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## Irreconcilable Differences

### *Battered Women, Police, and the Law*

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The policies of the criminal justice system regarding "domestic violence" have been in the process of reformulation for the past 15 years. The literature describing and examining this process has focused primarily on the effectiveness of interventions. In this chapter, we explore the cultural contexts in which this process is occurring. Specifically, we adopt a critical feminist analysis of law, law enforcement, and the experiences of heterosexual\* battered women.\*\* Central to this analysis is the concept of power. We argue that in the contemporary United States, law and law enforcement are elements of a culture of power founded on political liberalism. The content of this culture includes assumptions about universal desires and the appropriate role of the state, which we discuss. When law enforcement is placed in this cultural context, the contradictions between the needs

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\*AUTHORS' NOTE: Homophobic legal culture raises questions beyond the scope of this chapter.

\*\*EDITOR'S NOTE: The terms *battering*, *battered*, and *batterer* are used in this chapter to refer to physical and nonphysical forms of abuse.

of battered women and the orientation of the law become apparent. Our purpose in this chapter is to describe the irreconcilable differences between the cultures of power and of relationships. We draw on an empirical investigation of police responses to battering as an example of the problems inherent in policing battering.

We begin with a brief history of the recent trend toward the criminalization of battering. We then describe the law as a manifestation of the culture of power. The culture of power is then contrasted with relational culture, the context in which battered women make decisions. We next describe the assumptions that police (and all law enforcement officers), as agents of the culture of power, bring to battering situations. These assumptions are contrasted with the lives of battered women and the contingencies that inform their responses to violence. Ferraro's participant observation and interview study of the police is then described to illustrate the cultures discussed earlier. Our conclusion emphasizes that empowering battered women involves recognizing the diversity of needs and the competence of women to identify the most appropriate strategies for their survival. We do not adopt a pro or con stance on mandatory arrest. We attempt to direct attention to the larger context in which policing occurs, rather than focusing on arrest decisions. Our position is that abstracting criminal sanctions from the current social and political context in which they exist detracts from the overall empowerment of women.

### Criminalization of Battering

In 1984, the U.S. Attorney General's Task Force on Family Violence recommended that family violence be treated as "a criminal activity" (Hart et al., 1984, p. 10). This recommendation drew on testimony from social science experts, medical and social service professionals, battered women's advocates, and battered women. In the array of data presented, the Minneapolis domestic violence experiment, funded by the National Institute of Justice (NIJ), was highlighted. The Minneapolis study, conducted by Sherman and Berk (1984), employed an experimental model to examine the deterrent effects of arrest, separation, and mediation in the police response to wife battering. Their findings suggested that arrest was significantly superior in deterring future violence relative to the other two interventions (Sherman & Berk, 1984).

These data not only influenced the U.S. Attorney General's Task Force, but also were widely publicized in the popular and police press. Subsequently, the Minneapolis experiment was employed by policy-makers and activists to support legislative and policy changes in policing (Meeker & Binder, 1990; Sherman & Cohn, 1989). Research, lawsuits, and grass roots activism to reduce or eliminate police discretion in responding to domestic violence have been successful in altering state laws and department policies. As of 1987, 30 states had altered their laws to allow misdemeanor arrests based on probable cause. Six states statutorily mandate arrest for domestic violence assaults, and seven mandate arrest for violation of restraining orders (Woods, 1987). Many cities also adopted presumptive or mandatory arrest policies. In 1985, a survey of 140 cities with populations over 100,000 showed that 44 had policies encouraging arrest as the preferred option in domestic violence cases (Crime Control Institute, 1986). The embrace of mandatory and presumptive arrest policies reflects a conviction that discretionary policies result in failure to protect the victim and thus essentially condone male violence.

To test the generalizability of the Minneapolis findings, the NIJ funded six replication studies across the United States. The two replications published in journal form to date have not demonstrated that arrest is significantly more effective than other types of police intervention in deterring future violence (Dunford, Huizinga, & Elliott, 1990; Hirschel, Hutchison, & Dean, 1992). Sherman's analysis of a specific type of offender, inner-city black men, found a short-term deterrent effect for short-term custody, together with long-term criminogenic effects (Sherman, Schmidt, & Rogan, 1991). Long-term custody produced no significant effects. These recent studies suggest the complexity of evaluating police responses to battering. There is no simple answer to the questions revolving around effective protection for battered women.

Although there have been tremendous shifts, reforms, and expansions in domestic violence laws during the last 15 years, there has also been resistance by law enforcement and frustration on the part of battered women and domestic violence service providers (Hanmer, Radford, & Stanko, 1989). We propose that the focus on police response has failed to account fully for the contextual realities of both policing and battering, and the underlying irreconcilable differences

between battered women and the law. This absence occludes the complex interconnections among police response, lawyers, child support, courts, family members, child protective services, women, men, and children and the layers of power they represent. The analytical and policy effect of the focus on police response is the disregard of the complex power relations of battering and the promotion of a "cure" that brackets sexism, racism, homophobia, and poverty. An incident of battering has been reduced to an individual pathology for which swift and sure criminal justice sanctions are the remedy.

At the concrete, everyday level of survival, many women require police assistance. For too many women, there is none. When police intervention fails, the larger societal implications are overlooked, attention returning instead to the behavior of police. We argue that the irreconcilable differences in cultural contexts of policing and battering cannot be separated from an analysis of interventions. By cultural context, we mean the everyday behaviors, expectations, and roles, as well as historical and political constructions, of "police" and of "wives." The cultures represented by police and by battered women are necessary domains of inquiry to the development of the most effective strategies to inhibit male violence.

