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Men's Violence Against Wives and Partners: The State and Women's Experience, 1960-1984

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Jacqueline Marie O'Neill
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ABSTRACT

While men's violence against wives and partners is universal and transhistorical, the various terms used to describe it have been, and remain mutable, constructed and contested. This thesis traces how men's violence against wives or partners was once constructed as a private or domestic matter and how and why these constructions have changed over time; and what effects, if any, the changes might have had on the way the violence was responded to, and experienced by victims. The thesis is particularly concerned with state practices and how these impacted on women's capacity to resist a husband's or partner's violence.

The thesis begins with marriage in the medieval period because marriage and the family have been central to the concept of "domestic" as it emerged in Western society. The principal temporal focus of the thesis is the 1960s – 1984. The 1960s were a period marked by rapid social change that provided a foundation for the construction of "domestic violence" in the 1970s. The thesis ends in 1984, two years after the Domestic Protection Act which marked a radical shift in the construction of men's violence against wives or partners from a private matter to a public one, and one year after the state began to fund places of refuge for women trying to escape violent partners.

The central concern of this thesis is the operation of both dominant and resistant discourses that structured social practices in particular fields that affected women's capacity to resist violence by a husband or partner. How men's violence against wives or partners is constructed is crucial to social responses to it and women's experience of it. Discourse analysis is especially suited to this project because it can reveal which discursive practices created and upheld particular forms of social life. Importantly, a discursive analysis can explain the difference between rhetoric and practice. Although the thesis is underpinned by a legislative trajectory which appears linear and progressive, the discourses which swirl around legislative measures are constantly evolving, sometimes in regressive and internally contradictory ways. Exploring the discursive field of men's violence against wives or partners provides an understanding of historical actors and practices, and has a contemporary value. Current discourses of domestic violence are shaped by discursive practices that occurred in the period under study. Multiple contesting and contradictory discourses continue to undermine gains made by women in resisting domestic violence today.

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ABBREVIATIONS

AHH	Auckland Halfway House for Women
ATL	Alexander Turnbull Library
AJHR	<i>Appendices to the Journals of the House of Representatives</i>
ANZ	Archives New Zealand
BWSG	Battered Women's Support Group
CWR	Christchurch Women's Refuge Centre
DNZB	Dictionary of New Zealand Biography
DPB	Domestic Purposes Benefit
DPBRC	Domestic Purposes Benefit Review Committee
DSS	Department of Social Security
DSW	Department of Social Welfare
DWR	Dunedin Women's Refuge
HL	Hocken Library
HFS	Home and Family Society
IWY	International Women's Year
MBL	Macmillan Brown Library
MHF	Mental Health Foundation
MP	Member of Parliament
NCIWR	National Collective of Independent Women's Refuges
NCW	National Council of Women
NOW	National Organization of Women
NSW	New South Wales
NZLJ	<i>New Zealand Law Journal</i>
NZLR	<i>New Zealand Law Reports</i>
NZOY	<i>New Zealand Official Yearbook</i>
NZPD	<i>New Zealand Parliamentary Debates</i>
NZS	<i>New Zealand Statutes</i>
NZSW	<i>New Zealand Social Worker</i>
NZULR	<i>New Zealand Universities Law Review</i>
NZWW	<i>New Zealand Woman's Weekly</i>
PNWR	Palmerston North Women's Refuge
RCC	Royal Commission on Courts
RCSS	Royal Commission on Social Security
SPWC	Society for the Protection of Women and Children
SROW	Society for Research on Women
TH	<i>Timaru Herald</i>
VUWLR	<i>Victoria University of Wellington Law Review</i>
WWR	Wellington Women's Refuge
YWCA	Young Women's Christian Association

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INTRODUCTION

Exploring men's violence against wives and partners is important because of its far-reaching effects on women's wider lived experience. While this violence has been described as 'universal and trans-historical', the various terms used to describe it have been, and remain mutable, constructed and contested.¹ Men's violence against wives and partners was once constructed largely as a private matter, one of domestic relations, distinct from violence against a stranger. Gradually over time the construction of it as a private matter eroded. As it was brought into the public sphere the state intervened to discipline domestic relations between spouses and partners.

In tracing how constructions of men's violence against wives and partners have changed over time, the thesis also considers what effects, if any, the changes might have had on the way that violence was responded to, and experienced by victims. It is concerned specifically with state practices and how they impacted on women's capacity to resist a husband's or partner's violence. It examines changing discursive and material supports behind state responses and how these sustained or undermined the social structures which enabled men's violence against their wives and partners.

The thesis begins with marriage in the medieval period, because marriage and the family have been central to the concept of "domestic" as it emerged in Western society especially from the Middle Ages, and because marriage was the primary framework for regulating men's violence against wives. Gendered expectations of masculinity and femininity determined "normal" domestic relations. This study then investigates changes in gender discourses and concern with male violence that occurred in the Victorian period, which underpinned the emergence of "wife-beating" or "wife-assault" as a problem of social proportions in late nineteenth century England and New Zealand. These historical shifts provide an opening for interpreting the discursive framework for such violence. The principal temporal focus of this thesis is from 1960 to 1984. The 1960s were a period marked by rapid social change that provided a foundation for the construction of "domestic violence" in the 1970s. The thesis ends in 1984, two years after the Domestic Protection Act marked a

¹ Martin Wiener, *Men of Blood. Violence, Manliness and Criminal Justice in Victorian England*, Cambridge: Cambridge University Press, 2004, pp.9-10.

significant shift in the construction of men's violence against wives and partners from a private matter to a public one, and one year after the state began to fund places of refuge for women trying to escape violent partners. "Domestic violence" had now entered state discourses and become a focus of state policies. However, as this thesis indicates, the meaning of men's violence against wives and partners, and state policies towards that violence are dynamic, constantly being re-worked as multiple discourses vie for dominance and contest its meaning.

A historical account is required because the past continues to play a part in contemporary beliefs and behaviours.² In particular, discourses of marriage and gender embedded in social practices powerfully shaped constructions of men's violence against wives and partners as "wife-beating" or "domestic violence". Current discourses of "domestic violence" or "family violence" are shaped by discursive and material changes that occurred in the period under study. Thus, engagement with the past enables an understanding of contemporary practices around that violence.

THESIS APPROACH

The main concern of this thesis is the operation of dominant and resistant discourses that structured social practices in particular fields framing women's capacity to resist violence by a husband or partner. Michel Foucault developed the concept of discourse to express the relationship between language, social institutions, subjectivity and power.³ Discourses work to make speech possible, organize ideas or concepts, and produce 'objects of knowledge'.⁴ In effect, they are systems of representation.⁵ Because social practices are imbued with meaning, and meanings shape what we do, all practices can be said to have a discursive aspect.⁶ Practices have more than just a discursive effect because they in turn engage with discourses, opening such discourses to re-interpretation. Because discourses structure social practices, discourse analysis

² R. Emerson Dobash and Russell P. Dobash, *Violence against Wives. A Case Against the Patriarchy*, New York: The Free Press, 1979, p.32.

³ Chris Weedon, *Feminist Practice and Poststructuralist Theory*, Oxford: Blackwell Press, 1997, p.34.

⁴ Geoff Danaher, Tony Schirato and Jen Webb, *Understanding Foucault*, Crows Nest, Australia: Allen & Unwin, 2000, p.21.

⁵ Stuart Hall, 'Foucault: Power, Knowledge and Discourse', in Margaret Wetherell, Stephanie Taylor and Simeon J. Yates, eds, *Discourse Theory and Practice. A Reader*, London: The Open University Press, 2006, p.72.

⁶ *Ibid.*, p.72.

remains a useful tool to show what, and how, discursive practices created and upheld particular forms of social life. It can reveal how dominant discourses acquired and maintained their status over time, how these engaged with resistant discourses, and how dominant discourses might have been undone and remade. Discourse analysis provides a means to connect the concept or the individual with other social systems of meaning.⁷ Individuals are not self-governing subjects, but are constituted through discourses and it is through discourses that we interpret our personal experiences and act on them.⁸ Although discourses operate on all individuals, they do so in uneven ways.⁹ Each individual is subject to multiple discourses at any one time, which offer different sets of possibilities.¹⁰ Discourse analysis can reveal what power inequalities existed. This is especially relevant to a historical study in which gender plays an explicit part. Understanding power inequalities requires attention to systems of representation, that is, 'to ways societies represent gender, use it to articulate the rules of social relationships, or construct the meaning of experience'.¹¹ Studying discourses can show how social relationships were constructed, and the dynamic and complex nature of social interactions. Discourse analysis, therefore, is about tracing changes because it assumes all meanings are open to 'interpretation, re-statement and negation'.¹² Changes, as this thesis indicates, are not progressive and linear. Although the thesis is underpinned by a legislative trajectory which appears to be just that, the discourses which swirl around legislative measures are constantly evolving, sometimes in regressive and internally contradictory ways.

Because we interpret our experiences through discourses, something is not conceptualized until it enters into discourse. As Joan Scott puts it, 'without meaning there is no experience; without processes of signification, there is no meaning'.¹³ While things have a real material existence in the world, they do not have a meaning

⁷ Joan Wallach Scott, *Gender and the Politics of History*, New York: Columbia University Press, 1988, p.38.

⁸ Michel Foucault, *Power. Essential Works of Foucault 1954-1984*, vol.3, James D. Faubion, ed., London: Penguin Books, 2001, p.4.

⁹ Danaher, Schirato and Webb, pp.71-74.

¹⁰ For example, what "domestic violence" means to a woman will depend on the ways of understanding to which she has access. This involves her self-image and her beliefs around gender and the family. If a woman views gender as a biological condition and men as naturally violent, she is more likely to tolerate a husband or partner's violence against her.

¹¹ Scott, p.38.

¹² Ibid., p.66.

¹³ Ibid., p.38.

outside of discourse.¹⁴ How men's violence against wives and partners is named has implications for whose experience is named and whose is not.¹⁵ So although acts of violence have material and psychic effects on bodies, without being named they are excluded from the social realm of language where discourses make meaning and structure practices. In criminal law, the discursive exclusion of psychological violence from the concept of "assault" meant the criminal law could not discipline it.

The nexus of Foucault's theory is the power/knowledge regime: 'the exercise of power perpetually creates knowledge and conversely, knowledge constantly induces effects of power.'¹⁶ At any one time multiple discourses are competing for "truth" status. Power is exercised through discourses because each version of representation favours particular possibilities for individual subjectivity and social organization that benefit particular groups. Those discourses that obtain "truth" status possess great power in constructing and constraining social life. This thesis is concerned with the operation and effect of such claims on the organization of social life that related to women's experience of a husband's or partner's violence. Discourses that are supported institutionally are usually the most powerful. Institutions are constituted by a relatively enduring and stable set of relationships between people and between people and objects.¹⁷ Such institutions include the legal system, the family, marriage, compulsory heterosexuality and the education system.

Discourses are a site of intense struggle because the construction and reproduction of social practices and meaning matter a lot to everyday lives. For example, if a judge viewed a husband's violence towards a wife as "chastisement", a construction shaped by discourses of marriage that granted a husband disciplinary rights over a wife, he would be less likely to view the wife as in need of protection. While there are dominant forms of social practice, the discourses that justify and contest these practices are many. Within the discursive field of men's violence against wives and partners in the period under study, a violent husband could be positioned as a "criminal", a "good husband", "a problem drinker" or a "victim". The contesting and

¹⁴ Hall, p.73.

¹⁵ Suellen Murray and Anastasia Powell, 'What's the Problem? Australian Public Policy Constructions of Domestic and Family Violence', *Violence Against Women*, vol.15, no.5, May 2009, p.537.

¹⁶ Foucault, p.xvi.

¹⁷ Danaher, Schirato and Webb, p.36.

contradicting nature of multiple discourses means that relations of power are not immutable and can shift depending on changing alliances and circumstances.¹⁸ Because discursive shifts imply shifts in power relations, they are resisted and older discursive forms can persist for long periods. Through this process, new discursive positions become available.¹⁹

Because of changes within different discursive fields, subjectivity is a site of disunity and conflict and is central to processes of political change or to the preservation of the status quo.²⁰ Within this theoretical paradigm, the individual may resist particular subject positions or produce new versions of meanings from the conflict and contradictions between existing discourses.²¹ An individual's action either maintains or challenges a dominant practice, which feeds back into the discourse, either enhancing or diminishing its power to shape the subject. In this sense, the individual's agency is a 'discursive effect' and specific to particular contexts.²² However, agency has discursive limits. And while a variety of subject positions might linguistically be on offer, these subject positions are also shaped by other dominant discourses organizing social life, reflecting the inter-textuality of discourses.

Inter-textuality indicates the need to look further afield from the discursive field of men's violence against wives and partners to other discourses which intertwine with them, such as discourses and practices of social welfare. Power relations can render opportunities within one discourse mute. For example, social practices that reinforced female economic dependence on husbands undermined subject positions within legal discourses that enabled a wife to leave a violent husband. Even with material choices, state practices in one discursive field could circumscribe agency in another. A woman may have had an alternative place to go from a violent marriage, but legal practices around custody might have prevented her taking her children with her. At the extreme end, material and discursive possibilities might not have mattered at all. A woman who saw herself as a deserving victim and had material choices outside a violent

¹⁸ Ibid., pp.71-74.

¹⁹ Weedon, p.9.

²⁰ Ibid., p.21.

²¹ Ibid., p.102.

²² Joan Scott, 'Book Review – Heroes of Their Own Lives: The Politics and History of Family Violence', *Signs*, Summer 1990, p.851.

marriage might have decided to stay because by leaving she might have risked serious, even fatal violence. It is acknowledged that the most dangerous time for a woman in a violent relationship is when she leaves.²³

The exercise of power in assigning meaning to women's experiences of a husband's or partner's violence is important in this thesis. Although Foucault does not specifically speak of gender, his theories provide analytical tools that identify and explain how power operates in society to shape social organization and individual material realities. While the name "sex" references the biological difference between male and female bodies, gender references the social construction of those bodies, i.e. the meaning assigned to sexed bodies. Like all discourses, those that construct gender are multiple, mutable and competing. Gender is both a social construction and a lived experience.²⁴ This means that social practices around gender create the conditions of existence that are at once both discursive and material. The discursive implications of being a woman have real effects and can be empirically measured. While gender discourses are especially powerful, perhaps the most powerful, in shaping social life, individuals are also constituted from many meaning-making regimes; women's identities are subject to other discourses, such as ethnicity and class. Thus gender discourses will operate unevenly on women differently positioned for instance, by ethnicity or class.

Gender discourses are embedded in discursive practices around men's violence against wives and partners. Ignoring the gendered nature of "domestic violence" disguises the link between men's violence against wives and partners and women's broader inequality.²⁵ Dominant gender discourses construct gender as a hierarchical relationship, which privileges males. In this way, gender in this thesis is viewed as a basic classification system that assigns 'rank, power, privilege' that supports the 'perpetuation of women's subordination across vastly, different material conditions and situations'.²⁶ It is an exercise of power that 'privileges (some) men and (many

²³ New Zealand women's refuges claim that leaving is the most dangerous time for women in violent relationships. National Collective of Independent Women's Refuges Inc. (NCIWR), *Fresh Start. A Practical Guide for Women Wanting to be Free From Abuse*, Wellington: NCIWR, 2006, p.51.

²⁴ Weedon, p.9.

²⁵ Murray and Powell, p.532.

²⁶ Lisa Brush, *Gender and Governance*, Walnut Creek: Altamira Press, 2003, pp.11, 38

varieties of) masculinity at the expense of women and femininity, some individual and forms more than others'.²⁷ Analyzing gender constructions exposes how they shape particular subject positions for women available in the discursive framework for interpreting men's violence against wives and partners. Shifts in gender constructions have important implications for the meaning assigned to that violence. In the period under study, as the balance of power shifted within gender relations, it threatened male dominance in a "domestic" relationship and had implications for how men's violence against wives and partners was addressed.

The thesis explores the exercise of power in state agencies because the modern state has a particular capacity to shape how people think and act, and is a powerful influence on our everyday lives. The state is a privileged site because discourses embedded in social institutions and practices are usually the most powerful. For example, through laws the state 'sets and maintains the conditions of exchanges and alliances, be they financial, cultural, sexual or familial'.²⁸ Therefore 'all other forms of power relations must refer to [it]'.²⁹

While the state has the capacity to reproduce and reinforce male domination, it also has the capacity to undermine gender inequality and the relations of domination that stem from it. At its best, the state can offer women leverage against masculine privilege in bed, at home, at school and on the street. It can enable women to speak up, fight back and take control. At its worst it can reinforce patterns of inequality.³⁰ 'Governance', the management and discipline of public conduct, is exercised through state practices and occurs everywhere, for example, in parliament and in interactions between government representatives and individuals, and extends to professions established and bolstered by the state such as lawyers and doctors.³¹ The focus on the state in this thesis is primarily directed at the discursive fields which had powerful effects on women's capacity to resist a violent husband or partner. These are parliament, and state agencies governing justice, social welfare and employment. The discourses embedded in each of these were multiple and shifting, and varied in power.

²⁷ Ibid., pp.11, 38.

²⁸ Ibid., pp.3-4.

²⁹ Foucault, p.345.

³⁰ Brush, pp.17-18.

³¹ Ibid., pp.35-36.

Thus the state can be thought of as an ensemble of disparate parts.³² State practices within one discursive field could contest, contradict and undermine those within another.

Names used to refer to men's violence against wives and partners are many and reflect the different outlooks and purposes of different groups of people. The various names such as "wife-assault", "spousal abuse" and "domestic violence" serve different agendas. For example, "spousal abuse" can obscure the role of male domination, and suggest equal culpability. "Domestic violence" is a current term of wide usage. In practice, the name means different things to different people, but it is one of the more useful terms to enable communication between different groups. With respect to the use of these terms throughout this thesis, I use terms specific to their time and place, or a person's voice. When a less political term is appropriate to describe the phenomenon, I privilege the term "men's violence against wives and partners".

This thesis does not argue for a preferred name for the phenomenon of men's violence against wives and partners because of problems of euphemism, absences and contestation. Names can obscure material experiences and unintentionally glide over material realities. Men's violence against wives and partners takes many forms. The most generally understood is physical violence that includes pushing, pinching, kicking, pulling hair, punching, strangling, burning, stabbing and shooting.³³ These words may produce a different effect than evoked by the term "domestic violence". More commonly, women endure emotional, psychological, economic and sexual behaviours, such as verbal abuse, humiliation, possessive and controlling tactics, intimidation, and threats.³⁴ The effects of violence are both physical and psychological, and often difficult to measure and articulate.

³² Melanie Nolan, *Breadwinning. New Zealand Women and the State*, Christchurch: Canterbury University Press, 2000, p.37.

³³ United Nations, Centre for Social Development and Humanitarian Affairs, *Violence against Women in the Family*, New York: United Nations, 1989, p.13.

³⁴ Sheryl Hann, *Palmerston North Women's Refuge Herstory*, Palmerston North: Palmerston North Women's Refuge Inc., 2001, p.54, and the Christchurch Battered Women's Support Group (BWSG) in a submission on rape law reform indicated that it did not record the incidence of sexual violence amongst its clients because it was so common. Submission by BWSG on Rape Reform Bill, Private Papers of Doris Church.

Like the names for violence, the behaviours thought to constitute it vary in both time and place. There is a general consensus that physical blows constitute violence, but whether it should include verbal, psychological or emotional and financial forms is contested. Sexual violence is often excluded. Furthermore, endless variations occur in each category making for further controversy. Therefore, the names themselves do not give a clear definition of what is being talked about. I have defined the parameters of particular names by their empirical outcomes. For example, while discursively contested, court outcomes indicated what conduct constituted wife-assault; so while a slap did not, punching resulting in serious bodily harm did. For the purpose of enabling the reader to consider my position in the formulation and conclusions in this thesis, my personal understanding of men's violence against wives or partners is that a relationship of violence exists when a man controls, dominates or intimidates his wife or female partner through physical, verbal, psychological or financial means.

HISTORIOGRAPHY

From an earlier academic silence on men's violence against wives and partners, studies of marriage, divorce, family, gender, and violence have now canvassed the phenomenon to a greater or lesser degree. Specific studies on the subject have proliferated from the 1970s, and here feminism was a significant driver. While each study is a product of its own time and place, they have all demonstrated the centrality of discourses of marriage, family and gender to the construction of men's violence against wives and partners. I begin this historiography with important background works that do not specifically address men's violence against wives and partners, but trace the wider discursive field that shaped constructions of it.

Sandra Coney's general history, *Standing in the Sunshine: A History of New Zealand Women Since They Won the Vote*,³⁵ provided an overview of social practices, especially those around gender, as they related to women's lived experience from 1883 to 1993. A series of narratives, Coney's history provided evidence of how dominant gender discourses acted on women and how women took up particular subject positions to improve their lives. It was particularly helpful for recording

³⁵ Sandra Coney, *Standing in the Sunshine. A History of New Zealand Women Since They Won The Vote*, Auckland: Penguin Books (NZ) Ltd, 1993.

significant historical events, such as when women were first admitted to the police force, and incidents of feminist action. The micro-examples of social practices revealed how some individuals' lives were constrained by gender discourses and demonstrated the limited possibilities available to women to resist a husband's or partner's violence against them until the 1970s.

Like Coney's work, Charlotte Macdonald's *The Vote, the Pill and the Demon Drink*³⁶ was a product of the 1993 Centennial of Women's Suffrage in New Zealand. A repository of feminist writings, it reprinted documents from 1869 to 1993. The collection provides an historical context for the development of feminism in New Zealand. Feminism is important for this thesis because I argue that it was a major driver of shifts in the construction of men's violence against wives and partners. Analyzing these time-specific documents provides evidence of which discourses were in currency, the range of subject positions offered to women, and how women drew on various discursive opportunities to determine their lives.

Roderick Phillips's *Divorce in New Zealand: A Social History*,³⁷ indirectly relates a history of the construction of men's violence against wives. Divorce raised fundamental questions about marriage and the family, society, gender and children. Phillips's analysis of the political debate around divorce exposed the significance of gender discourses for the shaping of social practices, and how these in turn reinforced those discourses; Foucault's knowledge/power regime. A liberalization of divorce had implications for equality in marriage, a condition related to women's capacity to resist husbands' violence. Phillips claimed the main obstacle to liberalizing divorce law was the belief in the need to preserve the family for the social and moral order. This enduring belief was a major obstacle to women's capacity to resist violence within marriage.

The debate also indicated the need for full political citizenship for women; women's interests were more easily submerged when they had no political representation. This

³⁶ Charlotte Macdonald, *The Vote, the Pill and the Demon Drink. A History of Feminist Writing in New Zealand 1869-1993*, Wellington: Bridget Williams Books Ltd, 1993.

³⁷ Roderick Phillips, *Divorce in New Zealand: a Social History*, Auckland: Oxford University Press, 1981.

situation can be contrasted with that of the 1970s, in which women gradually increased their hold on positions of decision-making. Phillips's analysis demonstrated also how discourses had contradictory outcomes and conflict between discourses facilitated new versions of meaning. The gradual liberalization of divorce law was not always a result of enlightenment. In part, support for women's right to equal access to divorce was founded on an expectation that women would not exercise it, so entrenched was the belief that women were natural protectors of the family.³⁸

Because New Zealand was part of a wider Anglo-settler world, sharing a common British inheritance which was played out in a variety of contexts, Australian histories of gender and divorce are useful. Hilary Golder's *Divorce in 19th Century New South Wales* demonstrated the variability of social practices within the Australian colony. For example, while divorce facilities had been established in the other states by 1865, legislation was not introduced until 1873 in New South Wales (NSW).³⁹ Golder's exploration of the emergence of divorce legislation showed the importance of marriage to the social order to both sides of the debate. Liberals saw divorce reform as a cheaper means to cope with deserted women and children. In this way divorce could be seen as a means of 'poor relief which cost the state nothing and bypassed women's problem of underemployment and low wages' by re-releasing women back onto the marriage market.⁴⁰ Making divorce available was also driven by the belief that the state was not up to the task of supplying the necessary charitable resources. The material context was important. Golder attributes the preference in NSW for remarriage over the English preference for maintenance proceedings for deserted or battered wives to the ratio of marriagable females to males. Unlike England, where marriageable females outnumbered their male counterparts, remarriage was viewed as a viable option in NSW.⁴¹ It is interesting that subsequent divorce reform, unlike the situation in New Zealand, Victoria and England, occurred in absence of any coherent feminist or female opinion.⁴² This raises the question of how important feminist debate was in granting equal divorce legislation in New Zealand. Golder's study of

³⁸ Ibid., p.27.

³⁹ Hilary Golder, *Divorce in 19th Century New South Wales*, Kensington, NSW: New South Wales University Press, 1985, p.8.

⁴⁰ Ibid., pp.227-8.

⁴¹ Ibid., p.281.

⁴² Ibid, p.167.

divorce also showed how expectations of gender were crucial to the outcomes of divorce petitions and ultimately obstructed women's recourse to the law. It seemed to Golder that in the Australian court, 'the only good woman was a victim, either battered, betrayed or impoverished'.⁴³ The belief that marriage and middle-class domestic values were essential for social stability persisted. This was not dissimilar to observations made of New Zealand courts in this period.⁴⁴

Because the British context was so important to the colonial one, studies of the construction of men's violence against wives and partners in Britain are integral to understanding New Zealand history. Martin Wiener's *Men of Blood* is an historical study of state responses to men's violence against women in nineteenth-century England, which includes men's violence against wives. It explores the 'criminal law where discourse and dispositions come together' and the role gender played in the law's responses to male violence.⁴⁵ By focusing on men's experiences of the law, he demonstrates how discourses intertwine to make new meanings. Wiener links a reconstruction of gender, in which women were seen as both more moral and more vulnerable and men as more dangerous and more in need of external discipline, with the increasing intolerance of violence. He contextualizes material change, a time of increasing population and urbanization, and the increasing authority of the state. Similar material change would occur in the 1960s in New Zealand. Together, these shifts tended to see women as needing protection from 'bad men', 'which brought acts of violence against women, more often than not taking place in the home, out from the shadows'.⁴⁶ The Victorian change in standards of masculinity was the primary driver to the increasing stigmatization of men's violence against women; 'the protection of women came to pose the question of the "reconstruction" of men'.⁴⁷ Similarly, in the 1960s, the reconstruction of femininity reinvigorated a critique of masculinity and was a powerful driver for the naming of "domestic violence" as a social problem.

⁴³ Ibid., p.290.

⁴⁴ See Carolyn Bayvel, 'Destitution, Desertion and Illegitimacy: New Zealand's Nineteenth Century Maintenance Legislation and its Operation in Dunedin Magistrate's Court, 1890-1900', Hons research exercise, University of Otago, Dunedin, 1994; Susan Chivers, 'A Man's Home is His Castle. Domestic Violence in Dunedin 1884-1914', BA Hons Essay, University of Otago, Dunedin, 1988.

⁴⁵ Wiener, p.xi.

⁴⁶ Ibid., p.3.

⁴⁷ Ibid., p.6.

Wiener's study describes the diminished tolerance of men's violence against women, but also acknowledges the complexities and contradictions.⁴⁸ Efforts to civilize men were contested by persistent older values, heightened expectations of femininity, and the discursive domestic/civic divide. For example, "bad" women complicated outcomes, and increasing idealization of the family home inhibited external regulation of it. The principles of law offered some guidance to responses to male violence, however, these were 'applied within specific and cultural contexts'.⁴⁹ Thus, the criminal justice system became 'a site of intense cultural contestation over the proper roles of and relations between the sexes'.⁵⁰ Gender discourses sometimes converged with, and sometimes contested, criminal constructions of male violence against women. This demonstrates how discourses 'embed, entail and presuppose other discourses', and are unstable and unpredictable in practice.⁵¹

Jock Phillips's *A Man's Country*, is a historical study exploring masculinity in New Zealand. Like Wiener, Phillips identifies how the male stereotype has been influential on the lives of both men and women, and the centrality of social change for shifts in gender expectations.⁵² His work demonstrated how discourses of the family constrained and disciplined both men and women, and illuminated various social practices; especially in the context of this thesis, those surrounding men's violence against wives or partners. Importantly, his work highlights the cost of rigid gender stereotyping for both men's and women's lives.⁵³ My thesis, however, is focused on the effects of gender on women's lived experience of men's violence against them. Phillips places more emphasis on overall demographic imbalance in early New Zealand, in which adult men far outnumbered adult women, encouraging a male culture centred on "mateship", in which women were objects of scorn.⁵⁴ More recently, the impact of a gender imbalance on social practices has been treated more cautiously. Charlotte Macdonald argues that the gender imbalance varied over different parts of the colony and 'must be considered with care and cannot be assumed

⁴⁸ Ibid., p.xii.

⁴⁹ Ibid., p.8.

⁵⁰ Ibid., p.6.

⁵¹ Parker, p.13.

⁵² Jock Phillips, *A Man's Country? The Image of the Pakeha Male. A History*, Auckland: Penguin Books, 1987, pp.262-78.

⁵³ Ibid., p.278.

⁵⁴ Ibid., pp.7-8, 27, 37.

to have led, inevitably, to a single set of social effects or manifestations'.⁵⁵ Ultimately gender imbalance is one set of conditions amongst many that interconnect to make social meaning and its consequences are still a matter of debate.

Since “domestic violence” was named as a social problem in the late 1970s, there have been several significant historical works written on men’s violence against wives and partners. Various strands of feminism have informed many of these studies. Not technically a historical work, but acknowledging historical developments, Rebecca and Russell Dobash’s *Violence against Wives. A Case against the Patriarchy*, a radical sociological study published in 1979, claimed men’s violence against wives was a product of a history of gender inequality.⁵⁶ Dobash and Dobash were among the first social scientists to interpret it within a framework of general male domination. While acknowledging the outright use of physical force against a wife was no longer sanctioned, Dobash and Dobash claimed that the legacy of patriarchy continued to generate the conditions and relationships that enabled a husband to use force against a wife.⁵⁷ Men’s violence against wives and partners could only be understood in a context of gender inequality perpetuated in economic and social practices maintained over time. This implied the need for a historical approach to the problem. Dobash and Dobash warned that efforts to remove inequalities in language could obscure some of the inequalities that continued to exist.⁵⁸ This means ignoring material realities can make for meaningless talk. In context of this thesis, for example, the right to get a separation order on the ground of persistent cruelty was only as good as women’s opportunities for financial independence. Thus discourses of men’s violence against wives and partners that do not acknowledge women’s social inequality poorly serve women’s interests.

The first significant book-length historical analysis of men’s violence against wives and partners was Elizabeth Pleck’s *Domestic Tyranny. The Making of American*

⁵⁵ Charlotte Macdonald, ‘Too Many Men and Too Few Women: Gender’s “Fatal Impact” in Nineteenth-Century Colonies’, in Caroline Daley and Deborah Montgomerie, eds, *The Gendered Kiwi*, Auckland: Auckland University Press, 1999, p.33.

⁵⁶ R. Emerson Dobash and Russell P. Dobash, *Violence against Wives. A Case against the Patriarchy*, New York: The Free Press, 1979, p.32.

⁵⁷ *Ibid.*, p.ix.

⁵⁸ *Ibid.*, p.7.

Social Policy against Family Violence from Colonial Times to the Present.⁵⁹ It addressed two questions, which are also addressed in the current study: what were the major barriers to recognizing family violence as a social issue? And how were these barriers overcome? Pleck identified the 'Family Ideal' as the major barrier. This encompassed marital unity and harmony, family privacy, and a belief in traditional rights of correction over dependents in the household.⁶⁰ Pleck's study demonstrated how discourses of the family shaped, and continue to shape, constructions of men's violence against wives and partners.⁶¹ Like Dobash and Dobash, Pleck said rhetoric has no meaning without real material choices for women: 'A policy against family violence is only as far-reaching as the alternatives to the traditional family it makes available'.⁶² This necessitates looking further afield from the discursive field of men's violence against wives and partners to understand women's lived experience.

Pleck was careful to avoid any totalizing statement about patriarchy because it does not explain how women fight back or how violence occurs in same-sex relationships. This reflects how discourses act unevenly on individuals and, at any moment, individuals are subject to multiple discourses. Pleck's history showed that the belief in some ideal family of the past is a contemporary construction. History is, therefore, an important site to be claimed in pursuit of social change today. Feminist lawyers working on behalf of 'battered' women have used her work to find historical precedents for change, to avoid past mistakes, and to understand how legal doctrine has developed.⁶³

Linda Gordon's *Heroes of Their Own Lives: The Politics and History of Family Violence* was published soon after Pleck's history and exposed contestation and contradiction in discourses of gender and men's violence against wives and partners that both reproduced and undermined male privilege.⁶⁴ From social worker case records, Gordon gives an account of the history of family violence as it was

⁵⁹ Elizabeth Pleck, *Domestic Tyranny. The Making of American Social Policy against Family Violence from Colonial Times to the Present*, Chicago: University of Illinois Press, 2004, (first Illinois edition, originally published New York: Oxford University Press, 1987).

⁶⁰ *Ibid.*, p.xiii.

⁶¹ *Ibid.*, p.202.

⁶² *Ibid.*, p.202.

⁶³ *Ibid.*, pp.x-xi.

⁶⁴ Linda Gordon, *Heroes of Their Own Lives. The Politics and History of Family Violence*, London: Virago Press Ltd, 1989.

constructed by professional social workers. Gordon's main arguments are that 'family violence' is both a historical and political construct and that it was strongly shaped by dominant beliefs around gender, a middle-class construction that prescribed appropriate roles for men and women.⁶⁵ Gordon links the changing status of women to the historical development of family violence and observes that fears around women's increasing power were embedded in anxiety around family life.⁶⁶

Gordon makes another important argument that women were at times agents or 'heroes' and were not always passive victims of social agencies, an argument which challenged theories around social control.⁶⁷ Gordon argued that acknowledging women's agency does not deny their victimization or that many ultimately had little choice but to endure a husband's violence, but rather, it recognized that some women made complaints, fought back and sought assistance from friends and neighbours. Importantly, 'wife-beating arose not just from subordination, but also from contesting it'.⁶⁸ In this way "provocation" can be read as women's resistance to male power. This reflects how discourses act unevenly on individual subjects, are not predictable, and are contesting and contradictory. Women were able to take up subject positions offered in the dominant discourse of family violence exercised by social agencies for their own purposes. Gordon argued clients' 'cumulative pressure affected the agencies' definitions of problems and proposals for help'.⁶⁹ The subject positions taken up by women fed back into the discursive field of family violence and enabled new ones to emerge.

While analyzing women's agency is central to understanding social change, Joan Scott has challenged Gordon's notion of agency by arguing that Gordon located agency within an autonomous individual. Scott pointed out that, while women were active agents making choices, this was constrained.⁷⁰ This does not mean women's agency was predetermined, but that it was a 'discursive effect ... the effect of social workers' constructions of families, gender and family violence'.⁷¹ Nor does that mean

⁶⁵ Ibid., pp.3, 5, 291.

⁶⁶ Ibid.

⁶⁷ Ibid., p.293.

⁶⁸ Ibid., p.286.

⁶⁹ Ibid., p.295.

⁷⁰ Scott, p.851.

⁷¹ Ibid.

that women relied only on social workers' discourse of family violence to make sense of their own experiences. They also could construct their actions from 'a range of available discourses', such as feminism or religion,⁷² which demonstrates the intertextuality of discourses. Scott also challenged Gordon's contrast of 'real family oppressions' against the experts' construction of family violence. Rather, Scott viewed Gordon's reality and representation as different and competing discourses of family violence. This does not deny that family violence is not "real", but that our interpretation of it is always a discursive effect. That the real is representation can be seen in Gordon's definition of family violence that excluded non-physical forms of violence, a narrower construction that is evident in the current discursive field of domestic violence. Scott's views are consistent with the understanding of the operation of discourses in this thesis.

Judith Allen's socialist feminist article, 'The Invention of the Pathological Family', which analyzed case records of assault and divorce in New South Wales from 1880-1940, found that the construction of family violence shifted from a social problem in the late nineteenth century to an individual, largely genetic psychological disorder by the mid-twentieth century.⁷³ The effect was to disguise family violence. This psychological interpretation of men's violence against wives and partners was current also in New Zealand at this time, a construction which tended to blame wives for husbands' violence. Allen's work located family violence in the gender and economic order.⁷⁴ The subsequent exposure of the universal nature of men's violence against wives and partners makes capitalism less likely to be cited as a cause of family violence in current times, although it is one shaping factor in the discursive field of men's violence against wives and partners.

