothing to do with their lived realities. Perhaps it is the case that law will always be limited in its ability to respond to the different journeys that make human relationships so complex.

Law does not ease the shame or self-blame of domestic violence or the pain of the process of survival and separation and sometimes exacerbates it. Rarely in legal responses are there opportunities to work through the grieving process, rebuild a sense of self or redefine a relationship in a way that helps a woman to leave. The disappointment, lost hope and loneliness involved in ending a violent relationship are rarely addressed in legal responses. Long after a woman has been forgotten by legal actors she will be managing a relationship with the perpetrator through continued links of children, marriage, finances, or simply due to the memories of domestic violence and the ties of the relationship itself. Law can rarely address such a complex reality and some would say that it is neither within the remit or expertise of legal actors to become mixed up in human emotions and the messy relationships of domestic violence.

The stories told in this thesis reveal that law is already mixed up in these places where it pretends not to be. Legal responses are part of a violent relationship through the construction of gender relationships, the policies for action developed in domestic violence law and the different ways in which those policies are put into practice. Law

is part of domestic violence when men use legal threats to control their partner and when a woman uses similar threats to regain control. Law is part of a woman's life when she plans her survival and escape. The words and actions of legal actors can bring her fear and reassurance, exacerbate her sense of hopelessness or inspire her hope for the future. Legal proceedings can become part of her recovery and an obstacle in the grieving process that enables her to move on. Maybe the law will never be able to respond to the different needs of women or predict the varying impacts which legal responses have on people's lives. But the stories in this research suggest that there are glimmers of hope. Women will continue to be disappointed in, and failed by, a system that has a 'legal side' and 'another side'. So how do we begin to create a legal system that is not divided from the realities of survivors' lives?

The first challenge is for legal actors to surrender some of their power and be honest about the limits of the law. We need to demystify the practice of lawyering. Legal actors need to acknowledge to themselves and others that law is just one method of responding to messy human problems that rarely have simple answers. The portrayal of the legal world as 'special' is dangerous when it inflates the expectations of legal actors, and others, about what law can achieve. This thesis shows that legal pathways provide valuable opportunities for responding to the needs of survivors of domestic violence. But to create truly 'therapeutic opportunities', law must open itself to the insights, strategies and knowledge, not only of survivors of domestic violence, but of other disciplines and practitioners. This thesis suggests that such openness would enable law to respond to the 'other side' of domestic violence through helping to develop a way of thinking about legal responses that encompasses a jurisprudence of both empathy and empowerment.

Empathy requires legal actors to understand, not only what domestic violence is, but how it feels. Such understanding would help legal actors to respond to the needs that an individual woman has at each particular stage of her journey in dealing with a range of emotions including fear, shame, guilt, hope and confusion. When legal actors ignore those emotions, push them aside or simply assume that they are nothing to do with them, then law neither serves nor heals. Such 'blindness' is dangerous because it overlooks a valuable source of knowledge in decision-making and

undermines a woman's trust in law and in herself. She needs to rebuild her sense of self, gathering strength in her process of survival and this is very difficult to do alone. If she is to work through this process and leave the violent partner she needs to feel connections with others. Law provides openings for her connection with the wider community, with individual legal actors and, through its ability to link with other services, to connect her with other women who have experienced violence. Those empathic connections have the potential to inspire hope for her future and a sense of personal power.

The development of a jurisprudence of empowerment would understand law as more than a resource which helps a woman to connect with others and create a sense of self outside of the violent relationship. Empowerment is also about supporting a woman in gaining control within the relationship with the perpetrator. Law is a potentially powerful tool in correcting an imbalance of power. In all aspects of women's experiences of domestic violence law this role is missing. In the existing responses of the criminal legal system, a woman's need for empowerment has no role. In the context of divorce and child contact, law aims to end the relationship in a way that tries to balance the often irreconcilable interests of the two parties, sometimes actively resisting the empowerment of one party in an attempt to preserve a future relationship. Even when a legal outcome, such as an injunction, is viewed as giving a woman protection and power in the relationship the reality of the process for survivors is often exclusion and silence. A central argument of this thesis is that all legal pathways need to empower individual women through shared decision-making, involvement, opportunities to speak and the establishment of a sense of power in the relationship with the perpetrator and others.