### The Law and The Culture of Power

The culture of power is entrenched in the economic, political, religious, and legal institutions of U.S. society. Although the United States is diverse in cultural characteristics, the values of the culture of power are imposed on all groups, sometimes violently. For example, the emphasis on community and extended family in Pueblo Indian cultures has been attenuated by colonization, genocide, removal of children to boarding schools, and military service of young men. Western European ideology of the privacy of the family and the traditional rights of husbands over other family members remains embedded in the belief systems of policymakers and implementors (Allen, 1986; Red Horse, 1980). The state and national policy responses to battering cannot be separated from the institutional culture in which they exist.

Feminist legal scholars, such as Cain (1991), MacKinnon (1983), Minow (1990), and Scales (1986), critique traditional androcentric jurisprudence for the exclusions created by adherence to liberal philosophy. West (1988) understands traditional liberal jurisprudence as rooted in masculine views of human nature that place individual autonomy first, prior to relationships and "cooperative arrangements with others" (p. 2). Entrenched in an understanding of individuals separate from others, as "physically boundaried" (p. 1), liberal jurisprudence values separation and therefore freedom from others. Annihilation is an ever-present source of harm in the struggle for power over scarce resources: "Thus, according to liberal legalism, the subjective experience of physical separation from the other determines both what we value (autonomy) and what we fear (annihilation)" (p. 8).

This philosophical underpinning represents the worldview of a particular group of powerful men and distorts the experiences of many other people. It is especially unrepresentative of the lives of people who give birth, suckle and care for children, and assume responsibility for those outside the competitive marketplace: the sick, the physically or mentally disadvantaged, and the elderly. That is, it is unrepresentative of the life of many women (Jaggar, 1983, p. 45). The centrality of attachment to others in the lives of those women is accompanied by alternative values and fears. For those immersed in a relational culture, the ability to connect, nurture, and maintain intimacy is highly valued. Threats to relationships and the possibility of alienation are feared and guarded against (Gilligan, 1982).

The male bias of U.S. jurisprudence produces a legal structure contradictory to women's needs. Androcentric jurisprudence that values autonomy and fears annihilation collides with the values of women who seek relationship and fear separation. The contradictions can be demonstrated in the continuing conflict between the legal system and battered women seeking orders of protection (OP) (cf. Ford & Regoli, this volume). Judges, committed to traditional liberal legal theory, view the breach of individual rights to due process as justified only by the threat of annihilation and remedied by separation. For some battered women, fearing both invasion and loss of connection, the OP may be seen as a mechanism with the potential to remove the violence by her partner. She may perceive the OP as a technique for ensuring a violence-free marriage, continuing to live with her

violent partner and holding the OP as a "guarantee" of protection should he violate his promises that "It will never happen again." For judges, however, a woman's failure to separate from the relationship once an OP is granted is a demonstration of her failure to respect the court and instigation to renewed battering. The disjunction between women's and legal actors' perceptions leads to issuance of mutual OPs, mutual arrests, failure of police to respond to OP violations, denial of subsequent orders, and contempt of court charges against women, all of which can jeopardize women's future safety (see Chadhuri & Daly, 1992).

Although decisions specifically supporting husbands' rights to "moderate chastisement" of wives no longer exist, the *de facto* acceptance of battering lingers. The examination of the extent of bias in courts by gender bias task forces in 27 states has uncovered stereotyping, devaluation, and "myths and misconceptions about the social and economic realities of women and men's lives" (Schafran, 1989, p. 239). In a study of casebooks to determine how law schools teach about violence against women, the Sex Bias in the Teaching of Criminal Law researchers found that of the "seven most widely used criminal law casebooks . . . only one book even mentioned spousal abuse" (Schafran, 1989, p. 272). The bias against women inherent in U.S. jurisprudence and legal actions militates against the easy solution of mandating alternative police responses.

### The Culture of Power and Relational Culture

Two cultures come clashing together when police respond to battering. One is the culture of power, in which decisions are based on rational choice and maximization of profit or benefits. In this culture, manifest in part through the legal system, it is possible to know "the facts" and to determine probable cause, harm, fault, and a calculus of penalties. If a "crime" has been committed, the offender should be processed according to the rules, including the hearing of reliable testimony by victim-witnesses. If there is less than a reasonable doubt of guilt, sanctions equivalent to the degree of harm imposed should be meted out. Rational choice deterrence theory posits that men who

batter will ponder the chance of punitive consequences before inflicting violence on wives or lovers (see Carmody & Williams, 1987, for empirical refutation of this assumption). This is a culture of clear-cut boundaries: good/bad; harm/no harm; guilt/innocence.

The "other" culture is relational. We do not mean to suggest that all battered women are the same or respond to violence in the same ways. There are, however, features of being physically assaulted by one's intimate partner that can be generalized (see Browne, 1989; R. E. Dobash & R. Dobash, 1979, 1992; Ferraro & Johnson, 1983; Kelly, 1988; Russell, 1990; Stanko, 1985; Yllö & Bograd, 1989). The culture of women abused by their partner is filled with ambiguity, confusion, and fear. The man who beats, terrorizes, and tortures a woman also threatens to take her children away, to kill her if she tells the truth, to kill anyone who helps her, and to institutionalize or abandon her and her children.