Colin James's article, 'A History of Cruelty in Australian Divorce', has some parallels with this thesis.⁷⁵ James examined the legal concept of matrimonial cruelty in Australia during the twentieth century. He observed the powerful influence of beliefs

⁷² Ibid.

⁷³ Judith Allen, 'The Invention of the Pathological Family', in Carol O'Donnell and Jan Craney, eds, *Family Violence in Australia*, Melbourne: Longman Cheshire Pty Ltd, 1982, p.22.

⁷⁴ Ibid., 23.

⁷⁵ Colin James, 'A History of Cruelty in Australian Divorce', Australian and New Zealand Law and History Society Conference, Hobart, 10 December 2006, p.1. Retrieved December 2008 from www.anzlhesejournal.auckland.ac.nz.

around marriage that held husbands had a duty to control and discipline wives, and wives had a duty to obey, for the courts' interpretation of matrimonial cruelty. Similar to Pleck's findings, James observed that the notion of 'separate realms', the principle of marital unity and the notion of privacy that strengthened over the twentieth century ensured that 'the husband was responsible not only to protect his family from outside threats, but from disruptions within, such as a disobedient or non-submissive wife'.⁷⁶ James argued that until the 1970s, 'the matrimonial offence of cruelty served as a judicial instrument' to silence women and maintain male privilege.⁷⁷ Discourses that preserved marriage were dominant because it was thought the stability of the nation was dependent on the stability of marriage. As such, a husband's cruelty was not deviant behaviour unless it caused death, grievous injury or, in the court's opinion, threatened the marriage.⁷⁸

As with the case in New Zealand, social changes in Australia during the 1970s reflected in increasing separations, de facto unions and ex nuptial births, and demands for gender equality, undermined the court's power over the institution of marriage.⁷⁹ Legal reforms introduced in 1975 reinforced the institution of marriage by facilitating 'each party's ability to escape an unhappy marriage' so as 'to enable a more successful remarriage'.⁸⁰ Although many women took advantage of the new no-fault divorce law, James argued that the law continued to obscure men's responsibility for violence against wives and that this contributed to a parallel reluctance by police and society at large to view such violence as criminal. This thesis explores a similar legal context in New Zealand at this time.

In *More than Refuge. Changing Responses to Domestic Violence* Suellen Murray uses a case study of Western Australia's first feminist refuge to analyze the background of and motivations for responses to "domestic violence".⁸¹ Murray's discursive approach enables a partial comparative history with changing responses in New Zealand covered in this thesis. As in New Zealand, Murray shows how not naming the

⁷⁶ Ibid., pp.9, 30.

⁷⁷ Ibid., p.29.

⁷⁸ Ibid., p.30.

⁷⁹ Ibid., pp.25, 28, 30.

⁸⁰ Ibid., p.29.

⁸¹ Suellen Murray, *More than Refuge. Changing Responses to Domestic Violence*, Crawley, Western Australia: University of Western Australia Press, 2002.

violence maintained its invisibility and the dominant belief in the preservation of the family had a major cost to individual women.⁸² As New Zealand women found, discursive understandings of men's violence against wives and partners obstructed Australian women having their claims of a husband's or partner's violence taken seriously.⁸³ Reinforcing a central argument made in this thesis, Murray's case study illustrates the importance of the feminist and refuge movement for having "domestic violence" constructed as a serious social problem and the transformative nature of refuges on individual women.⁸⁴ Her discursive approach also highlights the ongoing contested nature of the meaning of domestic violence. Thus feminists must constantly engage with its meaning to shape its effects on women victims and defend gains made by women to resist a husband's or partner's violence against them.

Suellen Murray's and Anastasia Powell's article, 'What's the Problem? Australian Public Policy Constructions of Domestic and Family Violence',⁸⁵ explores the subsequent development of contemporary policy responses to domestic violence. Although feminists facilitated the adoption of domestic violence as a social problem, state responses have been influenced by competing discourses about the problem, its causes and possible solutions.⁸⁶ Although focused in 2006, the article demonstrates the usefulness of a discursive approach for analyzing state responses to men's violence against wives and partners to understand its implications for women victims of it. Exploring discursive effects is important because policies can both reinforce existing values and facilitate social change, and policies that sound like they will protect women may not translate into practice.⁸⁷ Like Rebecca Pleck, Murray and Powell identify discourses that support the preservation of the family as the most enduring challenge to a gendered interpretation of domestic violence. This non-gendered framework for domestic violence ignores 'the wider context of social disadvantage and inequality experienced by women relative to men, which, for some women, means that their vulnerability is heightened'.⁸⁸

⁸² Ibid., p.103.

⁸³ For example Murray claims Australian police offered poor support to women victims and it was difficult for women to get restraint orders in the early 1980s, *ibid.*, pp.36, 61.

⁸⁴ *Ibid.*, pp.1-2, 186.

⁸⁵ Murray and Powell.

⁸⁶ *Ibid.*, p.532.

⁸⁷ *Ibid.*, pp.532, 535.

⁸⁸ *Ibid.*, p.539.

Men's violence against wives and partners in New Zealand has been researched within specific spatial and temporal contexts in the period under study. Barbara Brookes's close reading of an individual case of domestic homicide in Dunedin at the turn of the twentieth century demonstrated the power of gender discourses to shape attitudes to men's violence against wives.⁸⁹ Gender was conceived as being centred on perceived differences from which normative concepts are articulated, social institutions structured, and subjective identity constructed.⁹⁰ Brookes showed that social sanctions regulating gender were so powerful that failure to behave appropriately as man or woman could 'at times be fatal'.⁹¹ Marriage was seen as a 'mirror image of the political community' and 'at the heart of the gender order'.⁹² In the case studied [of Thomas Gallaway killing his wife, Emmeline], gender discourses enabled the killing of a wife to be recast as 'an excusable homicide'.⁹³

Thesis material generated by students of the History Department at the University of Otago provided rich local detail for this study, both in relation to social work responses and court practices in the Otago area. Research essays by Jane Green and M.L. Reid provided background into the emergence of "wife-beating" as a social problem in the late nineteenth century and the understandings that informed it.⁹⁴ Carolyn Bayvel's and Susan Chivers's BA research exercises explored court practices around the turn of the century and were useful for identifying constructions of "wife-beating" in the courts and the effects of these on women's lived experience.⁹⁵ In particular, their findings demonstrated that court decisions were often driven by

⁸⁹ Barbara Brookes, 'Marriage. The Gendered Contract', in Barbara Brookes, Annabel Cooper and Robin Law, eds, *Sites of Gender: Women, Men and Modernity in Southern Dunedin, 1890-1939*, Auckland: Auckland University Press, 2003, pp.348-355.

⁹⁰ Barbara Brookes, Annabel Cooper and Robin Law, 'Situating Gender', in Barbara Brookes, Annabel Cooper and Robin Law, eds, *Sites of Gender. Women, Men and Modernity in Southern Dunedin, 1890-1939*, Auckland: Auckland University Press, 2003, pp.1-14.

⁹¹ Brookes, p.349.

⁹² Ibid., pp.349-350.

⁹³ Ibid., p.352; 'excusable homicide' rested on a defence of provocation.

⁹⁴ Jane Green, 'The Society for the Protection of Women and Children: Dunedin Branch, 1914-1945', BA Hons essay, University of Otago, Dunedin, 1982; M.L. Reid, 'The Society for the Protection of Women and Children: Dunedin Branch 1899-1914', Post-graduate Diploma essay, University of Otago, Dunedin, 1981.

⁹⁵ Carolyn Bayvel, 'Destitution, Desertion and Illegitimacy: New Zealand's Nineteenth Century Maintenance Legislation and its Operation in Dunedin Magistrate's Court, 1890-1900', Hons research exercise, University of Otago, Dunedin, 1994; Susan Chivers, 'A Man's Home is His Castle. Domestic Violence in Dunedin 1884-1914', BA Hons Essay, University of Otago, Dunedin, 1988.

spousal conformity to gender expectations and a belief in the preservation of marriage.

The more recent past was the focus of theses by Fran Cammock, Angela Lee and Jane Vanderpyl. Like Sheryl Hann's *Palmerston North Women's Refuge Herstory 1979-2001*,⁹⁶ Cammock's BA essay, 'A History of the Establishment of Dunedin Women's Refuge 1976-1977',⁹⁷ addressed men's violence against wives and partners within the development of feminist refuges. These two histories show the inter-play of feminist and dominant discourses, how dominant discourses supported or contested feminist ones, and the significance of feminist discourses for the emergence of "domestic violence" as a social problem. The histories of women's refuges link discursive practices with women's material experiences. Vanderpyl's thesis on feminist service groups was useful for its exploration of the multiplicity of feminist discourses, which of these were supported by other discourses in currency, and how these shaped feminist organizations.⁹⁸ Lee's MA thesis, 'The Development and Impact of the Domestic Protection Act 1982',⁹⁹ explored the discursive and material context for this piece of legislation and how the law translated into practice. This gave an understanding of the development of the law, and also identified discourses that contested new opportunities for women's safety. These works gave details of social practices and events to support arguments made in this study, especially the importance of feminism for the construction of "domestic violence" against women as a social problem.

SOURCES

This thesis draws on a range of primary and secondary textual sources, supplemented by a number of interviews. Primary sources include documents of state agencies in Archives New Zealand, reports of state agencies in *Appendices to the Journals of the*

⁹⁶ Sheryl Hann, *Palmerston North Women's Refuge Herstory 1979-2001*, Palmerston North: Palmerston North Women's Refuge Inc., 2001.

⁹⁷ Fran Cammock, 'A History of the Establishment of Dunedin Women's Refuge 1976-1977', BA Hons essay, University of Otago, Dunedin, 1994.

⁹⁸ Jane Vanderpyl, 'Aspiring for Unity and Equality: Dynamics of Conflict and Change in the "by Women for Women" Feminist Services Groups, Aotearoa/ New Zealand, 1970-1999', PhD thesis, University of Auckland, Auckland, 2004.

⁹⁹ Angela Jane Lee, 'The Development and Impact of the Domestic Protection Act 1982', MA thesis, Victoria University, Wellington, 1986.

House of Representatives, New Zealand Parliamentary Debates, published Law Reports, Home and Family Society records,¹⁰⁰ newspapers and journals. The most significant journals were the feminist publication, *Broadsheet*, and the legal profession publication, *New Zealand Law Journal*. *Broadsheet* provided accounts of feminist constructions of men's violence against wives and partners and the *New Zealand Law Journal* offered evidence of legal constructions and practices, which shaped legal responses to men's violence against wives and partners. The latter highlighted the importance of beliefs around the ideal nuclear family.

All primary sources are produced within specific contexts. Multiple discourses combine to effect different possibilities in each specific context. Analyzing each primary source gives insight into which discourses operated in particular fields and how they shaped it. Each site of discourse has its own motivations or agenda. For example, politicians' contributions to policy making were shaped by voters' expectations; departmental heads made annual reports under ministerial scrutiny; feminist journals interpreted social practices within a framework of male domination; legal journals were shaped by constructions of justice, often theoretical; the Society for the Protection of Home and Family's annual reports and case studies were shaped by a desire to preserve the family, attract financial support and demonstrate the organization's value; and newspapers produced narratives intended to appeal to advertisers and readers. Each source is analyzed for what the author said happened, how they said it happened, and for any absences. The sources are read for evidence of events and how meaning was ascribed to them. For example, a husband hitting a wife can be viewed as an event, but how the event was constructed would have varied within each representation. At other times a source could be read only as a discursive representation, such as that which described domestic violence as an ever-increasing phenomenon.

Documents of state agencies contained policy discussion and inter-agency correspondence, letters from constituents, and submissions to pertinent legislation. Parliamentary debates defined the parameters and context in which the topic was addressed within the political arena. Files of domestic proceedings of the Christchurch

¹⁰⁰ I was given permission to view restricted records held at the Hocken Library, Dunedin, Ref: 807/4, 7 January 2008.

District Court were significant for demonstrating how legal discourses translated into practice. There were hundreds of files in the period 1970-1980. Given time constraints it was impossible to analyze them all. I analyzed the first 50 consecutive petitions for separation in 1970, 50 petitions from March 1975 and 25 petitions from June in 1980. I chose to analyze fewer files in 1980 because details and discussions of cases were then minimal. Domestic proceedings files were not available for earlier periods. In the first half of the 1970s, court cases continued to require a petitioner to prove a guilty respondent had committed an intolerable act. The lawyers chose which evidence to exploit to prove “serious disharmony”, the primary grounds for a separation petition. Questions asked by magistrates and lawyers, evidence offered by petitioners and respondents, and witnesses offer insight into prevailing understandings around men’s violence against wives, of the family, children, and gender expectations.

Newspapers reported court events, official statements and people’s perspectives within their own discursive framework, indicated the kind of social treatment women victims could expect. Newspaper accounts were also significant because they served as a primary educator in public knowledge of crime and the justice system.¹⁰¹ The weekly national periodical, *Truth*, and the Christchurch daily paper, the *Press*, are principal sources. Many historians have drawn on *Truth* to inform studies of popular culture.¹⁰² Redmer Yska’s history of the periodical indicates the motivations that drove its reporting.¹⁰³ *Truth* had a reputation for sensationalism and controversy and its reports of court events were shaped by its urge to expose unseemly conduct and government inadequacies. *Truth* reported court events more frequently and in more depth than other publications and had a wide national circulation in the 1960s and early 1970s.¹⁰⁴

Some articles were obtained from the Christchurch daily, the *Press*. These were more accessible from the early 1970s when “domestic violence” had been named, and was

¹⁰¹ Ray Surette, *Media, Crime and Criminal Justice: Images and Realities*, Wadsworth Publishing Company: Belmont, California, 1992, p

¹⁰² Redmer Yska, *Truth. The Rise and Fall of the People’s Paper*, Nelson: Craig Potton Publishing, 2010, p.10.

¹⁰³ *Ibid.*

¹⁰⁴ In 1968 *Truth* claimed it was the biggest selling newspaper in New Zealand, *Truth*, 3 December 1968, p.1; from 1964-1968, *Truth* claimed a weekly readership of one million. By the mid-1970s the paper was in decline, Yska, pp.135, 179.

indexed. I made use of various miscellaneous newspaper clippings in archival material from state agencies, the Society for the Protection of Home and Family, and interviewees. Although newspaper accounts of court events were another representation produced within a specific context, relying on them encounters the problem of their inaccuracy, through misquoting or misrepresentation. Newspaper reported events in criminal cases are a substantial source for exploring the discursive field of criminal law because court reports of criminal cases were not available to me at Archives New Zealand. One judge said that judicial comments were often cited inaccurately.¹⁰⁵ In this way, words could have been replaced with others that made the narrative consistent with the culture of the newspaper.

Because, in comparison with later years, the 1960s to mid-1970s lacked written material, I conducted twelve interviews with people who were involved in the legal and social management of cases of men's violence against wives and partners.¹⁰⁶ Owing to the small number of interviews conducted, claims as to their representativeness cannot be made; however, they do provide some immediacy, personal insights and anecdotes, which ground the text, a reminder that this is a study of real people and real events. The interviewees were approached for their capacity to relate broad memories of responses to men's violence against wives or partners. For example, a lawyer has access to numerous court cases so can give an overview or general impression. Interviewees included a parliamentarian, a judge, two police officers, a lawyer, three women refuge workers, the co-founder of the Battered Women's Support Group, a worker for the Society for the Protection of Home and Family, a Salvation Army captain, and a court maintenance officer. They were given an information sheet about the project and their written consent was obtained. Interviewees are identified by their working positions and are named or not named according to their preference.¹⁰⁷

Most textual sources related Pakeha women's experiences. Some sources did provide insight into how Maori women's experiences may have differed from that of Pakeha women but an unintended consequence of the textual sources used is that Maori

¹⁰⁵ Interview with a judge, 1 May 2008.

¹⁰⁶ Human Ethics Approval was obtained, HEC: Southern B Application – 07/65, 8 February 2008.

¹⁰⁷ A list of interviewees is contained in the bibliography.

women's experiences are not well covered. Although there was no intention to focus on any particular geographical area, there is greater focus on Christchurch. This was because the first women's refuge in New Zealand was established there in 1973. Founders of this feminist service group were especially significant given they did not have any New Zealand model to follow. As well, the Battered Women's Support Group was established in Christchurch in 1978 and it had a high public profile and generated huge media coverage. Doris Church, a co-founder of the Battered Women's Support Group, gave me access to her personal collection of papers and newspaper clippings, which contained many articles from the *Press*. The Christchurch court materials enabled the social and legal management of men's violence against wives to be studied in greater depth than elsewhere.

THESIS STRUCTURE

The thesis is organized in a chronological and a thematic order. Because changes in various discursive fields explored were not simultaneous, the chronology is not smooth. Chapter 1 explores the precedents and institution of modern marriage because marriage provided the main framework for interpreting men's violence against wives and partners. It then explores the emergence of "wife-beating" as a social problem in late nineteenth century England and New Zealand, and the legal remedies that were introduced to deal with it. This enables a comparison to be made with the second reconstruction of men's violence against wives and partners in the 1970s and the legal remedies to it persisted relatively unchanged through to the 1960s.

Chapter 2 explores police practices through the 1960s and 1970s. Police responses to men's violence against wives and partners were shaped by statute law, which defined a crime; by police perceptions of their role; and civil liberty discourses, which made police more cautious about interfering in domestic relations. The police term for complaints relating to men's violence against wives and partners was "domestic disputes", a term that located an assault in the private world of the home and transformed such violence into a relationship or sexual contract issue, not a police matter. The chapter demonstrates how constructions of gender, class and ethnicity were significant for police interpretations of domestic assaults as criminal or not criminal.

Chapter 3 inquires into the criminal courts in the 1960s to the late 1970s. New Zealand law offered two types of legal remedies to men's violence against wives or partners. The first was under criminal law. Criminal legal discourses provided the primary framework for interpretation of such violence and transformed a domestic assault into a breach of the sovereign's peace. However, individual decision-makers were engaged also in a range of discretionary decisions, and victims of a husband's or partner's violence experienced the criminal justice system unevenly. The chapter explores how discourses of class, ethnicity, gender and the family shaped judicial structures and responses.

The second type of legal remedy to men's violence against wives and partners was available under "domestic" or "matrimonial" law. Chapter 4 analyzes legal responses to men's violence against wives, constructed as "cruelty". The aim of the law was to protect marriage, but in some cases public order was thought better served by releasing one spouse from the obligation of cohabitation. "Cruelty" was a matrimonial offence because it threatened the institution of marriage, the physical and psychological integrity of individual members of a family for whom the state was ultimately responsible, and the wider social order. Separation orders under the 1910 Destitute Persons Act were the most used remedy by wives to escape a husband's violence. This chapter explores how "cruelty" was constructed and how effective the Destitute Persons Act was in protecting women from a husband's violence.

While domestic law made some provision for women to leave oppressive marriages, legal practices surrounding marriage, custody, maintenance and matrimonial property, as well as state provisions of welfare, housing and employment, affected women's capacity to take up legal remedies. Chapter 5 investigates the impact of these various factors. In the main, discourses that aimed to preserve marriage and prescribed gender-specific duties underpinned the identified legal practices and state policies, and had variable effects on women's claims.

Chapter 6 explores the socio-economic changes that characterized the 1960s and underwrote domestic law reform in which the 1910 Destitute Persons Act was replaced by the 1968 Domestic Proceedings Act. The law's relaxation on the constraints of leaving marriage was intended to protect marriage by making re-

marriage easier, a similar driver to that which underwrote divorce legislation in early New Zealand. This chapter analyzes constructions which informed the new legislation in practice, and how this affected women's capacity to resist a husband's violence.

Social changes canvassed in Chapter 6 shaped further domestic law reform pertaining to custody (the 1968 Guardianship Act), matrimonial property (the 1968 Matrimonial Property Amendment Act), and marriage dissolution (the 1968 Matrimonial Proceedings Act and the 1975 Domestic Actions Act), and also informed social welfare reform. Chapter 7 analyzes the changing discourses that underwrote these reforms and what this meant for women living in violent marriages and relationships.

Chapter 8 explores the context for the re-naming of men's violence against wives and partners as a social problem. Feminists were the first to name the problem as "domestic violence", and located it within a framework of male domination. The chapter analyzes how men's violence against wives and partners was constructed by a range of feminist discourses, and their impact on wider social practices. The chapter then examines how other cultural discourses in currency intersected with feminist ones to strengthen feminist claims.

Chapter 9 continues to examine the discursive field of domestic violence, which was in constant flux with multiple discourses vying for dominance. The chapter identifies some of the discourses that countered feminist positions and shaped state responses. Where feminist discourses supported dominant ones, they were institutionalized. In particular, the 1982 Domestic Protection Act announced "domestic violence" was no longer a private affair and that all individuals deserved protection from it. However, although dominant discourses acknowledged the need for protection of women victims, they could also disempower women. The chapter examines the variable effects the 1982 legislation had on women's capacity to resist a husband's or partner's violence.

The thesis's conclusion provides a précis of the study, outlines findings specific to the study, and illustrates its contemporary significance. This thesis contributes to the history of men's violence against wives and partners in New Zealand by providing a broad discursive and material context for changes over a long time period. Most

studies on men's violence against wives and partners in New Zealand are more time specific, focused on particular laws, or local organizational studies. This historical work delves more deeply than previous studies into a key period of change for the discourses shaping practices surrounding men's violence against wives and partners in New Zealand. An account of nineteenth century England and New Zealand establishes the importance of that period for understandings of men's violence against wives and partners in twentieth century New Zealand and beyond. In particular, the thesis reaffirms the centrality of discourses of family and gender for the construction of men's violence against wives and partners. Close attention to the material effects of state policies on women's lived experience illustrates their importance to women's lives. The study's examination of the discursive field of men's violence against wives and partners adds to a greater understanding of the social treatment of women victims of a husband's or partner's violence in both the past and present.

Chapter 1

MARRIAGE AND LEGAL REMEDIES TO MEN'S VIOLENCE AGAINST WIVES

The past continues to shape conditions that perpetuate men's violence against wives and partners. In particular the history of the institution of marriage has been central to the construction of that violence. Because British legal precedent was a powerful influence in colonial New Zealand, this chapter identifies discourses and practices that shaped the construction of men's violence against wives as a social problem in late nineteenth century Britain, and legal remedies available to it. Attention then shifts to the construction of "wife-assault" as a social problem in late nineteenth century New Zealand and the legal remedies it inspired, which remained relatively unchanged by 1960. The historical analysis provides an understanding of the social treatment of such violence in New Zealand from 1960 and enables an evaluation of shifts in the discursive construction of men's violence against wives and partners, then named "domestic violence" that occurred in the 1970s.

PRECEDENTS OF MODERN MARRIAGE

In western civilization, marriage has increasingly become the place where the state has most directly shaped gendered authority.¹ The modern institution of marriage developed from a medieval model, described as a 'piquant mixture of notions and customs deriving from the ancient world, from Judaism and the early Church, from Rome and the barbarians', and was always a highly variable custom depending on locale.² The civil courts did not discipline matrimonial abuses and men of the Church had no legal sanction to do so.³ Marriage was a secular institution, a pact between two families, of which the principal purpose was to produce legitimate offspring. It supported the social order by substituting the abduction of women with their orderly

¹ See Barbara Brookes, 'Marriage: The Gendered Contract', in Barbara Brookes, Annabel Cooper and Robin Law, eds, *Sites of Gender. Women, Men and Modernity in Southern Dunedin 1890-1939*, Auckland: Auckland University Press, 2003, p.349.

² Christopher Brooke, *The Medieval Idea of Marriage*, Oxford: Oxford University Press, 1989, pp.39, 58, 130.

³ *Ibid.*, p.58.

exchange.⁴ From the twelfth century, for the nobility and propertied classes at least, marriage was the foundation of the household or *domus*, a contractual relation forming rights and obligations, not just of the wife and husband, but also of others who formed part of the wider *familia*, and it was designed to protect the economic position of legitimate offspring. As long as inheritance was not involved, sexual activity outside marriage was tolerated for males. In contrast, it was of utmost importance that the wife was faithful to her husband, least offspring from other seed lay claim to the patrimony (inherited property), and the virginity of daughters to be ceded some day to the family's advantage was prized and guarded.⁵ Women's role of producing heirs and making advantageous alliances constituted them as part of the patrimony, a position that established their subordination, first to their fathers, and on transfer, to their husbands.

The lay model did not require the parties' consent (such decisions were too important to be left to the parties only), did not insist on monogamy (at least for men), and did not hold marriage indissoluble (although dissolution was orderly). By the mid-twelfth century, while the lay courts 'might determine all the details of an inheritance',⁶ the Church gained formal control of marriage and imposed its modified rules that included consent, monogamy and indissolubility.⁷ Ecclesiastical discourses of marriage combined with lay ones to effect a model of marriage in which the consent of the parties validated their contractual relations, forming the *domus*.⁸ Marriage rituals slowly absorbed religious trappings, but marriage practices remained fluid and many marriages, especially those among the lower or non-propertied classes, were not made in churches.⁹ It was not until the sixteenth century that marriage by a priest became a legal necessity for Roman Catholics, and not until the eighteenth century

⁴ Georges Duby, *Medieval Marriage*, London: The Johns Hopkins University Press, 1978, p.4.

⁵ *Ibid*, pp.7, 92.

⁶ Christopher Brooke, p.128.

⁷ Christopher Brooke and Georges Duby attribute this shift to social changes that made the ecclesiastical model of monogamous marriage advantageous for the medieval lay nobility. At this time, when more than ever the economic dominance of the aristocracy was dependent on resources and on hereditary powers to exploit men and land, a tightening of the lineage structures promised to safeguard family interests, *ibid.*, pp.10, 126; Duby, pp.9-10.

⁸ Christopher Brooke, p.141.

⁹ *Ibid.*, p.253.

that this was the case for Protestant England, but that did not change the status of marriage as a free civil contract.¹⁰

The marriage contract provided the discursive framework for interpreting men's violence against wives. The concept of matrimonial cruelty was first incorporated into canon law as a defence to a petition for restitution of conjugal rights. No one could compel a wife to return to a husband whose cruelty she had fled. The ecclesiastical courts could also grant a judicial separation on the grounds of cruelty.¹¹ But the threshold for cruelty was high, equating to a deadly hatred between the spouses, which was evidenced by violence causing danger to life.¹² Marriage discourses named physical sanctions against a wife (and children) as "chastisement", and considered this violence a husband's religious duty. Male primogeniture and male physical superiority reinforced gender discourses embedded in religious practices that supported male domination in marriage.

Ecclesiastical law had a doctrine of 'women-covert', that is women under the protection or coverture of a husband.¹³ It meant a married woman's legal existence was subsumed into that of her husband, who assumed legal rights either as owner or as guardian of his wife's property at marriage.¹⁴ On marriage, a wife traded obedience to a husband for his protection: 'a husband was liable for the debts of his wife, even if incurred before the marriage. He was answerable for her torts and trespasses. For this reason he was allowed to chastise her, restrain her liberty for gross misbehaviour, and

¹⁰ Ibid., p.139; for example, the noted jurist William Blackstone declared that the law 'considers marriage in no other light than as a civil contract', see Carole Pateman, *The Sexual Contract*, Cambridge: Polity Press, 1988, p.154.

¹¹ Known as a divorce *a mensa et thoro*, John M. Biggs, *The Concept of Matrimonial Cruelty*, London: The Athlone Press, 1962, p.172.

¹² Ibid., p.10; for example, in 1395 Margaret Neffeld of York produced witnesses to her husband's assaults that included attacking her with a knife, forcing her to flee, and setting upon her with a dagger, injuring her arm and breaking a bone. He claimed he had done so to encourage her to mend her ways. The ecclesiastical court held no cause for separation had been made and Margaret was compelled to live with her husband, see Michael D.A. Freeman, *Violence in the Home. A Socio-legal Study*, Westmead: Gower Publishing Company Ltd, 1980, p.128.

¹³ S.A. Reilly, 'Our Legal Heritage', Chapter 8, 1272-1348, Project of Gutenberg, 2009. Retrieved December 2007 from <http://informations.com.etexts/gutenberg/dirs/1/3/3/7/13376/13376.htm>.

¹⁴ Jane Rendall, 'The Citizenship of Women and the Reform Act of 1867', in Catharine Hall, Keith McClelland and Jane Rendall, eds, *Defining the Victorian Nation. Class, Race, Gender and the Reform Act of 1867*, Cambridge: Cambridge University Press, 2000, p.122.

to punish her by beating for some misdemeanors. But the courts would protect her from death, serious bodily harm, or his failure to supply the necessities of life.¹⁵

The ecclesiastical courts were one of a number of English jurisdictions. Alongside them English common law developed and came to mean all that was not exceptional or special, representing the general law of the land. The first professorship of English law was established around 1753. In 1769 William Blackstone's lectures were published as the *Commentaries on the Laws of England*, which was fundamental to the shaping of law in Britain and the colonies.¹⁶ In the *Commentaries*, Blackstone established the legal dichotomy of the civic and domestic spheres by stating that a crime was an act that produced mischief in civil society whereas private vices lay outside the legitimate domain of law. Blackstone argued that even the vice of drunkenness, if committed in the privacy of one's home, fell beyond the reach of the law, but as the public drunkard set an evil example for others, he deserved prosecution.¹⁷ The discursive construction of the domestic sphere meant the state did not lay claim to the authority of the *domus* unless unnatural crimes took place, such as killing, which was also an infringement of the sovereign's right over life and limb. Coverture also reinforced a husband's religious right of chastisement. William Blackstone said, 'by marriage the husband and wife are one person in law: that is the very being or legal existence of the woman is suspended in marriage.'¹⁸ However, contesting discourses put a husband's right to chastisement under scrutiny and some legal limits were set. In 1775 Blackstone ruled that it was reasonable for a man to chastise his wife in the same moderation as to correct his children.¹⁹ Whether or not an individual husband chose to exercise this right, the marriage contract constituted wives as property and allowed men to control wives with violence. This historical inheritance was to have a long reach into the future.

¹⁵ S.A. Reilly, 'Our Legal Heritage', Chapter 8, Project of Gutenberg, 2009. Retrieved December 2007 from <http://informations.com.etexts/gutenberg/dirs/1/3/3/7/13376/13376.htm>.

¹⁶ Ibid., 'Our Legal Heritage', Chapter 18.

¹⁷ Blackstone reported in Rebecca Pleck, *Domestic Tyranny. The Making of American Social Policy against Family Violence from Colonial Times to the Present*, Urbana and Chicago: University of Illinois Press, 2004, p.33.

¹⁸ Quoted in R. Emerson Dobash and Russell Dobash, *Violence against Wives. A Case against the Patriarchy*, New York: The Free Press, 1979, p.60.

¹⁹ Reported in Susan Edwards, 'Male Violence Against Women: Excusatory and Explanatory Ideologies in Law and Society', in Susan Edwards, ed., *Gender, Sex and the Law*, Beckenham, Kent: Croom Helm Ltd, 1985, p.189. Another eighteenth century ruling gave a husband a right to beat his

BRITISH PRECEDENTS FOR NEW ZEALAND LAW AND CULTURE

British developments in law and state administration, and changes in the construction of violence and gender, enabled men's physical violence against wives to be constructed as a problem of social proportions that demanded external regulation by the state.²⁰ From the late eighteenth century the state was emerging as the principal structure in the ordering of social relations; 'the reach of English law was continually widening'.²¹ In this new environment wife-beating was increasingly stigmatized.

The extension of the law and its increasing monopolization of rights of discipline of the populace were fundamental to a change in attitudes to violence against women. A.V. Dicey observed an ideological shift occurring around 1860 from individualism to collectivism, collectivism being the idea that favoured state intervention, even at some sacrifice of individual freedom, for the benefit of the whole.²² Changes in the social and material environment propelled the shift. Increasing population, urbanization and industrialization had created discontent, and prompted popular demands for reform. Reformers of all kinds united in the crusade against cruelty and demands for protection of vulnerable groups.²³

State enquiries had an internal momentum: an initial enquiry led to interventions, more disclosures, further enquiry, and demands for more legislation. Demands for centralization accompanied these demands as local authorities failed to meet the new challenges.²⁴ So, too, intervention in any one area had wider implications. For example, the factory movement introduced socialistic enactments into English law and laid the basis for government inspection and control, not just of labour, but also of other spheres of life.²⁵ The factory acts also demonstrate how changes in the social

wife as long as it consisted of 'blows, thumps, kicks or punches in the back, which did not leave marks', see Dobash and Dobash, p.40.

²⁰ Martin J. Wiener, *Men of Blood. Violence, Manliness and Criminal Justice in Victorian England*, Cambridge: Cambridge University Press, 2004, p.9.

²¹ *Ibid.*, p.21.

²² A.V. Dicey, *Lectures on The Relation Between Law and Public Opinion in England During the Nineteenth Century*, London: Macmillan and Co. Ltd, 1905, p.64.

²³ *Ibid.*, pp.107, 219; Oliver MacDonagh, *A Pattern of Government Growth 1800-1860. The Passenger Acts and their Enforcement*, London: MacGibbon & Kee, 1961, p.17; examples of protectionist measures were the abolition of the slave trade in 1806, of the whipping of women in 1820, and protective measures were introduced for animals in 1822, see Dicey, p.106.

²⁴ MacDonagh, p.342; Dicey, p.117.

²⁵ The factory movement was concerned with labour conditions especially of children and women, Dicey, pp.219-37; the factory acts are described as one of the first attempts at state control of the exploitation of the labouring classes and their success was vital to the development of modern social

and material environment can invigorate newer discourses. The concentration of children in factories produced infection outbreaks and un-regulated child labour meant children were not receiving educational or moral training. Child protection legislation followed.²⁶

Before about the end of the eighteenth century an assault, no matter how vicious, did not constitute a felony unless the victim died, and often a non-intentional killing went unpunished.²⁷ As violence came to be seen as having a wider impact than on the individuals involved, anxieties about it rose, personal injury became more problematic and the legislature responded by redefining criminal violence.²⁸ The 1828 Offences Against the Person Act, described as ‘the first truly comprehensive piece of legislation designed to address interpersonal violence in British society’, widened magistrates’ powers and made it easier for a victim to initiate prosecution by extending ‘summary jurisdiction’ to common assault and battery.²⁹ Further laws toughened the penal response to violence.³⁰

From the mid-nineteenth century crimes against the person began to evoke a greater fear than did crimes against property.³¹ The increasing numbers of working-class people amassing in the cities and towns threatened a new barbarism.³² After the 1867 Reform Act that extended male suffrage, social policy makers felt it increasingly urgent to tame the masses advancing to political power, prompting a state-led civilizing process, which primarily targeted men’s behaviour.³³ While all male violence came under scrutiny, a reconstruction of gender exposed men’s violence

administration, Ursula R.Q. Henriques, *The Early Factory Acts and their Enforcement*, London: The Historical Association, 1971, p.1.

²⁶ Ibid., p.1.

²⁷ Wiener, p.19.

²⁸ For example, attempted murder was added as an offence in 1834 and breaking of the skin as not necessary to constitute wounding in 1837, *ibid.*, p.38.

²⁹ Greg Smith *cit.*, *ibid.*, p.23.

³⁰ Summary jurisdiction meant a magistrate could make a decision without a jury. See Wiener for a number of technical changes in law, pp.37-38.

³¹ *Ibid.*, p.27.

³² For example, in 1867 a social commentator, William Reade, warned that ‘the lawlessness which has temporarily grown up among the dangerous classes will have terrible results. Already rowdyism and ferocity seem to have infected the mob in many places to an unusual degree, and the sooner the lesson is taught that the Law is above all in England, the better for everyone’s welfare’, *cit.*, Maeve Doggett, *Marriage, Wife-beating and the Law in Victorian England*, London: Wiedenfeld and Nicolson Ltd., 1992, p.117.