An understanding of domestic violence law with empathy and empowerment at its core does not preclude the use of law as a means of protecting women and condemning men's violence, holding them accountable and changing their behaviour. In fact, this thesis argues that it is only by developing a jurisprudence of empathy and empowerment that we have any hope of developing legal responses that fulfil these aims. By focussing on protection and condemnation, in isolation from empathy and empowerment, we pathologise women as victims or leave them completely out of the

picture. Condemning his violence does not serve a woman and help her in the process of healing if she feels that she is also condemned or the complexity of her life is not understood. The process of survival may even be delayed if she feels that again control has been taken from her. Physical protection is crucial, but so is emotional protection, which involves strengthening a person's inner sense of self so that she can protect herself against the complex pressures exercised by the perpetrator, her children, family, community and her own feelings of hope and attachment. The 'protection' of alarms, phones, arrest, criminal sanctions and injunctions have little meaning when a woman does not feel strong enough to put her own needs before those of her children and her partner. Nor do they help her to resist the hope, guilt and isolation which makes her believe that she will never make it alone. This thesis argues that only protection, condemnation of the violence, empathy *and* empowerment make it possible for law to truly heal and serve a woman who is experiencing domestic violence. Such an argument reveals how much knowledge we still need about domestic violence law.

One of the features of exploratory research such as that presented here is that it points to so many unanswered questions. If we are to rethink the role of legal responses to domestic violence, research must focus on outcomes *and* processes. Survivors' voices must be central to all studies. We need to know more about different processes of help-seeking and decision-making and the relationship between legal pathways and the personal strategies and informal support networks which women use. We need longitudinal studies that examine the impact legal actors, processes and products have in survivors' lives. We need to know more about the role of empathy and empowerment in surviving domestic violence and separating from the abuser. We also need to know much more about perpetrators' experiences of legal responses to domestic violence – an issue about which this thesis is almost completely silent. The gaps in knowledge highlighted here show how desperate is the need for researchers to work in co-operation with each other so that individual studies are designed to become one part of a network of knowledge. This thesis suggests the need for a revolution in the ways we think about, and practice, research as well as law.

The only hope for therapeutic legal responses that protect, serve and heal survivors of domestic violence is a revolution in thinking which pulls law to the ‘other side’ of their lived realities. Domestic violence law must be thought of as a means of condemning violence and protecting survivors. The stories of the women outlined in this thesis suggest that we must also think of legal responses as potentially therapeutic processes providing opportunities for empathy and empowerment. Only then will women be able to describe experiences of legal pathways which involve meeting with people and processes that respond to their need for empathy and empowerment and help free them to create new lives and reach the ‘other side’ of surviving domestic violence.

Appendix One

Methodology

One reason I was prepared to talk to you about it, is the reason people get away with it is because . . . the stigma goes on you and it's like you're bad because its happened to you and I think the more people talk about it, it might be better.¹

This research aimed to explore the 'pathways' which survivors of domestic violence take through the legal system and how the law is perceived and experienced by them. Firstly, this appendix considers the question of which methods and data were most likely to address the questions of this research and highlights the influence of some feminist perspectives and grounded theory on the choice of methods. It goes on to consider the issue of how survivors of domestic violence were contacted, the process of interviewing, questions of validity and the process of analysing interviews.

1. Feminist Perspectives, Grounded Theory and Multiple methods

Many feminist perspectives emphasise the importance of grounding studies in women's own voices and the idea that their stories can reveal useful possibilities for change.² Similarly, grounded theory focuses on generating ideas and theories and ways of seeing the world based on close inspection of qualitative data rather than working from preconceived hypotheses.³ In developing the grounded theory approach Glaser and Strauss were attempting to counteract the scientific positivist preoccupation with testing prior theories in order to give some framework for theory generation and

¹ Lucy, Int. 4 at 83.

² Maynard, M. and Purvis, J. (Eds) (1994) *Researching Women's Lives From a Feminist Perspective* (London: Taylor and Francis).