For many women, the relationship and family unit are important. Women who are battered often say they love their partner. The meanings of "love" in relationships of terror are not clear and make up part of the confusion women feel. Supported by romantic ideology, they share a cultural image of relationships as havens of shared love and commitment. Occasionally, their abusive partner fulfills some aspect of the image, adding to the women's hope. Family members and social service providers kindle this hope, in part to fend off the intrusion of a dependent woman and her children. In the culture of relations, decisions are not based on "facts" and a calculation of the most propitious outcome for the woman. They are more compromises than decisions—strategies for survival in a confusing, dangerous, unpredictable situation. It is a culture in which boundaries are shifting and hazy.

In the criminal justice system, it has been common to overlay the culture of power on strategies for helping women. It is assumed that this culture provides the resources required for escaping from violent situations, for redistributing power to the disenfranchised. Too often, however, the imposition of the culture of power upon women's problems has not empowered women, but has crushed their self-determination (see Davis, 1983; Musheno & Seeley, 1986). In an Omaha study of police response to domestic violence, of 97 victims whose assailants were arrested, 60% did not want the arrest, 65%

reported that their assailant blamed them for the arrest, and 21% were threatened by the assailant because of the arrest (Dunford et al., 1990). There is an incongruity between the culture of power and relational culture.

The culture of power is not a monolithic institution, but has many levels and is dispersed among agents, institutions, language, and the media (Dreyfus & Rabinow, 1983; Foucault, 1980). Individuals representing state power, such as police, social workers, physicians, and media "experts," communicate the perspective of the culture of power. The desirability of order, profit, rational choice, and a domestic realm of privacy, drawn from liberal theory, defines the parameters of acceptable strategies within this culture for ending violence. We propose that criminal justice intervention in battering is bounded by these assumptions. The realities of living with violence, chaos, and fear in battering relationships challenge these assumptions and exceed the limited responses developed from them.

### The Police as Agents of the Culture of Power

The police, as agents of the law, are bound by certain technical rules and occupational ideals. Police as participants in a patriarchal culture are also bound by personal values, attitudes, and images of marriage. Their daily encounters with battered women provide constant evidence of the contradictions between the law, the police, and battered women.

The police are drawn most often from the same social class as those over whom they are mandated to exercise legal control. They do not unilaterally create the culture of power, but are in dynamic relation to it, and earn their living by enforcing it. There are two distinct yet interconnected ways in which the culture of power influences the police response to battering: through the establishment of technical legal and ideological boundaries and through the reinforcement of the dominant cultural perspective.

First, the police culture reflects the principles of the legal culture. The images of what police are supposed to be doing, who they are protecting from what, and the guidelines for their actions are founded

on liberal jurisprudence. The essence of liberal jurisprudence rests in maximizing autonomy and profit while minimizing intervention. The police guard against unlawful intrusion into the maximizing efforts of individuals, focusing on the protection of private property, crime fighting, and maintenance of order (Wilson, 1968).

There are clear boundaries in the statutes that form the basis of police activities, that is, the laws they are empowered to enforce (Littrell, 1979). Standards of evidence, rules of probable cause, jurisdictional boundaries, and laws about search and seizure have been developed through legal decisions dependent on liberal, androcentric jurisprudence. These rules represent efforts to protect the civil rights of individuals against intrusion by the law. They do not reflect the difficulty of women enmeshed in a relational culture or provide officers with authority to alter rules to fit the situation. For example, the first domestic violence laws expanding police powers to arrest were limited to situations involving legally married couples. Officers basing arrest on the probable cause standard could not arbitrarily extend this protection to unmarried cohabitants, even if all other circumstances were identical to a domestic violence assault against a married woman. Of course, officers do employ discretion and discrimination in carrying out their mandate. These choices are generally consistent with the existing hierarchy of power relationships, for example, brutality toward minority group members (see Black, 1976). As we will explore below, the formal rule of law influences police officers' perceptions of the legitimacy of calls by battered women and serves as a resource for conceptualizing the appropriate response.

The second major way in which liberal jurisprudence informs police decision making is in the reinforcement of the acceptance of a particular worldview. This view, as mentioned above, includes clear boundaries between self and other, and between good choices and bad choices. With regard to police work, these boundaries suggest that "normal" citizens do not desire or participate in burglaries of their homes, thefts of their cars, or assaults on their person. Thus, there is an unproblematic assumption of dichotomies between victim and offender, good guys and bad guys, deviant and normal citizens. Police reflect this view in their characterizations of the communities they serve, as they marginalize people living on skid row, in housing projects, or patronizing gay bars or areas of street prostitution. These

people are conceptualized by police as a different category of human beings deserving of a different response (Bittner, 1967; Ferraro, 1989a, 1989b; Van Maanen, 1978). They are "others," who constitute the "deviant" because they live outside the boundaries circumscribed by the ideology of rational, self-interested market maximizers or because they threaten such maximizers with theft and corruption. This category is external to the dominant group of law-abiding citizens perceived to constitute the "normal."

The boundaries separating normal and deviant citizens help officers deal with constant encounters with individuals who fail to meet the standards of humanness enmeshed in the ideology of the culture of power. In daily interactions with individuals whose appearance, demeanor, and surroundings contradict the dominant definitions of "normality," police require some mechanism for managing the cognitive dissonance created by the incoherence between the rational model of "man" on which the law is premised and the raw facts of life. Creating a separate category of "others" allows officers to adhere to the ideology of the law and to implement it, even as they face repeated contradictions.