³³ Wiener, p.11.

against wives as particularly problematic. The concern to protect women converged with a need to reduce violence in general, to civilize men in all their social relations.³⁴ Class discourses combined with emergent gender ones to focus attention on working-class domestic relations. Wife-beating was considered a characteristic of the working class.³⁵ Legal academic John Biggs has claimed that separation orders grew out of increased assaults by working men on their wives.³⁶

The construction of women as moral, vulnerable and in need of protection from dangerous men gained currency. It underwrote the 1853 Better Prevention and Punishment of Aggravated Assaults Upon Women and Children Act, which put the first explicit limit on a husband's right of chastisement, added wife-beating to the other newly named social evils in the era of reform and signalled the state's growing inclination to regulate domestic relations. However, measures against male violence to wives were about reshaping masculinity. This was evident in one parliamentarian's view that wife-beating was 'a man's question' because these 'unmanly' assaults ultimately had a more injurious effect on the men who committed them than on the women who endured them.³⁷ Legislators stressed men's duty to protect helpless wives from violence, not wives' right not to be beaten. New constructions of manliness demanded that men were peaceable, practised self-restraint and were better behaved. The treatment of women became the new standard of manliness.³⁸ This had wide political implications; the treatment of women became the touchstone of civilization and national pride, and the protection of women became an important justification for imperial dominance over much of the world.³⁹

Many discourses contested the new constructions of civilized manliness. Firstly, constructions of aggressive manliness persisted. Secondly, by the 1860s the male voter as breadwinner and head of the household was central to the construction of political citizenship. Because citizenship was household-based, the doctrine of

³⁴ Ibid., pp.3, 5.

³⁵ This included women's rights advocates such as Francis Cobbe who believed that 'the better sort of Englishmen are...exceptionally humane and considerate to women, while the men of the lower class of the same nation are proverbial for their unparalleled brutality', cit., Doggett, p.126.

³⁶ Biggs, p.193, it is unclear if this was actual or perceived.

³⁷ Wiener, pp. 6, 157-8.

³⁸ Ibid., p. 6; A. James Hammerton, *Cruelty and Companionship. Conflict in Nineteenth-Century Married Life*, London: Routledge, 1992, pp.66-67.

³⁹ Wiener, pp.3, 32.

coverture, which subsumed a married woman's legal existence into that of her husband, obstructed married women's claims to political citizenship.⁴⁰ As Carole Pateman has argued, equality among men was structured on an ability to control and dominate the *domus* or household, especially wives; a 'sexual contract' lay at the heart of the social contract.⁴¹ In return for acceptance of its more extensive role, the state justified male paternalism in the domestic sphere, supporting a husband as a kind of 'domestic magistrate', and thereby institutionalizing gender inequality and protecting the domestic sphere from state intrusion.⁴² Thirdly, the bourgeois model of the family, which became more pervasive over time, made the domestic sphere the proper place for all women. This excluded women from the civic sphere, and its constructions of femininity placed higher demands on women's behaviour. Attributes such as industry, sobriety and chastity became indispensable to being a 'good' wife.⁴³ There was a separation of brutal violence from lesser forms of violence. According to A. James Hammerton 'middle class outrage against wife assault...continued to be qualified by acceptance that it could still be men's ultimate legitimate sanction against recalcitrant wives'.⁴⁴

Discursive constructions of provocation were particularly powerful in mitigating male responsibility for violence. Nineteenth century magistrate and author of *Principles of Punishment*, Edward Cox, wrote that in his experience the beaten wife was usually 'an angel of the fallen class, who has made her husband's home an earthly hell, who spends his earnings on drink...starves her children...lashes him with her tongue when sober'.⁴⁵ His contemporary, Francis Cobbe, noted that both the lower-class perpetrators and the upper-class magistrates who judged them were likely to take a generous view of what constituted aggravating behaviour.⁴⁶ In one case in 1880 a man 'charged with brutally assaulting his wife whom he had repeatedly kicked in the head and ribs while she lay barely conscious', pleaded he was aggravated. He was

⁴⁰ Rendall, pp.120, 122, 161.

⁴¹ Pateman, pp.6, 48-49.

⁴² A French civil code makes this reference to the husband as a 'domestic magistrate', see Nicole Arnaud-Duc, 'The Law's Contradictions', in Georges Duby, Genevieve Fraisse and Michelle Perrot eds, *A History of Women. Emerging Feminism from Revolution to World War*, Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1995, p.99.

⁴³ Wiener, p.159.

⁴⁴ Hammerton, p.27.

⁴⁵ Doggett, p.124.

⁴⁶ *Ibid.*, p.129.

sentenced to 14 days hard labour.⁴⁷ While the killing of a wife was incurring heavier sanctions, if the wife was proven to have been adulterous the husband usually was treated with some leniency.⁴⁸ The fining of a policeman in 1871 for common assault after he stopped a man from beating his wife exemplifies how powerful the discursive constructions of the husband as head of the household were in contesting discourses that problematized men's violence against wives.⁴⁹

The exposure of men's violence against wives was central to prompting external regulation of domestic relations.⁵⁰ The Society for the Protection of Women and Children from Aggravated Assaults opened the first recorded lodging place for assault victims in London in 1857, and played a part in publicizing the problem.⁵¹ From the 1860s, newspapers started to give extensive coverage to wife-assault cases. The public read of extreme examples, such as the 'kicking districts' of Liverpool, about trampling and 'purring' (which meant digging the women with wooden clogs tipped and heeled with iron) in the North, and smashing and vitriol-throwing in London.⁵² The Divorce Court, established in 1857, provided new access to private family affairs, opened marital behaviour to scrutiny, and raised the question of what cruelty meant. It attracted publicity for the issue, especially in the newspapers.⁵³

Changing discourses that recognized women's political rights and accentuated a woman's right to bodily integrity, reinforced the move towards state regulation of domestic relations and a widening definition of violence in the domestic sphere as a breach of contract. Enlightenment discourses of reason, progress, and natural and equal rights, contested the poor civil and legal status of wives. Demographic changes reinforced these counter discourses. Since the nineteenth century the number of middle-class women had increased and women had 'obtained the means of making

⁴⁷ Edwards, p.190.

⁴⁸ Wiener, p.202.

⁴⁹ Doggett, p.115.

⁵⁰ Hammerton, p.33.

⁵¹ Doggett, p.111; the Society also provided legal advice to victims, stationed observers in courtrooms to monitor cases involving women and children, Evans Stark, *Coercive Control. How Men Entrap Women in Personal Life*, New York: Oxford University Press, 2007, p.143.

⁵² Doggett, p.111.

⁵³ Hammerton, pp.102, 116, 119.

known to the public through the press every case of injustice done to them'.⁵⁴ The women's rights movement criticized marriage for producing slavery-like conditions for wives and enabling 'paternal omnipotence' that 'placed women in a desperate situation, without rights in regard to their children and vulnerable to their husband's blackmail'.⁵⁵

Until 1857 it was virtually impossible for a wife to terminate a marriage; divorce was available only by private Act of Parliament. There had been only 325 divorces in England until this time, only four of which were initiated by women. The cost was prohibitive and the grounds for a petition were severely limited: adultery by a woman or aggravated adultery by a man. A woman whose husband was violent only was restricted to a judicial separation.⁵⁶ This reflected the greater importance of women's fidelity for the security of inherited property. The 1857 Matrimonial Causes Act maintained a view of marriage as a civil contract and propagated the belief that, like any other free agreement, it could be dissolved when it failed to achieve its end, but only under special circumstances determined by a court. It also increased the viability of a separation order by making the wife a *femme sole* with respect to any property she acquired post-separation. This meant a husband had no claims on it.⁵⁷

The idea of protection that had emerged to restrict freedom of contract also applied to marital ones.⁵⁸ Further legislation to protect wives followed. This, in turn (like divorce legislation) strengthened the belief that the law should treat women equally, and encouraged further legislation to produce equality, thereby improving wives' capacity to resist husbands' violence.⁵⁹ The 1870 Married Women's Property Act made the wages and property a wife earned through her own work her separate property, in practice an extension of property laws used by daughters of the rich to

⁵⁴ Dicey, p.384; Jane Rendall notes that the *English Women's Review* frequently carried articles that assailed the conditions of marriage as 'outmoded and barbaric inheritances of a past world', Rendall, p.173.

⁵⁵ Carole Pateman also relates an historical practice of wife-selling from the fifteenth century lasting through to the twentieth century, which makes the comparison more than implicit, Pateman, p.121; Arnaud-Duc, p.104.

⁵⁶ Aggravated meant the adultery had to be coupled with another matrimonial offence, Roderick Phillips, *Divorce in New Zealand. A Social History*, Auckland: University of Oxford press, 1981, p.17.

⁵⁷ Dicey, pp.43, 189; there was only one divorce court which was situated in London, Dogget, p.100.

⁵⁸ Other civil contracts were also altered such as those around employment of apprentices, Dicey, pp.259-61.

⁵⁹ *Ibid.*, p.43.

daughters of the poor.⁶⁰ In 1882 this law applied to all property, regardless of source or time of acquisition.⁶¹ From 1830 legislative changes improved women's rights to custody of children. By 1886 a mother could apply to the courts for custody or access for any child of any age.⁶²

After the failure of several bills to punish wife-beaters, the British legislature in 1874 commissioned an inquiry into the law on brutal assaults. A passionate speech by Colonel Egerton Leigh in the House of Commons initiated an investigation.⁶³ Six months later, the *Brutal Assaults Report* related a shocking number of serious cases of assault, such as trampling, burning, blinding and breaking of bones, providing fuel to reformers.⁶⁴ Consistent with an interpretation of men's violence against wives as a breach of the marriage contract, laws to provide matrimonial relief were passed. The 1878 Matrimonial Causes Act enabled women to petition for separation orders on the grounds of a conviction of aggravated assault against a husband. This was extended to conviction for persistent cruelty in 1895.⁶⁵ The legal definition of cruelty also shifted to that used by the Divorce Court, which did not depend exclusively on severe physical violence, thus widening the scope for wives' relief.⁶⁶ The 1884 Matrimonial Causes Act removed the power to imprison a spouse who would not comply with a decree for restitution of conjugal rights, it simply rendered them guilty of desertion, a major relief for women who left violent husbands. A wife could not be imprisoned for refusing sexual relations. The deserted spouse was entitled to a judicial separation without the two-year wait previously required.⁶⁷ The British ruling in *R v Jackson* 1891 was the most significant legal announcement that limited a husband's rights as head of the household. It abolished the common law defences of chastisement and confinement, and made it illegal for a husband to imprison or beat his wife.⁶⁸

⁶⁰ Rendall, p.157; Dicey, p.393.

⁶¹ Doggett, p.101.

⁶² Ibid., p.102.

⁶³ Bills were introduced in 1856, 1857, 1860, and 1872, *ibid.*, pp.108-9.

⁶⁴ Three years later Francis Cobbe wrote *Wife Torture in England* and estimated that around 1,500 women were brutally assaulted each year, *ibid.*, p.113. Some examples Cobbe used were, a man who had cut his wife to pieces, a man who had thrown his wife into a blazing fire and another who had knocked in the frontal bone of his wife's forehead. See Dobash and Dobash, p.72.

⁶⁵ Arnaud-Duc, p.99; Doggett, p.126; under the Summary Jurisdiction Act 1895, Hammerton, p.55.

⁶⁶ Hammerton, p.55.

⁶⁷ Doggett, p.103.

⁶⁸ Ibid., p.22.

While the legislation was important, the legislature's intention to regulate at least brutal violence was, like criminal justice reforms, uncertain in practice. Far from a smooth trajectory of progressive improvement, legal reforms were subject to a swirl of multiple, competing and contesting discourses, which qualified new discursive opportunities to censure a husband's violence, and at worst, neutralized them. Contesting discourses such as constructions of a "bad" wife and a husband's role as household head, produced 'intense cultural contestation over the proper roles of and relations between the sexes'.⁶⁹ Mabel Crawford's study of a sample of wife-beating cases in 1893 showed that, despite appalling violence and wives' pleas, the courts were disinclined to grant separation orders.⁷⁰ Mrs Jackson of the landmark case, *R v Jackson* 1891, was reportedly harassed by locals for defying her husband when she returned home.⁷¹ And while the Jackson ruling enabled a woman to live apart from a husband without his permission, material factors obstructed this possibility. Economic independence was virtually unobtainable in an environment where it was almost impossible for a woman to support herself and her children on women's wages. Maintenance orders were for small amounts and unreliable. The 1912 United Kingdom Royal Commission on Divorce reported that over half those separated were soon forced to resume cohabitation because of the increased cost of living separately.⁷² Legal discourses and practices continued to uphold the status of husband as "domestic magistrate" or household head despite the Jackson ruling. In *Balfour v Balfour* 1918, the High Court judge Lord James Aitken said, 'each house is a domain into which the King's writ does not seek to run, and to which his officers do not seek to be admitted'.⁷³ Although the case seemed to endorse self-determination, a sign of respect for the consensual nature of the marriage contract that arranged the household, in effect it upheld the power of the stronger party. Peter Goodrich has interpreted the ruling to mean that 'the husband is sovereign in his home, his castle, and it is his pleasure and law that govern there'.⁷⁴

⁶⁹ Wiener, p.6.

⁷⁰ Reported in Doggett, pp.143-4.

⁷¹ See Hammerton, p.33.

⁷² Ibid., p.56.

⁷³ Cit., Roma Mitchell, 'The Family and the Law', *New Zealand Law Journal* (NZLJ), no.10, 3 June 1969, p.183.

⁷⁴ Peter Goodrich, 'Friends in High Places. Amity and Agreement in Alsatia', *International Journal of Law in Context*, 1:1, 2005, Cambridge University Press, p.46. Retrieved February 2008 from <http://journals.cambridge.org>.

As this discussion has demonstrated, men's violence against wives emerged as a social problem demanding state regulation. However, older constructions of manliness, the domestic/civic dichotomy, and gender discourses embedded in the marriage contract, compromised efforts to civilize men in their domestic relations. Men's violence against wives was interpreted within the discursive framework of the marriage contract and was constructed as a question of breach of contract. Expectations of femininity put pressure on women to behave in a way that deserved protection; a failure to do so undermined claims of victimhood. The compromise was a separation of brutal from lesser forms of violence and a generous interpretation of assault.

In effect, the legislature and the courts, components of the British state, institutionalized gender inequality and supported social structures enabling men's violence against wives. There is much material evidence to support Maeve Doggett's claim that, although 'by the end of the nineteenth century the legal position of married women had improved considerably...for many of the victims of marital abuse the practical gains were small'.⁷⁵ In the 1910s, the state's civilizing offensive was described as being wound down.⁷⁶ But ultimately real changes did take place although these may have been more discursive than material. Men's violence against women was constructed in new ways so that a breach of contract covered a wider ambit of violent behaviour and was stigmatized more severely than it had been before.

WIFE-ASSAULT IN EARLY NEW ZEALAND

The discourses and practices that shaped the construction of men's violence against wives as a social problem in late nineteenth century New Zealand continued to shape the social treatment of it far into the twentieth century. Legal remedies introduced in this period remained largely unchanged until 1968, and are important to understanding responses to men's violence against wives and partners over the twentieth century.

In 1840 New Zealand was declared a colony of Great Britain, adopting British institutions of government and political practices, and all inhabitants were extended

⁷⁵ Doggett, p.142.

⁷⁶ Weiner, p.289.

the rights and privileges attached to British citizenship. The state, in both central and provincial form, was the principal structure for ordering social relations. In 1852 New Zealand gained the right to representative government and the first national parliament was subsequently established. The General Assembly was empowered ‘to make laws for the peace, order and good government of New Zealand provided that no such laws were repugnant to the laws of England’.⁷⁷ All acts assented to by the Governor had to be forwarded to the Colonial Office and could be overturned within two years of receipt.⁷⁸ British law still operated.

In 1857 the British Secretary of State for the Colonies had requested all colonial governments to introduce divorce measures as Britain had done that year. New Zealand passed an almost replica of British legislation in 1867.⁷⁹ Strong local resistance to divorce liberalization and the belief that New Zealand did not have ‘a large and permanent criminal class’, which obscured men’s violence against wives in this Colony, may have contributed to the delay.⁸⁰ But certainly the protectionist impulse towards women operated even if this did not demand divorce as a remedy. In 1867 parliamentarian John Kerr said, the Colony needed ‘better protection for married women from the ill-usage of drunken and brutal husbands’.⁸¹ British emigrants had also brought British ideas about women’s vulnerability and men’s dangerousness. British reforms shaped the New Zealand 1860 Married Women’s Property Protection Act, which provided for property protection orders for married women deserted by their husbands, and prevented rogue husbands from intermittently returning and appropriating a wife’s earnings.⁸² The New Zealand parliament appeared to favour maintenance proceedings and property protection over divorce as solutions to desertion and cruelty. These were not perceived to threaten marriage as divorce might have.

⁷⁷ J.O Wilson, *New Zealand Parliamentary Record, 1840-1984*, Wellington: Government Printer, 1985, p.34.

⁷⁸ Ibid.

⁷⁹ Reasons for the delay are not clear, but although New Zealand’s response may have been tardy, New South Wales did not pass legislation until 1873, Hilary Golder, *Divorce in 19th Century New South Wales*, Kensington, NSW: New South Wales University Press, 1985, p.8

⁸⁰ Roderick Phillips, *Divorce in New Zealand: a Social History*, Auckland: Oxford University Press, 1981, pp.18-20; Mr Moss cit., *ibid.*, p.8; recall too that much of the British debate around wife-beating had to do with punishment of wife-beaters.

⁸¹ John Kerr, *New Zealand Parliamentary Debates*, (NZPD), 1867, 1, p.1045.

⁸² British divorce legislation had made a similar provision, Doggett, p.100.

By the mid-1860s however, newspapers highlighted divorce as a significant social concern. The lack of right to escape intolerable marriages was deemed a ‘scandal of the most serious kind’.⁸³ The apparent enthusiasm for divorce provisions is not explained. Demographic changes might have played a part. The Pakeha population virtually trebled in the 1860s and doubled the following decade, a greater proportion lived in urban areas, an influx of female immigrants made marriage a possibility for larger numbers of the population, and the pioneering phase had passed.⁸⁴ Hayley Brown suggests that the numerous immigrants of Scottish descent were prominent in promoting divorce law reform. Divorce had been a common law right in Scotland from 1560.⁸⁵ Newspapers enabled a wider transmission of issues around marriage and gender.⁸⁶ Contestation over the proper roles and rights of the sexes in Britain was also relayed through New Zealand newspapers, supporting local debate around marriage and reinforcing bourgeois notions of gender.⁸⁷

British and Australian reforms had exposed the comparative lack of divorce provisions in New Zealand. The emulation of British and other colonial laws became an important driver of divorce reform.⁸⁸ Different laws amongst the colonies could raise problems in determining legitimacy and inheritance.⁸⁹ Divorce was not considered as a woman’s question at this time.⁹⁰ However, the plight of many women’s unsuccessful attempts to petition for divorce through British or Australian courts and the hardships for men and women arising from the non-availability of divorce had come to the attention of politicians.⁹¹ It was also observed that the

⁸³ A.H. Louis, ‘The State of the Marriage Laws in New Zealand’, *Daily Southern Cross*, 27 May 1865, p.5; Louis’s article was reprinted in several newspapers, originally in the *Lyttelton Times*.

⁸⁴ From 1861-1865 almost 30,000 females immigrated to New Zealand, Jeanine Graham, ‘Settler Society’, in Geoffrey Rice, ed., *The Oxford History of New Zealand*, 2nd ed., Auckland: Oxford University Press, 1992, pp.116, 125, 136; W.J. Gardner, ‘A Colonial Economy’, in Geoffrey Rice, ed., *The Oxford History of New Zealand*, 2nd ed., Auckland: Oxford University Press, 1992, p.70.

⁸⁵ Hayley Marina Brown, ‘Loosening the Marriage Bond: Divorce in New Zealand, c.1890s –c.1950s’, PhD thesis, Victoria University, Wellington, 2011, pp.5-6.

⁸⁶ Nine new newspapers were established from 1864-1868. Retrieved April 2008 from paperspast.natlib.govt.nz. An example of debate around marriage and gender was that incited by Mary Ann Colclough’s outspoken attacks on the position of wives in Auckland in 1870, see Judith Elphick Malone, ‘What’s Wrong with Emma?’ in Barbara Brookes, Charlotte Macdonald and Margaret Tennant, eds, *Women in History. Essays on European Women in New Zealand*, Allen & Unwin/Port Nicholson Press, Wellington, 1986, pp.69-85.

⁸⁷ For example, ‘Husbands and Wives’, *Southland Times* 5 January 1866, p.3.

⁸⁸ Phillips, pp.19-21.

⁸⁹ *Ibid.*, p.24.

⁹⁰ *Ibid.*, pp.19-21.

⁹¹ Francis Bell claimed that some New Zealanders had traveled to Australia to obtain divorces,

availability of divorce in England had not undermined society or caused a deterioration of the character of English women.⁹² Still, divorce law did not have an easy passage. The government had refused to introduce such a bill and many feared what William Travers's private bill meant for the family and the moral order.⁹³ In 1867 the New Zealand Divorce and Matrimonial Causes Act made the same provisions for divorce as existed in Britain.⁹⁴ A husband could petition for divorce on the grounds of adultery; a wife could petition for divorce on the grounds of aggravated adultery, i.e. coupled with cruelty, desertion or habitual drunkenness. Cruelty in marriage coupled with adultery became issues of contract to be heard in the Supreme Court in Wellington. It was thought proper that when spouses did not fulfil promises of either to 'love and cherish' or to 'honor and to obey' the perpetuity of the relationship should be cancelled.⁹⁵ The first judicial separation was granted in late 1869.⁹⁶

Women's capacity to resist a husband's violence improved with the 1870 Married Women's Property Protection Act, which extended property protection orders for deserted married women introduced in 1860 to wives subject to cruelty, where the husband was living in open adultery, was guilty of habitual drunkenness, or failed to maintain. If a married woman's earnings or property were insufficient to support any child under the age of ten years she could apply for a limited maintenance order. Under these conditions a magistrate could vest custody in the mother of male children under ten years and female children until 18 years.⁹⁷ An extension of property orders had also followed a British example.⁹⁸

see Phillips, p.19; parliamentarian David Main said that in his professional capacity he had received many applications for relief, but the expense constituted an insurmountable barrier, David Main, NZPD, 1867, 1, p.1046; parliamentarian John Hall said that there was 'hardly one honourable member who did not know of cases in which relief could be afforded by this measure', John Hall, NZPD, 1867, 1, p.1094.

⁹² John Hall reported in Phillips, p.21.

⁹³ Ibid., pp.18-20.

⁹⁴ *New Zealand Statutes (NZS)*, 1867 Divorce and Matrimonial Causes Act, pp.689-97.

⁹⁵ 'The Divorce Bill', *North Otago Times*, 17 September 1867, p.3.

⁹⁶ In that case a wife gave corroborated evidence of the 'grossest and most abandoned cruelty' and of the 'most abusive and disgusting language', 'First Judicial Separation in New Zealand', *West Coast Times*, 1 November 1869, p.2.

⁹⁷ NZS, 1870 Married Women's Property Protection Act, pp.113-14.

⁹⁸ Phillips, pp.19-21.

Seven years later the 1877 Destitute Persons Act extended provisions for deserted wives.⁹⁹ It provided for a wife who was compelled to leave her home under ‘reasonable apprehension of danger to her person’ to be deemed to have been deserted without reasonable cause.¹⁰⁰ Such a wife was legally entitled to maintenance. Although a deserted wife was not entitled to marry, the act allowed her to escape some of the legal disabilities of wifehood. Unlike divorce law, petitions could be heard in a Magistrate’s Court, which was more accessible in both time and place than the Supreme Court. However, proving ‘reasonable apprehension’ was difficult; the feared acts of violence had to be of a nature calculated to imperil health or safety.¹⁰¹ The act applied only to the settler population; Maori could make applications, but only with the Governor’s blessing.¹⁰²

In the criminal justice system assaults against wives were usually dealt with as common assault, an offence liable to fines or two months imprisonment.¹⁰³ When serious injuries occurred, some distinction was made between assaults perpetrated by strangers and those by husbands. At least from 1867 under the Offences Against the Persons Act, any person who assaulted a female or male child aged under 14 years where such an assault could not sufficiently be punished under provisions for common assault or battery, was liable to imprisonment not exceeding six months.¹⁰⁴ Women and children were regarded as a single category as regards protection by the law. A common penal response was to bind over husbands to keep the peace or impose a fine in lieu of imprisonment. These penalties could also be imposed for offences involving strangers, but violence against wives was distinguished by the legal interpretation of it as a breach of the matrimonial contract.

The case of Hannah Ross exemplifies the distinction. Hannah charged her husband with brutal assault in 1877, but because the parties had come to an agreement in which she forgave him if he paid her maintenance, Ross, although severely

⁹⁹ The 1846 Destitute Persons Ordinance had created the first provisions for deserted wives in New Zealand.

¹⁰⁰ NZS, 1877 Destitute Persons Act, pp.344-51.

¹⁰¹ Home and Family Society (HFS) records, Dunedin branch, 1910 Destitute Persons Act, Case Notes, *Milford v Milford*, AG-647-155, Hocken Library (HL), Dunedin.

¹⁰² NZS, 1877 Destitute Persons’ Act, p.351.

¹⁰³ Raewyn Dalziel, *Focus on the Family. The Auckland Home and Family Society 1893-1993*, Auckland: Home and Family Society, 1993, p.23.

¹⁰⁴ NZS, 1867 Offences Against the Persons Act, p.64.

reprimanded, was fined ten shillings: ‘let off’ in Hannah’s words.¹⁰⁵ Hannah had several teeth knocked out, an almost closed-up eye, severe bruising, was forced to flee, and her baby abducted by her husband the next day at gunpoint.¹⁰⁶ By comparison, an argument between two men in which one hit the other three times and a witness gave evidence the man was not hurt much and continued to smoke his pipe, also resulted in a fine of 10s.¹⁰⁷ Because Hannah and her husband had worked out an agreement that remained contractual (the husband continued to maintain his family), and Hannah had forgiven him (forgiveness was interpreted as condonation because marriage was a free contract), criminal justice sanctions were not necessary.

Hannah returned to her husband, who nine months later, was again charged with assault. After a beating, Hannah had run for her life, taking refuge at a local hotel. The next morning her husband attempted to take her home, dragging her screaming along the street, where some men seeing her ‘suffering a great deal’ and calling for mercy, challenged him, the image before them consistent with one of a vulnerable woman in need of protection from a brutish husband. Ross told the court he was only trying to get her home and that she had no cause to leave him. A doctor gave evidence of injuries and her generally weak constitution. The court ordered a £75 bond to keep the peace.¹⁰⁸ This did not constitute adequate protection in Hannah’s eyes for she did not return home. She later gained a custody order, presumably on account of Ross’ cruelty. Three months later Ross sold up the farm and left his wife and three young children penniless. Hannah then successfully applied for a judicial separation arguing desertion and cruelty.¹⁰⁹

Magistrates often concurred with wives’ wishes for leniency, viewing marriage as a free civil contract. When Mary Wheeler accused her husband of an assault in which she had been stabbed and beaten, and requested that her husband might be bound over to keep the peace, the magistrate, after severely reprimanding her husband, obliged

¹⁰⁵ ‘Resident Magistrate’s Court’, *Timaru Herald* (TH), 22 November 1877, p.3; ‘Supreme Court’, TH, 18 June 1879, p.2.

¹⁰⁶ ‘Supreme Court’, TH, 18 June 1879, p.2.

¹⁰⁷ ‘Resident Magistrate’s Court’, TH, 15 October 1878, p.2.

¹⁰⁸ ‘Resident Magistrate’s Court’, TH, 18 September 1878, p.3.

¹⁰⁹ ‘Supreme Court’, TH, 18 June 1879, p.2.

with a six-month bond.¹¹⁰ Similarly, Edward Carpenter was bound over to keep the peace when his wife said she did not want to see him punished.¹¹¹

As with English legal practice, brutal violence was separated out from lesser forms of violence. Husbands were penalized in cases of serious injury, such as those resulting in hospitalization or long recovery periods. In 1865 a man was sentenced to one month gaol for breaking two of his wife's ribs and severely bruising her body.¹¹² Eliza Bray's husband incurred three years penal servitude for an assault that left her in a critical condition with a broken arm and 'seriously injured all over'. She was hospitalized for three months.¹¹³ In contrast, Hannah Ross's previously mentioned injuries were not thought serious enough to warrant imprisonment of her husband.¹¹⁴

Women's economic dependence on men and the state's reliance on men to provide for families, contested discourses that stigmatized men's violence. For example, Thomas Bloomfield was sentenced to one month imprisonment for an aggravated assault on his wife. He was told that 'were it not for his wife and family' he would have received a longer term.¹¹⁵ Normative constructions of femininity mitigated male violence. The failure of a wife to meet expectations of virtue and domesticity transferred responsibility for the violence to the wife, as was indicated in Ellen Pederson's experience. Her association with another man undermined her petition for a property protection order despite allegations of threats to kill, strangling, cruelty to the children, poor maintenance and agreement by the parties to separate.¹¹⁶ Assumptions about the privacy of the domestic sphere contested external regulation so that when Eliza Bray, after her husband threatened to beat her, asked a policeman to arrest her in order to protect her, the policeman refused after her husband promised not to beat her again.¹¹⁷ A witness to the subsequent assault on Eliza, resulting in her being

¹¹⁰ 'Resident Magistrate's Court', TH, 11 September 1874, p.3.

¹¹¹ Carpenter was however warned that if he appeared again he would be gaoled, 'Resident's Magistrate's Court', *Wellington Independent*, 16 November 1865, p.6.

¹¹² 'Resident Magistrate's Court', *Evening Post*, 16 February 1865, p.3.

¹¹³ 'Supreme Court', TH, 19 December 1878, p.2.

¹¹⁴ 'Supreme Court', TH, 18 June 1879, p.2.

¹¹⁵ A constable gave evidence of the assault being very aggravated, see 'Resident Magistrate's Court', TH, 26 October 1878, p.3.

¹¹⁶ 'Resident Magistrate's Court', TH, 29 May 1878, p.4.

¹¹⁷ 'Supreme Court', TH, 19 December 1878, p.2.

hospitalized for three months, gave evidence that he had heard screams coming from the house but did not intervene.¹¹⁸

From the late 1880s there was a heightened awareness of the ill-treatment of wives and children as male culture and domestic relations came under greater social and political scrutiny. Raewyn Dalziel characterizes the 1890s as a decade of moral panic over youth and parental behaviour.¹¹⁹ James Belich describes the period between 1880 to 1920 as ‘the Great Tightening’, a moral crusade to harmonize and homogenize New Zealand.¹²⁰ Demographic shifts, economic conditions, a progressive ethos and women’s rights advocates’ reform efforts converged to challenge male behaviours that could threaten the safety of women.¹²¹ As informal sanctions failed to control behaviour in the complex and more urban society, the state’s tolerance for activities that threatened social order declined.¹²² ‘A broadening belief in the need for comprehensive social integration’ had encouraged state regulation in all sorts of economic and social endeavours such as immigration, education and economic development, with each intervention encouraging further regulation.¹²³ The progressive ethos of the late nineteenth century supported state intervention in the pursuit of justice and equality.¹²⁴ The New Zealand government was more inclined to make laws that suited local conditions rather than pursuing legislative uniformity with England.¹²⁵ The state was centralizing control of the judicial system. For many years petty offences, such as those listed under police law or summary offences, had been controlled by old provincial legislation, and a national statute was not passed until 1884.¹²⁶ In 1893 the Criminal Code Act established the first national criminal code

¹¹⁸ Ibid.

¹¹⁹ Dalziel, p.11.

¹²⁰ James Belich, *Paradise Reforged. A History of the New Zealanders from the 1880s to the Year 2000*. Auckland: Penguin Books, 2001, p.121.

¹²¹ For example see ‘Weak Women’, *Observer*, 19 May 1883, p.130.

¹²² Belich, p.160.

¹²³ Ibid., p.123.

¹²⁴ Roberta Nicholls, *The Women’s Parliament. The National Council of the Women of New Zealand, 1896-1920*, Wellington: Victoria University of Wellington, 1996, p.25.

¹²⁵ Phillips, p.24.

¹²⁶ The 1884 Police Offences Act, see Jeremy Finn, ‘Codification of the Criminal Law: the Australasian Parliamentary Experience’, paper presented at the Comparative Histories of Crime Conference, Christchurch, September 2003, footnote 14, p.4. Retrieved February 2009 from <http://ir.canterbury.ac.nz/bistream/10092/1828/1/1>.

and penalties for crimes of violence were raised, which indicated a greater intolerance for violence in general.¹²⁷

Scrutiny of men's behaviour elevated the problem of "wife-assault", as it was commonly named, but not to the extent it did in England. There was no local commissioned equivalent of the *Brutal Assaults Report* and wife-assault did not receive the same public attention it did in Britain. The belief that wife-assault was uncommon in New Zealand tempered concern, with some arguing that there was no need for legal remedies or protectionist societies.¹²⁸ The construction of New Zealand as a New World where the undesirable elements associated with the Old World were left behind, the lack of public exposure of wife-assault and the lack of established subcultures such as the 'kicking districts' of Liverpool, supported this belief.

Although disciplining drunkenness was part of reforming men in Britain, men's drinking habits appeared a greater target in New Zealand.¹²⁹ Associated with the socially disruptive 'frontier male culture', and often blamed for all social disorder and suffering, the problem of drink dominated politics from the 1890s. Justice statistics were interpreted to mean that alcohol was the major contributor to crime, and social disorder and prohibition became the primary means to tame the Pakeha male.¹³⁰ Morally charged discourses constructed various behaviours that did not fit with a vision of a New World as social problems that needed intervention. From the 1880s, a rapidly increasing population, an improved gender balance, urbanization and declining economic conditions had increased low income housing density and made more visible social problems such as destitution, prostitution, drunkenness, illegitimacy, 'larrikinism' and wife-assault.¹³¹ As Dalziel noted, among the tightly

¹²⁷ The 1884 Police Offences Act generally provided significantly lower penalties for similar criminal conduct, *ibid.*, pp.4, 7, 11.

¹²⁸ For example, the notion that New Zealand did not have a permanent criminal class (unlike Britain) was raised in discussions around a national criminal code, Finn, p.8; parliamentarians opposed to adding cruelty as a ground for a judicial separation argued that aggravated assaults upon wives were by no means common in New Zealand, 'Political Notes', *Southland Times*, 29 July 1891, p.3; and some questioned the need for the Society for the Protection of Women and Children, Dalziel, p.10.

¹²⁹ Doggett, p.118.

¹³⁰ Jock Phillips, *A Man's Country? The Image of the Pakeha Male – A History*, Auckland: Penguin Books, 1987, pp.55, 59.

¹³¹ Belich, p.17; M.L. Reid, 'The Society for the Protection of Women and Children: Dunedin Branch 1899-1914', Post-graduate Diploma essay, University of Otago, Dunedin, 1981, p.1; Nicholls, p.22; illegitimacy rates increased due to the increasing proportion of young women in the population and larrikinism was a name used to refer to groups of young men nuisance making, Dalziel, pp.11-12.

packed houses in the inner city, quarrels, shouts and thumps were easily heard; a child or woman with broken bones or bruises more easily noticed.¹³² Unemployment forced many men to seek seasonal or transitory work, separating families. Many did not return and wife desertion was common.¹³³

Jock Phillips claims that the new social disorder of the larger cities upset the sensibilities of respectable Pakeha. Entry of working-class male habits of drinking and gambling into town space caused disruption, frightened women and children, made other men anxious about their property, caused the unemployed to be stigmatized and inspired efforts to civilize men.¹³⁴ For many, the bourgeois family model in which women devoted themselves to their duties as mothers and wives and men as providers and protectors of them, offered the solution to the apparent social disorder. Phillips claims that marriage, as an economic, community and emotional anchor, was encouraged as a means to reconstruct masculinity.¹³⁵ Dalziel noted that women's job at this time was 'to restrain and refine the base instincts of men'.¹³⁶ Wifedom was especially suited to this mission. Such morally charged discourses were in greater currency amongst the middle-class. Middle-class women also attempted to impose middle-class femininity on working-class women in order to rescue them from so-called lives of disease and immorality.¹³⁷ But also importantly, protectionist impulses, based on the notion of women and children as vulnerable and men as dangerous, were a dominant driver of many social reforms in the 1880s and 1890s.¹³⁸

Increasing state regulation of domestic relations had wide social and political support. Women's groups, such as the National Council of Women (NCW) formed in 1896, demanded that the state intervene to make New Zealand 'more moral, humanitarian

¹³² Dalziel, p.11.

¹³³ Reid, p.1.

¹³⁴ Jock Phillips, pp.49, 54.

¹³⁵ Ibid., p.51.