³ Glaser, B. and Strauss, A. (1967) *The Discovery of Grounded Theory: Strategies for Qualitative Research* (New York: Aldine); Strauss, A. and Corbin, J. (1990) *Basics of Qualitative Research: Grounded Theory, Procedures and Techniques* (Newbury Park, CA: Sage).

the analytic process of “inserting new discourses within old systems of meaning.”⁴ The final part of this Appendix describes some ideas from the grounded theory approach to research method. It provides a theoretical framework as well as practical guidelines for discovering and formulating theories.⁵ Both feminist and grounded theory perspectives consider the contextual aspects of social experience focussing on the meanings people attribute to events and seek to understand more about the world from participants’ interpretations and definitions.⁶ Several studies of survivors’ experiences of domestic violence have combined the two approaches, using qualitative research methods in order to hear women’s stories.⁷

A distinction has traditionally existed between quantitative and qualitative methods, but the reality is that there is a continuum of research methods. Whilst more quantitative methods point to the scope of a problem, numbers are ‘cold’ and tend to “create numbness rather than a sense of urgency.”⁸ In contemporary Government policy-making more value is being attached to qualitative studies, partly due to their potential for contextual, diagnostic, creative and evaluative input into the policy process.⁹ Qualitative methods often reveal the multiple interpretations of human experience by viewing thoughts and behaviour in their full complexity. Some researchers have advocated the use of multiple research methods¹⁰ and domestic

⁴ Pidgeon, N. and Henwood, K. (1992) ‘Qualitative research and psychological theorising’, 83 *British Journal of Psychology* 97-111 at 21.

⁵ Orona, C. (1997) ‘Temporality and identity loss due to Alzheimer’s disease’, in, Straus, A. and Corbin, J. (Eds) (1997) *Grounded Theory in Practice* (California: Sage) at 182.

⁶ Wuest, J. (1995) ‘Feminist grounded theory: An exploration of the congruency and tensions between two traditions in knowledge discovery’, 5 *Qualitative Health Research* 125-137 at 127.

⁷ Merritt-Gray, M. and Wuest, J. (1995) ‘Counteracting abuse and breaking free: The process of leaving revealed through women’s voices’, 16 *Health Care for Women International* 399-412; Lempert, L. (1996) ‘Women’s strategies for survival: Developing agency in abusive relationships’, 11(3) *Journal of Family Violence* 269-289.

⁸ Minow, M. (1990) ‘Words and the door to the land of change: Law, language and family violence’, 43(6) *Vanderbilt Law Review* 1665-1699 at 1685.

⁹ See Walker, R. (1989) ‘We would like to know why: Qualitative research and the policy maker’, 7(2) *Research, Policy and Planning* 15-20.

¹⁰ See Brannen, J. (1992) *Mixing Methods: Qualitative and Quantitative Research* (Aldershot: Avebury); Reinharz (1992) *Feminist Method in Social Research* (Oxford: Oxford University Press) Usher, P. (1996) ‘Feminist approaches to research’, in, Scott, D. and Usher, R. (Eds) (1996) *Understanding Educational Research* (London: Routledge).

violence researchers have used a combination of narratives and statistics to explain the complex reality of the problem.¹¹

In this thesis, official statistics and the results of smaller scale quantitative studies have been used to examine the degree to which various legal responses are relevant in the lives of women who experience domestic violence. Quantitative and qualitative studies have also been significant in understanding the decision-making of legal actors and the perceptions and experiences of survivors and perpetrators in relation to certain aspects of the law. Observations of court proceedings relating to domestic violence took place in Winchester Crown Court and Eastleigh Magistrates Court on several occasions in 1998. Two sessions of a domestic violence perpetrator's group programme were observed and the researcher participated in several meetings of a parallel support group for survivors of domestic violence. The research also included many informal discussions with practitioners and involvement in various local responses to domestic violence. These included membership of the Southampton and Hampshire Domestic Violence Forums, involvement in training for senior police officers and delivery of multi-agency training for the New Forest Domestic Violence Forum. Participation in the Southampton Domestic Violence Forum included membership of the 'User's Sub Group' which has begun to involve users in policy making through periodic focus groups. The research also included volunteer work in a local refuge and election to the executive committee of the Southampton Women's Aid refuge. These experiences have added different insights and perspectives to the central feature of this thesis, which is focused in-depth face-to-face interviews with female survivors of domestic violence. The aim in using these different aspects of the research process was to reach a deeper and richer level of understanding about the way in which survivors of domestic violence interact with legal actors and the legal system.