From this perspective, battered women represent individuals who stray from the model of normalcy. They live with men who beat them and their children, become angry at police for trying to help them, and retract accusations of violence after arrests have been made. From the perspective of the culture of power, such actions are irrational and deviant. Women who enact them are, therefore, indistinguishable from their assailants in terms of culpability (see Hilton, this volume, for a review of police attitudes toward victim responsibility). Police stereotypes of battered women are related to their assumptions of "rational" human action and deserving victims. These assumptions are embedded in the law, rules, and procedures that flow from them.

### Battered Women and Relational Culture

Violence is an aspect of all women's lives (Stanko, 1990). In that sense, battered women are no different from all other women,

although each woman's experience with violence is unique. Yet, repeated physical and emotional abuse by one's husband or lover produces similar emotional reactions in women, including fear, anxiety, depression, and confusion (Blackman, 1989; Kelly, 1988; Pagelow, 1984; Walker, 1979, 1984). In using the language "relational culture," we are not suggesting that all women are inherently more warm, nurturing, and caring than all men. Rather, we use this term to represent the complexity of relationships and concerns that influence battered women.

Battered women are differentiated from most crime victims by their relationship with their assailant. Not only is there a direct emotional bond between the woman and her husband or lover, but they also are tied in the myriad connections created and enforced in a patriarchy in which heterosexual monogamy is compulsory (Rich, 1980). Although the police response to woman battering is influenced by the ideologies of liberal jurisprudence and rational choice, women's responses are located within complex experiential and relational knowledge, as well as the external ideology of romance.

The experience of battering does not occur in isolation from other life circumstances. Some battered women have emotional, social, and economic resources that support escape from violence. Other women do not have access to such resources or face batterers whose persistence makes escape efforts extremely arduous and dangerous. Some women face extraordinary restraints that legally bind them to an abuser, such as court-mandated joint custody and visitation of children, immigration status, or shared financial liabilities.

Responding to physical violence entails a wide repertoire of strategies of survival, some of which are invisible to outsiders. Women approach trusted insiders and external authority figures for assistance in defining experiences, developing strategies for change, providing tangible resources, and intervening in the abuse. Survival strategies involve scrutinizing an array of individuals and institutions for effectiveness. Within the boundaries of her relationship, the woman must evaluate each resource as making a positive or negative contribution to the safety of herself and her children. The demands of maintaining a delicate balance of outside interference add to the complexity of calculating safety. Any resource that upsets that balance threatens her survival.

From this perspective, the police are only one potential resource that must be evaluated within the more complex web of resources making up the larger picture of assistance. Whether the assistance the police offer will prove helpful must be weighed and measured in the shifting and sometimes hazy context of not only the extent of the violence but also the current status of the relationship and the short- and long-term strategies for its maintenance or dissolution. To the extent that any resource, including the police, fails to provide for ultimate safety concerns, it may be abandoned by the woman. The identification and utilization of a given resource can only be framed by the woman's assessment of her needs, a frame that is at once unique and similar to the frames of other women.

The expectations each woman has of helping resources will vary depending on the particular circumstances of the relationship. When women call upon the police they overlay their relational culture, within which they have vast, changeable needs, upon agents of the culture of power operating within limited boundaries with circumscribed responses. Women's needs are bounded by the culture of relationship; the police response is bounded by the culture of power.

The ideology of romantic love is one of the bulwarks of women's enmeshment in relationships with men who batter. Romantic love is highly regarded in contemporary North American culture, across race and class lines. The culture is saturated with visual, dramatic, auditory, and folkloric imagery of romance, from billboards along the freeway to Disney movies to popular music. It is not unusual or surprising in any way that a woman would hope to establish a romantic relationship with a man. In fact, it is considered quite deviant if she does not. The establishment of romantic relationships is accompanied by high expectations and hopes for fulfillment. When marriage occurs, the state, and state-sanctioned religion, intervene to ensure that both parties take their obligation to matrimony seriously. Even in the case of no-fault divorce, the dissolution of marriage is much slower, more expensive, and more legally complicated than its creation. Informal social control is very clear and strong: Divorce represents failure and should be avoided unless all possible remedies have been exhausted, especially if children are involved.

Most women's first response when hit by a partner is not to leave immediately, file for divorce, and never look back. Rather, a woman

will attempt to understand why it happened and how *she* can prevent it from reoccurring. Most women become involved in a process of adaptation and rationalizations, conceptualizing men's violence as a problem they have to deal with and control (Ferraro, 1983; Ferraro & Johnson, 1983). Relational culture is characterized by process and compromise rather than single-point decision making about the best alternatives.