¹³⁶ Raewyn Dalziel, 'The Colonial Helpmeet', in Barbara Brookes, Charlotte Macdonald and Margaret Tennant, eds, *Women in History. Essays on European Women in New Zealand*, Wellington, Allen & Unwin/ Port Nicolson Press, 1986, p.63.

¹³⁷ For example, see Margaret Tennant, 'Magdalens and Moral Imbeciles: Women's Homes in Nineteenth Century New Zealand', in Barbara Brookes, Charlotte Macdonald and Margaret Tennant, eds, *Women in History 2. Essays on Women in New Zealand*, Wellington: Bridget Williams Books, 1992, pp.49-75.

¹³⁸ For example, divorce in relation to women was raised only tangentially in the 1867 debate but was a major issue in debate in the 1880s and 1890s, Roderick Phillips, p.21.

and egalitarian' in order 'to prevent the evils of poverty and vice from the Old World afflicting the New'.¹³⁹ The Liberal Government, which began its 21-year tenure in 1891, supported this view.¹⁴⁰ In 1893 the Society for the Protection of Women and Children (SPWC) became the first New Zealand organization to aid women and children who suffered assaults, its title a reflection of the belief about vulnerable women and dangerous men. Changing discourses around children that positioned them as precious assets to the community supported it. For children's own sake and in the interests of social order, they should not be raised in homes that were constructed as characterized by drunkenness, immorality or violence. For the Society, the bourgeois family model was the means to remedy social problems of female impropriety, drunkenness, and rowdiness. The Society incessantly petitioned parliament for law changes to protect women and children in both their homes and on the street. It was an important resource for women. It assisted many physically and emotionally abused wives to obtain maintenance orders and collect payments.¹⁴¹

Law changes encouraged further scrutiny of marital relations. Newspapers both reflected and propelled the increasing concern about wife-assault. In 1880 one paper reported a large number of married women making applications for separation orders, and another in 1883 related a 'rapid increase in business in the Divorce Courts'. Cruelty was the basis for most of these applications.¹⁴² From the late 1880s newspapers were more inclined to publish details of court cases involving wife-assault, and there were more papers to do so.¹⁴³ Reformers such as the SPWC, and women's groups, exploited the opportunity for publicity. The Society wrote to government ministers, held public meetings and publicized its crusade in the newspapers.¹⁴⁴ The Women's Political League also directed the state's attention to the

¹³⁹ Nicholls, p.22.

¹⁴⁰ Ibid.

¹⁴¹ Dalziel, *Focus on the Family*, pp.7, 12-15, 23; female impropriety was the main concern of the Society's 1894 annual report, 'Protection of Women and Children', *Evening Post*, 4 April 1894, p.2.

¹⁴² 'Conjugal Unhappiness', *Star*, 4 March 1880, p.2; 'Weak Women', *Observer*, 19 May 1883, p.130.

¹⁴³ Susan Chivers observed that the *Otago Daily Times* printed more detailed accounts of such cases from the late 1880s, Susan Chivers, 'A Man's Home is His Castle. Domestic Violence in Dunedin 1884-1914', BA Hons. essay University of Otago, Dunedin, 1988, p.28; seven newspapers were established in the 1870s, nine in the 1880s, and five in the 1890s. Retrieved May 2008 from paperspast.natlib.nz.

¹⁴⁴ Chivers, p.76.

‘abnormal number of cases of assault against women and children before the Supreme Court’.¹⁴⁵

The problem of wife desertion especially provided a material basis for empowering women.¹⁴⁶ As women’s legal status rose, the bourgeois construction of women as morally superior converged with protectionist efforts to contest marriage laws that enabled a husband to treat his wife as chattel.¹⁴⁷ The 1884 Married Women’s Property Act enabled married women to have, hold and dispose of separate property, significantly empowering women who had resources.¹⁴⁸ Property protection orders later became a source of patriotic pride. In 1891 parliamentarian Downie Stewart claimed that women’s position in New Zealand was ‘in advance of the Home Country’;¹⁴⁹ the treatment of women was also a measure of civilization and independence in the colonies.

Women were enfranchised in 1893, and women’s rights advocates agitated for law changes and were active in reform groups that protected women’s interests such as the NCW, the SPWC, and the temperance movement. Women’s rights’ advocates sought solutions to wife-assault through prohibition and law reform to give women equal status in marriage. The NCW agitated for marriage law reforms that would remedy ‘married women’s disabilities’, and the Women’s Christian Temperance Union pursued prohibition because overwhelmingly it was women and children who suffered from the effects of alcohol.¹⁵⁰

The NCW helped bring about the 1896 Married Persons’ Summary Separation Act that enabled any married woman whose husband had been convicted of aggravated assault, desertion, persistent cruelty or willful neglect, to live separately from him, have guardianship of the children and improved access to maintenance.¹⁵¹ The act was intended to give much ‘needed relief to those women who suffered under intolerable

¹⁴⁵ ‘Offences Against Women’, *Taranaki Herald*, 3 May 1907, p.2.

¹⁴⁶ Chivers, p.90.

¹⁴⁷ Roderick Phillips argues that women were granted enfranchisement on the assumption of their moral superiority, Roderick Phillips, p.27; for example of challenge to wives as chattel see ‘Political Notes’, *Southland Times*, 29 July 1891, p.3.

¹⁴⁸ NZS, 1884 Married Women’s Property Act, pp.17-20.

¹⁴⁹ ‘Political Notes’, *Southland Times*, 29 July 1891, p.3.

¹⁵⁰ ‘The Women’s Council’, *Evening Post*, 8 May 1900, p.2.

¹⁵¹ Nicholls, pp.28-30.

hardship', women with brutal husbands 'to whom they still owed a duty in spite of grievous ill-treatment'.¹⁵² While discourses of natural justice supported a woman's right to such relief, this did not extend to the right to form another relationship.

The 1898 Divorce Act extended the grounds for divorce to include a man's habitual drunkenness coupled with a failure to maintain his wife or persistent cruelty towards her, or a woman's habitual drunkenness coupled with a failure to neglect her domestic duties.¹⁵³ Drunkenness was a breach of the marital contract when it interfered with the ability of the spouses to fulfil their respective obligations. The act implicitly linked drunkenness to violence against wives. A protectionist ethos was central to its passage. Parliamentarian Richard Seddon said, 'there was nothing so much to be deplored as to see a good soul – a good wife – having to struggle and provide for herself and her family year after year, and then to be abused by a drunken husband'.¹⁵⁴ It also removed the discriminatory provision that allowed a woman a divorce only when her husband's adultery had been aggravated, that is coupled with cruelty, incest, sodomy, rape or bestiality. This was in spite of considerable opposition that held adultery by a wife more serious than adultery by a husband.¹⁵⁵

Discursive constructions around marital duties reinforced economic concerns, and the cost of caring for destitute children attracted political attention. Parliamentarian Daniel Pollen claimed that in the Auckland province alone there were 532 destitute children, half of whom were cared for by charitable aid.¹⁵⁶ Around half of destitute children were thought to have fathers who had deserted them. Law on industrial schools in 1882 and 1885 had aimed to increase parental responsibility for children committed to industrial schools, and the 1877 Destitute Persons Act increased discipline of deserters of family.¹⁵⁷ This intervention exposed the incidence of men's violence against wives. Abraham Solomon of the Otago Benevolent Trust said that

¹⁵² 'Married Persons Summary Separation', *Hawera and Normanby Star*, 14 December 1896, p.2.

¹⁵³ Roderick Phillips, p.23.

¹⁵⁴ *Ibid.*, p.22.

¹⁵⁵ *Ibid.*, p.24.

¹⁵⁶ See Carolyn Bayvel, 'Destitution, Desertion and Illegitimacy: New Zealand's Nineteenth Century Maintenance Legislation and its Operation in Dunedin Magistrate's Court 1890-1900', BA essay, University of Otago, Dunedin, 1994, p.17, Dr Pollen, NZPD, 1877, 24, pp.531-533.

¹⁵⁷ For example, although the Otago Benevolent Institution aided three times as many widows as deserted wives through the 1890s, the number of the latter was viewed as excessive because the husbands and fathers were failing in their moral obligation to provide support, Bayvel, pp.16-17, 19-20.

women often told him ‘we starve in peace when he is away, but we starve in misery when he is at home’.¹⁵⁸

In 1910 provisions for cases of cruelty were made under legislation pertaining to destitution. The 1910 Destitute Persons Act was described as the state throwing ‘its sheltering arm’ around women.¹⁵⁹ The act can be interpreted as a transfer of the duty to protect women from a husband to the state, rather than as a concession to new rights, though the effect might have been such an enlargement. The act made it easier for women who were ill-treated by their husbands to obtain a separation order and enabled ‘any reputable person’ to petition on behalf of such a woman. Under the act wives could apply to the court for separation, maintenance, and guardianship orders on the following grounds:

that the husband of that woman has failed or intends to fail to provide her with adequate maintenance; or that he has been guilty of persistent cruelty to her or to her children; or that he is an habitual inebriate; or that he has, within six months of her making the complaint...been convicted summarily or otherwise of any assault or other offence of violence against her or any of her children, and has been sentenced for that offence to imprisonment or to a fine exceeding £5.¹⁶⁰

The definition of persistent cruelty was left to judicial discretion. Previously, it had been limited to brute force; mental abuse and sexual violence did not constitute a breach of contract in the New Zealand courts. Parliamentarian Thomas Wilford thought that the new definition of ‘habitual inebriate’ might capture these other forms of cruelty.¹⁶¹ The state’s solution was to provide an economically viable escape route; a recognition of the centrality of material resources to women’s capacity to separate; equally importantly, this relieved the state of any potential cost. There was a limit: applications had to be made within six months of convictions. It was not ‘persistent

¹⁵⁸ See Margaret Tennant, ‘Brazen-faced Beggars’, in Barbara Brookes, Charlotte Macdonald and Margaret Tennant, eds, *Women in History. Essays on European Women in New Zealand*, Wellington: Allen & Unwin/ Port Nicolson Press, 1986, pp.40-41.

¹⁵⁹ John Findlay, NZPD, 1910, 150, p.293.

¹⁶⁰ NZS, 1910 Destitute Persons Act, p.109.

¹⁶¹ Thomas Wilford, NZPD, 1910, 153, p.427.

cruelty' if a man had acted cruelly to his wife two years before and again six months after.¹⁶² Failure to pursue legal remedies to assaults within six months was interpreted as condoning the act of violence. This construction implied a wife was autonomous or unaffected by effects of the violence between assaults, which might or might not have been the case.

The non-molestation clause indicated that the intent of a separation order was to enable women to escape what was perceived as intolerable domestic situations of which violence was the primary cause. While a separation order was in force, a husband was guilty of an offence and liable to imprisonment or a fine if he:

commits any trespass by entering or remaining upon any land, house, shop or other building which is in the occupation of the wife or in which the wife dwells or is present; or attempts or threatens to commit any such trespass; or molests his wife by watching or besetting her dwellinghouse or place of business, employment or residence, or by following or waylaying her in any road, street, or other public place.¹⁶³

Influential individuals who drew on discourses of protection and bourgeois notions of family were important to the law's passage. The Minister of Justice, John Findlay, who introduced the act, was a liberal humanitarian and a strong supporter of state paternalism.¹⁶⁴ He viewed the act as a means 'to relieve the necessities and the sufferings of women and children'.¹⁶⁵ Fellow lawyer and parliamentarian Thomas Wilford, a lifetime supporter of matrimonial law reform, was also a strong advocate.¹⁶⁶ Henry Wilding, leader of the SPWC, was a Justice of the Peace, a successful businessman and committed Methodist. His organization had frequently petitioned for similar remedies.¹⁶⁷

¹⁶² Ibid., p.429.

¹⁶³ NZS, 1910 Destitute Persons Act, p.111.

¹⁶⁴ Geoffrey Hall, 'Findlay, John George', in *The Dictionary of New Zealand Biography* (DNZB). Retrieved October 2008 from <http://www.dnzb.govt.nz/dnzb>; Thomas Wilford, NZPD, 1910, 150, pp.427-9.

¹⁶⁵ John Findlay, NZPD, 1910, 150, p.291.

¹⁶⁶ Susan Butterworth, 'Wilford, Thomas Mason', in DNZB. Retrieved October 2008 from <http://www.dnzb.govt.nz/dnzb>.

¹⁶⁷ Raewyn Dalziel, 'Wilding, Henry', in DNZB. Retrieved October 2008 from <http://www.dnzb.govt.nz/dnzb>; .Dalziel, *Focus on the Family*, p.9.

By the early twentieth century women's negotiating powers in marriage had improved as the state had increased its regulation of the domestic sphere by amending the marriage contract and extending state protection of wives. Divorce and separation provisions made cruelty a breach of contract; cruelty could annul a woman's duty to cohabit, but it had to be aggravated or brutal.¹⁶⁸ The state had no interest in interfering in the domestic sphere unless the husband had exceeded his powers as head of the household by threatening life or limb. But even in the case of serious violence, discourses that awarded men control over women and constructed the domestic sphere as private contested women's right to legal remedies.

As in Britain, aggressive constructions of manliness persisted. New Zealand's involvement in the Boer War from 1899-1902 and compulsory military training in 1908 reinvigorated these. Dominant gender discourses made female victimhood contingent on respectability and defined the husband as head of the family. The SPWC was not concerned with wives who suffered the occasional slap or punch, and deemed wives who failed to live up to expectations as deserving it.¹⁶⁹ Parliamentarian Albert Samuels claimed crimes of desertion and cruelty had 'very frequently far greater excuse than any other category of crimes'.¹⁷⁰ Gender discourses also combined with those of class to obstruct working-class women's claims of victimhood. Middle-class women were more readily viewed as domestic 'queens' while some working-class women were considered 'seductresses' or 'carriers of shameful disease'.¹⁷¹ Attorney-General John Findlay also subscribed to this view, which indicated the powerful import of class.¹⁷² The view that some wives shared responsibility for cruelty because they just did not know how to make a home comfortable probably referred to working-class women.¹⁷³ Women activists too were quick 'to denounce women who fell short of their own high ideals, or who consistently resisted their influence'.¹⁷⁴

¹⁶⁸ It had to incur at least a £5 penalty.

¹⁶⁹ Dalziel, *Focus on the Family*, pp.23, 25; the President of the Dunedin SPWC, Reverend Curzon-Siggers, believed that 'many of the husbands were to be more than pitied with the wives they had', see Chivers, p.79.

¹⁷⁰ Albert Samuels, NZPD, 1910, 150, p.482.

¹⁷¹ For example, Attorney-General John Findlay. See Andree Levesque, 'Prescribers and Rebels', in Barbara Brookes, Charlotte Macdonald and Margaret Tennant, eds, *Women in History. Essays on European Women in New Zealand*, Wellington, Allen & Unwin/Port Nicolson Press, 1986, p.2.

¹⁷² Ibid.

¹⁷³ Dalziel, *Focus on the Family*, p.23.

¹⁷⁴ Tennant, 'Magdalens and Moral Imbeciles', p.72.

Barbara Brookes's account of a 'shocking murder' in Dunedin on New Year's day 1900 exemplifies to what extent normative gender constructions could excuse violence.¹⁷⁵ Though it was clear Thomas Gallaway had killed his wife, Emmeline, he was found not guilty of murder because he was 'a decent hard-working man, driven beyond endurance by a complaining, drug-addicted, violent wife, who despite his best efforts, was driving him into debts'.¹⁷⁶ The belief that women bore mental and physical sufferings 'with much more fortitude than do the stronger sex' and that men were 'more liable to these violent outbursts than women, for as they have more force and strength in their nature they consequently exhibit more violence of expression' mitigated husbands' responsibility for wife-assault.¹⁷⁷

The contradictory nature of gender discourses meant they both enabled and restricted change for women. Supporters of women's suffrage maintained that women would have a 'salutory effect on coarse colonial politics'.¹⁷⁸ It was commonly thought that women's votes would effectively mean two votes for married men, thereby increasing the influence of the settled married man and strengthening the prohibition vote.¹⁷⁹ Women needed protection on account of their gender. The 1896 description of David Cuff, convicted of assault against his wife, as a 'big burly man' in contrast to his 'weak-looking' wife, epitomizes the notion of a brutish husband and a wife's reliance on vulnerability to claim victimhood.¹⁸⁰ Protection was a manly expression of chivalry or 'a sheltering arm' rather than an act of empowerment.¹⁸¹ Protective remedies were directed more at a husband's behaviour than a wife's experience. The widely held belief that women were ever ready to forgive encouraged greater legal rights for wives because it was thought unlikely they would pursue divorce or separation.¹⁸² Male politicians' predictions proved right, but for different reasons.¹⁸³

¹⁷⁵ 'Shocking Murder in Dunedin', TH, 2 January 1900, p.3.

¹⁷⁶ Barbara Brookes, p.353.

¹⁷⁷ 'Jealous Husbands', TH, 24 March 1900, p.2.

¹⁷⁸ Roderick Phillips, p.27.

¹⁷⁹ Jock Phillips, p.54.

¹⁸⁰ Untitled, *Evening Post*, 27 March 1896, p.3.

¹⁸¹ Sir George Whitmore described married women's property law as a piece of chivalry, see Chivers, p.91; John Findlay, NZPD, 1910, 150, p.292.

¹⁸² For example, parliamentarian Oliver Samuel thought one of the most beautiful points of women's character was the readiness to forgive and a colleague thought no honest or decent woman would divorce her husband, Roderick Phillips, pp.27-28; for another example, 'Married Women's Summary Separation', *Hawera and Normanby Star*, 14 December 1896, p.21.

¹⁸³ Women were unlikely to pursue divorce except in extreme circumstances and few divorces occurred after 1898, Nicholls, p.40.

Rather than indicating an ever-forgiving nature, failure to pursue divorce or separation was more likely a reflection of social practices that made wives economically dependent.¹⁸⁴

Marriage, an institution within a hierarchical gender order, was the basis of the social order and women's economic independence constituted a threat to it.¹⁸⁵ The construction of femininity as morally superior, passive and naturally attuned to the domestic sphere was part of the solution to the social disorder produced by desertion, drunkenness and youth mis-behaviours. Both women's rights groups and politicians supported temperance and humanitarian reforms, but women's demands for economic independence were controversial. When the National Council of Women advocated that married women should have a share of their husbands' income, the legislature and the public feared this meant the possibility of women being able to live without men and renounce marriage.¹⁸⁶ Women who worked to improve conditions for women were more successful as members of groups that included male membership, often under male leadership, and which were supportive of the bourgeois family model. One such group was the SPWC, which emphasized a woman's role as wife and mother and promoted the family as the foundation of social order.¹⁸⁷

A woman's value as a citizen rested on married motherhood.¹⁸⁸ Motherhood escalated in importance in the early twentieth century as a consequence of anxieties around racial deterioration, a declining birth rate, war readiness and the perceived ever-increasing 'Yellow Peril'.¹⁸⁹ Parenthood was promoted as 'a vocation of national import' with women viewed as 'race-producers and race-developers'.¹⁹⁰ This view

¹⁸⁴ Roderick Phillips, p.33.

¹⁸⁵ The demise of the National Council of Women in the early 1900s is primarily attributed to the public's perception of it as a threat to family life and ultimately to social order and security, Nicholls, p.80.

¹⁸⁶ *Ibid.*, p.40.

¹⁸⁷ *Ibid.*, p.102.

¹⁸⁸ Secretary of Labour in 1897, see Sandra Coney, 'The Bosom of the Family', in Sandra Coney, ed., *Standing in the Sunshine. A History of New Zealand Women Since They Won the Vote*, Auckland: Penguin Books, 1993, p.54; Raewyn Dalziel has identified particular circumstances of colonial New Zealand that led to the intense emphasis on women's role within the home and family, Dalziel, 'The Colonial Helpmeet', pp.55-68.

¹⁸⁹ Belich, pp.161-3.

¹⁹⁰ Margaret Tennant, 'Natural Directions', in Barbara Brookes, Charlotte Macdonald and Margaret Tennant, eds, *Women in History. Essays on European Women in New Zealand*, Allen & Unwin/ Port Nicholson Press, Wellington, 1986, pp.89-90.

was held by medical experts such as Truby King who founded Plunket, and by women's groups such as the NCW.¹⁹¹ As a consequence, motherhood and childcare became increasingly prescribed and discursively regulated. Most importantly, gender constructions reduced women's political citizenship. Despite enfranchisement, women were excluded from the civic sphere, the space in which material power was negotiated. Exclusion from decision-making meant women's claims were easily marginalized when they did not support the hierarchical social order. For example, women's efforts to reform incest law were initially dismissed as claims of hysterical women.¹⁹² Women's exclusion from legal positions also meant that only men judged the legality of women's claims. Women's groups petitioned unsuccessfully to be included on juries for offences against the person.¹⁹³ Women were well aware that male jurors were more inclined to put a lenient gloss on cruelty or brutal assaults.

Susan Chivers' study of men's violence against wives in late nineteenth and early twentieth century Dunedin suggests that, although women did make use of the law to escape oppressive marriages, it was common for legal practices to obstruct women's petitions. Firstly, complaints required corroboration, often difficult to get given the private nature of the violence, and even when complaints were proven magistrates often adjourned hearings for separation orders in the hope that the disagreement might blow over.¹⁹⁴ Florence Sontag's experience demonstrates the material effect of discourses that aimed to preserve marriage. Despite many assaults, an assault on her daughter and Sontag's evidence that she had 'given him many chances and had forgiven him time after time so that it would be of no use to give him another chance', the magistrate declined in taking the 'serious step' of granting a separation order.¹⁹⁵ Carolyn Bayvel's study of legal practices in late nineteenth century Dunedin indicates this was common. Bayvel described one magistrate as favouring reconciliation 'even

¹⁹¹ For example both King and the National Council of Women thought that 'girls and young women needed to be nurtured for their primary role of motherhood; the well-being of the child, stability of society and the strength of the Empire and the white race depended on it', cit., Nicholls, p.110.

¹⁹² Dalziel, p.25.

¹⁹³ 'Women's Convention', *Poverty Bay Herald*, 17 April 1896, p.2; 'The Women's Council', *Evening Post*, 8 May 1900, p.2.

¹⁹⁴ Chivers, p.92.

¹⁹⁵ Cit., *ibid.*

if it was clear the parties were unhappy together and there was evidence of ill-treatment on the part of the husband'.¹⁹⁶

The unpredictability of judicial decision-making and the high threshold of cruelty in legal discourses had implications for women's rights to custody of children. Law changes had improved these. The 1908 Infants Act empowered the court to decide custody on the basis of infant welfare and parental conduct; the 1926 Guardianship of Infants Act, a landmark for mother's rights to custody, made an infant's welfare the paramount consideration.¹⁹⁷ Under the 1926 act, wives and husbands held equal guardianship rights.¹⁹⁸ Where a husband was proven guilty of cruelty, desertion, negligence or misconduct, the law provided for custody of children to be vested in the mother.¹⁹⁹ However, the court required strong evidence of a man's unfitness as a father before it would do this.²⁰⁰ Where cruelty was unproven, guardianship of the children was vested in the father.

WIFE-ASSAULT FADES FROM VIEW: 1920-1960

The divorce law was further liberalized. The 1953 Divorce and Matrimonial Causes Act made the radical change by allowing for divorce when the parties had been living apart for seven years. Separation orders were extended to husbands in 1939 and law governing cruelty in marriage remained relatively unchanged by 1960.²⁰¹ The 1910 Destitute Persons Act operated until 1968. In this period the problem of wife-assault receded from public consciousness and bourgeois constructions of marriage and the

¹⁹⁶ In that case the husband was alleged to have threatened to shoot his wife several times, see Bayvel, pp.64-65.

¹⁹⁷ C. Irvine, 'Custody of Infants', NZLJ, no.5, 20 March 1962, p.97.

¹⁹⁸ Rutherford Ward, 'Parental Misconduct and the Custody of Children', in B. Inglis and A. Mercer, eds, *Family Law Centenary Essays*, Wellington: Sweet and Maxwell Ltd, 1967, p.60; Jane Green, 'The Society for the Protection of Women and Children: Dunedin Branch, 1914-1945', BA Hons essay, University of Otago, Dunedin, 1982, p.27.

¹⁹⁹ 1870 Married Women's Property Protection Act, 1896 Married Persons' Summary Separation Act and 1910 Destitute Persons Act.

²⁰⁰ Chivers, p.95.

²⁰¹ The 1920 Divorce and Matrimonial Causes Act reduced the period of confinement in relation to divorce for reasons of insanity and introduced three new grounds. It re-introduced failure to comply with a decree for restitution of conjugal rights. It added the grounds of seven or more years imprisonment for wounding the petitioner or child of the petitioner and three years separation under a judicial separation or a court order provided that one party was innocent of any matrimonial offence. The 1953 Divorce and Matrimonial Causes Amendment Act made divorce easier by reducing duration of confinement for reason of insanity and provided for divorce when the parties had been living apart for seven years, Roderick Phillips, pp.41, 44-45; Department of Justice papers, Destitute Persons Act and Domestic Proceedings Bill, 1967-1970, AVBP, 500, W4927, box 47, J 18-11-161, pt 3, Archives New Zealand, Wellington.

family dominated. Changing terms such as “marital conflict” and “marital disharmony”, disguised wife-assault, constructing a husband’s violence as a relationship issue and offered reconciliation as a solution.²⁰² Men’s violence against wives would not be named as a problem of social proportions again until the 1970s. It continued as it always had, but prevailing discourses of the ideal nuclear family obscured it as an object of social concern.

A number of developments contributed to the declining profile of wife-assault. One was that population continued to be a state concern, reinforcing the importance of motherhood. A Dominion Population Committee was formed in 1945 ‘to consider ways and means of increasing the population’.²⁰³ There was intense propaganda to propel women back into the home, for them to relinquish jobs they held while men were away at war, to be full-time mothers and to create an emotional sanctuary from a tough outside world.²⁰⁴ Public acknowledgement of husbands as violators became suppressed, in part, because of the increasing privatization of the home after the world wars.²⁰⁵ The state was invested in discourses privileging the ideal nuclear family as the basis of social order and managed the populace accordingly. In the context of the Cold War, the nuclear family of post-war western democracies was a strong point of difference from family organization under communist rule. In the latter, mothers went to work, with the state providing day-to-day care of children, domestic allegiances were subordinate to those to the state and the domestic sphere was the business of the state.

The 1955 name change of the Society of the Protection of Women and Children to the Society for the Protection for Home and Family exemplifies the idealization of the family and the receding of wife-assault as a social problem. The name change indicated a shift in focus from women and children, once ‘victims of cruel, drink-maddened, selfish men’ to what the Society thought was a more balanced view of the

²⁰² Linda Gordon, *Heroes of Their Own Lives. The Politics and History of Family Violence*, London: Virago Press Ltd, 1989, p.284.

²⁰³ Helen Smyth, *Rocking the Cradle. Contraception, Sex and Politics in New Zealand*, Wellington: Steele Roberts Ltd, 2000, p.69.

²⁰⁴ Ibid; Coney, p.54; Melanie Nolan, *Breadwinning: New Zealand Women and the State*, Christchurch: Canterbury University Press, 2000, p.197.

²⁰⁵ Joanna Bourke, *Rape. Sex Violence History*, Great Britain: Virago Press Ltd., 2007, p.317.

family.²⁰⁶ The Society believed the social pattern had shifted from the early days ‘when protection societies were concerned with cruelty and poverty, to one of unhappy marriages’, and this was now its main concern.²⁰⁷ In 1966 the Christchurch branch said that it made assistance available on a family unit basis, each member being led to discover his or her interdependence on the other.²⁰⁸

The ideal nuclear family was materially and discursively supported through state practices and the notion of romantic domesticity.²⁰⁹ This maintained the capitalist economic order: ‘it was the husband’s job to earn, but it was her job to spend’ on consumer goods that embellished the domestic sphere.²¹⁰ Deviations from this model, such as divorce, single motherhood, or working mothers, attracted censure and shame. After World War II, marriage increased in popularity to the extent a ‘marriage boom’ occurred.²¹¹ More people married and at younger ages, and marriage was an almost universal experience.²¹² A post-WWII baby boom occurred until the early 1960s.²¹³ Gender roles were strongly prescribed and some proscribed. The ideal marriage was one in which ‘a man specialized in the practical individualist activities needed for subsistence’ and a woman ‘took care of the emotional needs of her husband and children’.²¹⁴ Normative gender discourses were embedded in medical discourses. One New Zealand psychologist, Dr Anne Biezanek, reportedly believed that ‘a woman’s true work in this world is that of self-sacrificing devotion as a wife to the cause of sexual harmony with her husband, and to the moral and physical welfare of her children’.²¹⁵

²⁰⁶ Dalziel, *Focus on the Family*, p.36.

²⁰⁷ HFS records, Dunedin branch, Mr McCreary, Triennial Dominion Conference 1959, Correspondence and Minutes, 1929-1973, AG-647-94, HL, Dunedin.

²⁰⁸ HFS records, Wellington branch, Annual Report 1966, MSX-3294, Alexander Turnbull Library (ATL), Wellington.

²⁰⁹ Belich, pp.491-3.

²¹⁰ Barbara Ehrenreich and Deidre English, *For Her Own Good. 150 Years of the Experts’ Advice to Women*, New York: Anchor Books, Doubleday, 1978, p.240.

²¹¹ Ian Pool, Arunachalam Dharmalingham and Janet Sceats, *The New Zealand Family from 1840. A Demographic History*, Auckland: Auckland University Press, 2007, p.181.

²¹² Graham Dunstall, ‘The Social Pattern’, in Geoffrey Rice, ed., *The Oxford History of New Zealand*, 2nd ed., Auckland: Oxford University Press, 1992, p.454; Pool, Arunachalam and Sceats, p.179; discussed in Chapter 6.

²¹³ Belich, p.489.

²¹⁴ Stephanie Coontz, *Marriage. A History: from Obedience to Intimacy*, New York: Viking, Penguin Group, 2005, p.242.

²¹⁵ Cit., ‘The Women whose Lives are a Lottery’, *Truth*, 10 February 1965, p.23.

Although most fathers spent little time with their families, a concern with the appropriate gender socialization of children meant that their influence was crucial to child development.²¹⁶ Another New Zealand psychologist believed that “normal” sexuality was predicated on a clear distinction between the sexes in appearance, dress and behaviour; homosexuality, transvestism and hermaphroditism were linked to an absence of a masculine father figure.²¹⁷ Because a father’s influence was limited by the little time he spent with his family, it was imperative that he acted in a ‘masculine’ way when he was there. This meant not getting involved with domestic duties such as cooking or housework as this would confuse the children as to gender. The best parents were ‘manly men’ and ‘womanly women’.²¹⁸ These constructions sustained the free world and consumerism, contrasted with the more androgynous gender order of the communist world where women also did men’s work and household commodities were less available.

There were many ways to penalize non-conformity and contain discontent. Most wives were economically dependent on husbands. Women still promised to obey their husbands in their wedding vows. Men were looked upon as head of the family and made the most important decisions.²¹⁹ Husbands decided whether families should relocate, women could not take out loans, were legally paid less for work than men, and it was not illegal for a man to force his wife to have sex.²²⁰ Social pressure was exerted through shame, encouraging women to hide their predicament, and violent marriages were not talked about.²²¹ For many, a “broken marriage” engendered feelings of shame and embarrassment and sensitivity to what others might think.²²² When women did speak out they risked being labelled neurotic: lack of satisfaction in

²¹⁶ For example, the SPWC thought the removal of one of the parents from a child’s immediate sphere of influence was so serious to the development of its personality that reconciliation of the parents should be the primary goal, HFS records, Wellington branch, Annual Report 1958, MSX-3294, ATL, Wellington.

²¹⁷ A. Taylor, ‘A Psychologist’s View of Family Law’, in B. Inglis and A. Mercer, eds, *Family Law Centenary Essays*, Wellington: Sweet & Maxwell Ltd, 1967, p.100.

²¹⁸ Ehrenreich and English, p.247.

²¹⁹ Sandra Coney, ‘Affairs of the Heart’, in Sandra Coney, ed., *Standing in the Sunshine. A History of New Zealand Women Since They Won the Vote*, Auckland: Penguin Books, 1993, p.177.

²²⁰ For example, Margaret Corner, ‘Equal Pay and the Case of Jean Parker’, in Sandra Coney, ed., *Standing in the Sunshine. A History of New Zealand Women Since They Won the Vote*, Auckland: Penguin Books, 1993, p.232; spousal immunity from rape remained until 1985.

²²¹ Sue Kedgley, *Mum’s the Word. The Untold Story of Unmarried Motherhood in New Zealand*, Auckland: Random House Ltd, 1996, p.189.

²²² K.D. MacRae, ‘Marital Strife and the Family’, *New Zealand Social Worker*, vol.14, no.3, July 1968, p.35.

homemaking indicated serious psychological problems,²²³ being ‘virtually social outcasts because it was often assumed that it was a woman’s fault’,²²⁴ or having claims invalidated. Women who sought advice from women’s magazines or women’s advice columns for their husband’s ill-treatment of them, were frequently told to be patient, to put up with their lot, to turn the other cheek, to excuse their husband’s behaviour on account he was a man, or to consider how they may have contributed to the conflict.²²⁵

The prescription of bourgeois family norms did not go uncontested. The 1937 McMillan Report on abortion revealed that many women did not embrace multiple motherhood, and the establishment of the Sex Hygiene and Birth Regulation Society in 1935 signified some women’s determination to control their own fertility. The Society’s name change to the Family Planning Association in 1939 after it affiliated to its British counterpart, reflected prevailing discourses that emphasized the family.²²⁶ Not all women embraced marriage and domesticity. Although outnumbered and outranked by the status of wife and mother, the working mother, the single mother and the childless mother, continued to challenge dominant beliefs.²²⁷ However, the post-war development of an independent youth culture posed a bigger threat to established values. There was a real shift in sexual behaviours, which unsettled sensibilities that confined sex to marriage.²²⁸ Anxieties around youth culture underpinned the 1954 Mazengarb Report that investigated youth sexual impropriety. Consistent with the discursive imperative to preserve families for the sake of the social order, “broken homes” were in particular the antithesis of bourgeois family norms and were singled out as responsible for juvenile delinquency and all other social problems.

Once “broken homes” were identified as the cause of all social ills, more evidence of the apparent decline of the family emerged wherever one looked. For example, most

²²³ Coontz, p.230.

²²⁴ Kedgley, p.188.

²²⁵ Ibid., p.189; my reading of letters published under ‘Letters to Lyn Carroll’, *Truth*, in the 1960s.

²²⁶ Smyth, pp.21, 37, 41, 46-48, 55.

²²⁷ Belich, p.496.

²²⁸ Belich tracks this shift, *ibid.*, p.505; as does Gordon Alexander Carmichael, ‘Aspects of Ex-nuptiality in New Zealand: towards a Social Demography of Marriage and the Family Since the Second World War’, PhD thesis, Australian National University, Canberra, 1982, pp.73, 128.

parents of children in homes run by the Auckland Orphanages Council were separated or divorced and only 3% of those children were orphans.²²⁹ In 1957 the Justice Minister John Marshall claimed the prevention of homes breaking up ‘would be a worthwhile contribution to crime prevention’.²³⁰ In 1963 Minister of Education Brian Talboys regarded increasing juvenile delinquency, adult crime, mental ill-health and emotional maladjustment as the product of broken homes and unsatisfactory home life.²³¹ In 1960 the Department of Justice revitalized the Marriage Guidance movement to prevent ‘broken homes’, which were perceived to undermine social order.²³² Fixing marriages would fix social problems.

Medical discourse, especially of psychiatry, reinforced the gender order that enabled men’s violence against wives. Sigmund Freud’s psychoanalytical studies in the early twentieth century had consolidated the binary construction of human sexuality that produced an image of women as weak, passive, dependent and intuitive, in contrast to an image of men as aggressive, controlling, rational and independent.²³³ The themes of female masochism and sexual fantasy were particularly damaging to women in the context of rape (which included rape in marriage), and although Freud did not explicitly link wife-beating to the notion of female masochism, his disciple, Helene Deutsch, did. Her claim, that masochism was a central feature of a normal woman’s psychology became the dominant psychiatric explanation for the victimization of women from the mid-1940s.²³⁴ The nagging wife became ‘a woman of complex mental ailments’, who failed ‘to accept her own femininity’, attempted ‘to compete with her husband’, was frustrated on account of her frigidity and had ‘a need to control resulting from her own sexual repression, masochism’.²³⁵ Such neuroses demanded professional treatment. Medical intervention replaced legal intervention as the preferred option.²³⁶ This would manifest itself in New Zealand in high numbers of women being medicated or given psychiatric help for experiencing “marital”

²²⁹ Dalziel, *Focus on the Family*, pp.56-57.