¹¹ Murphy, J. (1993) 'Lawyering for social change: The power of the narrative in domestic violence law reform', 21(4) *Hofstra Law Review* 1243-1293 at 1259; Abrams, K. (1991) 'Hearing the call of stories', 79(4) *California Law Review* 971-1052 at 994; Mahoney, M. (1991) 'Legal images of battered women: Redefining the issue of separation', 90 *Michigan Law Review* 1-94.

The voices heard in the research process are always translated in some way. The ideas presented in this thesis have inevitably been shaped by the emotions and personal experiences of the researcher.¹²

*[T]heory does not just 'emerge' from data; rather, data is itself constructed from many events observed or read about or heard about, constructed in a highly selective series of actions, and interpreted all along the course of the research project.*¹³

Some feminist researchers have argued that it is important for the reader to understand how the researcher's identity might have affected her interpretations.¹⁴ I am an unmarried twenty-seven-year-old white woman, living with my partner in a long term heterosexual relationship and have no children. I do not consider myself to have been a victim or a survivor of domestic violence, although I have, like most people, perpetrated and experienced some of the behaviours that constitute a pattern of violence. Domestic violence has been a feature of my extended family life and has been experienced by some close friends. I believe that these experiences, and the memory of my parents' divorce during my childhood, played a role in the way in which I responded to the women who participated in this research and the way I have chosen to present their stories. Reflection on my role in the process has been an important part of conducting the research.¹⁵

2. Focused Interviews

Given the exploratory and investigative nature of the research in discovering more about women's pathways through domestic violence law, a questionnaire or structured interview approach would not enable sufficient flexibility. Such approaches are usually used in order to numerically analyse responses when a research project is attempting to prove or disprove, or learn more about, a predetermined hypothesis. Although these methods have the advantage of control, speed and reliability in that

¹² Stanley, L. and Wise, S. (1993) *Breaking Out Again: Feminist Ontology and Epistemology* (London: Routledge) at 225.

¹³ Clarke, A. (1997) 'A social worlds research adventure: The case of reproductive science', in, Straus and Corbin (1997) *op. cit.* at 64.

¹⁴ Reinharz (1992) *op. cit.* at 258-263.

¹⁵ Mason, J. (1996) *Qualitative Researching* (London: Sage Publications) at 6.

each interview covers exactly the same issues, they limit what the respondent can talk about. There is also a risk that the researcher will fail to predict areas that the participant considers important or prioritise issues that are not relevant to the interviewee.¹⁶ The data produced does not usually reflect the complexity and contradictions in a particular person's experience.

Focussed, in depth and open-ended face-to-face interviews allow the researcher to gain a "detailed picture of a respondent's beliefs about, or perceptions of, a particular topic."¹⁷ They are particularly useful when one is interested in the complexity of a process or when an issue is controversial or personal.¹⁸ The interviews were not 'unstructured' as questions were asked and clarification sought at points. No fixed interview schedule was used because the aim was to discover the aspects of their experiences that were most important to the participants. The aim was to make the interview as non directive as possible in order to reach understanding of women's own definitions and emphases and to this end the interviews were like an extended 'conversation with a purpose'.¹⁹ This method allows the researcher the flexibility to pursue interesting avenues raised by the participant and to explore these in depth, prioritising survivors' own accounts, rather than attempting to predict areas of interest or to prioritise issues in advance. This facilitates rapport and empathy, and allows flexibility of coverage enabling the interviewer to "enter novel areas" and produce richer and detailed data.²⁰ However, it also reduces the control of the interviewer, takes longer to carry out and is more difficult to analyse.²¹

¹⁶ Smith, J. (1996) 'Semi-structured interviewing and qualitative analysis', in, Smith, J., Harre, R., and Langenhove, L. (Eds) *Rethinking methods in Psychology* (London: Sage) at 11; Also, Graham, H. (1983) 'Do her answers fit his questions? Women and survey method', in, Gamarnikow, E., Morgan, D., Purvis, J. and Taylorson, D. (Eds) (1983) *The Public and the Private* (London: Heinemann).