A continuum of adaptations to male violence exists, with initial denial moving to hopes for change and finally to rejection of the relationship (Ferraro, 1983; Ferraro & Johnson, 1983). Women's feelings about violence are neither static nor unidimensional, but instead alternate between levels of rejection of and accommodation to the abuser. The types of help sought and desired vary depending on women's location in the continuum of adaption and on prior help-seeking efforts (Bowker, 1982; R. E. Dobash & R. Dobash, 1979). At any given point of help seeking, women may be broadly grouped as falling into three categories of adaptation: those who have decided to end the relationship; those who still hope for improvement in the relationship; and those who are suicidal, homicidal, or dependent on drugs for alleviation of suffering (Caputo, 1988). Caputo found that a majority of battered women who had called the police for help hoped that the relationship would change (87%). About half of the women said they loved their husband, and 60% said they "didn't know what to do" (p. 503). For a large group of women, help seeking reflects a desire to end the violence, but not necessarily the relationship. These women will have different needs and expectations of police from women who have decided that the violence will not end and desire to terminate the relationship. Variations in women's needs suggest the importance of a police response that is sensitive to the subtleties and complexities of a particular situation and to *women's* evaluations of their needs.

In many cases, a woman calling the police for help with a battering partner is not declaring an end to the relationship. She is asking for help in controlling his violence. At the point of prosecution, many women ask the courts for "help" for their abuser, rather than imprisonment (Ferraro & Boychuk, 1992). Even women who have already ended their relationship and need assistance dealing with the

violence that follows that decision may be facing a more complex set of circumstances than a woman assaulted by a stranger. They may know from past experience, for example, that arrest will not end the harassment and abuse, and fear an escalation if they assist in prosecution.

The inability of women to fit into police categories and the common, but *not universal*, feelings of ambivalence toward arrest place battered women at odds with the police. The misfit between battered women's needs and experiences and those of the police results in considerable frustration and ineffectiveness in policing battering. So far in this chapter, we have presented a theoretical account of the cultures of power and relationships. The research that follows serves to illustrate these cultures and how they operate on an everyday level. This study of the adoption of a presumptive arrest policy brings out the complexity of implementing such a policy. The considerations of police officers and battered women's perception of the effectiveness of police intervention provide insight into the clash between the culture of power and relational culture.

### Imposition of the Culture of Power: Examination of a Presumptive Arrest Policy

#### Setting

As part of the national shift toward enhancing the chances for arrests for domestic violence, the Arizona state legislature passed a domestic violence bill in 1980. This legislation prohibited police from citing and releasing domestic violence offenders, expanded police officers' ability to arrest on the basis of probable cause, required officers to provide procedural and service information to victims, and allowed for orders of protection to be obtained independent of a divorce action. By May 1984, the Phoenix, Arizona, Police Department had adopted a presumptive arrest policy that stated: "Officers should arrest domestic violence violators even if the victim does not desire prosecution. When probable cause exists, an arrest should be made even if a misdemeanor offense did not occur in the officer's presence" (Ortega, 1984, p. 1).

## Method

To examine the effect of this policy, Ferraro conducted a participant observation study of the police (see Ferraro, 1989a; 1989b). Observations of 44 ten-hour shifts in three precincts were conducted on weekend nights. Observers included one female professor, two male professors, and three female graduate students. The fieldwork began 3 weeks after initiation of the presumptive arrest policy and ended 1 year later.

For purposes of the study, battering was defined as actual or threatened physical violence by one adult against another adult with whom s/he currently or previously had shared an intimate relationship. This definition was more expansive than the domestic violence statute, which was limited to legally or formerly legally married couples. Other criminal statutes, however, were applicable to all incidents coded as "family fights." We chose a more inclusive definition to allow exploration of the range of police responses to cases coded "family fights." Our primary interest was in the application of a presumptive arrest policy in the field to actual cases of domestic violence.

The field notes of 440 hours of field observations were culled for instances of family fights, which were coded for the participants, type of incident, and intervention. After determining these basic data, the notes were analyzed and basic themes regarding police perceptions and actions were extracted. In examining police actions, we attempted to determine whether cases met the legal criteria for arrest, particularly domestic violence arrest, under the new policy.

## Results and Discussion

During the researchers' observations, police responded to 69 family fight calls, 49 of which fit our definition of woman battering. Only nine (18%) of these cases resulted in arrest, despite the presumptive arrest policy. All but one of the arrests involved weapons or injury to someone other than a woman.

We discovered that legal criteria were not the only nor the most salient considerations in officers' decision making. Three contextual considerations also emerged. The most prevalent and influential

consideration was the background ideological assumptions that police brought to "family fights." Additionally, officers were influenced by the context of daily practical considerations and the politics of police work. These contextual considerations did not operate in isolation, but were intersecting, sometimes dissonant, influences on the officers and their decisions.

It is through exploring these four considerations in police decision making (legal, ideological, practical, political) that we can understand how the irreconcilable differences described above influence the police and battered women. The impact of the differences between the culture of power and the culture of relations can be seen clearly at the point of policy implementation, in the everyday interactions on the street. Each of these considerations and the circumstances in which they were encountered will be described briefly (see Ferraro, 1989a for complete discussion).

### *Legal Considerations*

The nature of police work requires discretionary evaluation of legal criteria. Officers collect information at a crime scene to determine whether an offense has been committed, and if there is probable cause for arrest (Brown, 1981; Littrell, 1979). There are a variety of statutory offenses into which a domestic violence disturbance can be categorized, ranging from disturbing the peace to homicide. For each offense, certain elements must be present for the behavior to fit the legal categorization. In Arizona, for misdemeanor assault, there must be evidence of a physical assault or attempt of an assault, including injuries, weapons, or witnesses. For an officer to make an arrest for misdemeanor assaults against unmarried individuals, the crime must be witnessed.