²³⁰ Cit., Leslie Clements, ‘Marriage Guidance in New Zealand. The Story of a Movement’, in Stewart Houston, ed., *Marriage and the Family in New Zealand*, Wellington: Sweet & Maxwell Ltd, 1970, p.158.

²³¹ See Dalziel, *Focus on the Family*, p.57.

²³² Report of the Department of Justice, *Appendices to the Journals of the House of Representatives*, 1961, 306, H.20, pp.10-11.

²³³ Susan Edwards, *Female Sexuality and the Law*, Oxford: Martin Robertson, 1981, p.102.

²³⁴ Pleck, p.21.

²³⁵ Gordon, p.23.

²³⁶ Pleck, p.146.

problems that included violence.²³⁷ Approaching violence against wives as a problem of women's own psychology made wives complicit with their husbands' violence towards them, discouraged a concern with safety, and mitigated a male offender's responsibility for violence.

CONCLUSION

Marriage in New Zealand persisted in early New Zealand as a civil contract that legitimated a hierarchical gender relationship. The state as the ultimate organizer of social relations prescribed the terms of the marriage contract and institutionalized gender inequality; men as husbands were providers and protectors of wives who were primary care givers of children and homemakers. From 1867 the New Zealand government began to modify the terms of the contract so that a breach of it could annul marital obligations of cohabitation. In the latter part of the nineteenth century, wife-assault emerged as a problem of social proportions in both England and New Zealand. This construction was enabled by a discursive shift in child welfare, gender and violence; by demographic, social and economic patterns; by a humanitarian ethos; and through the agency of powerful individuals who held paternalist views of the state. As well, any state intervention had an internal momentum of its own by exposing other social practices to enquiry.

Although there was a general intolerance for all violence, that against wives was primarily interpreted as a breach of contract and legal remedies were provided through matrimonial law that increased women's capacity to resist it. However, dominant discourses of family and gender constrained this opportunity. Ultimately the state was prepared to enable an escape route in extreme situations, but it was also committed to preserving marriage because the social order was thought dependent on it.

In the twentieth century, the bourgeois family model dominated, protectionist arguments weakened and men's violence against wives was re-constructed as a marital problem in which wives were complicit. Although contested and resisted, in 1960 New Zealand marriage was an almost universal practice and any deviations of

²³⁷ Discussed in Chapter 6.

the ideal nuclear family were contained. State institutions and social practices reinforced discourses around gender and family that supported male dominance in marriage, gender roles and the privacy of the domestic sphere. It was difficult for women to escape violent marriages because they were materially, socially and legally dependent on husbands. Ultimately, the state's continued maintenance of gender inequality enabled men's violence against wives and partners. The next chapter explores police responses to men's violence against wives and partners in the 1960s and 1970s, the first step in the criminalization of that violence.

Chapter 2

POLICE PRACTICES: 1960-1970s

New Zealand law offered two types of legal remedy to men's violence against wives and partners. The first was through law governing marriage in which this violence, named "cruelty", was constructed as a breach of the matrimonial contract, the parties to which were the wife and husband. The second was through criminal law, in which it was constructed as a crime against the person, a breach of the social contract, the parties to which were the offender and the state. This chapter analyzes the police application of criminal law and enforcement of court orders under matrimonial law as pertaining to men's violence against wives and partners in the 1960s-1970s. The chapter is thematic rather than chronological. There were no detectable changes in police practices relating to men's violence against wives or partners in this period; however police awareness of it did heighten in the late 1970s. This chapter identifies the material and discursive supports for police responses and their effect on women's capacity to resist that violence.

CRIMINAL LAW DISCOURSES

Statute law provided the legal framework for defining acts of violence as criminal. Under the 1961 Crimes Act, a consolidating piece of legislation, violence against wives or partners remained undefined as a particular instance of criminal violence.¹ The same provisions penalizing individuals' violence against strangers applied. Depending on its characteristics, a violent act could incur charges under Part VIII, 'Crimes against the Person'. These included murder, manslaughter, threat to kill, aggravated assault, wounding with intent, male assault on a female and common assault.² Although the offence of male assault on a female did not require the parties to be in a relationship, most male assaults on a female were thought to involve assaults on wives or partners.³ 'Assault' was defined as applying force to a person, or

¹ There did not appear to be any discussion in parliament around violence against wives preceding the 1961 Crimes Act.

² Aggravated meant with an ulterior motive, for example, using violence to conceal a crime, *New Zealand Statutes* (NZS), 1961 Crimes Act, vol.1, pt VIII, pp.401-11.

³ Police guidelines for 'domestic disputes' were directed solely at husband and wife situations, New Zealand Police College, 'Domestic Disputes', pp.1-4; and Police Manual Extract, 'Domestic Disputes',

threatening force, and ‘injure’ meant causing actual bodily harm.⁴ This made physical violence, or at least the threat of it, necessary to construct violence as criminal. Verbal or psychological violence was not criminalized.

The 1961 Crimes Act perpetuated the nineteenth century notion of gendered protectionism by retaining the offence of male assault on a female, the maximum penalty for which was two years imprisonment. Women were treated the same as children under the act; the offence of male assault on a female included an adult assault on a child. Common assault had a maximum penalty of one year, thus assaults by men on women were stigmatized more severely than assaults between men or between women. Criminal law was internally contested. Under Part VII, ‘Crimes against Religion, Morality and Public Welfare’, a husband could not be charged with the rape of his wife unless the marriage contract was voided by a divorce, judicial separation or separation order.⁵ This did not protect women who were informally separated or awaiting court proceedings. Under Part X, ‘Crimes against Rights of Property’, it was not an offence for either marital party to take or dispose of the other’s property ‘unless they are living apart from each other’.⁶ By exempting the domestic sphere from external regulation in these instances, the law exercised the domestic/civic divide, and effectively upheld male privilege. Non-regulation in the domestic sphere meant rule by the more powerful party, usually the male.

Serious assaults on wives and partners, such as those constructed as murder or grievous injury, categories unrelated to marital status, were clearly criminal. But where lesser forms of violence occurred (as was the case in most assaults), including those that did not produce serious injury, the question of criminality was subject to contesting and contradictory discourses. Ostensibly, de facto wives had greater protection under the law because property and rape law exemptions did not apply to de facto husbands. But overall, through silences and exemptions, the discursive framework of statute crime law discouraged a construction of violence against wives

Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, pt 4, Archives New Zealand (ANZ), Wellington.

⁴ Ibid., p.342.

⁵ Ibid., section 133, pp.391-2.

⁶ Ibid., section 226, p.422.

and partners in the domestic sphere as criminal as long as it did not threaten life or limb. Discretionary police powers enabled a wide range of police responses to be considered lawful.⁷

ROLE OF THE POLICE

How police understood their role shaped their practices. There was no clear guide as to what constituted a police officer's role. The prevention and detection of offences, the preservation of peace and good order, and protection of life and property were traditional police responsibilities. Most police officers perceived their role to be law enforcement, which meant relying on the law as a guide for what they could or could not do. This approach lacked flexibility to deal with situations that did not fit neatly into 'legal niches'.⁸ Social service activities were not recognized as real police work because 'compassion and helping might in some way tarnish the mystique of law enforcement'.⁹ Responding to violence against wives and partners could constitute a social service activity. A law enforcement approach focused on prosecution processes rather than on the protection of an individual woman. This meant that should the police be called to an incident, they had to decide how best to resolve the situation and to establish whether or not there had been a breach of law. In deciding on making an arrest or not, police then had to consider if there was enough evidence to sustain a prosecution, whether the complainant was likely to drop charges or refuse to testify, and so on.¹⁰ This effected what Professor of Criminology Louk Hulsman called a 'transformation of reality'.¹¹ Instead of methods being devised to deal with the matter directly, existing methods were applied, which turned the situation into something else. Approaching a situation as a question of whether there was enough evidence to sustain a prosecution obscured the question of a woman's safety, which was the

⁷ David Brown, 'Recurring Themes in Contemporary Criminal Justice Developments and Debates', in Julie Tolmie and Warren Brookbanks, eds, *Criminal Justice in New Zealand*, Wellington: LexisNexis Ltd, 2000, p.11.

⁸ Gregory Ford, 'Domestic Disputes: A Police Perspective. An Analysis of Domestic Dispute Complaints Attended by the Police in Hamilton', MA thesis, University of Waikato, Hamilton, 1985, p.6.

⁹ American researchers Snibbe and Snibbe cit., *ibid.*, p.7. Police resistance to seeing social work as real police work is documented in New Zealand police histories, for example, Graham Butterworth and Susan Butterworth, *Policing and the Tangata Whenua, 1935-85*, Wellington: Treaty of Waitangi Research Unit, Victoria University, 2008, p.32.

¹⁰ Louk Hulsman reported in Report of the Department of Justice, *Appendices to the Journals of the House of Representatives (AJHR)*, 1979, E.5, p.5.

¹¹ *Ibid.*

motive for the call for assistance. The discursive effect was a shift away from a construction of men's violence against wives and partners as criminal and an undermining of women's capacity to resist domestic assaults.

Ultimately, as agents of the state, the principal purpose of police was to protect the social order through the maintenance or restoration of the peace. Discursive constructions of marriage and family constituted the foundation of that order. The head of the household sustained domestic order by controlling conduct in the domestic sphere, and men financially provided for families, thus maintaining economic order. Both married and de facto marriages could perform this function, but marriage was privileged because de facto relationships, i.e. non-contractual relationships, were not subject to regulation through matrimonial law, and were thought unstable. Thus, preserving the family better served the police purpose of maintaining the social order than did the protection of vulnerable women in it. Families that did not support that order, as determined by law, could be subject to police action.

THE DOMESTIC/CIVIC DIVIDE

Civil liberty discourses embedded in legal discourse made police more cautious about interfering in domestic relations. Such discourses assumed privacy of the domestic sphere and protected individuals from state regulation. This was indicated in the interpretation of the English judgment in *Balfour v Balfour* 1918 that held, 'each house is a domain into which the King's writ does not seek to run, and to which his officers do not seek to be admitted' to mean that to 'a substantial extent a husband was the king of that domain'.¹² The Department of Justice said that 'with few exceptions, a person could not be deprived of his liberty until he had done something that amounted to a crime. A sane person cannot be removed from the community on the ground that he is considered dangerous or that he is likely to commit a crime.'¹³ There was concern about increasing powers of the state. To allay fears, the legislature introduced an Ombudsman and a Bill of Rights in 1961.¹⁴ Community groups also

¹² See Roma Mitchell, 'The Family and the Law', *New Zealand Law Journal* (NZLJ), no.10, 3 June 1969, p.183.

¹³ Department of Justice, *Crime and Community. A Survey of Penal Policy in New Zealand*, Wellington: Government Printer, 1964, p.29.

¹⁴ Ralph Hanan, Minister of Justice, *New Zealand Parliamentary Debates* (NZPD), 1961, 326, p.502.

canvassed this issue. The New Zealand Council of Civil Liberties, an organization with high social credibility, advised citizens of their right to resist police encroachment into their homes: ‘Don’t wait until the constable has completed his inquiries – object to his presence early and often! The householder who shouts through the door “Get lost” is in a stronger position than the fool who lets the officer in to talk.’¹⁵ These constructions supported a police interpretation of their role in domestic assaults as ‘limited to preventing offences and enforcing such legal orders as may apply’.¹⁶

The police category of domestic disputes reflected the separation between domestic and civic space. This category included incidents of family violence as well as inter-family arguments, and arguments between neighbours.¹⁷ These were disputes that occurred on private property, involving relationships that were regulated by civil law, such as matrimonial and tenancy law. In practice however, calls for assistance categorized as domestic disputes in the main involved male violence against wives and partners.¹⁸ There was a clear distinction made between public and private behaviour. A Police College training manual from the 1970s stated that, ‘although many [domestic disputes] are the result of criminal offences, some are of a civil nature and are not within the area of police jurisdiction’.¹⁹ One guiding rule for police, that ‘the offence of fighting can only be committed in a public place’, demonstrates the importance of social geography for a construction of criminal.²⁰ What constituted ‘fighting’ is unclear, but the rule indicates a toleration of some violence occurring on private property. By default, this made violence there a private matter rather than a police one. When the Christchurch Commander of Police was asked what he was going to do about three policemen known to be beating up their own wives, he replied

¹⁵ Cit., Ian Cross, ‘Policeman at the Door’, *Listener*, vol.74, no.1764, 3 September 1973, p.12.

¹⁶ Acting Minister of Police to Mrs Cronin, 21 October 1977, Women and Violence, 1977-1980, ABKH, W4105, 2 30-0-9, pt 1, ANZ, Wellington.

¹⁷ Ford, p.3.

¹⁸ New Zealand Police College, ‘Domestic Disputes’, pp.1-4; and Police Manual Extract, ‘Domestic Disputes’, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, pt 4, ANZ, Wellington.

¹⁹ New Zealand Police College, ‘Domestic Disputes’, p.1, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, pt 4, ANZ, Wellington.

²⁰ *Ibid.*, Police Manual Extract, ‘Domestic Disputes’.

that he probably would not do anything about it because it was ‘private behaviour’.²¹ In contrast, police more readily made arrests when assaults against wives and partners took place in public places.²² Outside the domestic sphere, a law enforcement approach applied more easily because such violence threatened the public order in a clear and visible way.

The location of domestic assaults in the private world of the home had wide implications for police practices. Violence against wives and partners in the home was transformed into a relationship or sexual contract issue in which ‘police cannot take sides’.²³ Not being a police matter, it was therefore thought more appropriately dealt with under matrimonial law provisions. Police were reminded when attending domestic assaults that ‘the law provides avenues for either party to seek a separation order’.²⁴ Unencumbered with a marriage contract, de facto wives were legally free to leave a relationship when they wished. Thus domestic assaults were not a real police matter and, accordingly, were a low priority.²⁵ One constable’s reported comment, that ‘the police were far too busy to be wasting their time on such trivial matters’, exemplified the exclusion of men’s violence against wives and partners from police business.²⁶ Australian police practices were similar to those in New Zealand. A former Australian policewoman reported that during the 1970s, a call for assistance to a ‘domestic’ was relegated to the bottom of the list of police business.²⁷ The preferred course of action was to advise women to see a marriage guidance counsellor or a solicitor.²⁸

²¹ Question by Doris Church. The Battered Women’s Support Group (BWSG), formed in 1978, had several clients whose husbands were policemen, interview with Doris Church, social activist and co-founder of the BWSG, 22 March 2008.

²² As shown by reports in *Truth* during the 1960s and 1970s.

²³ Acting Minister of Police to Mrs Cronin, 21 October 1977, Women and Violence, 1977-1980, ABKH, W4105, 2 30-0-9 pt 1, ANZ, Wellington.

²⁴ New Zealand Police College, ‘Domestic Disputes’, p.4, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, pt 4, ANZ, Wellington.

²⁵ Detective Chief Superintendent E. Perry cit., ‘Police Must Act in Marital Rows’, *Press*, 22 June 1978, p.4.

²⁶ BWSG to Chief Superintendent, Christchurch Police Station, 21 August 1978, Private Papers of Doris Church.

²⁷ Reported in Suellen Murray, *More Than Refuge. Changing Responses to Domestic Violence*, Crawley: University of Western Australia Press, 2002, p.108.

²⁸ Acting Minister of Police to Mrs Cronin, 21 October 1977, Women and Violence, 1977-1980, ABKH, W4105, 2 30-0-9, pt 1, ANZ, Wellington.

Construction of domestic assaults as a relationship problem obscured the fact that most perpetrators were men and most victims were women, thereby minimizing men's responsibility for the violence. It also ignored the social reality that men had privileged access to social resources. This supported claims that women who remained in relationships were consenting to the violence or that it could not have been that bad because 'the parties involved were adults who could seek the help available to them if they wished'.²⁹ It supported a view of the parties involved as 'quarrelling', in need of being told to 'behave themselves'. It was thought that 'having any two people living together and give them something to argue about and you have the makings of a domestic'.³⁰ Relationships, not men, caused violence, and an element of inevitability was assumed.

Stemming from relationship issues, victimhood discourses provided opportunity for both victim and perpetrator. In 1977 Harry Lapwood, Acting-Minister of Police, believed that 'domestic disputes are but a symptom of family stress'. Financial issues and sexual jealousy were thought common catalysts of such disputes, but alcohol was thought the primary cause.³¹ This was indicated in one offender's court hearing for assault on his de facto wife and child that included threatening them with a knife, in which police said they were often called to his home because of his drinking habits.³² In that case, the violence was constructed as a problem of alcohol. Its location in alcohol or domestic relations obscured its gendered nature, even in cases of extreme violence. Frank Gill, the Minister of Police, described the killing of Barbara Wall and her infant daughter in 1979 as 'a tragic incident' resulting 'from a longstanding unstable domestic' relationship'.³³ This minimized Ray Hanson's responsibility. He had murdered Barbara Wall and their baby because he would not accept that their relationship was over.³⁴

²⁹ Detective Chief Superintendent E. Perry cit., 'Police Must Act in Marital Rows', *Press*, 22 June 1978, p.4.

³⁰ See 'Police Tread Warily in Domestic Disputes', *Herald*, 18 October 1982, Domestic and Matrimonial Proceedings, 1982-1982, ABVP, 7410, W4927, box 252, LEG 15-1-6, pt 3, ANZ, Wellington.

³¹ Submission of Police Commissioner, pp.24-25, 29 May 1978, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 83, pt 1, ANZ, Wellington.

³² 'Knife Threat to Wife: Get Out Before I Open Your Guts', *Truth*, 12 July 1960, p.11.

³³ Answer to a question by Marilyn Waring, NZPD, 1979, Women and Violence, 1977-1980, ABKH, W4105, 2 30-0-9, pt 1, ANZ, Wellington.

³⁴ Coroner's Report, Barbara Wall, 1979-1979, ABVP, 17298, W5450, 28, COR79/1597, ANZ, Wellington.

GENDER DISCOURSES

Police culture both reflected and perpetuated the power structures within the society it served and the gender order was one such structure.³⁵ The overwhelming predominance of men in the police force was highly relevant to police culture. Discourses that constructed the passivity and vulnerability of women impeded the recruitment and promotion of women within the Police Force itself.³⁶ Women had first won the right to join the police in 1936; the first recruits were announced in 1941; the first uniformed woman was seen on the streets in 1952; in the late 1950s the first female detectives were appointed; and in 1972 the first woman police prosecutor was appointed.³⁷ Such was the novelty of a female prosecutor that the senior sergeant had to get permission from the magistrate, Ben Scully, for a woman to plead in court. He reportedly replied, 'Why not? Anything's good for a laugh'.³⁸

In 1973 the Commissioner of Police declared that policewomen would be treated as equal. He explained that a misplaced paternalism had led to second-class status for policewomen, 'on the premise that they couldn't be attacked by a typewriter, or injured by a telephone, duties were often found for them as typists and telephonists which guaranteed their ineffectiveness as policewomen trained for field duties'.³⁹ However, older discourses persisted. In the same year the head of the Auckland Central Division of the CIB said there were many duties that could and should not be handled by women.⁴⁰ Policewomen who worked in the 1970s have said that there were many policemen who resented their presence and that being able to handle sexist comments was very important for their survival.⁴¹ As an insider, police sergeant

³⁵ Susan Edwards, *Policing Domestic Violence. Women, the Law and the State*, London: Sage Publications Ltd, 1989, p.26.

³⁶ For example, in 1916 the belief that the hardest thing for a woman was to hold her tongue so it would take too long to train her was used to exclude women from the police, Margie Thompson, 'Women in Blue', in Sandra Coney, ed., *Standing in the Sunshine. A History of New Zealand Women Since They Won The Vote*, Auckland: Penguin Books NZ Ltd, 1993, p.126.

³⁷ *Ibid.*, pp.126-7.

³⁸ Valerie Redshaw, *Tact and Tenacity. New Zealand Women in Policing*, Wellington: Grantham House Publishing, 2006, p.120.

³⁹ Thompson, p.127.

⁴⁰ *Ibid.*; women were unable to join the Armed Offenders Squad, described as 'a boys' club', until 1991, Ralph Van Beynen, *Zero-Alpha. The NZ Police Armed Offenders Squad Official History*, Auckland: Howling at the Moon Productions Ltd, 1998, p.192.

⁴¹ Valerie Redshaw also documents sexual discrimination persisting throughout the 1980s, Redshaw, pp.124, 143.

Graham Duncan observed the ‘boys’ club mentality’. He said that policewomen ‘had to be 120% good at their jobs to be as good as the blokes’.⁴²

In the first two decades after entry into the police, women constituted between 0.66% and 3.2% of the Police Force. In the 1960s numbers fluctuated from 34 policewomen (1.32%) to 69 (2.34%). In 1974 women constituted 4% of the service; in 1976 there were 190 police women (4.4%) and from this time there were serious moves to limit numbers. The 1977 Human Rights Act allowed police to appoint fewer females on the premise that more males were required for dealing with violent situations. In 1980 there were just 210 policewomen (4.2%). Valerie Redshaw observed a tacit consensus that 4% was the right number of policewomen.⁴³

Low numbers of women officers reinforced police culture as a ‘macho environment’,⁴⁴ or a bastion of male authority by ensuring patriarchal attitudes went unchallenged within the police force.⁴⁵ Felix Donnelly, Catholic priest and social critic, thought it inevitable that a group of men working exclusively with other men would laud masculine virtues, limit tolerance and foster aggression.⁴⁶ A wide variation of behaviours was possible within this ‘cult of masculinity’, from excluding women to outright misogyny, but the celebration of maleness was consistent.⁴⁷

Susan Ehrlich’s concept of ‘community of practices’ explains how discourses shaped police practices to reproduce male privilege. Ehrlich describes institutions as non-neutral and as structured along gender lines to lend authority to not only reigning classes and ethnic groups, but specifically to men’s linguistic practices.⁴⁸ Police, male or female, can be viewed as constituting a ‘community of practice’; that is they are mutually engaged on a regular basis with police business. It is male linguistic practices that shape this community of practice, so male privilege is perpetuated through police practices.

⁴² Interview with Police Sergeant Graham Duncan, 14 May 2008.

⁴³ Redshaw, pp.95, 129, 143-4.

⁴⁴ Description of the police culture in the 1970s, interview with Police Sergeant Len Corner, 18 August 2009.

⁴⁵ Edwards, p.26.

⁴⁶ Felix Donnelly, *Big Boys Don’t Cry*, Auckland: Cassell New Zealand, 1978, p. 64.

⁴⁷ Edwards, p.27.

⁴⁸ Susan Ehrlich, ‘Communities of Practice, Gender, and Sexual Assault’, *Language in Society*, 28, 1999, p.251.

The following examples suggest how police might have supported male privilege. Police sergeant Len Corner believed that ‘there was more sympathy to the man of the house losing his cool when he was under pressure’.⁴⁹ Mateship between perpetrators and police was also observed in Australia.⁵⁰ Personal friendships further discouraged police action. One woman reported that a policeman took particulars because she had marks around her face, but after he saw her husband, a friend of his, the complaint went no further.⁵¹ Co-founder of the Christchurch Battered Women’s Support Group (BWSG), Doris Church, said the group had several clients whose husbands were policeman.⁵² Such policemen would more readily define a woman’s complainant as not a police matter and their status could enable them to act aggressively towards women without challenge. Church said that the policeman who came to her home to exercise an access order was separated from his wife on account of his violence. She described him as aggressive; he raised his arm to her in a manner she felt threatened by. She believed the arrival of her second husband prevented an assault.⁵³ Whether an assault was likely or not, the example demonstrates police intimidation which could deter women from pursuing prosecutions. Similarly, the police community of practice might have enabled sexual aggression. There has been recent media coverage concerning past police sexual misconduct in Rotorua.⁵⁴ Graham Duncan agrees that such behaviours did occur.⁵⁵ Len Corner reports that some police officers had “cavalier” attitudes to women who might be described as vulnerable.⁵⁶

Gender discourses embedded in police practice reproduced stereotypes of female behaviour that shaped police judgement of guilt or innocence, blame and

⁴⁹ Interview with Len Corner, 18 August 2009.

⁵⁰ Murray, p.119.

⁵¹ Christchurch District Court Files, CAHS, CH927, box 4, case 90, 1970, ANZ, Christchurch (note two files were numbered 90 in this year).

⁵² Interview with Doris Church, 22 March 2008.

⁵³ Ibid.

⁵⁴ There is extensive media coverage of this case. In 2003 Louise Nicolas made an historical complaint against several police officers who were stationed in Rotorua at the time of the event. Nicolas alleged that the three officers had forced her to have sex. They were subsequently acquitted but it was later revealed that two of the officers accused were in prison for another rape, ‘Final Chapter in Police Sex Chapter’, <http://tvnz.co.nz/view/page/411749/1252884>; ‘Muddy Waters getting Murkier’, http://www.peterellis.org.nz/people/ClintRickards/2004-216_WaikatoTimes_MuddyWaters.htm.

⁵⁵ Interview with Graham Duncan, 14 May 2008.

⁵⁶ Len Corner recalls competitions amongst police for sexual conquest at a Christchurch pub where solo mothers, viewed as ‘easy game’, were known to frequent, interview with Len Corner, 18 August 2009.

responsibility.⁵⁷ Police protected women when they viewed them as vulnerable. Police who found a five-month pregnant wife sitting on the floor crying and bleeding freely from her nose proceeded with a prosecution despite the wife pleading for the complaint to be dropped.⁵⁸ However, constructions of women as provocative or “asking for it”, and discourses that supported male domination in marriage contested this construction of vulnerability. Graham Duncan said that there was a respect for male dominance in marriage: ‘she’s his wife, she didn’t know her place, he’s head of the household, that kind of thing’.⁵⁹ Len Corner agreed.⁶⁰ For example, ‘Cecilia’, whose experience was recorded by the Auckland Halfway House, said that police asked her what kind of bitch she was to leave her husband when he was crying and saying he loved her? On a second occasion after which she ran next door to escape an assault, the police told her to go home.⁶¹

Normative expectations of femininity that made victimhood contingent on respectability discouraged police action. Due to a lack of sources, it is difficult to gauge how this may have impacted on police attitudes towards de facto wives. Court reports in *Truth* in the 1960s-1970s, however, do indicate that de facto husbands were charged with assault-based offences.⁶² The police directive, to ‘be wary of arrest if the wife is under the influence of liquor’, indicated that drinking alcohol undermined a woman’s victimhood status and credibility.⁶³ Insufficiently feminine behaviour undermined women’s claims for police assistance. Graham Duncan’s re-telling of one late shift’s attendance at 29 ‘domestic disputes’ included several cases in which he described the woman as the aggressor and the man as more passive: ‘They weren’t all the little women who were intimidated by the big bully man.’⁶⁴ His description might have been fair as males do not have a monopoly on violence, but it also suggests that women who presented as aggressive were unlikely to be seen as victims in need of

⁵⁷ Edwards, p.26.

⁵⁸ ‘Stripped his Pregnant Wife’, *Truth*, 17 April 1963, p.3.

⁵⁹ Graham Duncan says he himself did not support this belief because he was brought up not to treat women like that, interview with Graham Duncan, 14 May 2008.

⁶⁰ Interview with Len Corner, 18 August 2009.

⁶¹ Bronwyn Banks, Joy Florence and Jenny Ruth, *He Said He Loved Me Really*, Auckland: The Halfway House Collective, 1979, p.18.

⁶² As illustrated by Court reports in *Truth*, 1960s-1970s.

⁶³ New Zealand Police College, ‘Domestic Disputes’, p.3, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, pt 4, ANZ, Wellington.

⁶⁴ This was a personal record of attendance in one shift, the late shift, from 1pm to 9pm, interview with Graham Duncan, 14 May 2008.

police protection, especially when men presented as calm. Len Corner's recollection of a common attitude, 'she was as bad as him', also indicates that women fighting back in self-defence might not have been viewed as in need of protection.⁶⁵ Similarly, the failure of women to be good wives combined with discursive constructions around men's disciplinary rights to mitigate male responsibility. At John Hetaraka's court hearing for assaulting his de facto wife from which she had black eyes and a bleeding nose, Sergeant Wright reportedly said that it was not all Hetaraka's fault because he 'had had a tough time with his de facto wife. Things were all right now.'⁶⁶

Discursive constructions around women as irrational and emotional also operated to trivialize women's complaints. It was common for visibly upset women to be described as 'hysterical' so that a demand to arrest the husband made by such a woman was interpreted as a 'scream'.⁶⁷ This reduced the woman's credibility by locating hysteria in a woman's own psyche, implying an exaggerated version of events. It disguised a violent source of woman's emotional state and obscured a man's responsibility. Police said of one pregnant woman, who was shaken and thrown against a wall by her husband, as 'although hysterical', that she was not 'injured'.⁶⁸ It was thought that once a woman had calmed down she would act more rationally and would not wish to pursue a complaint. Changing one's mind was interpreted as a measure of women's inherent illogic, and hence a woman's word could not be trusted.⁶⁹ The police directive was to 'be a good listener. Often that is all the complainant requires'. This discouraged taking women seriously.⁷⁰ It was expected that most women complainants only wanted 'the police to de-escalate the situation, act as a referee, or as marriage guidance counsellors'.⁷¹ Women's understandings of their own behaviours were also shaped by such discourses. In 1960, Majorie

⁶⁵ Interview with Len Corner, 18 August 2009.

⁶⁶ The exact charge is unclear, 'Woman's Eyes Blackened', *Truth*, 3 May 1960, p.9.

⁶⁷ 'Police Embarrassed when Wives are Mum', *Truth*, 16 June 1965, p.22.

⁶⁸ 'He Threw Her Against the Wall', *Truth*, 29 August 1967, p.7.

⁶⁹ Jan Jordan demonstrated how the construction of woman as lying shaped police practices around rape, Jocelyne Scutt termed this construct the 'incredible woman', cit., Jan Jordan, *The Word of a Woman? Police, Rape and Belief*. Houndmills, Hampshire: Palgrave Macmillan, 2004, pp.1, 244.

⁷⁰ Police Manual Extract, 'Domestic Disputes', Committee of Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, part 4, ANZ, Wellington.

⁷¹ Submissions of Commissioner of Police, p.24, 29 May 1978, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 83, pt 1, ANZ, Wellington.

Robertson excused her refusal to give evidence on the basis of having drunk whiskey and being ‘a bit hysterical’ at the time of the assault.⁷²

Policewomen were not exempt from the police community of practice. As a member of that community the policewoman too was invested with the responsibility of upholding the standards and values of the institution – standards and values that did not necessarily serve the interest of many women, especially those differently positioned by class and race.⁷³ Len Corner said that if a policewoman did not fit in with the culture, she was almost ostracized.⁷⁴ Policewomen survived by becoming like men.⁷⁵ A woman complainant could not expect sympathy from a policewoman on account of her gender. Gregory Ford interviewed one woman who claimed a policewoman told her she probably got what she deserved and that she looked all right. Another interviewee said a policewoman told her that for a woman who had been beaten up she looked in pretty good health.⁷⁶

ETHNICITY DISCOURSES

While the gendered exercise of power affects all people, it is diversely experienced, depending on other social markers such as ethnicity and class. Police practice reproduced discourses around ethnicity that disadvantaged Maori.⁷⁷ Although Maori had long been eligible to join the police, racial discrimination meant for the first half of the twentieth century they were almost excluded. After a 1965 campaign to recruit Maori, sixty-nine Maori became police, some of whom became non-commissioned officers.⁷⁸ Gross under-representation of Maori enabled negative racial stereotyping to go unchallenged. For many police the only Maori they came in contact with were those they arrested.⁷⁹ Len Corner said racial slurs were common at Wellington Central in the 1970s and that ‘racism was a justification for a lot of what happened’.⁸⁰ Some, including Corner, believed there was ‘a greater suspicion of Maori, a more ready

⁷² ‘Changed Mind’, *Truth*, 12 January 1960, p.31.

⁷³ Ehrlich, pp.251-2.

⁷⁴ Interview with Len Corner, 18 August 2009.

⁷⁵ Edwards, p.31.

⁷⁶ Ford, pp.93-94.

⁷⁷ See Graham Butterworth and Susan Butterworth’s *Policing and the Tangata Whenua, 1935-1985* for a full historical account of Maori experiences of policing.

⁷⁸ *Ibid.*, pp.15, 18.

⁷⁹ Police sergeant Graham Duncan made this observation of police he worked with in Wellington in the late 1960s and early 1970s, interview with Graham Duncan, 14 May 2008.

⁸⁰ Interview with Len Corner, 18 August 2009.

assumption of guilt, and a correspondingly higher arrest rate'.⁸¹ Graham Duncan thought the fact an offender was Maori did colour police thinking, but not the process. He did not think being Maori meant those accused of violence against wives and partners were more likely to be arrested.⁸²

Both positions might have been right. Culture and class divided most Maori offenders from police. Len Corner says police used 'an attitude test' when called to 'domestic disputes' and that Maori were more likely to be arrested if they refused to co-operate.⁸³ So while being Maori may not have directly affected arrest policy, the fact that Maori, especially those from a lower socio-economic group, did not identify with and therefore were more likely to resist middle-class Pakeha institutions, would make them more vulnerable to arrest. However, constructions of Maori as uncivilized might have enabled police to more readily interpret behaviour as challenging police authority. Duncan and Corner do not recall Maori wardens playing any significant role in police resolution of domestic assaults that involved Maori in Wellington.⁸⁴ However, in more densely Maori populated areas the role of Maori wardens may have been more significant.

When Maori accused of violence against wives and partners co-operated with police, the view that Maori were less civilized could disadvantage Maori women victims. There was a common belief that Maori women, in particular, behaved badly after drinking. Some Christchurch bars had refused to serve Maori women on this basis.⁸⁵ Graham Duncan acknowledged that when police turned up at a house where Maori lived, some thought, 'oh, here we are, another bloody Maori fight', a construction that reduced the violence to a Maori affair, obscured a Maori woman's victimhood, and mitigated a Maori man's responsibility.⁸⁶ Len Corner recalls using a code 'TPDNFPA', which meant 'typical Porirua domestic no further police action'. As a

⁸¹ Nelson Race Relations Action Group, 'Justice and Race: a Monocultural System in a Multicultural Society', NZLJ, no.8, 1 May 1973, pp.175-6; police sergeant Corner said that in his experience Maori were more likely to be arrested, interview with Len Corner, 18 August 2009.

⁸² Interview with Graham Duncan, 14 May 2008.

⁸³ Interview with Len Corner, 18 August 2009.

⁸⁴ Interview with Graham Duncan, 14 May 2008; interview with Len Corner, 18 August 2009.

⁸⁵ Although the licensee and manager of one bar were fined because the right of the individual must be respected, the belief around Maori women who drank was not challenged, 'Two Fined for Refusing Drink to Maori Woman', *Truth*, 14 July 1965, p.17.

⁸⁶ Interview with Graham Duncan, 14 May 2008.

member of the Team Policing Unit in Wellington he often went through to Porirua, but the term was often used cynically throughout the Wellington District.⁸⁷

Graham Duncan's account of a domestic assault demonstrates how gender and ethnicity discourses reinforced a view of it as non-criminal. Neighbours called police to a regularly visited Maori home:

The man opened the door and his partner was standing behind him with a black eye and fat lip telling me to fuck off. When I asked him what he had done this time he replied, "What would you do if your missus got home at this hour of the morning with no pants on?" She had been partying, spent the night with someone else and then sort of staggered home with her pants in her handbag... her husband had taken a dislike to it and had given her a back-hander and it was not a beating. He had whacked her across the face because she was hung over from the night before but that is how they lived, it was their life, and he was not arrested for it, she didn't complain.⁸⁸

In contrast, Graham Duncan recalled another incident where he had witnessed 'a back-hander' and made an arrest.⁸⁹

CLASS DISCOURSES

It has long been acknowledged that the law unequally represents class interests. Class can be a difficult concept to define, but for the purposes of this thesis one class can be differentiated from another by its socio-economic status, as measured by social status, income and expectations of behaviour. Police, as agents of the state, exercised and protected a state ideology that was organized around the capitalist and bourgeois principles of private property; hence protection of property was a traditional responsibility of police. There were almost twice as many sections pertaining to property crime than there were to crimes against the person in the 1961 Crimes Act.⁹⁰ Combined with fraternal loyalties, class sensitivities could protect middle-class male

⁸⁷ Interview with Len Corner, 18 August 2009.