¹⁷ Smith (1996) *op. cit.* at 9.

¹⁸ *ibid* at 10.

¹⁹ Duncombe, J. and Marsden, D. (1996) 'Can we research the private sphere? Methodological and ethical problems in the study of the role of intimate emotion in personal relationships', in, Morris, L. and Stina Lyon, E. (1996) (Eds) *Gender Relations in Public and Private: New Research Perspectives* (Macmillan).

²⁰ Smith (1995) *op. cit.* at 12.

²¹ *ibid.*

The ethical basis of this research was that it should not harm the participants' physical or emotional well being. Throughout the process efforts were made to ensure that the methodology chosen would give women opportunities to feel empowered by telling their story. Many women made positive comments about their participation. Some said that they hoped that telling their stories would increase understanding of domestic violence and help other women. Some said that it was good to talk to someone about their experiences and for several women telling their story was seen as a way of closing a chapter in their lives. Whilst it appeared that many women did feel empowered by the interview process, it is recognised that ultimate control and responsibility for how women's stories are used lays in the hands of the researcher.²²

3. Contacting women who have experienced domestic violence

Given the silence and shame surrounding domestic violence, making contact with survivors is notoriously difficult. In order to learn more about a range of 'pathways' through the legal system it was necessary to make contact with women with a diverse range of experiences of law. Throughout the research, relationships were developed with individual practitioners, many of whom agreed to give out contact letters to survivors when they felt it was appropriate. The letter, which is reproduced in Appendix Two, included the telephone number of the Law Faculty. A stamped addressed envelope was provided, so that respondents could express their willingness to be interviewed without cost to themselves.

A total of 37 responses were received and 31 interviews were carried out. One response was received from a woman who did not include her contact details and wrote that she did not feel able to participate. Her response is discussed in Chapter Seven. Of the five remaining responses that did not result in interviews, three did not include contact telephone numbers and the women did not respond to letters sent to their addresses. In order to achieve the highest possible response rate in her research examining the policing of domestic violence, Hoyle adopted the 'cold-calling' method

²² Finch, J. (1993) "'It's great to have someone to talk to': Ethics and politics of interviewing women', in, Hammersley, M. (Ed) (1993) *Social Research: Philosophy, Politics and Practice* (London: Open University).

whereby she made unannounced visits to the homes of survivors, accompanied by a police officer.²³ In this research it was not considered appropriate to make a visit which had not been pre-arranged, because of concerns for safety. It was also central to this research that women should feel able to withdraw their consent to participation at any time. No further attempts at contact were made with women who did not reply to the letters sent to their homes, based on the assumption that the respondents no longer wish to be interviewed. One of the other two respondents had left the local refuge and was not contactable. The other woman cancelled the arranged meeting on the night before.

Of the 31 interviews carried out, three are not referred to in this thesis because they concerned violence from family members who were not partners or former partners. In one case the perpetrator was the woman's brother, and two other women talked about abuse by their fathers. These women's experiences of legal responses reveal similar themes to those of the women referred to in this thesis. But a decision was made to focus on the particular issues for women experiencing violence from intimate partners. Data from twenty-eight interviews was used in this study.

The table on the following page shows that contact was made with participants by using practitioners from various agencies, including the police, Victim Support, Witness Support Service, local refuges, Family Court Welfare Service, and a support group for survivors of domestic violence. One participant made contact after the research was described to her by a friend who had already taken part. Letters were distributed to various solicitors, but no replies from those letters were received. As with other research in this area there were problems contacting black and Asian women and, though contact was made with a local Asian women's refuge, only one reply was received from this source.

Reliance was placed on the commitment of practitioners to pass the letters on and the response rates are difficult to establish. When practitioners were contacted, about the

²³ Hoyle, C. (1998) *Negotiating Domestic Violence: Police, Criminal Justice and Victims* (Oxford: Clarendon Press).

number of letters that had been passed on, some said that they had forgotten to do so or considered it inappropriate to suggest participation at a particular stage or to a particular woman. This left the selection process open to assumptions about the suitability of particular women to take part in the research, which can be influenced by issues of race, class and language. However, it was an important starting point that this research should ensure, as far as possible, to avoid harm to the women involved. It was left to each practitioner to evaluate whether suggestion of participation could cause further distress. In handing over control in this way, rather than asking practitioners to give the letters to all women who they believed had experienced domestic violence, it is possible that participants were 'lost' who may have taken part.