Domestic violence statutes in Arizona and other states permit arrest on the basis of probable cause, including the above evidence. When the presumptive arrest policy was first adopted in Phoenix, however, domestic violence occurring between cohabiting, unmarried couples was not covered by the statute. Cohabitation was still a crime, so to provide protection to such individuals would support illegal activity. Of the 49 cases of battering observed, 15 involved cohabitants. Three of these, all involving weapons (ball bats and a knife) and injury,

resulted in arrests. The identical circumstances between an unmarried couple and a married couple were interpreted differently due to the legal exclusion of cohabitants from the domestic violence statute. The cases where arrests were made involved high levels of violence, which categorized the incident as a felony-level assault, enabling arrest on the basis of probable cause regardless of the couple's relationship. The issue of cohabitation, then, was one legal factor impinging on the construction of probable cause arrest.

At the same time, legal considerations are not immutable forces with which officers must comply, but are resources that can be adapted (Littrell, 1979). For example, the use of citizen's arrest is an option officers can employ when they are unsure of the strength of evidence. If a woman wants an arrest for an assault that only marginally conforms to the legal elements of assault, an officer may assist her in making a citizen's arrest. This legal option was employed in one case of assault by a man against his cohabiting partner, where the assault consisted of spitting. The officer explicitly informed the observer that the use of citizen's arrest would ensure the case would go forward despite the minor nature of the assault. Although this option was available and appropriate, it was not employed on other occasions where the lack of legal marital status was the only barrier to arrest for a misdemeanor assault. Thus the law does impose constraints on decision making, but those constraints are still interpreted in light of other considerations that are more salient to the creation of meaning.

### *Ideological Considerations*

Probably the most influential considerations in police decision making are the background beliefs about battered women and family fights that police bring to specific incidents. These include class, race, and sex stereotypes as well as images of danger and safety. In terms of class, race, and sex, the distinction between normal and deviant citizens described above came into play at domestic disturbances observed in this study. Women from low-income neighborhoods, especially those who did not speak English or were members of racial minorities, were likely to be viewed as enmeshed in a culture of violence. In this context, a specific violent event was understood to be part of a larger pattern of degradation beyond the scope of police

intervention. Unless a woman was in the throes of a violent physical assault, such incidents were usually categorized as noncrime. Women were told to call if anything else happened. Even though probable cause already existed, arrests were not made.

The response to domestic violence in the low-income areas reflects the notion that individuals there have fewer rights to privacy and to civil courtesy than middle-class suburban people (Bittner, 1990). In our observations, for example, a woman who spoke only Spanish and lived in a very crowded, poorly maintained housing project was escorted by police to a neighbor's house at 2 a.m., although she wanted her husband arrested. The neighbor was asked to house her and her three small children for the night, while the inebriated, violent husband was left in their house two doors away. It is unimaginable that a similar strategy would be employed in an upper-class neighborhood, where the privacy of each home is sacrosanct.

Anglo-Americans living in the housing projects are not considered part of the "normal" white population, but are grouped with those external to the dominant culture. A young Anglo woman living in the projects was denied any redress although she displayed burn marks around her neck produced by her husband's choke hold. She was informed that no real danger existed and told to call if there was any further trouble. It is not possible to assess whether the lack of responsiveness displayed toward this woman is the result of her class, sex, or status as a battered woman. There were no observations of middle- or upper-income women for comparative purposes. It is possible that any battered woman would fall outside the boundaries of police definitions of "normality."

Officer comments during ride-alongs reflected racist attitudes toward Hispanics, African Americans, and American Indians that then influenced their perceptions of violence. One Anglo male officer expressed the belief that Mexicans were taking over Phoenix, noting that certain parts of Phoenix "look just like old Mexico." Driving by a bar frequented mostly by American Indians, the same officer said, "Yah ta hey! Come down from the reservation to get some firewater. Yeah, going to get a little firewater," and told several stories about drunken Indians, suggesting they were inferior to non-Indians.

Sexist attitudes are expressed in views of battered women as "stupid." They are stupid for "getting themselves into" violent situations

and stupid for staying. One officer said that he always asked women why they stayed with abusers. He said one woman told him, "I guess I'm just stupid," and he replied, "I guess you are." He had no sympathy for her because her child was also being abused.

Stith's (1990) analysis of police attitudes toward battered women found that the more traditional their sex-role beliefs and the more conflict officers experienced in their own marriage, the more hostile they were toward battered women. In our study, several officers expressed beliefs that a man's home is his castle where he should be able to control the actions of his wife and children. One officer acknowledged (without remorse) hitting his wife, and another suggested it was better to hit your wife than to destroy your property when angry. Men who destroyed their own property during a battering event were viewed as foolish, but not criminal. In two cases, this property was the wife's car, her only means of escape.

For these officers, the presumptive arrest policy represents a departure from their value system viewing wife battering as a private male prerogative. Evaluations of blame, harm, and danger, which constitute the basis for arrest, are filtered through this value system. The presumption of arrest or probable cause does not override this process.

As Davis (1983) argued, the primary focus of police intervention into domestic violence is the restoration of a "semblance of order." Such a focus does not usually address the private terror experienced by a woman who is threatened by her partner. If the violence has subsided and is no longer visible to outsiders, including the police, officers perceive the situation as "under control." Women who have left the house or who have been left alone by the assailant are perceived as safe by officers. The Anglo woman with burn marks on her neck was told that approaching her abuser would only stir up trouble and that "It will just get him all riled up, and the baby's sleeping. Everything's OK right now."