⁸⁸ Interview with Graham Duncan, 14 May 2008.

⁸⁹ Ibid.

⁹⁰ NZS, 1961 Crimes Act.

offenders because such men identified with the state, and many were in occupations that reinforced the state, including members of the medical, education and legal professions. This is why these men were unlikely to fail the ‘attitude test’ referred to by police officer Len Corner: the state’s linguistic practices and discursive understandings were their own. As well, notions that wives constituted part of a husband’s property still operated; there was no penalty for marital rape and in most instances matrimonial property belonged to the husband only. An important police role was to protect private property and because mostly men owned property, especially middle-class men, this meant respecting men’s rights as property owners. There was a tension between discourses associated with property rights and those associated with crime.

Middle-class offenders were also protected by the police belief that violence was a preserve of the lower socio-economic classes.⁹¹ Police experiences reinforced this belief. Most domestic assaults occurred in low socio-economic areas. It was unusual for middle-class women to call police. Ford reports that in Hamilton in the early 1980s, most calls received by police were from areas containing high-density rental accommodation and state housing, and offenders were employed mainly in manual occupations.⁹² In Christchurch it was usual for police to be called to domestic assaults in Aranui and Bexley, low socio-economic suburbs, but it was rare that a woman from Fendalton or Merivale, high socio-economic areas, would contact police to say that she was being bashed.⁹³ Graham Duncan reported that, in a lot of the incidents he attended, people ‘were semi-literate, they did not read, they did not get newspapers, they couldn’t sit down and logically debate something with you, they sorted it out with their fists’.⁹⁴

Doris Church’s experience of police response to an assault on her by her first husband in 1976 demonstrates the operation of class discourses. She believes that the fact her husband was a school principal inhibited police in taking her complaints of assault by him seriously. She said her daughter called police because she was being hit badly.

⁹¹ Interview with Graham Duncan, 14 May 2008; interview with Len Corner, 18 August 2009.

⁹² Ford, pp.25-26.

⁹³ Interview with Graham Duncan, 14 May 2008.

⁹⁴ Ibid.

When the police arrived, her husband acted calmly and rationally, and she told them she wanted to leave with the children. The police were just going to leave her there, but she insisted that they help her get off the property, which they then did grudgingly. Church relates another example where, as a BWSG advocate, she accompanied a woman to the police station to make a complaint. When the woman revealed the assailant was her husband, a university professor, the officer steadfastly refused to process the complaint.⁹⁵ Len Corner agreed that this was very possible at that time.⁹⁶

Women were also subject to class discourses. It is known that women in abusive relationships experience shame. The experience of shame takes place within a specific social context that is ‘created through the constitutive power of dominant discourses of gender’: heterosexuality, matrimony and motherhood. Because our social bonds are dependent on how well we ‘do’ the identities offered to us in dominant discourses, not ‘doing’ them places our social bonds or status at risk, which can produce a sense of failure.⁹⁷ Class affects the extent to which these identities shape the lives of individual women. Middle-class women had stronger imperatives to comply with the identities on offer in conservative discourses around motherhood and marriage. This discouraged women from speaking out about assaults in two ways: firstly, from making a complaint; secondly, making them vulnerable to shaming critiques by others. If a middle-class woman did make a complaint, police would apply expectations of femininity for a woman of her social standing. Graham Duncan’s re-telling of the incident in which no arrest was made included the comment ‘that’s how they lived’. Alternatively, middle-class women, such as the wife of the university professor, were made to feel they were the ones breaking the rules.

INSTITUTIONAL PRACTICES

As demonstrated, discourses of law, police role, the family, the domestic/civic divide and gender, discouraged a police interpretation of violence against wives and partners in the domestic sphere as a crime. Discourses that supported this decriminalization

⁹⁵ Interview with Doris Church, 22 March 2008.

⁹⁶ Interview with Len Corner, 18 August 2009.

⁹⁷ Angela Jury, ‘Shame on Who? Experiential and Theoretical Accounts of the Constitution of Women’s Shame within Abusive Intimate Relationships’, PhD thesis, Massey University, Palmerston North, 2009, pp.266-8.

were embedded and perpetuated in institutional practices such as police training, organization, recording practices and guidelines for domestic assaults, categorized by police as “domestic disputes”. Little detectable change occurred in police responses over this time period. However, the very issue of domestic disputes did heighten in response to the emergence of “domestic violence” as a social problem in the late 1970s. From 1980, the annual report of the New Zealand Police began to report the incidence of domestic disputes (see Chapter 8).

Police Training

Police training reflected and reinforced the low priority given to domestic assaults throughout the 1960s and 1970s. Police were not trained to take them seriously as police matters and were directed to take a law enforcement view of the problem, leaving individual police reliant on their belief systems for interpretation. Little training was given despite domestic assaults being one of ‘the most frequent requests for police service’.⁹⁸ Graham Duncan recalls that of his nineteen-month police cadet course in the mid-1960s, around two hours were spent specifically on domestic disputes.⁹⁹ In the 1970s it appears that in an alternative sixteen-week training course, one week was spent on that and ‘things that are not really of a criminal nature’ such as accidents and disasters, a combination expressing the general non-criminal status of domestic assaults.¹⁰⁰ Len Corner’s recollection of this course was a ‘bit on domestic violence included in assaults in passing’.¹⁰¹ Trainees were given a general overview, but the main focus was on the various legal powers available to police officers when attending such incidents, an example of how a domestic assault was transformed and alienated from the original problem. Most learning took place on the job and was usually carried out under the supervision of a more experienced police officer, who might or might not have provided a good role model.¹⁰² Because of staffing difficulties, often two 19 or 20 year old constables were sent to a house, their youth

⁹⁸ New Zealand Police College, ‘Domestic Disputes’, p.1, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, pt 4, ANZ, Wellington.

⁹⁹ Interview with Graham Duncan, 14 May 2008.

¹⁰⁰ Chief Superintendent McCarthy, Women, Violence and Justice Seminar, p.24, Women and Violence, 1978-1980, ABKH, W4105, 30-0-9 2, ANZ, Wellington.

¹⁰¹ The sixteen-week course was established to quickly bolster police numbers, interview with Len Corner, 18 August 2009.

¹⁰² Ford, p.15.

and lack of experience adding to the stress of dealing with an offender who may have been twice their age.¹⁰³

Police Organization

Three structures of organization operated from 1960 to the 1980s. Until the mid-to-late 1960s policing was decentralized to a local level, suited to a time of relatively stable populations and low levels of reported crime. Few cars were available, much work was done on foot, and the communications network was limited. In response to the emergence of an increasingly mobile urban population and a rising rate of reported crime in the 1960s, the police adopted centralized rapid-response policing. In the 1970s and early 1980s communications technological advances improved.¹⁰⁴ This discouraged local community contact. Residents' associations in the main cities campaigned to get their local 'bobbies' back.¹⁰⁵ As a result, community constables were appointed to provide 'complementary service policing', but this had little effect on front-line police culture and the change was described as largely cosmetic.¹⁰⁶

In effect two different structures operated. Because of a lack of cars, police were poorly equipped to respond to emergency calls. Although it made for community contact, a local relationship probably discouraged wives from calling on police assistance. Fraternal loyalties and personal friendships meant a woman might not expect police support. The potential for an incident to become general knowledge could also increase the risk of shame and discourage a woman from speaking out. A rapid-response policy enabled police to answer quickly to emergency calls from urban women, but because police were concentrated in fewer urban locations and many rural stations were closed, it was more difficult to respond to rural women. In 1975 one woman said that she had not called police after various assaults because 'the nearest police was some distance away'.¹⁰⁷ Furthermore, a rapid-response policy reinforced a law enforcement approach that did not always suit a domestic assault. It lacked a preventive or proactive element that might aid resolution in the long-term. A

¹⁰³ Chief Superintendent McCarthy, Women, Violence and Justice Seminar, p.22, Women and Violence, 1978-1980, ABKH, W4105, 30-0-9 2, ANZ, Wellington.

¹⁰⁴ Warren Young and Neville Trendle, 'The Police', in Julia Tolmie and Warren Brookbanks, eds, *Criminal Justice in New Zealand*, Wellington: LexisNexis Ltd., 2000, pp.103-105.

¹⁰⁵ 'Bring Back the Bobby, They Cry', *Truth*, 9 June 1970, p.3.

¹⁰⁶ Young and Trendle, pp.104-5.

¹⁰⁷ Christchurch District Court Files, CAHS, CH927, box 223, case 46, 1975, ANZ, Christchurch.

Chief Superintendent described ‘a couple of fairly young men riding in a white motorcar and going from job to job, and responding on a purely reactive basis’.¹⁰⁸ A reactive approach made more visible crime, such as street violence or theft, a greater priority over less visible violence that occurred in the home. A distant relationship with the local people enabled the police community of practice to define the role of police without challenge. However, poor relations may have enabled some women to more readily call on assistance because there was less risk of shame.

Recording Practices

Only formal complaints were recorded so the ‘vast majority of this type of violent offending’ was not, and remained, invisible.¹⁰⁹ Most domestic disputes were recorded as K1, a police code for getting attention sufficient to deal with the incident. There would not even be a paper file recording police attendance. Graham Duncan recalls that of his record 29 domestic disputes attended in one night in 1971, only a couple ‘had to be covered on paper’.¹¹⁰ Len Corner recalls that he often went to a number of ‘domestics’ in a night and no arrests would ensue.¹¹¹ Although outside the time period, the discrepancy between Hamilton police records and telephone message forms for domestic disputes indicates how many complaints were not reported. In April 1984 police recorded 47 complaints and telephone forms indicated 116 complaints had been made.¹¹² In effect, reporting practices suppressed an awareness of men’s violence against wives and partners as a social problem.

In a circular way, reporting practices legitimated the discursive constructions that shaped them. Statistics supported practices; knowledge authorized the exercise of power. The Christchurch Commander of Police said that because he knew of no policeman being charged with assault against his wife, he ‘must presume’ that no policeman had committed such an offence.¹¹³ Police statistics indicated a link with alcohol. The Police Commissioner reported that the peak time for complaints was

¹⁰⁸ Women, Violence and Justice Seminar 1980, p.24, Women and Violence, 1978-1980, ABKH W4105, 30-0-9 2, ANZ, Wellington.

¹⁰⁹ Submission of Police Commissioner, 29 May 1978, p.24, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 83, pt 1, ANZ, Wellington.

¹¹⁰ Interview with Graham Duncan, 14 May 2008.

¹¹¹ Interview with Len Corner, 18 August 2009.

¹¹² Ford, p.33.

¹¹³ ‘No Cases Against Policemen’, *Press*, 22 June 1983, Private Papers of Doris Church.

after hotel closing, 10 p.m. through to 1a.m. In the vast majority of ‘disputes,’ up to 90%, one or both parties were affected by alcohol.¹¹⁴ Because police recording of domestic disputes was discretionary, it is difficult to know to what extent police beliefs around men’s violence against wives and partners shaped the statistics. Police did share an exaggerated view of the role that alcohol played. Gregory Ford’s research on the category of domestic disputes showed that it was involved in 50% of the general complaints and in 55% of violent ones.¹¹⁵ This meant many domestic assaults might have been interpreted as a problem of drinking behaviours, which would have left the violence unacknowledged and women unprotected.

Poor recording practices disguised the on-going nature of violence in the home and meant police could be unaware of repeat calls to one home. Worse still, the low priority of domestic assaults meant that unless weapons were involved, new complaints were not mentioned at police briefings or changeover of shifts. Sometimes complaints were not passed on because police were still out in the field and had not yet produced reports.¹¹⁶ The low priority undermined women’s safety. In a 1982 case, a Christchurch woman was abducted by her estranged husband, driven at high speed on rural roads, and tied to a fence post. Her husband then told her he was going to get the kids and would shoot them all. She managed to escape and alert police. The police initially suggested to her that when they found him they would only question him at first, they may or may not lay a charge and he would probably be released the following morning. The woman felt more reassured when police said they would oppose bail, but the following shift only questioned and released him. The husband was prosecuted, but his fine of \$400 suggests that charges laid were of a lesser kind than might have been.¹¹⁷ Other possible charges, such as kidnapping or commission of a crime with a firearm could incur a long period of imprisonment.¹¹⁸ Often police generously interpreted men’s violence so that accused men were charged with a lesser crime than those available under the 1961 Crimes Act. In 1960 one man who knocked

¹¹⁴ Submission of Police Commissioner, 29 May 1978, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 83, pt 1, ANZ, Wellington.

¹¹⁵ Ford, p.68.

¹¹⁶ John Chadderton, an ex-police officer of 16 years service appearing in ‘Calling on the Police’, *Close-Up* (TV news programme) dated around 1983 or 1984, Private Collection of Doris Church.

¹¹⁷ *Ibid.*

¹¹⁸ For example, commission of a crime with firearm could incur imprisonment up to 10 years and kidnapping charges could incur imprisonment up to fourteen years.

his wife down and kicked her in the head and needed to be forcibly restrained by police officers was charged with disorderly behaviour.¹¹⁹ In 1982 Inspector D. Bates said that some prosecutions were made under the Police Offences Act, which carried penalties up to six months, because ‘domestic violence tended to be less brutal, not warranting the harsh penalties of the Crimes Act’.¹²⁰ While domestic assaults were reconstructed as domestic violence, older understandings of domestic assaults still operated.

Police Guidelines for “Domestic Disputes”

In the absence of serious injury or death, the police aimed to restore domestic order. Police were directed to avoid arrest and to ‘make an effort to effect reconciliation’.¹²¹ A Chief Superintendent said, ‘we’ve got to take immediate action sometimes of course. It’s a last resort’ and ‘the main thing is not...getting convictions but trying to get people together’.¹²² Police tried ‘to leave the scene confident that no breach of the peace or further disorder’ would recur.¹²³ This could mean advising ‘the complainant to go to bed or pack up and go home to relatives’.¹²⁴ Police had no legal powers to order a man to leave his premises unless he had committed an offence, but woman victims might have left voluntarily.

The police privileging of ‘communication, empathy and common sense’ over ‘police powers and the law’ to restore peace was consistent with a view towards preservation of the family.¹²⁵ Police avoided arresting even when restoring peace was difficult. They might have used ‘a little bluff or hint of possible consequences’; ‘a drinker objects to the effect of a prohibition order, separation orders lead to maintenance,

¹¹⁹ ‘Ungentlemanly’, *Truth*, 1 March 1960, p.35. No comment was passed on this by *Truth*.

¹²⁰ ‘Arrests not Automatic’, *Press*, 25 March 1982, Private Papers of Doris Church.

¹²¹ New Zealand Police College, ‘Domestic Disputes’, pp.2-3, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, pt 4, ANZ, Wellington.

¹²² Women, Violence and Justice Seminar 1980, p.22, Women and Violence, 1978-1980, ABKH, W4105, 30-0-9 2, ANZ, Wellington.

¹²³ Sergeant Clegg cit., ‘Police Tread Warily in Domestic Disputes’, *Herald*, 18 October 1982, Domestic and Matrimonial Proceedings, 1982-1982, ABVP, 7410, W4927, box 252, LEG 15-1-6, pt 3, ANZ, Wellington.

¹²⁴ Police Manual Extract, ‘Domestic Disputes’, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, pt 4, ANZ, Wellington.

¹²⁵ Steve Long, ‘The Role of the Police’, in *Violence Within the Family II, Violence Against Women. Proceedings of a Symposium held at the University of Otago Medical School, May 1986*, Dunedin: The Friends of the Otago Medical Trust, 1986, p.7.

children may be taken away from a bad home'.¹²⁶ The latter threat may have discouraged women calling on police again. Most commonly, police warned or cautioned men.¹²⁷ This also applied when a woman had been 'assaulted in only a minor way'.¹²⁸ For everyone's sake the family should remain undisturbed. A police training directorate advised avoiding arresting where possible because of 'the likelihood that such action will contribute to family stress rather than relieve it, if the aggressor is arrested he may, on release, become even more violent', and 'if placed in custody it may involve financial hardship for the family'.¹²⁹

The non-arrest policy meant that most violence against wives and partners, while possibly recorded as a domestic dispute, would not result in charges being laid and therefore were excluded from the official crime rate. The effective decriminalization of domestic assaults left the domestic sphere unregulated. Furthermore, civil liberties discourses isolated abused women from other helping or social agencies. Although police thought these better equipped to handle the social issues, they did not make referrals because doing so would be a 'breach of confidentiality of police information and a further intrusion into the private life of the individual'.¹³⁰ This would violate a tenet of liberal social democracy, which protected citizens by the state not building up files on them through departmental sharing of information.

Unlike street violence that usually only required police evidence, without the complainant's evidence of a husband or partner's assault there was often nothing on which the courts could convict.¹³¹ Graham Duncan said that in cases where women were unwilling to make a complaint, police 'hands were pretty much tied'.¹³² He said that police felt that if a woman wanted their help then she needed to make a complaint

¹²⁶ Police Manual Extract, 'Domestic Disputes', Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, pt 4, ANZ, Wellington.

¹²⁷ This emerged as a common practice from separation files of the Christchurch District Court Files, CAHS, 1970, 1975, 1980, ANZ, Christchurch.

¹²⁸ New Zealand Police College, 'Domestic Disputes', p.3, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, pt 4, ANZ, Wellington.

¹²⁹ Ford, p.19.

¹³⁰ 'Police Must Act in Marital Rows', *Press*, 22 June 1978, p.4; Acting Minister of Police to Minister of Justice, 21 October 1977, Women and Violence, 1977-80, ABKH, W4105, 2 30-0-9, pt 1, ANZ, Wellington.

¹³¹ Ford, p.22.

¹³² Interview with Graham Duncan, 14 May 2008.

so they could deal with it, otherwise it was her problem: ‘We turned up, were not wanted and moved on.’¹³³

The tendency of women complainants to drop charges or refuse to give evidence in court reinforced police practices of not arresting. Former Court Registrar, Robin O’Neill, recalls that court hearings were frequently dismissed because of the wife’s refusal to give evidence.¹³⁴ The court was powerless to make a wife testify. De facto wives could be compelled by law to give evidence, but they could change evidence if they did not wish to pursue a prosecution. In a 1964 case, a woman changed her story in court from her de facto husband punching her in the jaw to one in which she had fallen.¹³⁵ Women who withdrew complaints were judged harshly by the police as wasting ‘a lot of time and effort’.¹³⁶ Police were reported to feel embarrassed when they acted on women’s complaints that were later withdrawn.¹³⁷ They were cautioned against ‘arresting the husband for assault, even though the wife strongly request that you do so’, as often she withdrew charges or refused to testify in court.¹³⁸ Police also feared that wives who were frightened their husbands would continue to beat or attempt to kill them, might ‘take advantage’ of the power of the police to remove the man from the home until the crisis has passed, with the intention of later withdrawing assault charges.¹³⁹ Separation files from the Christchurch District Court indicate that women did use police to stop violence without any intention of supporting a prosecution.¹⁴⁰ Using police only to stop the violence contradicted their law enforcement role. The immediate problem of protecting women was transformed into a question of the likelihood of a successful prosecution. If police perceived the wife to be not a credible witness, they would not act to remove the man from the home even in cases where an offence was detectable.

¹³³ Ibid.

¹³⁴ Interview with Robin O’Neill, Court Registrar and Maintenance Officer, 15 May 2008.

¹³⁵ ‘At First it was a Hit – Later a Fall’, *Truth*, 16 December 1964, p.17.

¹³⁶ Ford, p.22.

¹³⁷ ‘Police Embarrassed when Wives are Mum’, *Truth*, 16 June 1965, p.22.

¹³⁸ New Zealand Police College, ‘Domestic Disputes’, p.2, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, pt 4, ANZ, Wellington.

¹³⁹ Committee on Women, Discussion Paper on Police, Appendix, Women and Violence, 1977-1980, ABKH, W4105, 30-0-9, pt 1, ANZ, Wellington.

¹⁴⁰ Christchurch District Court Files, CAHS, 1970, 1975, 1980, ANZ, Christchurch.

Frequent re-direction of anger against police further fuelled police frustration with women complainants.¹⁴¹ It was reportedly not uncommon for ‘the police presence to unite the fighting couple against a “common enemy” – the policeman’.¹⁴² Police also used this as a strategy to restore peace. Graham Duncan said that when very busy he would turn up at an address and ‘if there was nothing serious, would abuse the lot of them so that they all united and turned against this interloper who was being abusive, and you walked out’. He thought this focused attention elsewhere and provided a common ground to unite the warring couple. While women might have been deterred from calling again because they were made to feel partly responsible for the event, at the time it was viewed as a successful strategy to deal with a large number of disputes as quickly as possible. In Graham Duncan’s record shift of 29 domestic dispute call-outs, he was not recalled to a single incident.¹⁴³

Police practices not only expressed distrust of women complainants, but actively deterred them from complaining. Police were instructed to have a woman complainant repeat the complaint in front of her husband, which some women may have wished to avoid for various reasons that included fear, intimidation, risk of reprisal and shame. If the woman remained ‘adamant’ that she wished to make a complaint an officer should then explain to her that she would be required to give evidence in court, if not, then the officer should warn her husband. If she persisted, she needed to sign a document to the effect of promising co-operation. But even then the officer did not have to make an arrest.¹⁴⁴ Police reportedly attempted to dissuade women from making complaints. One woman said that the constable ‘spent some time trying to dissuade’ her from making a statement and told her that ‘the police were under no obligation to investigate her complaint’.¹⁴⁵ The BWSG wrote that ‘the great majority of our clients...report that the police have actively counselled them, sometimes even

¹⁴¹ New Zealand Police College, ‘Domestic Disputes’, p.1, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, pt 4, ANZ, Wellington.

¹⁴² See ‘Police Tread Warily in Domestic Disputes’, *Herald*, 18 October 1982, Domestic and Matrimonial Proceedings, 1982-1982, ABVP, 7410, W4927, box 252, LEG 15-1-6, pt 3, ANZ, Wellington.

¹⁴³ Duncan hopes that no-one suffered as a result of this action, interview with Graham Duncan, 14 May 2008.

¹⁴⁴ New Zealand Police College, ‘Domestic Disputes’, pp.2-3, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, pt 4, ANZ, Wellington.

¹⁴⁵ BWSG to Chief Superintendent, Christchurch Central Police Station, 21 August 1978, Private Papers of Doris Church.

bullied them, out of recording a formal complaint'.¹⁴⁶ Most clients of the BWSG were middle-class women so shaming discourses embedded in class ones were likely to have operated.

Successful prosecution relied on physical evidence or corroboration of injury. Police were unlikely to act otherwise. Measuring the gravity of the event by visible physical injury could disguise the seriousness of the violence. Police reportedly told one woman who was attacked around her kidneys and in other unseen places, that she did not have any bruises so there was no point in prosecuting the husband.¹⁴⁷ Insistence on obvious physical injury could disguise the risk of escalation. The previously discussed 1979 murder victim Barbara Wall had made two complaints against her ex-boyfriend alleging assault, wilful damage and threat to kill with a knife. Lacking physical evidence or corroboration by witnesses, police merely warned Ray Hanson. Some months later he murdered Barbara and their infant daughter before turning the gun on himself.¹⁴⁸ The reliance on physical injury as a measure of seriousness also disguised the meaning of an assault as a controlling strategy, and its psychological effects. In one case, after police had warned a husband for physically assaulting his wife, the wife reported that although he had not been physically violent to her again, he continued to be 'unreasonable' by throwing meals around the kitchen, being bad-tempered and threatening violence.¹⁴⁹ These were deemed non-police matters although criminal law did enable threat to constitute a crime.¹⁵⁰

The sheer number of complaints encouraged the police to dismiss many domestic assaults as non-police matters. Such complaints were thought to make up to between 10-15% of calls to police. In 1976 Christchurch police dealt with around 200 incidents a month and their Auckland counterparts dealt with around 500.¹⁵¹ Because police had so many calls for assistance, and because they could not rely on wives to give

¹⁴⁶ BWSG to Chief Superintendent, Christchurch Central Police Station, 2 February 1982, Private Papers of Doris Church.

¹⁴⁷ Banks, Florence, Ruth, p.38.

¹⁴⁸ Barbara Wall, 1979-1979, ABVP, 171298, W5450, 28 Cor79/1597, ANZ, Wellington; Marilyn Waring, NZPD 1979 in Women and Violence, 1977-1980, ABKH, W4105, 2 30-0-9, pt 1, ANZ, Wellington.

¹⁴⁹ Christchurch District Court Files, CAHS, CH927, box 8, case 183, 1970, ANZ, Christchurch.

¹⁵⁰ Threatening to kill or do grievous bodily harm was an offence under section 306 of the 1961 Crimes Act.

¹⁵¹ Submission of the Police Commissioner, 29 May 1978, p.4, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 83, pt 1, ANZ, Wellington.

evidence, they restored the peace as quickly as possible. For Graham Duncan this meant spending around ten minutes with each call-out.¹⁵²

A particular construction of violence supported police attempts to restore the peace through reconciliation. An assault was constructed as a discrete event or an emotional outburst rather than a deliberate and patterned behaviour with on-going effects. It meant that threats of violence and threats to life could be dismissed as ‘hot air’, things that were said in the heat of the moment: ‘You get into an argument and say things you later on regret or you didn’t really mean at the time, in the heat of the argument they came out.’¹⁵³ Graham Duncan says that police did not go into the fact that the couple may have been in a relationship for ten years and that other controlling behaviours may have been going on.¹⁵⁴ Once a situation had calmed down it did not make sense to make an arrest so police were cautioned against arresting a sober man or one who was ‘not likely to strike her again’.¹⁵⁵ Because a calm offender signalled a violent event was over, police considered their duty at an end. This made the risk of reprisals and carrying out of threats invisible. Because men had privileged access to social resources and women were the primary targets of controlling strategies that included violence, the perpetuation of this construction of violence meant police actions upheld male power and undermined women’s capacity to resist a husband’s or partner’s violence.

WOMEN’S AGENCY AND EXPERIENCES

The previous sections have demonstrated how particular discourses and practices produced a general police response that decriminalized domestic assaults in the absence of serious injury. In 1982 the Minister of Police, Ben Couch, said that around 85% of domestic disputes were resolved peacefully, indicating that most were still defined as non-criminal or non-police matters.¹⁵⁶ This section identifies the social and material implications of police practices for women, some of which have already been demonstrated, to analyze how police, as agents of the state, undermined or supported

¹⁵² Interview with Graham Duncan, 14 May 2008.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ New Zealand Police College, ‘Domestic Disputes’, p.3, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, pt 4, ANZ, Wellington.

¹⁵⁶ Minister of Police, Press statement, March 1982, Domestic and Matrimonial Proceedings, 1981-1982, ABVP, 7410, W4927, box 252, LEG 15-1-6, pt 1, ANZ, Wellington.

structures that enabled men's violence against wives and partners. While there was a general policy of decriminalization of men's violence against wives and partners, individual women's experiences might have varied substantially. Inconsistent police practices have been well documented, and also might have discouraged women calling on police.¹⁵⁷

The 1961 Crimes Act gave clear direction that assaults producing injuries were crimes even if they occurred in the domestic sphere, and police acted accordingly in these situations. Killing was automatically a capital crime; and police made arrests and prosecuted in cases of serious injury that included being knocked unconscious, concussion, strangling, broken bones, broken noses, and serious lacerations.¹⁵⁸ Police also prosecuted men when they witnessed serious violence, such as one man attacking his wife, punching her about the body, and another attempting to strangle his wife.¹⁵⁹ At the other end of the spectrum there were no doubt petty quarrels in which the police did not have any business. But where the majority of domestic assaults lay was between these two extremes, in an area where legal discourses were ambiguous and police response discretionary.

In the first instance, the name "domestic disputes", suggesting a non-violent argument between equals, trivialized many women's experiences and undermined their capacity to claim victimhood. Alongside serious injuries, violence against wives and partners included kicking, slapping, bending arms behind backs, throwing hot tea, pulling hair, being knocked off chairs, having knives thrown at them, being shot at and having clothes torn, violent acts that did not easily support a successful prosecution. As a result of these assaults, some of the women lived in constant fear, were depressed, and functioned poorly as mothers.¹⁶⁰

In contrast to police definitions of domestic assaults as often trivial, women's narratives in separation files indicate that women called police often as a last resort,

¹⁵⁷ For example, BWSG to Chief Superintendent, Central Christchurch Police Station, 2 February 1982, Private Papers of Doris Church.

¹⁵⁸ 'Fight for Rifle', *Truth*, 12 June 1973, p.9; separation files of the Christchurch District Court, CAHS, CH927, box 223, case 74, 1975 and box 223, case 61, 1975, ANZ, Christchurch.

¹⁵⁹ 'Attacked Wife in Front of Police', *Truth*, 6 September 1966, p.6; 'Liquor in Wife-beating', *Truth*, 13 September 1966, p.9.

¹⁶⁰ Christchurch District Court Files, CAHS, 1970, 1975, 1980, ANZ, Christchurch.

after many months or years of being assaulted, and when they feared for their lives. Women did not call police after a quarrel; they called when they perceived a serious threat to either their own or their children's safety. Some women called only when the violence put their children at risk. Some women never called police.¹⁶¹ Police response times are further evidence of the low priority accorded to domestic assaults. A 1984 survey reported that in 76% of complaints police arrived in 30 minutes, in 15% up to an hour, and in 9% of cases police did not arrive at all.¹⁶² These response times did not protect a woman who called in a crisis. As well, it meant a violent husband or partner had more time to calm down before police arrival, which supported a view of the event as non-criminal.

Police policy that aimed to restore the public peace provided poor protection of women. Cautioning husbands was often ineffective. Court reports related in *Truth* and the *Press*, and women's narratives in separation files, indicate that it was not uncommon for men to assault wives and partners after police had left the premises.¹⁶³ Police twice warned one man against assaulting his wife before he was arrested that same night.¹⁶⁴ One woman called police after her husband assaulted her daughter, but things did not improve so she left the home.¹⁶⁵ Another woman said she called police several times, but her husband merely argued with them and no improvement ensued.¹⁶⁶ Men's violence and police inaction forced some women to leave town permanently for their safety.¹⁶⁷ Police suspicion of complainants was well known and might have deterred some women from calling police. Because of this, in 1974 legal advice in *Truth* advised a woman to pursue civil proceedings rather than using police to deal with her problem of 'wife-beating'.¹⁶⁸

While police judged women harshly for not pursuing complaints, material and social obstacles to women leaving marriages meant that it was not always in women's

¹⁶¹ Ibid.

¹⁶² Ford, p.56.

¹⁶³ As illustrated by Court Reports in *Truth*, 1960s-1970s.

¹⁶⁴ 'Magistrate's Court – Assault', *Press*, 23 September 1975, p.7.

¹⁶⁵ Christchurch District Court Files, CAHS, CH927, box 2, case 36, 1970, ANZ, Christchurch.

¹⁶⁶ Ibid., box 3, case 77, 1970, ANZ, Christchurch.

¹⁶⁷ BWSG to Chief Superintendent, Christchurch Central Police Station, 21 August 1978, Private Papers of Doris Church.

¹⁶⁸ 'Ask the Lawyer', *Truth*, 17 December 1974, p.43.

interest to do so.¹⁶⁹ Court Registrar Robin O'Neill said that there was no way a woman was going to stand up in court and say what he had done, because if he went to jail she was not going to get any maintenance. For this reason women invariably withdrew complaints.¹⁷⁰ Some women did not want their marriages to end - only to have the violence stop. Police responses effectively gave women the choice of either leaving a marriage (they had options under matrimonial law) or staying without the reinforcement of a police prosecution. This put women in an either/or position. It also put them in a catch 22 situation. Pursuing remedies under matrimonial law required evidence of the matrimonial offence of cruelty, which police prosecutions and convictions could provide.

Backed up by institutionalized discourses, the non-arrest policy was such that it could overpower legal discourses that did allow for an assault against a wife or partner to constitute an offence. In 1979 one woman called police after being assaulted, but police said they could do nothing about it because there were no marks. The woman thought there were, but that police just did not seem to want to know.¹⁷¹ Matrimonial court records show that serious violence could be viewed leniently. One husband threatened his wife with a rifle and fired. She later learnt it was blank. Police were called, but no charges were laid.¹⁷² After her husband threatened her with a knife, another woman ran to her father-in-law's. Police removed the knife and gave it to the father-in-law. No charges followed.¹⁷³ In a third incident, a wife barricaded herself in her daughter's room after her husband had threatened her with a knife. The daughter slipped out the window and called police. Police talked to the husband and then left. In the morning he assaulted his wife and police were called, again cautioned him, and left.¹⁷⁴

Alongside general practices of a decriminalization of domestic assaults were instances where individual police officers empowered women, thereby enabling women to resist a husband's or partner's violence against them. In 1973 one woman said a

¹⁶⁹ Obstacles to leaving marriages are discussed in Chapter 5.

¹⁷⁰ Interview with Robin O'Neill, 15 May 2008.

¹⁷¹ Home and Family Society (HFS) records, Dunedin branch, Client Case Files 1970-1985, AG 647-165R, Hocken Library (HL), Dunedin.

¹⁷² Christchurch District Court Files, CAHS, CH927, box 7, case 174, 1970, ANZ, Christchurch.

¹⁷³ *Ibid.*, box 8, case 182, 1970, ANZ, Christchurch.

¹⁷⁴ *Ibid.*, box 8, case 185, 1970, ANZ, Christchurch.

policeman's sympathy enabled her to leave her husband for good. He made her realize there were shoulders to cry on and organizations to provide financial help. He also made her see that she was really afraid of the idea of facing life as a solo parent.¹⁷⁵ In the early 1980s another woman reported that police 'were mighty. They stayed for quite a while and gave him the works. They told me to ring back straight away if anything else happened.'¹⁷⁶ The latter example might have been indication of the shift in attitudes to men's violence against wives and partners that was occurring in the police force at this time, discussed in later chapters.

SEPARATION VIOLENCE

Only a separation or divorce order dissolved marital obligations; otherwise discourses of marriage continued to operate in the absence of these orders. The domestic sphere or domestic relationship was discursively constructed. Separated wives and partners could apply for civil law orders to protect them from male partners. Under the 1910 Destitute Persons Act separation orders contained a non-molestation clause.¹⁷⁷ De facto wives could apply under the 1957 Summary Proceedings Act for a bond to keep the peace. This was expensive.¹⁷⁸ From 1970 under the 1968 Domestic Proceedings Act separated wives could apply for a non-molestation order.¹⁷⁹ Some police advised women to obtain these orders. Because an order clearly defined a particular activity as criminal, it clarified police duty and made it easier for police to act. In the early 1970s police told one woman that it would 'assist them in controlling' her husband's behaviour.¹⁸⁰ In another case police had told a woman they could not give her protection to go and get her children after she was granted a custody order unless she actually went to get the children and was threatened by her separated husband.¹⁸¹ However, non-molestation orders did not guarantee that police support. Police responses which decriminalized men's violence against wives and partners persisted even where women possessed non-molestation orders. Graham Duncan thinks that around half of complaints of violations of non-molestation orders were treated

¹⁷⁵ 'I Made a Break', Letter to Lyn Carroll, *Truth*, 30 October 1973, p.53.

¹⁷⁶ Ford, p.94.

¹⁷⁷ This was outlined in Chapter 1.

¹⁷⁸ Secretary of Justice to Caucus Justice Committee, 22 August 1978, Domestic and Matrimonial Proceedings, 1977-1978, ABVP, 7410, W4927, box 251, LEG 15-1-3, pt 2, ANZ, Wellington.

¹⁷⁹ This is discussed in Chapter 6.

¹⁸⁰ Christchurch District Court Files, CAHS, CH927, box 224, case 91, 1975, ANZ, Christchurch.