Individual/Agency making contact	Number of Interviewees (28)
Police	3
Victim Support	1
Witness Service	2
Women's Aid Refuges	7
Asian Women's Refuge	1
Family Court Welfare Service	9
Support Group for Survivors	4
Another Participant	1

This 'self-selected' purposive sample was based on convenience of contact, but attempts were made to cover as broad a range of different experiences as possible. All the women lived in Hampshire and at the time of the interviews were living separately from the violent partner. The ages of the women ranged from early 20s to early 60s. Some lived in homes they owned and others in local authority properties or refuges. All of the women had lived with the perpetrator at some point, 15 had been married to him and 13 were unmarried. At the time of the interviews all of the women had children, who ranged in age from one year old to being grown up with children of their own. All those interviewed had approached a voluntary or statutory agency in relation to domestic violence, which may reflect more severe experiences of

violence.²⁴ Also, practitioners had to be confident enough that a woman had experienced domestic violence to suggest that she participate in the research, which indicates that the women had begun the process of ‘naming’ their experience as domestic violence.

4. The interviews

The interviews took place between November 1997 and September 1999. When a response was received, the participant was contacted by telephone and a time and place for the interview agreed. Women were given the option of being interviewed in their own homes or another place of their choice. Arrangements were also made to hire a room at a local Women’s Centre. All but four of the women chose to be interviewed in their own homes. Three were interviewed at the refuge, where they were staying at the time of the interview, and the fourth was interviewed in local housing association offices. Interviews were only conducted in the women’s homes when they had been made clear that their partner no longer lived with them. At every stage the women were assured that they could withdraw their offer of help at any time. When possible, on the evening before the interview, a telephone call was made to confirm that the arrangements were still convenient. One respondent did say, at this point, that she felt it would be too traumatic to talk at that time. She was assured that no further contact would be made. To ensure the researcher’s personal safety, details of the interview location were left in a sealed envelope with a colleague.

Feminist perspectives were important during the course of the interview and establishing empathy and connection with those interviewed was considered to be crucial in building trust and enabling women to tell their stories.

*Personal involvement is more than dangerous bias – it is the condition under which people come to know each other and to admit others into their lives.*²⁵

²⁴ Radford, L., Sayer, S. and Aid for Mothers in Contact Action (AMICA) (1999) *Unreasonable Fears? Child Contact in the Context of Domestic Violence: A Survey of Mothers’ Perceptions of Harm* (Bristol: Women’s Aid Federation England).

²⁵ Oakley, A. (1981) ‘Interviewing women: a contradiction in terms’, in, Roberts, H. (Ed) (1981) *Doing Feminist Research* (London: Routledge) at 58.

Several women said that, if the request for research participants had been made to them at an earlier or later point in the process of survival, they would not have felt able to tell their story. Some also said that they would not have agreed to participate if the researcher had been a man. At the beginning of the interviews apologies were made for the fact that payment for the woman's time was not possible. Cakes and sweets for the woman's children were also given as a gesture of thanks.

The research was explained as a project to examine how the legal system responds to domestic violence. Each woman was assured that the interview was confidential and that her name and any details that might identify her would be changed. She was also asked the name she wished to be used to refer to her in the research. Some women said that they were happy for their own Christian name to be used and others chose a pseudonym or asked the researcher to select one for them. Before beginning the interview the participant was asked whether she would give permission for the taping of the interview as well as the taking of written notes. Three said that they preferred that a tape recorder was not used and, in these cases, notes from the interview were written up immediately afterwards.