The focus on "right now" is contrary to women's continuing experiences with violence. The women in our study reported recent use of guns and knives, break-ins, threats, and batterings by their partner, but officers bracketed these incidents as irrelevant to the current search for probable cause. Officers focused on danger and evidence at the specific moment in time and made no attempt to investigate the existence of prior reports. Women were responding to complex

biographics of abuse and therefore perceived a higher level of danger. The culture of power, the law, translates battering into an offense that is evaluated in isolation from history and relationships. The relational culture experiences battering as a long-term, escalating process. Even when women attempt to translate their experiences into the language of law by describing prior police contacts, incidents with weapons, and OPs, officers reject information external to the specific incident. The different foci of women and police create disparity in the evaluation of level of danger. As long as a "semblance of order" is restored, police see no need for further action.

Failure to perceive further danger also results in police failure to provide information about social services or legal resources. Information about emergency shelters, counseling, legal aid, and orders of protection was only provided twice without the prompting of the researcher. Several times the researcher acted as a conduit between the officer and the woman seeking resources or referrals. The emphasis on restoring order for the moment leaves battered women and their children in the same danger zone after the officer leaves the scene; often, women are left with no phone, car, money, or possibility of police intervention.

The Family Stress Team was available 24 hours a day specifically for counseling battered women. Officers who were questioned about the team said that it did good work and was a valuable resource. Of the 69 cases observed, however, officers made calls to the Family Stress Team only four times, and two of these calls were suggested by the researcher as the officer walked away from the scene. Officers did not see the need for crisis intervention if the couple was separated by arrest or by one person's absence from the home.

Another ideological influence on police perceptions is the belief that battered women are poor witnesses. Police believe that most battered women will not follow through with prosecution and will deny the violence to prosecutors and judges (cf. Ford & Regoli, this volume). Part of the intention of requiring police to arrest by law is to remove the onus of pressing charges from the woman, who is often intimidated by her partner. Theoretically, it is not up to the woman whether she wants to press charges, as the crime is against the state. A crime with a victim who denies its occurrence, however, is difficult to prosecute, especially if there are no visible injuries as a result of the

assault. As discussed above, women interact with the criminal justice system at various points in their relationship. Many are not ready to end the relationship and perceive full prosecution as an unacceptable threat to reunification. The range of concerns women face in determining the feasibility of prosecuting assailants is not accessible to police decision makers.

Some officers in our study did express sympathy with women's predicaments, but remained frustrated over energy expended on arrests that resulted in release due to women's decision to drop charges. It is interesting, however, that the proportion of cases dropped from prosecution because of the inadequacy of police reports in documenting evidence (10%) is nearly as great as the proportion dropped because of victim-witness reluctance or refusal to prosecute (13%) (Ferraro & Boychuk, 1992). Police can place blame for dropped cases on battered women and thereby deflect responsibility for failing to handle cases in a manner that would enhance the chances of prosecution.

Officers also tend to rely on the stereotype of the reluctant witness as a model of prediction, reflected in statements such as, "She's mad tonight, but tomorrow they'll be back together." Presumptive arrest is inconsistent with this prediction, leading officers to question the usefulness of arrest. Street-level experience, however, does not reflect knowledge about what happens to women when men are *not* arrested. The continuing danger to women in battering relationships is overshadowed by officers' "street knowledge" of typical patterns of reconciliation.

### *Practical Considerations*

Ideological considerations are linked to considerations of available resources and the practical circumstances facing officers. One major issue overlooked by the presumptive arrest policy is the departure of batterers from the scene when police are called. In 40% of the cases observed, no man was on the scene to be arrested. In such cases, the appropriate procedure is to write a report that can be followed up the next day or to search for the man. The latter option was never followed. It was not always possible to determine whether reports were written by officers, as several cars were called to the same scene. In those cases

where the officer being observed was the primary responding officer, observers determined that reports were not written in the majority of cases.

Another practical problem discussed by officers is the issue of "mutual combat." As Berk, Berk, Loseke, & Rauma (1981) and Saunders (1988) have pointed out, "mutual combat" almost always consists of an aggressive male and a defensive female. Women's violence, when it occurs, is an attempt at self-protection. In part because of the decontextualized nature of police intervention, officers who find two violent people at a domestic disturbance find determination of fault problematic. In Washington state, when mandatory arrest was introduced, large numbers of mutual arrests were made on the grounds that officers could not determine who "started it." In response, Washington instituted a "primary aggressor" clause, which requires police to arrest the initiator and the most violent partner (Crane, 1987). In our study, however, the presence of two violent persons translated into no official action, as officers believed it was not possible to build a case when the testimony of either party would be self-incriminatory. This attitude extended to cases where the only "violence" apparent on the part of the woman was yelling and being under the influence of alcohol. The ideological conception of "real danger" structured the perceived practical problems of "mutual combat" in this study.

Time was another consideration that influenced officers' behavior. It takes at least an hour to process an arrest. When officers were nearing the end of their shift, particularly if that shift ended at 4:30 a.m., they were less inclined to initiate lengthy procedures. More important, officers viewed domestic calls as an investment of time that infringed on other police work. Time limits were invoked as rationales for refusing to transport women or to wait and search for an assailant. One officer recounted a situation in which she had been unable to respond to an armed robbery call because she was transporting a woman to a shelter. Such accounts underscore the hierarchy of importance attached to different crimes. Woman battering is low on the hierarchy for police officers.