¹⁸¹ HFS records, Dunedin branch, Case Files, 1977, AG-647-15R, HL, Dunedin.

seriously and the other half were ‘fobbed off as get over it, get a life and move on’.¹⁸² The BWSG, having counselled more than 400 women, said that in the great majority of post-separation offences police were reported to have taken no action.¹⁸³

The duty to protect property rights was in constant tension with the duty to protect individual women. Police were especially reluctant to take action against alleged offenders whose wives remained in the matrimonial home. One woman attempted to complain to the police about her husband’s comings and goings, abusing her and taking things, but they refused to act because it was a joint family home.¹⁸⁴ It was, in fact, an offence to remove anything from the home during legal proceedings. Discourses of the domestic/civic divide, family and gender, contested legal discourses that disciplined a non-molestation order. This is indicated in Inspector D. Bates’s response to the questioning of police exercising greater caution in arresting in breaches of ‘protection orders’ than in picking up a drunk and putting him in the cells. Bates replied that ‘a man ill and drunk in a public place was a matter different from violence in a domestic setting’.¹⁸⁵ In the early 1980s in one case the estranged husband had threatened several times to kill his wife, prowled around her flat at night at least three times, one of which was witnessed. The woman reported each of these offences because she feared for her life. After one call police took over an hour to respond; another call was neither investigated nor recorded. Later a firebomb was thrown through her window, her flat was gutted and everything destroyed, she suffered burns escaping the fire and was said to be lucky to be alive.¹⁸⁶

Police frequently blamed complainants for their non-enforcement of non-molestation orders: ‘The dithering and uncertainty of the complainant party’ made it ‘difficult’ for ‘definitive police action’.¹⁸⁷ Although a non-molestation order defined molestation as criminal, legal discourses around corroboration and ‘implied consent’ contested this.

¹⁸² Interview with Graham Duncan, 14 May 2008.

¹⁸³ BWSG to Chief Superintendent, Christchurch Central Police Station, 2 February 1982, Private Papers of Doris Church.

¹⁸⁴ Christchurch District Court Files, CAHS, CH927, box 9, case 217, 1970, ANZ, Christchurch.

¹⁸⁵ ‘Arrests not Automatic’, *Press*, 25 March 1982, Private Papers of Doris Church.

¹⁸⁶ MP Mike Moore, Press Statement – Domestic Violence, 24 March 1982, Domestic and Matrimonial Proceedings 1981-1982, ABVP, 7410, W4927, box 252, LEG 15-1-6, pt 1, ANZ, Wellington.

¹⁸⁷ Inspector R. Waitai to Chief Inspector, Wellington City Division, 30 July 1982, Domestic and Matrimonial Proceedings 1982-1982, ABVP, 7410, W4927, box 252, LEG 15-1-6, pt 3, ANZ, Wellington.

Non-molestation orders could be waived by consent and were nullified on resumption of cohabitation. These provisions were easily exploited by abusive men to escape discipline because it was difficult for women to prove that they had not given consent, either verbally or through the resumption of sexual relations. Gender discourses that constructed women as vindictive and untrustworthy shaped police preferences for the man's word. Police believed it was likely that 'the party alleged to be offending' was 'present on the property with "implied consent" ...or that the parties' had resumed cohabitation'.¹⁸⁸ Some police believed that a husband's visit to a wife also nullified the order.¹⁸⁹ Police were also reluctant to enforce a non-molestation order when a copy was not readily available, but having a copy did not guarantee police action.¹⁹⁰ The murder of Kay van Olphen in 1981 was an extreme example of how police disinclination to act on non-molestation orders undermined women's safety. Van Olphen had her non-molestation order pinned to her door. She reported three breaches for which police made no arrest. She was shot to death just 24 hours after her last call to police.¹⁹¹

CONCLUSION

Internal tension within legal discourses and contesting discourses made the role of the police in domestic assaults ambiguous. Beyond injury that threatened life and limb, police decision-making was discretionary as to whether a crime had occurred. Police culture both reflected and perpetuated the power structures within the society it served. Women's interests were under-represented in policing.¹⁹² Police practices exercised powerful discourses around the family, the domestic/civic divide and gender in ways that constructed men's violence against wives and partners as a private matter of domestic relations, not as police business. This obscured men's responsibility for the violence and re-directed focus from men's behaviour onto the relationship; this put women's behaviour under scrutiny. Gender discourses embedded

¹⁸⁸ Ibid.

¹⁸⁹ See Hamish Galloway, 'Legal Reforms Needed to Protect Women', *Press*, 21 June 1978, Women and Violence, 1977-1980, ABKH, W4105, 2 30-0-9, pt 1, ANZ, Wellington.

¹⁹⁰ Senior Sergeant B. Courtney to Chief Inspector of Lower Hutt, 2 August 1982, Domestic and Matrimonial Proceedings, 1982-1982, ABVP, 7410, W4927, box 252, LEG 15-1-6, pt 3, ANZ, Wellington.

¹⁹¹ 'Calling on the Police', *Close-up* (TV programme) dated 1983 or 1984, Private Collection of Doris Church.

¹⁹² Edwards, p.31.

in police practices reproduced stereotypes of female behaviour that shaped police judgement of likely guilt or innocence, and blame and responsibility.¹⁹³

Discretionary powers meant police practice could vary, and other social markers such as class and ethnicity shaped police responses. Restoring the peace by cautioning men and effecting reconciliation, rather than using police powers to make an arrest, characterized police practices. A law enforcement approach, and a particular construction of a domestic assault as a discrete event, supported efforts to restore the peace. Police considered their duty at an end when peace was ostensibly established. Even when a domestic assault was not thought a police matter, police did not usually make referrals to helping agencies because of discursive constructions of privacy. In effect, discourses of law and the police role reconstructed a domestic assault as a dispute between a woman and the police. This meant police did not deal directly with women's real problem of living with the risk of violence. In the vast majority of domestic assaults police did not take action to protect women and children. Ultimately, police practices institutionalized gender inequality by undercutting protections available to women and reinforcing social structures that enabled that violence. The following chapter addresses the next step in the criminal justice process, legal practices in the criminal law courts from the 1960s to the 1970s.

¹⁹³ Ibid., p.26.

Chapter 3

THE CRIMINAL COURTS: 1960 – 1982.

Some domestic assaults, though relatively few, ended up in the criminal courts. This chapter examines practices in the criminal courts, and how these upheld or undermined discursive and social structures that enabled men's violence against wives and partners. Decision-makers in the criminal courts did not form a homogeneous entity: magistrates, judges, and occasionally juries and justices of the peace, were 'engaged in a range of discretionary decisions' that affected 'whether, which and how many individual incidents' were dismissed or penalized.¹ Multiple and competing discourses meant individual women unevenly experienced the criminal justice system. There was little discernible change in criminal law or practices pertaining to men's violence against wives and partners in this time period. As this chapter will demonstrate, discourses of the law, gender, family, penal policy and victimhood were the most significant for criminal court outcomes.

LEGAL DISCOURSES

Legal discourses provided the primary framework for interpreting men's violence against wives and partners in the criminal justice system. Following a police prosecution, the case of an accused was heard before a magistrate or judge in a court of law. Offences that incurred a maximum of three years imprisonment could be heard in the Magistrate's Court and most domestic assaults were heard in this court. More serious charges such as unlawful killing or sexual crimes, were heard in the Supreme Court where defendants could elect for trial by jury or by judge alone. In 1980 magistrates were re-named 'district court judges' and the Magistrate Courts became District Courts, with increased jurisdiction and some provision for juries.

The very construction of crime and "principles of law" governing criminal proceedings had far-reaching consequences for women victims of domestic assaults. The essential purpose of criminal proceedings was to determine whether an offence

¹ David Brown, 'Recurring themes in Contemporary Criminal Justice Developments and Debates', in Julia Tolmie and Warren Brookbanks, eds, *Criminal Justice in New Zealand*, Wellington: Lexis Nexis Ltd., 2000, p.11.

had been committed against the sovereign's peace.² This approach transformed a violent domestic-located event into one where the state was positioned as the nominal victim of the offence and the woman was relegated to the status of witness.³ The outcome for the woman in the case was of secondary importance and she had no claim for redress. As a witness for the Crown, the woman was vulnerable to a re-victimization through having to relive the assault and be questioned aggressively by defence counsel. Without legal representation she was reliant on the prosecutor to represent her interests.⁴ In effect the legal framework obscured the woman, and her needs became subservient to the wider public interest. As one magistrate told an offender, 'for the sake of the police, I hope you are successful in patching up your troubles'.⁵ This generated a critical attitude to women who refused to testify, as expressed in one magistrate's comment that he wished 'complainants would make up their minds...before they complain to the police'.⁶ Unreliable witnesses were viewed as wasting court time and public monies.

Discourses that protected civil liberties by restricting state power were embedded in legal practices, and upheld the integrity of the law. Principles included neutrality and standards of proof such as guilt beyond reasonable doubt. In cases involving domestic assaults, these principles of law could protect offenders and obstruct women's claims for legal redress and protection. One judge said, 'you can only judge the case on the evidence presented to you, you are not to be swayed by sympathy for either party, as a judge you are supposed to be objective.' The judge 'cannot go in presuming that it is probably one of those cases where a woman has been beaten up and so forth.'⁷ This judge said it was difficult to decide which party was telling the truth when both appeared credible.⁸ In a 1980 hearing for an assault on a female, another judge could not conclusively determine the wife's credibility because there was conflicting evidence. While acknowledging it was likely there was an assault, outside the wife's evidence, which he had difficulty accepting, the judge found no evidence for this. He

² Phillip Stenning, *The Modern Prosecution Process in New Zealand*, Wellington: Victoria University Press, 2008, p.206.

³ *Ibid.*, p.205.

⁴ *Ibid.*, pp.205-6.

⁵ 'Threatened Wife with Knife', *Truth*, 15 January 1974, p.17.

⁶ 'Wife's Charge Dropped', *Truth*, 9 September 1975, p.20.

⁷ Interview with a judge, 1 May 2008.

⁸ *Ibid.*

had to dismiss the case because he did not know the truth to the extent of being satisfied beyond reasonable doubt.⁹

Examples such as that described above show legal constraints made it difficult for judges to deal adequately with domestic assaults. In that case, social work records indicated that in all probability, at least some, if not all, of the wife's allegations were valid, and that the failure of the courts to discipline the husband put the safety of the wife and children at risk. According to the Society for the Protection of Home and Family (SPHF), the wife had separated from her husband because of his violence to herself and the children. Thereafter her husband persistently phoned and sat outside the house in his car. He sporadically exercised his right to access, drove drunk with the children, told them he was going to kill their mother and threatened the wife that he would kill the children unless she paid insurance money. The five-year old boy was described as disturbed; he would deliberately hurt himself and have crying fits. After one access visit the wife found a cigarette burn on her son. She contacted Social Welfare, but no investigation ensued. After this incident the wife obstructed access, and a year later the children were described as having improved. The alleged assault occurred when, after this period of no access, the husband visited the wife's home at 10 p.m. and demanded to see the children. On being told they were asleep he grabbed the wife around her throat, began bashing her head against the door and put a finger in her eye saying he was going to pull it out.¹⁰ Based on the SPHF's records, the wife and children endured considerable violence and the husband persisted in threatening their safety, both physically and psychologically. Legal practices re-constructed the assault as a conflict of evidence between two parties, which advantaged the alleged offender because guilt had to be proven beyond reasonable doubt. The private nature of domestic assaults made this difficult. The effect was a failure of the court to protect the wife and children.

PENAL POLICY

Discourses of punishment, rehabilitation and victimhood shaped the court's treatment of offenders and had particular consequences for victims of domestic assaults. From

⁹ Home and Family Society (HFS) records, formerly known as the Society for the Protection of Home and Family, Dunedin branch, newspaper clipping, Client case files 1970-1985, AG-647-165R, Hocken Library (HL), Dunedin.

¹⁰ HFS records, Dunedin branch, Client case files 1970-1985, AG-647-165R, HL, Dunedin.

1961 to 1968 under the partnership of Minister of Justice Ralph Hanan and Secretary of Justice John Robson, there was a shift in penal policy from a preoccupation with the punishment of offenders to a focus on their re-education and rehabilitation. In the 1950s under Secretary of Justice Sam Barnett, probation had been extensively developed and fining had been encouraged as alternatives to short-term custodial sentences.¹¹ The numbers of full-time probation officers rose from 30 in 1955 to 90 in 1964.¹² The 1962 Criminal Justice Act provided for periodic detention, a requirement to work for the community under supervision, to be imposed only when the offence was punishable by imprisonment.¹³ In 1964 five guiding principles were announced that remained influential through to the early 1980s. These were directed at diverting young people from crime, removing offenders from the community only as a last resort, and towards rehabilitation, re-education and resettlement of prisoners.¹⁴ Ralph Hanan was influenced by the ideas of Earl Warren, which insisted on the ‘re-education and re-generation of offenders’ because ‘more than 95 per cent of all convicted offenders were ultimately released’.¹⁵ Hanan claimed that Warren, as Governor of California, had made California ‘one of the world’s leading jurisdictions in penal thought and practice’.¹⁶

Material and discursive changes propelled and sustained the shift. Post-war affluence had not removed crime, but served to weaken the view that crime was a product of poverty;¹⁷ an upsurge in youth offending presented new challenges and existing methods were proving ineffective;¹⁸ and emerging discourses around victimhood were gaining currency.¹⁹ Changing discourses that located human conduct in social circumstances shaped a new construction of crime as an outcome of social sickness.²⁰

¹¹ Penal Policy Review Committee, *Report of the Penal Policy Review Committee*, Wellington: Government Printer, 1982, p.17.

¹² Department of Justice, *Crime and the Community. A Survey of Penal Policy in New Zealand*, Wellington: Government Printer, 1964, p.41.

¹³ Penal Policy Review Committee, p.24.

¹⁴ *Ibid.*, p.19.

¹⁵ Earl Warren cited by Ralph Hanan in ‘Foreword’, Department of Justice; Warren was appointed to the USA Supreme Court in 1953. He was known for his strong commitment to the principle of equality. His contribution to racial equality stands as a testament to his leadership, ‘The Oyez Project, Justice Earl Warren’. Retrieved December 2010 from http://www.oyez.org/justices/earl_warren.

¹⁶ Ralph Hanan cit., ‘Foreword’, Department of Justice.

¹⁷ *Ibid.*, p.13.

¹⁸ *Ibid.*, p.17.

¹⁹ *Ibid.*, p.24.

²⁰ Discourses constructing human conduct as an outcome of social circumstances are explored further in Chapter 6.

An offender became a byproduct of his childhood, which made prevention the preferred strategy to fulfil the primary purpose of justice, namely the protection of society.²¹ With an increased concern for the young offender, the home and schools came under scrutiny. Because a first offence was regarded as a social problem, the community had to accept responsibility.²² ‘Broken homes’ characterized by marital separations, desertions and divorce were thought to produce juvenile delinquency and adult offenders, thus the preservation of the family became an important strategy in combating crime.²³ The first reform penal policy of a list of 18 in a 1964 Department of Justice publication was ‘a considerable expansion of marriage counselling and premarital education, aimed at reducing the number of broken marriages and encouraging normal, happy family life’.²⁴ Imprisonment was an unattractive option because it threatened marriages; the husband was exposed to the ‘debasement influence of the prison’, while his wife may have sought ‘illicit comfort’ producing the very ‘soil and climate for more delinquency and immorality to flourish’.²⁵ It was also acknowledged that ‘if the home broke up, the man inside [in jail] was difficult to handle, and having nothing to lose when he came out, became a recidivist’.²⁶

Medical discourses too were significant in interpreting criminal behaviour, and encouraged treatment and sympathy over punishment. Most criminals were thought to have psychiatric problems.²⁷ The 1964 Department of Justice publication cited an English study, which described persistent offenders as ‘wretched, weedy, feeble, incompetent creatures who need care as much as punishment’.²⁸ This view also informed the 1966 Alcoholism and Drug Addiction Act. Alcoholism was more like a disease than drunkenness (which was an offence). This view was indicated in Monty Holcroft’s editorial that claimed alcoholics ‘are no weaker than the diabetic; the alcohol is merely a precipitating factor, as with sugar in diabetes’.²⁹ Economic

²¹ Department of Justice, p.14.

²² Reported in Penal Policy Review Committee, p.19.

²³ Department of Justice, p.54.

²⁴ Ibid., p.104.

²⁵ Ibid., p.25.

²⁶ An official of the Prisoners’ Aid and Rehabilitation Society cit., ‘Jailed Married Men are Costly’, *Truth*, 5 July 1966, p.13.

²⁷ Psychological grouping was thought a useful way to categorize offenders, *ibid.*, p.36; an English inquiry into 11 cases of improper conduct concluded that all but one had a medical element and eight had psychiatric aspects, Department of Justice, p.60.

²⁸ Cambridge Institute of Criminology cit., Department of Justice, p.106.

²⁹ Monty Holcroft, ‘The Road from Ruin’, *Listener*, vol. 55, no. 1397, 15 July 1966, p.12.

concerns reinforced the preference for prevention. Imprisonment was costly. In 1963 it cost almost 20 times more to keep a man in prison than to maintain the services of one probation officer. Probation was proven to be effective. Two random samples showed 60% of those completing it did not re-offend in the subsequent five years. In 1960 there were 2000 persons in prison, a figure expected to almost double by 1970.³⁰ This situation called for a new approach.

The period prior to the 1960s was one in which there was a general lack of concern for the victims of crime: ‘the emotional response to a crime was to get the criminal and punish him...the costs to the innocent were nobody’s concern’.³¹ During the 1960s, however, victimhood discourses were gaining currency. The 1961 Crimes Act increased penalties for offences against the person to a greater extent than those against property.³² The 1963 Criminal Injuries Compensation Act provided compensation for financial losses suffered in consequence of criminal injuries.³³ However, initially the concern for the victim did not effect any apparent benefits for women victims of domestic assaults. In practice, it did not appear that such women received compensation.³⁴ A concern with sexual crimes, especially against children, was a significant driver of heavier penalties; men’s violence against wives and partners was absent from debate around the 1961 Crimes Act.³⁵ Discourses of the family also informed the construction of a wife’s victimhood. Imprisoning a man made his wife a victim because her dignity, respect and happiness suffered, and the children were vulnerable to taunts about a convicted father to the extent they might have to leave the district.³⁶ However, the construction of an offender as a victim obscured the victimhood of a wife. The 1964 Department of Justice publication, *Crime and the Community*, even asked if victims and offenders were ‘really separate groups? The victim is the immediate victim in the case. But is the offender not himself the victim of his heredity, his upbringing, and all influences which are

³⁰ Department of Justice, p.44.

³¹ Ibid.

³² Ibid., p.30.

³³ Report on Crime in New Zealand, *Appendices to the Journals of the House of Representatives* (AJHR), 1969, H.20c, p.15.

³⁴ John Robson, *Sacred Cows and Rogue Elephants*, Wellington: Government Printing Office, 1982, p.182.

³⁵ *New Zealand Parliamentary Debates*, 1961, my reading of the debates.

³⁶ Department of Justice, p.25.

brought to bear by the community?'³⁷ This position reduced male responsibility. Such an effect was indicated in Magistrate Trapski (later to be appointed a Family Court Judge in 1981) treating an assault on a former wife more leniently because of the man's pitiful childhood, which had been filled with emotional strife in foster homes and orphanages. He said this altered what otherwise would have been regarded as a serious offence warranting imprisonment. In that case the offender had tried to strangle his wife and it had taken two men to pull him off her.³⁸

Constructions of women's moral superiority made women responsible for offenders' rehabilitation. It was said that women offered a special socializing and rehabilitative quality. For this reason prison social workers and occupational therapists should be women.³⁹ In one case study, an offender's rehabilitation was attributed largely to his wife's support.⁴⁰ Thus the contradictory nature of discourses meant that a woman could simultaneously be positioned as a victim of an assault and a rescuer to her assailant. The offender's needs were privileged over those of his family so that, for example, a social worker's role was to help the family 'to accept back someone who in their eyes seems to have betrayed them'.⁴¹

Discourses of victimhood, psychiatry and economics combined to impel the Department of Justice to sponsor law change, which would 'deal with an offender wherever possible without taking him out of the community'.⁴² In 1967 custodial sentences of less than six months were restricted to cases where, in the court's opinion, there was no appropriate alternative to prison.⁴³ The implications of a reliance on sanctions that did not remove an offender from his community were far-reaching for victims of domestic assault, but also ambivalent in effect. Imprisonment had both advantages and disadvantages. It gave a woman time to organize herself and get out before the offender came home, useful in cases of serious violence. Police sergeant Graham Duncan said that a lot of women moved town to get away and to start afresh in a location unknown to their partner. This sometimes meant shifting

³⁷ Ibid., p.26.

³⁸ 'Court News in Brief', *Truth*, 4 June 1974, p.7.

³⁹ Department of Justice, p.62.

⁴⁰ Ibid., p.78.

⁴¹ Ibid., p.62.

⁴² Ralph Hanan cit., 'Foreword', Department of Justice.

⁴³ Penal Policy Review Committee, p.20.

from one end of the country to the other. Often all it did was put her safety at risk because the offender would come out angrier than ever. Some women were so frightened of violence when the offender was released that they relocated to Australia, which was not an easy thing to do in the 1960s.⁴⁴ In practice, imprisonment of men who assaulted women was less common than other penalties.⁴⁵ Because it is unknown how many of male assaults on females were “domestic”, it is not possible to say how many “domestic” offenders went to prison. However, Graham Duncan believes ‘there had to be something very serious in the way of injuries for a judge to put someone away’.⁴⁶ Court Registrar Robin O’Neill shares this view.⁴⁷

Non-custodial sentences meant offenders could still provide for families, but there was no directed treatment for violence against a wife or partner or built-in protections for victims when offenders were released into families. Fines beginning at £5, or prohibition orders, which banned an offender from drinking, were common.⁴⁸ Graham Duncan did not think these helped the victim. Prohibition and good behaviour bonds were ineffective and fining only took money out of the household, which created more stress and precipitated more violence.⁴⁹ So penalizing offenders often did not necessarily serve women’s interests. Magistrates were cognizant of this. One magistrate told an offender that ‘it’s difficult to punish a man who beats his wife because the punishment often rebounds on the wife’. He put the offender on probation for two years.⁵⁰

The ineffectiveness of penalties to target male violence against wives supported the preference for remedies under laws governing marriage, the primary one being the 1910 Destitute Persons Act. As the above magistrate continued, ‘but when a man beats his wife long enough, then he’s punished when she seeks a separation order and

⁴⁴ Interview with Police Sergeant, Graham Duncan, 14 May 2008.

⁴⁵ For example, sentencing statistics for male assault on a female or adult on a child heard in the Magistrate’s Court, 1966-1976, table 4.2, indicates that around one-fifth to almost one-third received prison sentences, Department of Justice, *Justice Statistics 1966-1976*, Wellington: Government Printer.

⁴⁶ Interview with Graham Duncan, 14 May 2008.

⁴⁷ Interview with Robin O’Neill, 15 May 2008.

⁴⁸ For example, sentencing statistics for male assault on a female or adult on a child heard in the Magistrate’s Court, 1966-1976, table 4.2, fines and other orders made up over half of penalties, Department of Justice, *Justice Statistics 1966-1976*, Wellington: Government Printer.

⁴⁹ Interview with Graham Duncan, 14 May 2008.

⁵⁰ Magistrate Watts cit., ‘The Wife Frightener’, *Truth*, 12 August 1975, p.14.

he has to pay maintenance'.⁵¹ Separation was a costly exercise for men found to be at fault for a marriage breakdown by the civil courts; men had to pay the full upkeep of wives and children and the wife and children could retain the use of the matrimonial home and its chattels. Under the 1910 Destitute Persons Act, a fine over £5 for an assault on a wife (later changed to \$50) was a ground for a separation order (see Chapter 4).⁵² When a magistrate handed down such a fine it meant he considered the violence beyond what a wife might be expected to endure in a marriage. Sometimes magistrates made this explicit. One magistrate warned the offender that as a result of his conviction and fine, his wife was entitled to take steps to end her marriage.⁵³

GENDER, ETHNICITY AND CLASS

Gender, class and ethnicity were powerful discourses in the wider discursive field of criminal justice. As in the police force, judicial culture perpetuated the power structures within the society it served. These combined with penal policy to shape attitudes to alleged offenders and victims. As feminist Margaret Wilson observed, the judiciary could interpret apparently neutral laws in a less than neutral manner.⁵⁴ Feminists described judges and magistrates as being almost invariably male, generally older and more conservative than the average jury.⁵⁵ The first female magistrate was not appointed until 1975.⁵⁶ Male dominance produced and reproduced a community of practice that exercised patriarchal attitudes and gender inequality. This is indicated in a 1980 discussion around the appointment of women judges in the new Family Courts. The Chief Judge of the District Court was reported to have said of female lawyers, 'we have some very excellent girls in Wellington. Some of the younger girls do a tremendous job and have a flair for the domestic work. They genuinely do try to

⁵¹ Ibid.

⁵² See discussion of Destitute Persons Act in Chapter 1; New Zealand converted to a system of decimal currency in July 1967.

⁵³ 'Poured Kettle Over Family', *Truth*, 18 August 1964, p.18.

⁵⁴ Reported in Sandra Coney, *Out of the Frying Pan. Inflammatory Writing 1972-1989*, Auckland: Penguin Books Ltd, 1990, p.99.

⁵⁵ Women, Justice and Violence Seminar 1980, p.13, Women and Violence, 1978-1980, ABKH, W4105, 30-0-9 2, Archives New Zealand (ANZ), Wellington.

⁵⁶ Augusta Wallace was appointed stipendiary magistrate in 1975 and Silvia Cartwright was appointed Chief District Court Judge in 1989, Pat Baskett and Sandra Coney, 'Women in Traditional Male Jobs', in Sandra Coney, ed., *Standing in the Sunshine. A History of New Zealand Women Since They Won The Vote*, Auckland: Penguin Books Ltd, 1993, p.237.

effect reconciliations.⁵⁷ While supporting the appointment of female judges to the Family Court, the judge acknowledged many female lawyers were married, and geographically bound by where their husbands and family were.⁵⁸ This construction of femininity was a reflection of the gender order in which women were subservient to men. In the context of male violence against wives and partners, the dominant construction of femininity meant a woman who did not “do” femininity well might be judged as deserving violence or being complicit in it. These gendered discourses were more likely to advantage offenders of violence than victims.

Juries were also male-dominated. From 1942 women could serve on juries, but until 1963 they had to apply for inclusion. By 1959 only two women had served.⁵⁹ In 1960 the Christchurch jury list of 12,699 people included only three women.⁶⁰ In 1963 jury service became compulsory for women, but women could exempt themselves by fact of their sex. Judges could also exempt women: in 1972 a judge asked female candidates to stand aside in a case of obscene telephone calls because they may have found some of the evidence offensive.⁶¹ In 1976, jury service applied equally to men and women, but juries remained male-dominated.⁶² In 1981, 47 out of 55 rape trials had more men than women jurors and five had only men.⁶³ Male-dominated juries were believed to support male interests as evidenced by one detective’s belief that in rape trials male jurors would think back to occasions where they had gone too far and vote for acquittal because of a ‘there but for the grace of God go I’ attitude.⁶⁴ This belief can also be applied to trials involving male violence against wives and partners, especially in cases of killing. Mike Bungay, a high-profile homicide defence lawyer, believed that juries ‘realize that to be branded a failure as a lover, to be unfavourably compared with another man, either in terms of quality or quantity, is the ultimate

⁵⁷ ‘Family Affairs May Become A Women’s World’, *Truth*, 19 February 1980, Private Papers of Doris Church.

⁵⁸ *Ibid.*

⁵⁹ Sandra Coney, ‘Good Women and True’, in Sandra Coney, ed., *Standing in the Sunshine. A History of New Zealand Women Since They Won the Vote*, Auckland: Penguin Books Ltd, 1993, p.40.

⁶⁰ ‘Revised Jury List’, *Press*, 10 October 1960, p.17.

⁶¹ Newspaper clipping dated 8 June 1972, *Herald*, cit., Sandra Coney, ‘Kicking Against the Pricks’, *Broadsheet*, July 1972, p.9.

⁶² Coney, ‘Good Women and True’, p.40.

⁶³ Warren Young, *Rape Study. Volume 1, A Discussion of Law and Practice*, Wellington: Department of Justice, 1983, p.155.

⁶⁴ Pat Donovan cit., Ann Lloyd, *Rape. An Examination of the Crime in New Zealand: its Social and Emotional Consequences*, Auckland: Wilson & Horton, 1976, p.35.

insult to the male ego, the ultimate provocation'. Juries, in his view, recognized 'the power of such primal concepts and feelings, making homicides involving sexual provocation the easiest to defend'.⁶⁵

Maori similarly experienced exclusion that enabled racist practices to persist unchallenged. Both the general conviction and imprisonment rate for Maori was consistently higher than for Pakeha, but it is not known what the comparative rates were for offences involving domestic assaults.⁶⁶ In 1974 there were no Maori judges, only 2% of magistrates and 2.5% of Justices of the Peace were Maori, yet Maori made up 40% of prisoners.⁶⁷ Prior to 1964, Maori were not eligible to serve as ordinary jurors. Previously, cases involving Maori only could be heard before an all-Maori jury and cases of Pakeha against Maori were generally heard before an all-Pakeha jury.⁶⁸

A study by sociologist Stephen Mugford reported in the *New Zealand Listener* in 1974 indicated how constructions of Maori disadvantaged them. Mugford claimed that probation officers discriminated against Maori in the reports that magistrates relied on to make judgment. The officers tended to see Maori offenders as being in trouble with the law because they had been having a few drinks and 'a lark' with the lads. They were often described as gullible, aggressive and unfriendly. In contrast, Pakeha offenders tended to be viewed as victims of outside pressures, and were described as anxious, depressed or suffering from emotional stress.⁶⁹ The distinction supported higher conviction rates for Maori. So too did institutional practices. Dr Sutherland from the Nelson Maori Committee said the system itself discriminated against Maori because 'Maoris [sic] and other Polynesians often have little or no knowledge of how the system operates, how best to protect their own interests and what a lawyer is, or how to obtain one'.⁷⁰ Although legal aid for offenders was available, twice as many non-Maori offenders had lawyers as did Maori. As a result Maori tended to plead guilty more often, and without legal representation, were more

⁶⁵ Mike Bungay and Brian Edwards, *Bungay on Murder*, Christchurch: Whitcoulls, 1983, pp.29-30.

⁶⁶ Nelson Race Relations Action Group, 'Justice and Race – A Monocultural System in a Multicultural Society', *New Zealand Law Journal* (NZLJ), no.8, 1 May 1973, p.175.

⁶⁷ 'Moore Says', *Truth*, 9 July 1974, p.6.

⁶⁸ Coney, 'Good Women and True', p.40.

⁶⁹ 'Class, Sex and Other Apartheids', *Listener*, vol.76, no.1808, 13 July 1974, p.15.

⁷⁰ R.W. Sutherland, R.A. Galbreath and J.T. Hippolite, 'Class, Sex and Other Apartheids', *Listener*, vol.76, no.1810, 3 August 1974, p.8.

likely to be convicted.⁷¹ In the mid-1970s a duty solicitor scheme was introduced in an effort to reverse the trend of many people, especially Maori, going to court without representation and not knowing anything of their legal rights.⁷²

These conviction rates indicated that Maori and Polynesians offended against the person at a much greater rate than did the European population.⁷³ Ralph Hanan was reported to have said that the crime rate would be one of the lowest in the world if offence statistics excluded Maori.⁷⁴ This supported the belief that Maori might have had 'fewer and less effective controls than more sophisticated persons belonging to the numerically dominant race with centuries of continuous culture'.⁷⁵ Apart from this denial of Maori culture and continuity of residence in New Zealand, the Department of Justice report underlined the fact that Maori were thought less able to cope with drinking alcohol.⁷⁶ One magistrate thought that drink was responsible for 80% of Maori cases that came before him.⁷⁷ The fact that Maori were more likely to be imprisoned than Pakeha might have produced greater financial difficulties for their wives and partners, or alternatively, provided them with a greater opportunity to escape permanently. Greater conviction rates for Maori meant their families were subject to more penalties such as fines, which had a financially negative effect on them.

Alleged offenders before the court were generally of the lower socio-economic classes, a social fact that reinforced judicial perceptions of a criminal class. In *Crime and Community* the typical offender was described as one who was unskilled, had limited educational opportunities and attainments, and whose conduct and way of life was anti-social.⁷⁸ While it was recognized that offenders came from various backgrounds, this dominant construction protected middle-class offenders. Class was thought to affect consequences of punishment. The publication also stated that, 'if he

⁷¹ In the early 1970s, a Nelson legal aid organization interviewed 70 Maori offenders; only six of these knew about a legal aid scheme, and few of the remainder realized that a lawyer could help them Nelson Race Relations Action Group, pp.175-8.

⁷² 'Moore Says', *Truth*, 9 July 1974, p.6.

⁷³ Department of Justice, *Crime in New Zealand*, Wellington: Government Printer, 1968, p.208.

⁷⁴ 'Maori Life Crime Rate', *Truth* 1 July 1969, p.23.

⁷⁵ Department of Justice, *Crime in New Zealand*, p.209.

⁷⁶ Ian Cross exposed racist beliefs around alcohol and violence in his editorial, Ian Cross, 'Drunk New Zealand', *Listener*, vol.79, no.1858, 12 July 1975, p.8.

⁷⁷ 'Maoris [sic] and Liquor', *Truth*, 16 May 1961, p.35.

⁷⁸ Department of Justice, *Crime and the Community*, p.47.

[the offender] has any social standing, there is cost in status, in public esteem and in self-esteem'. Thus ten days imprisonment could spell more pain for one man than ten years for another.⁷⁹ Section 42 of the 1954 Criminal Justice Act embodied this view and the desire to keep offenders out of prison if they did not constitute a serious threat by empowering the court to discharge an offender without conviction or sentence.⁸⁰ It did not contain any guide to making this decision, which invited other opaque discourses to shape decision-making and meant individual attitudes were important.

The dominant construction of the offender undermined women's safety in two ways. Firstly, discourses, which constructed a criminal propensity amongst certain groups took emphasis away from the victim of the crime. Secondly, beliefs about appropriate levels of punishment based on class differences of the offender took emphasis off the crime, which had consequences for women. Doris Church claims that when her ex-husband appeared in court for assault on her, the judge did not convict him because he could lose his job as a school principal.⁸¹ Middle-class occupations might also have indicated to a judge or magistrate that a person so occupied would not present a serious threat; something akin to the 'attitude test' that police were said to have used.⁸²

A domestic assault case reported by *Truth*, in which the offender was 'a prominent man', indicates how class could shape judicial decisions. The assault involved the husband forcing his wife to stand while he questioned her on an alleged affair, punching and pinching her, and forcing her to have sex. Police gave medical evidence that the wife had bruises all over her body, a result of 'a systematic beating'. The magistrate described it as an 'animal assault' and fined the offender, who pleaded guilty, £25.⁸³ The fine was probably lenient, but might not have differed substantially from other cases and did not cause protest. It did give the wife an automatic ground for a separation order, but class privilege suppressed the name of the offender, a very infrequent practice, and underwrote the refusal of the court to allow the wife to

⁷⁹ *Ibid.*, p.37.

⁸⁰ *New Zealand Statutes (NZS)*, 1954 Criminal Justice Act, p.266.

⁸¹ The case was heard in the late 1970s, interview with Doris Church, 22 March 2008.

⁸² See Chapter 2 for discussion on 'attitude test'.

⁸³ 'Animal Assault on Wife; Concern Over Court Case', *Truth*, 27 March 1962, p.4 (page number blurred).

answer her husband's allegations. This prompted a local daily in New Plymouth and *Truth* to report the case.⁸⁴ Because the offender pleaded guilty, his version of events dominated proceedings. On the verge of tears he told the court that his wife had been unfaithful to him in the very house he had built for her and the children. The police sergeant twice requested that the wife be given an opportunity to give her side of the story, but was denied. The magistrate said that the court was not interested in going further into the matter. It seemed the offender's class intersected with gender constructions to make the offender's allegations credible to the magistrate. This enabled the magistrate to be simultaneously disgusted by the assault and to express sympathy for the offender.⁸⁵

AN ANALYSIS OF JUDICIAL OUTCOMES

Reports of court events indicated the boundary between criminal and non-criminal violence against wives and partners, by describing the level of legally tolerated violence within marriage or in a de facto relationship. While the law provided the primary framework, multiple and competing discourses, often opaque, shaped the interpretation of a domestic assault as criminal or non-criminal. Because court transcripts were unavailable, this section uses mainly newspaper reported court events to identify dominant discourses and their implications for women's experiences. A reliance on newspaper accounts can be problematic because of issues related to journalistic accuracy. Reports were produced within a newspaper's own culture and the actual offence with which an accused was charged was seldom defined. Despite this, newspaper reports of court cases involving male violence against wives and partners are useful because of the impact such reports had on influencing popular discourses on that violence. They also indicate what level of violence was penalized and why. In the analysis of newspaper sources that follows, *Truth* is a dominant source because it reported court cases more often and in greater length than other newspapers, even if primarily for titillation. The Christchurch *Press*, along with other mainstream newspapers, reported court events of domestic assault infrequently and in less detail, which was less helpful for identifying discourses that shaped judicial

⁸⁴ *Truth* considered itself a champion of the underdog, especially of the common man against the power of the state. There were only two name suppressions in court reports of male violence against wives in *Truth* in the 1960s.