The interviews were conducted and analysed using ideas from grounded theory methodology, which stresses theory generation and development. Participants were asked to tell their story of the experience of domestic violence, with a focus on legal responses. They were told that the central aim of the research was to hear their story and, whilst the researcher might ask for elaboration or corroboration on some issues, there was no fixed list of questions and the important point was to discover what matters to them. Each woman was also asked to indicate if there was anything specific she did not want to talk about and to say if she wished to end the interview at any time. Some participants asked for guidance as to which point in their story they should begin with, and responded to open-ended probes, such as: "Tell me about when you first met your partner." Interruptions were kept to a minimum allowing each participant to construct the narrative in her own terms, emphasising her version of reality. Interviews lasted from one hour to four hours (with a lunch break in between), with the average interview lasting approximately two hours. In one case a woman asked to be interviewed on another occasion two months after the initial

interview. After each interview the participant was given a list of contact numbers relating to services for survivors of domestic violence. The researcher sent a card of thanks to each woman interviewed. In several cases women telephoned the researcher to give more detail about her legal proceedings which were still continuing. The contents of these telephone calls were noted and have been referred to in the thesis.

5. Issues of validity

The stories of the women interviewed for this research enable a wider picture of survivors' experiences of legal responses to domestic violence than studies restricted to women who have had contact with the police,²⁶ women who have sought injunctions,²⁷ or women who have stayed in a refuge.²⁸ Apart from the one woman interviewed twice at her request and the women who made contact by telephone, the interviews occur at only one point in the process and reveal only a 'snapshot' of a particular woman's perceptions at one point in time. It is likely that each new account given by a woman would reflect different perspectives, understandings and emphases. As the participants were subject to practitioners' selection and then self-selection, it could be argued that volunteers would be more likely to be those with particularly positive or particularly negative experiences of the legal system. For instance, practitioners may not have given letters to those who they feared would give a negative impression of 'their' agency. Also some women might have been encouraged to respond by a particularly negative experience or a particularly positive one. Although it is possible that these factors did play a role in some responses, the interviews suggest that no single one of these suggestions explains all of the responses. For instance, practitioners passed on letters to survivors who gave a negative account of that practitioner's personal response and of their organisation. Letters were also passed on to survivors who had had a positive experience of the practitioner and their organisation.

²⁶ Hoyle (1998) *op. cit.*

²⁷ Barron, J. (1990) "*Not Worth the Paper...?*" *The Effectiveness of Legal Protection for Women and Children Experiencing Domestic Violence* (Bristol: Women's Aid Federation England).

²⁸ Pahl, J. (Ed) (1985) *Private Violence and Public Policy* (London: Routledge).

Another potential criticism is that the interviews have not been verified for their accuracy, but this research prioritises the ‘truth’ of individual women’s perceptions of their experiences. Interviews can be seen as factual accounts or, at the other extreme, as a performance which resembles neither the world outside (‘facts’) nor internal beliefs, perceptions and attitudes.²⁹ This research adopts a position between these two views, that the respondent’s story manifests the psychological reality of the participant and has an important relation to the world outside in terms of how the law responds to domestic violence. Symbolic interactionism argues that meanings and psychological realities are negotiated within a social context³⁰ and there is a connection between the narrative construction and the life as lived by the subject.³¹ In the interviews, attempts were made to discover more about the reality of legal responses through the eyes of survivors and in the context of their lives. The focus is on women’s behaviour, motivations, decision-making, perceptions and experiences of legal pathways, and also allows analysis of stories told by women for whom domestic violence law played only a small part.

6. Analysis of Interviews and Grounded Theory

The tape recordings of interviews used in the research were transcribed as soon as possible after the interview with the assistance of notes taken at the time. The stories were not easily susceptible to comparison and analysis. It is difficult to produce quantifiable data when engaging in inductive research, but the aim of qualitative analysis is:

*to capture the richness of the themes emerging from the respondents’ talk rather than reduce responses to quantitative categories.*³²

Quantification would not add to the descriptions and analysis of how individual survivors perceive and experience law.

²⁹ Smith (1995) *op. cit.* at 10.

³⁰ *ibid* at 10.

³¹ Stanley, L. and Morgan, D. (1993) ‘Editorial introduction’, 27(1) *Sociology* 1-4 at 3.

³² Smith (1995) *op. cit.* at 9.

This research inevitably began with some preconceptions and ideas about the phenomenon being studied and reviews of the literature and other aspects of data collection took place alongside the interviews, so this is by no means a 'pure' grounded theory study. However, an attempt was made to generate theories by using some ideas from the grounded theory approach in order to draw out themes from women's stories. Grounded theory does not presuppose a linear research process. Descriptive codes were developed throughout the research to highlight the legal pathways described in the interviews and interpretative codes highlighted particular themes in the stories. A grounded theory study is continually evolving and uncovering new insights. And in this study interviews and analysis occurred simultaneously with patterns and ideas emerging as the process continued.