Other practical considerations we observed included: placing children in foster care in cases of mutual arrest; people who answer the door and insist everything is resolved; wrong addresses, or no

response to knocks on the door; and women who request that charges not be brought.

Many of these practical problems are a reflection of the societal emphasis on the privacy of the nuclear family. To protect individual privacy, officers cannot enter private homes without an invitation or a warrant. Women are expected to demonstrate a commitment to prosecution when their husband is the assailant, although the same level of commitment is not expected in the case of stranger assaults. Most significant, police officers do not consider violence against women in their home to be "real police work" equal in importance to crimes committed in public space.

### *Internal and External Politics*

At the same time that police are influenced by legal, ideological, and practical considerations, the politics of the police department and of the community it serves are relevant to officers' actions. In Phoenix, street-level officers doubted the sincerity of administrative fiats, particularly those at odds with the realities of street work. The presumptive arrest policy was viewed by many officers as a political manoeuvre by the chief to demonstrate action to battered women's advocates. Although training was provided on the policy, many officers either did not remember it or evaluated it negatively. There were no incentives for following the new policy, nor built-in penalties for failing to follow it. A memo circulated shortly after the introduction of the policy stressed the importance of establishing probable cause. Many officers interpreted the memo as further evidence that the policy was not to be taken seriously, but was merely "for show."

The external politics were perceived by officers as being adversarial and potentially harmful to their career. The low-income, black sections of town were viewed as hostile territory where officers were unwanted and endangered. Police shootings of citizens in the area were recent events and negatively affected the atmosphere of police community relations. Officers believed that housing project committees held considerable power and influence with the police chief. They were therefore reluctant to engage in practices, such as domestic violence arrests with no cooperative witness, in these areas.

At the same time, the community of women activists was not considered large or powerful. There were about a dozen women as part of the Maricopa County Task Force Against Domestic Abuse who fought for greater protection for women. As representatives of the relational culture, however, these women were not adopted into the higher echelons of power at the police or government levels.

Consideration of political influence and community context is important information for advocates working to improve police responses to battered women. In this case, the perception of a weak influence of battered women's advocates and a strong influence of the project committees shaped police officers' perceptions of the consequences of their responses to battering.

### Women's Perceptions of Police Response

Following the observational portion of this study, a small sample of women who had called the police was interviewed. The sample was small because few of the women whose names were given to us by the police department remained at the addresses listed in police files. A number of those who were contacted either did not have time for an interview or did not wish to relive their experiences.

Seventeen open-ended interviews were completed. The women were almost evenly split on whether the police interventions were helpful. Eight women evaluated the police negatively. Two of these women were arrested and spent a night in jail. One of these women was forced out of her home after her husband received an order of protection against her. Other women reported that police promised they would come to the home or would return, but did not. Some were told there was nothing the police could do to help. One woman was "yelled at" for not wanting to press charges, and other women said they were treated rudely. These eight women would not advise other women to call the police if they were battered.

The other nine women evaluated the police positively, but not all believed they were helpful. Women described officers as "professional," or "very nice," but did not necessarily believe the police

intervention benefited them. Several women were convinced that their husband's severe alcoholism and "craziness" were uncontrollable through any means. Other women felt that the risks involved in prosecution were greater than in avoiding it. This was true for two women who believed their own or a close relative's immigration status would be jeopardized by police involvement.

Five women were unequivocally positive in their assessments of the police. Four were at the point of ending their relationship and only needed police assistance in persuading their husband to stay away. They were not currently enmeshed in violent situations. Three of these women were divorced following police intervention and had no subsequent problems with their ex-husband. One woman reported that the police intervention was the impetus that led her and her husband to fundamentalist religion and prayer, which she believed had saved their marriage. One woman obtained a second order of protection against her ex-husband and was successful in deterring future violence.

Even with this small sample of women, it is apparent that the needs of women are not identical. Women's needs reflect their current position on the continuum of adaptation to violence. They simultaneously represent various levels of resources, concerns, and knowledge of workable survival strategies. As discussed above, only individual women have access to the range of considerations bearing upon the most appropriate police intervention for their particular situations.

## Conclusion

Battering is a serious crime that inflicts suffering on millions of women each year. The empowerment of police, however, is not a substitute for empowerment of women. Any legal or policy changes that increase the power of police without simultaneously striving for the empowerment of women will have the potential to decrease rather than improve the level of women's safety.

Women know their situations and needs, and are capable of developing survival strategies that fit their particular circumstances. When criminal justice agents acknowledge this ability, interventions are more likely to succeed. For example, Ford (1991) found that prosecu-

tion of wife batterers was most successful when women were included in the decision-making process. It would be advantageous to follow a similar course in policing. Because the needs of women vary, it seems appropriate to ensure that a full range of options is available. The rapid development of public concern, legislation, and scholarship on battering has accelerated at the expense of a full elaboration of the complexities of emotional and physical violence. The term "battered woman" glosses over the emotional ties, interludes of calm, and shared history that women experience over the course of relationships with violent partners. Extracting physical violence as the pivotal concern, whether for academic or legal purposes, simplifies the intricacies of relationships. This simplified, unidimensional understanding of battering precludes appreciation of the depth of irreconcilable differences between the culture of power and relational culture.

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