Interviews were analysed repeatedly throughout the research process using the traditional 'cut and paste' method to label the data and develop an index system. Consideration was given to using a computer package such as *Ethnograph* to assist in analysis. At the beginning of the research process, the researcher's personal preference was to avoid the 'distancing' from the data which computer analysis can create. In hindsight, some use of computer analysis may have been more convenient and efficient, particularly as the data became more extensive than was envisaged at the beginning of the research process. By that later stage, time and resources did not allow for the computer package to be used as part of the analysis.

The data from the interviews was categorised and sorted using codes which fit the data, rather than forcing the words spoken into preconceived categories. This constant comparative method of grounded theory allows central themes and their inter-relationships to be identified. Earlier interviews were revisited in the light of the insights emerging from later interviews.

*[T]he beauty and strength of the grounded theory approach is that it is not linear. Instead, the approach allows for the emergence of concepts out of the data in a scheme that allows for introspection, intuition, ruminating as well as analysis in the 'traditional' mode.*³³

³³ Orona (1997) *op. cit.* at 179.

It is difficult to know when categories and themes identified have reached ‘theoretical saturation’ point, but after the 28 interviews had been analysed no major new themes were emerging.³⁴

Grounded theory-led research tends to work on a micro-level rather than macro-levels of analysis to generate more local and contextual than ‘grand’ theories. While this research has worked at developing micro-level understandings of individual women’s ‘pathways’ through the legal system, suggestions are made about the implications of this understanding for the general relationship between law and domestic violence. It is important that the theories and ideas presented in this thesis should be recognisable to the women who participated in this study.³⁵ Analysis identified different ‘pathways’ taken through the legal process and examined recurring themes in the women’s stories of those experiences. The ‘pathways’ themselves are examined in Part Two of the thesis and Part Three focuses on two particular themes, first, emotion and empathy and second, silence and empowerment. The role of empathy and empowerment in women’s experiences of legal responses and domestic violence itself needs to be developed in further research, possibly with a more focussed approach than the exploratory and open-ended method of interviewing adopted here. The original fairly modest aim of the research was to discover insights that enable us to gain more deeper understandings of women’s experiences. The ideas and theories which have emerged, from the women’s stories, point to a need to re-conceptualise our entire understanding of the relationship between domestic violence and law.

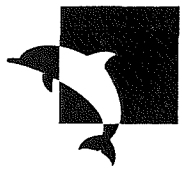
³⁴ Henwood, K. and Pigeon, N. (1992) ‘Qualitative research and psychological theorising’, 83 *British Journal of Psychology* 97-111.

³⁵ Turner, B. (1981) ‘Some practical aspects of qualitative data analysis: One way of organising processes associated with the generation of grounded theory’, 15 *Quality and Quantity* 225-247 at 227.

Appendix Two

Research Participants' Contact Letter

The letter shown over the page was given to practitioners in order to make contact with survivors of domestic violence. Each letter was given out with a stamped addressed envelope, so that participants could contact the researcher with no financial cost to themselves.



I know that this might be a difficult time for you but I would be very grateful if you could help with some research I am doing.

I am researching how well the law protects women and children from violence in their family. I am very interested in the views of women who have used or are using the law for this reason, and those who have not been able to or have chosen not to use the legal process. I really want to know what *you* think about this. Perhaps you have views about how the law and services could be more helpful. You may also have had experiences which will give others clues as to how the legal system is useful and how it could be improved.

If you are willing to talk to me I would be very grateful if you could ring or return the attached slip in the envelope enclosed. I can be contacted at the University on (01703) 593632 and messages can be left if I am not around. I can arrange to talk to you at your home, at the university or at any place where you would feel most at ease. Any information you give will be confidential. I will not use your name or any other details which could make your identity known.

My research may not be able to help you directly but it should help others in the future. I would be very grateful if you could agree to talk to me. Thank you for your time.

With best wishes,

Kate Paradine

I would like to help with your research.

Name.....

I can be contacted at.....

.....

Please do not call at the following times

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