⁸⁵ 'Animal Assault on Wife; Concern Over Court Case', *Truth*, 27 March 1962, p.4 (page number blurred).

responses. Interestingly, *Truth* also reported such cases less frequently from the late 1970s, indicating that *Truth's* reporting of such events related to its own particular motives at that time rather than the actual violence.

Unlawful Killing

Killing a person resulted in a charge of murder or manslaughter. In the 17th century, the plea of provocation was developed to distinguish between murder, pre-meditated and with malice, and manslaughter, unpre-meditated and without malice. The 1893 New Zealand Criminal Code Act had established that provocation must be sufficient to deprive a reasonable man of self-control. The 1961 Crimes Act provided that:

- (1) Culpable homicide that would otherwise be murder may be reduced to manslaughter if the person who caused the death did so under provocation.
- (2) Anything done or said may be provocation if –
 - (a) In the circumstances of the case it was sufficient to deprive a person having the power of self-control of an ordinary person, but otherwise having the characteristics of the offender, of the power of self-control; and
 - (b) it did in fact deprive the offender of the power of self-control and thereby induced him to commit the act of homicide.⁸⁶

Deprivation of self-control implied a sudden transition to a state, necessarily temporary, during which it was absent. The time element was therefore crucial.⁸⁷ 'Self-control' meant the ability to control emotions.⁸⁸ Passion was more easily excitable when a person was intoxicated.⁸⁹ The judge decided if there was evidence of provocation; the jury decided if provocation was sufficient to impel the conduct.⁹⁰ Life imprisonment was a mandatory sentence for murder and a maximum sentence for manslaughter.⁹¹ A life sentence equated to around ten years imprisonment.⁹²

⁸⁶ *The Queen v McGregor* 1962, *New Zealand Law Reports* (NZLR), p.1073.

⁸⁷ *The Queen v McGregor* 1962 was important for subsequent cases where provocation was raised, *ibid.*, p.1069.

⁸⁸ *Ibid.*, p.1069.

⁸⁹ G.F. Orchard, 'Provocation – The Subjective Element', NZLJ, no.4, 1 March 1977, p.78.

⁹⁰ Women Violence and Justice Seminar 1980, p.9, Women and Violence, 1978-1980, ABKH, W4105, 30-0-9 2, ANZ, Wellington.

⁹¹ NZS, 1961 Crimes Act 1961, pp.403-4.

⁹² Women, Justice and Violence Seminar 1980, p.10, Women and Violence, 1978-1980, ABKH, W4105, 30-0-9 2, ANZ, Wellington.

The usual example used by judges to explain ‘provocation’ to a jury was a man finding his wife in the act of committing adultery.⁹³ Judges were not known to use the reverse example.⁹⁴ Defence lawyer Mike Bungay, said, ‘the commonest form of provocation is sexual...if one goes by results, then men are considerably less able than women to deal with such assaults on their sexuality. I cannot recall a case where a woman accused of murder pleaded sexual provocation. Men do so constantly’.⁹⁵ This construction made men less responsible than women for conduct in the ‘heat of the moment’.⁹⁶ Elisabeth McDonald’s study of New Zealand cases alleging provocation revealed that provocation was used more by men and was more useful to them. Because provocation was primarily used to defend male sexuality, McDonald concluded that, like rape which claimed men seized property rights over female bodies, it was about sexuality.⁹⁷ Provocation was not just about being provoked, but also about the right to be provoked.⁹⁸ This could include de facto husbands: the 1965 ruling in *Queen v Anderson* extended unfaithfulness as provocation to killing a de facto wife.⁹⁹ Whereas a 1958 judgement in a similar case had ruled that because there was no legal marriage, the de facto wife had ‘every right if she saw fit to bestow her favours upon any man’.¹⁰⁰ The case indicated that attitudes towards de facto relationships were in flux.

The meaning of sufficient provocation was fluid: it covered a wide range of behaviours that included making sexual insults and challenging men’s sexual rights over females. Dr David Minnitt’s killing of his wife Leigh in 1980, a well known case, indicated just how far a defence of provocation could mitigate male responsibility and blame women, moving feminist Sandra Coney to rename the manslaughter verdict as ‘man’s laughter’.¹⁰¹ It was argued that Leigh’s ‘tirade’ in

⁹³ Ibid., pp.11-12.

⁹⁴ Crown Prosecutor Kirk Toogood, cit., ibid., p.12.

⁹⁵ Bungay and Edwards, p.29.

⁹⁶ Susan Edwards’ observation that, the ‘heat of the moment’ retaliation argument relies on the perceived credibility of the impulsive side of men, who in the presence of particular stimuli, have no choice but to act in a particular way, similar to the uncontrollable male sexual urge, Susan Edwards, *Policing Domestic Violence. Women, the Law and the State*, London: Sage Publications Ltd, 1989, p.183.

⁹⁷ Elisabeth McDonald, ‘Provocation, Sexuality and the Actions of “Thoroughly Decent” Men’, *Women Studies Journal*, vol.9, no.2, September 1993, pp.127, 141.

⁹⁸ Edwards, p.183.

⁹⁹ *The Queen v Anderson* 1965, NZLR, 1965, pp.38-39; McDonald, p.130.

¹⁰⁰ ‘Manslaughter of De Facto Wife’, *Truth*, 18 February 1958, p.16.

¹⁰¹ Sandra Coney, *Out of the Frying Pan*, p.97.

which Minnitt alleged she had said, ‘you domineering bastard. You penny pincher ... You are physically repulsive. You are a terrible lover’, had provoked Minnitt into losing self-control.¹⁰² The jury found that sexual insult constituted sufficient provocation and Minnitt received a four-year prison term.¹⁰³

Both the defence and prosecution arguments exercised discourses of class and gender to promote David Minnitt’s social status and criticize Leigh’s Minnitt’s failure to be a “good” wife. It was argued that Minnitt was ‘remorseful’, the crime was ‘out of character’, that the killing was ‘not pre-meditated’, Minnitt was ‘emotionally battered’ and Leigh was presented as ‘heartless’.¹⁰⁴ Allegedly having a lover, drinking and taking drugs (prescribed by her husband), wanting to leave her husband and sexually insulting him undermined her victimhood.¹⁰⁵ In contrast, David Minnitt ‘had served the community well as a doctor beyond the normal call of duty, and was held in the highest esteem by his professional colleagues.’¹⁰⁶ It appears that male property and sexual rights, class discourses that assigned Minnitt high social status and gender discourses that deemed Leigh had failed to be a “good” wife, constructed the killing as manslaughter. Discourses of domestic tension also reduced David Minnitt’s responsibility. The sentencing judge had said there were many ups and downs in the marriage and the Solicitor-General reportedly described the case as ‘one of the disturbingly numerous cases in which a domestic argument had been brought to an end by one party using an available weapon to kill the other’.¹⁰⁷ The latter construction also obscured the gendered nature of the crime and social relations of power. It was predominantly men who killed women.

Although men’s killing was generously interpreted as provoked, constructions of masculinity also disciplined men’s behaviour. Failure to be a “good” man could reduce a man’s victimhood. David Madle reported that, between 1959 and 1962, there were two cases in which the wife and a de facto wife shot their husbands dead. In both cases the wives had been subject to considerable physical abuse and neither received a

¹⁰² ‘Doctor Found Not Guilty of Murdering Wife’, *Press*, 7 August 1980, p.8.

¹⁰³ ‘Doctor Receives Prison Term of Four Years’, *Press*, 16 August 1980, p.5.

¹⁰⁴ *Ibid*; Coney, *Out of the Frying Pan*, pp.98-99.

¹⁰⁵ Coney, *Out of the Frying Pan*, pp.99-100.

¹⁰⁶ ‘Doctor Receives Prison Term of Four Years’, *Press*, 16 August 1980, p.5.

¹⁰⁷ *ibid*; *cit.*, Coney, *Out of the Frying Pan*, p.98.

heavy sentence; the first, seven weeks imprisonment and one year probation, and the second found not guilty on the grounds of insanity.¹⁰⁸ A husband leaving his wife could mitigate female responsibility. In a 1974 case Lauraine McLean shot her husband through the head while he was asleep. About half an hour later she heard her husband making a horrible noise so she shot him again. McLean alleged she could not bring herself to separate from her husband of 32 years and be subject to the humiliation as a separated wife. The jury found her guilty of manslaughter. The judge said that he was conscious of the effects of her husband's infidelity on her and sentenced her to four years imprisonment, a lenient sentence not dissimilar to Minnitt's.¹⁰⁹

Male victims of male killers in a domestic setting were also subject to the same discourses that shaped the victimhood of women. In 1960 a jury found an offender guilty of a minor assault charge after he had killed a man by punching him. The offender had found the man lying with his wife in the grass at a party they were both attending. The judge accepted that the offender had acted under acute provocation, fined him £50 and placed him on probation for two years.¹¹⁰

Although provocation could reduce responsibility of male and female killers, in practice the plea upheld males' interest, so that Elisabeth McDonald has argued 'a man's sexual relationship with a woman' could 'make her an almost legitimate target for homicidal violence'.¹¹¹ This was because men were more likely to kill women than women to kill men, and more likely to use a plea of provocation.¹¹² It was also because gender discourses undermined the victimhood of women who fought back or spoke their minds. Male bias also operated in the plea of self-defence. Women who killed husbands or partners who were attacking them could claim self-defence, but because women were physically unequal to husbands and partners, those women who

¹⁰⁸ Details of the physical abuse are limited and the time element is unclear. The first woman's husband was a 'strongman' who frequently beat her, the second wife's de facto husband had thrown manure over her earlier in the day, David Madle, 'Patterns of Death by Accident, Suicide and Homicide in New Zealand 1860-1960', PhD thesis, Victoria University, Wellington, 1996, pp.172-3, appendix 12, pp.12, 15.

¹⁰⁹ 'Wicked So She Shot Hubby', *Truth*, 5 March 1974, p.3.

¹¹⁰ 'Caught Youth with his Wife on the Lawn', *Truth*, 10 May 1960, p.35.

¹¹¹ McDonald, p.130.

¹¹² Elisabeth McDonald's study indicates this disparity, *ibid.*, p.127; reported domestic homicides in the *Press* and *Truth* overwhelming involved men killing women; Mike Bungay said that in the vast majority of domestic homicides, husbands killed wives, Bungay and Edwards, p.30.

feared being killed and made a pre-emptive strike could not claim self-defence.¹¹³

Thus the law did not recognize some women's material realities.

Non-fatal Domestic Assaults

At a first reading, newspaper reports on court cases suggest there was no support for men's violence against wives and partners. One magistrate said, 'there are no circumstances which justify an assault on a woman'.¹¹⁴ Magistrate Trapski said he knew there were a lot of things behind 'wife-bashing', but these factors did not excuse it in any way.¹¹⁵ However, discursive constructions of men's violence were contradictory and inconsistent and operated in conjunction with other dominant discourses. Where competing discourses constructed mitigating circumstances, members of the judiciary could simultaneously claim that such violence was criminal, but also reasonable or understandable under certain conditions. One magistrate told an offender that 'in ordinary circumstances the court would show little sympathy with husbands who attacked their wives', but the facts in this case were 'exceptional'.¹¹⁶ The following discussion indicates what discourses and practices shaped understandings of non-fatal men's violence against wives and partners.

Court hearings were about determining if a husband's violence constituted a threat to the sovereign's peace. The law would stigmatize a husband's violence when it threatened a wife's life or limb. When a husband exceeded disciplinary rights, privacy of the domestic sphere was forfeited and the state had a right to intervene. This is evident in one magistrate's comment to an offender that his conduct had 'gone far beyond the point of being a domestic matter' and was an offence against society.¹¹⁷

Cases reported in the media during the 1960s and 1970s suggest that those resulting in serious injury or involving sadistic violence, repeat offences, and assaults witnessed by police, were clearly criminal and usually attracted imprisonment. In 1973 a man

¹¹³ For example, Carol Plunkett was found not guilty of murdering her husband. Her mother gave evidence that her husband had rung her saying he was going to kill Plunkett, and Plunkett gave evidence he had attacked her, 'Woman Tried For Murder', *Press*, 14 April 1981, p.6; 'Plunkett Not Guilty', *Press*, 16 April 1981, p.6.

¹¹⁴ 'Woman's Eyes Blackened', *Truth*, 3 May 1960, p.9.

¹¹⁵ 'Watch Out Wife Bashers', *Truth*, 3 June 1975, p.10.

¹¹⁶ 'Caught Youth with his Wife on the Lawn', *Truth*, 10 May 1960, p.35.

¹¹⁷ In that case the offender had bound and gagged his wife before sexually attacking her, 'Wife Gagged in Attack on Bed', *Truth*, 3 February 1970, p.7.

was sentenced to six months imprisonment for an assault on his de facto wife. He had punched her, thrown her to the ground, dragged her and attempted to cut off part of her breasts with a skinning knife.¹¹⁸ A repeat offender was sentenced to six months imprisonment after being fined £10 for a previous offence.¹¹⁹ Another offender was sentenced to what was described as the maximum of three months after police witnessed him attempting to strangle his de facto wife, punching her in the stomach and threatening to kill both her and her baby.¹²⁰ These prison terms were similar to sentences handed down for assaults against strangers.¹²¹ However, penalties were not always directly related to the actual violence used against wives and partners. For example, in the preceding offence, because the penalty imposed was the maximum, the charge must have been laid under the Police Offences Act rather than as an assault under the Crimes Act. This meant the de facto husband's conduct was constructed as an offence against the police, a challenge to the sovereign's authority, rather than a crime against the person, the wife. Multiple and contesting discourses minimized serious or minor violence, and made outcomes less predictable in cases that involved lesser injuries.

Violence on the street was usually treated more seriously than that which occurred in the home, because it constituted a clear threat to public order. In 1960 a magistrate told a man who had beaten his fiancée severely in the street that despite reconciliation, 'it was, however, an offence against good order and peace and although a husband-and-wife matter, the method used was unorthodox and warranted a conviction'.¹²² It was the public space that transformed the event into a crime. However, even in this space, discourses of marriage and gender could mitigate men's violence. This construction made violence a relationship or private matter, even when the parties were not married. In 1974 an offender who chased his girlfriend down the street with a knife, was charged with disorderly behaviour. He said his male ego was roused when his girlfriend said she was leaving him. The magistrate said that, while

¹¹⁸ 'Knife Job on a Pantie Girl's Breast', *Truth*, 23 January 1973, p.2.

¹¹⁹ 'Bashed Wife Brutally', *Truth*, 6 October 1965, p.3.

¹²⁰ 'Punched Pregnant Girl in Stomach', *Truth*, 24 March 1965, p.8.

¹²¹ My reading of court reports in *Truth* during the 1960s and 1970s.

¹²² 'Wanted to 'Knock Some Sense Into His Bride-To-Be'', *Truth*, 14 February 1961, p.30.

the offender had six previous convictions for disorderly behaviour, he would treat this as a domestic matter and fined him \$75.¹²³

A “domestic matter” meant essentially a private matter. The rule of law ordered the civic space over which the state claimed jurisdiction. It operated more flexibly in the domestic sphere. Here, order was premised on marriage with its differentiated spousal duties and obligations. This meant that discourses of the family and gender shaped constructions of violence against wives and partners in the home. Court processes were also about maintaining domestic order, on which the social order rested. This protected a husband’s disciplinary rights and made a certain level of violence tolerable. In a 1960 case, a magistrate opined that hitting one’s spouse with the butt of a rifle to intimidate her into stopping drinking was ‘overdoing things a bit’. The man was fined £10 for the assault and discharged on the charge relating to presenting a loaded rifle at his wife.¹²⁴ Court practices supported a husband’s right to discipline a wife, thereby permitting some violence. The interpretation of men’s violence against wives as chastisement had a long history.

The Department of Justice’s policy of preserving families to prevent crime was in tension with legal discourses that defined violence in the home as criminal. In 1966 one magistrate adjourned a case of assault for six months with a view to discharge without conviction because he hoped this would bring about reconciliation, at least for the sake of the children.¹²⁵ Punitive responses threatened the viability of marriage. Magistrates could be less lenient when they believed reconciliation was no longer possible. In sentencing one offender, a magistrate said that it could be that this marriage had reached a dead end so there was no point in extending special leniency.¹²⁶

Wives too were subject to discourses that encouraged magistrates to preserve marriages and families. Many wives identified with them and indicated that they wished their marriages to be saved, which reinforced those discourses. When wives

¹²³ ‘Chase to Bring Back Girlfriend’, *Truth*, 22 January 1974, p.41.

¹²⁴ ‘Hit Wife with Rifle: SM Says He Overdid It’, *Truth*, 29 November 1960, p.13.

¹²⁵ ‘Taunts Sparked Violence’, *Truth*, 29 November 1966, p.7.

¹²⁶ ‘Former Irish Cop Assaulted Wife’, *Truth*, 11 June 1968, p.16.

desired reconciliation, magistrates were particularly reluctant to make contrary decisions. In 1973 one magistrate said, regarding an assault with a knife, that because the offender's wife gave evidence that the marriage could be saved, 'from the matrimonial point of view' it was probably better that he did nothing about it. He convicted the offender and ordered him to come up for sentence if called on within six months.¹²⁷ Similarly, when another magistrate learnt that an offender had four children and his wife wanted him back, he convicted him for assault and ordered him to come up for sentence if called upon within six months.¹²⁸ Wives' forgiveness could minimize the effects of violence in others' eyes, and supported the belief that women were ever ready to forgive. In one case in which the wife forgave the husband, the magistrate commented that, 'women seem to be a hardy breed'.¹²⁹

The impetus to preserve families could incur considerable individual costs. A pregnant wife was dragged from room to room by the hair and punched and battered for almost half an hour when she intervened upon discovering her husband sexually interfering with her eight year-old daughter. She was hospitalized for five days. Her husband pleaded guilty, and was fined £20 and put on probation for one year. He had to take out a prohibition order and pay £10 to his wife in compensation. The magistrate said he did not send the offender to jail because the wife wanted her husband to return to her as long as he did not drink. The family was reunited despite the suggestion of sexual abuse of the daughter, and the risk to the unborn child and the wife went unacknowledged.¹³⁰

Alcohol was often constructed as the cause of the violence. This had the effect of reducing personal responsibility. In 1961 one offender was told that if he had been sober when he attacked his fiancée, he would have gone to jail. He was fined £15.¹³¹ It also dictated penalties. In 1970 a magistrate fined another man \$50 for an assault in an attempt to stop him buying so much wine.¹³² Prohibition orders were also common, but drinking as a mitigating factor had limits. One magistrate said, 'there were far too

¹²⁷ 'Wife Played Down Assault: SM', *Truth*, 27 February 1973, p.11.

¹²⁸ 'Love Bite Made Him Mad', *Truth*, 28 September 1971, p.16.

¹²⁹ 'Briefs from the Courts', *Truth*, 12 May 1970, p.27.

¹³⁰ 'Dragged Wife About By Her Hair', *Truth*, 29 October 1963, p.11.

¹³¹ 'Wanted To "Knock Some Sense" Into His Bride-To Be', *Truth*, 14 February 1961, p.30.

¹³² 'Briefs from Court', *Truth*, 14 July 1970, p.4.

many husbands beating up wives and then saying they didn't know what they had been doing because they were drunk'. He sentenced the offender in this instance to one month imprisonment. The prison sentence could nonetheless be considered lenient because it was a repeat offence and the magistrate thought that the wife might have been killed if police had not intervened.¹³³

Gender expectations of female passivity undermined a wife's victimhood and excused male violence. Wives and partners who fought back were, in the absence of serious injury, usually not constructed as victims defending themselves. Fighting back confirmed the situation as a "domestic", and the assault was interpreted within the framework of marital relations. In 1974 a magistrate said of a case before him, that at first the assault appeared to justify imprisonment, but because the wife gave evidence of her contribution to the assault, he fined the man \$50. In that case the husband had thrown battery acid in the woman's face.¹³⁴

Similarly, the understanding of men's violence against wives and partners as a 'domestic' affair brought wives' behaviours under scrutiny. Gendered constructions that held wives and partners provoked or deserved it mitigated men's violence. One man was told he had escaped jail after an assault that resulted in the hospitalization of his de facto wife because there were faults on both sides.¹³⁵ By far the most powerful argument for provocation was alleged sexual transgression. A jury found one man guilty of assault on his wife, but recommended leniency because of her sexual indiscretion.¹³⁶

Belief systems shaped judicial decisions and made for inconsistency. Discourses of the family could exclude de facto wives from protection, and those of morality could undermine their claims of victimhood. Some treated de facto wives and married wives alike. One magistrate said, 'no man has a right to knock a woman about, whether it is his de facto wife, his legal wife, or anyone else'.¹³⁷ In contrast, another magistrate considered a de facto relationship as nothing more than adultery, that violence was

¹³³ 'Liquor in Wife-beating', *Truth*, 13 September 1966, p.9.

¹³⁴ 'Wife Was Burned', *Truth*, 22 October 1974, p.16.

¹³⁵ 'Put de Facto Wife in Hospital', *Truth*, 28 March 1961, p.15.

¹³⁶ 'Caught Youth with His Wife on the Lawn', *Truth*, 10 May 1960, p.35.

probably a part of de facto relationships where there was little sense of responsibility or stability between people, and that ‘women living in adultery could not expect the same protection from the court as married women’.¹³⁸ Alternatively, de facto status could enhance victimhood because such wives did not have access to matrimonial law remedies, such as separation and maintenance.¹³⁹ One magistrate told the offender that his de facto wife was unable to walk out on him because ‘she does not enjoy the protection of a legal wife and under circumstances was quite defenceless’. Because the wife and child were financially dependent on the offender, he placed him on probation for three years.¹⁴⁰ Similarly, another magistrate said he did not send the offender to prison for his assaults on his de facto wife because the family would be without his wages.¹⁴¹

From the 1960s, attitudes to de facto relationships shifted so that by the 1970s the distinction between legal and de facto wives, while not disappearing entirely, was less evident. Around 1980 Judge Watts was reported to have concluded that it was a lesser crime to assault a de facto wife than a legal wife because the de facto wife must be ‘no good’.¹⁴² That did not go unnoticed by feminist groups.¹⁴³

A construction of a domestic assault as a temporary aberration reinforced discourses that mitigated male responsibility. This interpreted violence against wives and partners as an outcome of domestic tension. It minimized verbal threats and made invisible the power of further threats of violence to control a wife’s conduct. By equating seriousness with physical injury, this construction of a domestic assault excluded the impact on a victim’s psychological well-being and trivialized women’s claims of being fearful for their safety. This failed to protect women and children. In a 1962 case a husband planned to kill his estranged wife and children to put them out of

¹³⁷ ‘Beat Up Woman’, *Truth*, 29 March 1960, p.5; another magistrate told the offender that his de facto relationship made no difference, ‘Jailed for Assault on Woman’, *Truth*, 6 January 1970, p.23.

¹³⁸ ‘Too Many Assaults on De Facto Wives’, *Truth*, 9 June 1964, p.19; the magistrate fined a de facto husband £10 because the assault occurred in a public street telling him, ‘you will avoid bothering the authorities with your bad temper, the woman, your drink, your assaults, and your low way of life’, ‘SM On De Facto Relationships’, *Truth*, 18 December 1962, p.15; ‘*Truth* Readers Say – Justice Must be for All’, *Truth*, 12 May 1965, p.40.

¹³⁹ See Chapter 1 for discussion of 1910 Destitute Persons Act and following chapter.

¹⁴⁰ ‘Beat Up De Facto Wife’, *Truth*, 16 April 1963, p.11.

¹⁴¹ ‘Batchelor Father’s Assault on Wife’, *Truth*, 14 November 1961, p.19.

¹⁴² Reported in Coney, *Out of the Frying Pan*, p.99.

¹⁴³ Discussed in Chapter 9.

their 'misery'. The husband said that as he was about to pull the trigger a loving remark by his son stopped him. He was subsequently charged under the Arms Act. Defence counsel argued that he was only 'mixed up', and got the weapon to apply pressure to secure his lawful rights to access. The magistrate agreed, saying his only concern was that the weapon was procured without a permit nearly five years before and had been kept unlawfully. The man was fined £15.¹⁴⁴ In another case in 1973, a magistrate regarded a man's threat to kill his de facto wife as a 'domestic matter', put the offender on probation for a year and ordered him to take out a prohibition order.¹⁴⁵

The trivializing attitude to women's fear meant that judges and magistrates could harshly judge women complainants who refused to co-operate with a prosecution. In a 1964 case, where an accused's wife stopped giving evidence and asked that the charge be dropped after seeing her husband furiously shaking his head and waving his arms in a silent appeal, the magistrate told her that if able, he would have imposed costs on her for inconveniencing the court.¹⁴⁶ Similarly, in a 1960 case in which the wife refused to give evidence, the magistrate said, 'the police have enough to do without being conciliators in family disputes'. In that case the wife said she feared for her life.¹⁴⁷

Discourses of femininity that held women to be naturally dishonest or hysterical enabled magistrates to accept women's claims that they had lied in bringing charges, even where this conflicted with other evidence. In a 1963 case, a man pleaded guilty to an assault on his wife and received a prison sentence. Police had found his wife showing signs of being manhandled, partially unclad, blood on her face, scratches on her forehead, frightened, and refusing to return to her home unless her husband was removed. The man was granted a rehearing because his wife said she had lied to police in a fit of temper and spite. She said she removed her garments herself, fabricated allegations of threats to kill and maim, and that her husband had only torn her frock when he was trying to calm her because he was scared she would damage

¹⁴⁴ 'Got Gun to End Family's Misery', *Truth*, 24 July 1962, p.17.

¹⁴⁵ 'SM: Death Threat a Domestic Matter', *Truth*, 28 August 1973, p.8.

¹⁴⁶ 'Would Not Give Evidence Against Her Husband', *Truth*, 21 January 1964, p.38.

¹⁴⁷ 'She Wouldn't Give Evidence', *Truth*, 23 August 1960, p.6.

their TV set. The magistrate said that he hoped the imprisonment of the husband would be a serious lesson for his wife.¹⁴⁸

Normative constructions of marriage shaped judicial responses even when couples were separated or divorced. One magistrate in a 1973 case told a repeat offender who had assaulted a man he found in bed with his separated wife, ‘there are a lot of complications. You must have acted under provocation’. The offender had broken into his estranged wife’s home at 2 a.m. and had beaten the man with a spade and thrown a bottle in his face causing lacerations. The magistrate ordered a probation report with a view to periodic detention.¹⁴⁹ In another case in 1972, the defence counsel argued that an assault on a former de facto wife was ‘a domestic matter and the rift had been healed’. In a tavern carpark the offender had slammed a car door on the woman, pulled her hair, grabbed her around the throat until she had partially lost consciousness, knocked her to the ground with his fist and chased her around the car park. The magistrate ordered the offender to come up for sentence if called upon within six months.¹⁵⁰

Normative constructions of marriage and gender contested those of victimhood. In 1960, a wife had a separation order on the grounds of persistent cruelty, which she had hoped would provide her with some protection.¹⁵¹ However her husband’s assaults persisted and she feared she would be killed. She took in a lodger because she and her daughter feared to live alone. The case before the court involved her husband breaking into her home and assaulting her, their daughter and the lodger. For the assault on the lodger the offender was fined £7 and 10s, with a peace bond of £50. For the assault on the wife there was a peace bond but no fine. The offender was convicted without penalty for the assault on the daughter.¹⁵² The court’s response to the assault against a stranger differed markedly from the assault against the wife, despite her injuries being at least as serious as that of the lodger’s and having being granted a separation order that released her from a duty to cohabit. Constructed as a domestic assault, discourses of marriage and gender that protected male privilege

¹⁴⁸ ‘He Did Not Strip Her, Wife Confesses’, *Truth*, 5 March 1963, p.6 (page number unclear).

¹⁴⁹ ‘Husband did his Scone at his Wife’s Bedmate’, *Truth*, 13 November 1973, p.5.

¹⁵⁰ ‘Rift Healed after Assault’, *Truth*, 7 March 1972, p.12.

¹⁵¹ Recall that separation orders had a non-molestation clause.

¹⁵² ‘Beat up his Wife’s Lodger’, *Truth*, 27 December 1960, p.3.

mitigated the offender's responsibility, regardless of whether the parties were living together or not.

For the most part, the criminal law as it applied to domestic assault cases in the courts privileged men and disadvantaged women. Reported female assaults on husbands were rare. Discourses that gave a husband disciplinary rights over wives and constructed domestic assaults as inevitable, combined with physical and social inequalities, to enable men more than women to be perpetrators of violence in relationships. However, these discourses could operate unevenly and in contradictory ways to disadvantage male victims. In a 1972 case one magistrate expressed sympathy for an offender's inability to control himself in the face of domestic troubles and placed him on probation for two and a half years for stabbing his separated wife's lover. The offender had stabbed the man his wife was sleeping with because he thought she should have been looking after the children.¹⁵³ These discourses could also reduce women's responsibility for violence. In 1971, a jury acquitted a de facto wife charged with wounding with intent to injure after she had stabbed her de facto husband causing a minor wound after he threatened to leave her.¹⁵⁴

Sexual Violence

If statute law had its deficiencies in protecting married women from physical violence, it was even more wanting in protecting them from sexual violence.¹⁵⁵ Rape within marriage was not a crime. However, it was an offence to rape a wife who had a separation or divorce order, and certain sexual practices such as sodomy, were a crime in all contexts. Statute law did not make an exemption for rape in the case of separation agreements, but the English judgment in *R v Miller* 1954 ruled that a husband could be charged with rape if he and his wife had entered into a separation agreement that contained a non-molestation clause.¹⁵⁶ A man could be charged with raping his de facto wife or girlfriend. In statute law, rape was categorized under

¹⁵³ 'Probation for a Stabbing', *Truth*, 19 September 1972, p.7.

¹⁵⁴ 'Stab Incident Woman Cleared', *Truth*, 13 July 1971, p.20.

¹⁵⁵ See preceding chapter.

¹⁵⁶ Susan Edwards, 'Male Violence Against Women: Excusatory and Explanatory Ideologies in Law and Society', in Susan Edwards, ed., *Gender, Sex and the Law*, Beckenham, Kent: Croom Helm Ltd, 1985, p.194.

crimes against religion, morality and public welfare rather than crimes against the person; a construction that further obscured a victim's experience of the rape.

While the marriage contract afforded both men and women rights to a sexual relationship, physical superiority and gendered discourses of sexuality, in particular those that constructed an active male sexual drive, made it more possible for men to exert this right than women. The belief that wives owed a sexual duty to husbands was common.¹⁵⁷ Wives could attract legal censure when they failed to perform wifely duties. In a divorce proceeding in 1965, a woman who left her marital bed to sleep on the floor was held guilty of constructive desertion.¹⁵⁸ The construction of conjugal rights made it difficult for women to name some sexually aggressive experiences as violence. When wives fought off aggressive sexual advances they could be constructed as perpetrators of violence. When police arrived at one domestic assault, the wife said 'the bloody...I will kill him. He attacked me in the bedroom and I fought him off'. They charged her with assault of which she was found guilty.¹⁵⁹ In separation petitions made in the Christchurch District Court in the 1970s, women described experiences of sexual violence as 'unreasonable', 'unnatural' or 'excessive sexual demands', or 'forced sex', terms that suggested their husbands had gone beyond contractual expectations of sexual relations.¹⁶⁰ Within such discourses, rape, whether in or out of marriage, was constructed as a sexual act rather than a violent one. One lawyer experienced in rape cases described rape as when 'the hunger of the male animal comes out...lust is the word'.¹⁶¹

Two conditions were required for a conviction of rape. Firstly, the act itself had to be proved; secondly, the accused had to have sufficient intention (*mens rea*) to carry out the rape. If an accused had an honest belief that a woman was consenting, then the sex was not defined as rape. The basis on which a man could claim an honest belief was not legally defined. It was assumed to reflect the standard of care a man should take

¹⁵⁷ For example, a New Zealand psychologist Dr Anne Biezanek said that a woman's 'true work in this world is that of self-sacrificing devotion as a wife to the cause of sexual harmony with her husband', 'The Women whose Lives are a Lottery', *Truth*, 10 February 1965, p.23.

¹⁵⁸ 'Wife Spent Nights on the Floor', *Truth*, 18 May 1965, p.2.

¹⁵⁹ 'Took to Husband with a Leg of Mutton', *Truth*, 9 February 1966, p.3.

¹⁶⁰ Christchurch District Court Files, CAHS, CH927 1970, 1975, and CH953 1980, ANZ, Christchurch.

¹⁶¹ Reported Lloyd, p.38.

with regard to consent: one that would be expected of a reasonable man.¹⁶² But what a man might define as ‘reasonable’ a woman might not. Given assumptions of what constituted appropriate sexual behaviour for men and women, it was acknowledged that there would be no criminal intent in many instances where a woman would perceive intercourse as rape.¹⁶³ In effect, *mens rea* worked to deny a woman authority as a “knower” of her experience; rape was essentially a male-defined offence that privileged male sexual rights.

While it was not uncommon for women to experience legally proscribed sexual practices, as evidenced by separation files of the Christchurch District Court and in reported court events, it was a rare for a complaint to be made on this basis. When women did make complaints, they were subject to the same discriminatory practices that victims of stranger rape were.¹⁶⁴ Principles of law meant that, in practice, it was hard to make a rape charge and easy to refute it, especially when a relationship existed, or had existed, between the complainant and the accused. It was a common belief that having once consented to sex with a man it was not rape if you had sex with him again. Because rape was usually a private affair, it was difficult to prove. In a 1964 case a woman claimed that after breaking off her association with a man he had threatened to kill her and had raped her several times. The man denied all charges. The magistrate could not convict on such evidence.¹⁶⁵

Two “rules of law” undermined women complainants by making the construction of rape as a crime subject to an interpretation of women’s behaviour. The “corroborative warning” was a rigid rule of law that required a judge to direct a jury that it was dangerous to convict a rape defendant on the complainant’s uncorroborated evidence. The “recent complaint rule” enabled evidence to be presented to show whether a complaint had been made at the first “reasonable” opportunity. These rules were

¹⁶² Young, p.95.

¹⁶³ Jim McLay, Minister of Justice, ‘Opening Address’, in Hilary Haines and Max Abbott, eds, *Rape in New Zealand. Papers Presented at the Rape Symposium, September 1982*, Wellington: Mental Health Foundation, 1983, p.9.

¹⁶⁴ See Jacqueline O’Neill, ‘She Asked for It. A Textual Analysis of the Re-negotiation of the Meaning of Rape in the 1970s –1980s’, MA thesis, Massey University, Palmerston North, 2006.

¹⁶⁵ ‘Accused by Girl From Flat Below’, *Truth*, 19 May 1964, p.5.

shaped by beliefs that a genuine victim would make a complaint as soon as able and that many rape complaints were in fact false.¹⁶⁶

In 1968, a wife gave evidence that her estranged husband had broken into her flat, squeezed her around the neck so tight that everything went black, then dragged her up to the bedroom and raped her. She ran up the road and phoned the police after he left. The doctor who attended her immediately said there were no injuries. A doctor who saw her the next day gave evidence of bruises and strained muscles in her inner thighs and upper arms, and her demeanour as highly nervous. The husband claimed she consented. Summing up, the judge said that some refuse at first but finally relent, but it was a question of consent at the moment of intercourse that was important. He warned the jury it was dangerous to convict without corroborating evidence and reminded them that it was easy to make a rape charge, but difficult to defend it. He advised the jury that one of the couple must be lying, but if the accused's evidence had raised a doubt then he must be acquitted. The jury found him not guilty.¹⁶⁷

The nature of criminal proceedings was a deterrent to women pursuing rape or sexual violence claims. Women were subject to intense questioning by defence counsel and the trial experience often constituted a re-victimization. When women related their rape experiences they had to name parts of their body, parts that in the act of naming revealed their sexual content.¹⁶⁸ Catherine MacKinnon has argued that this discouraged women from going to court because, in court, women come to embody the standard fantasy of the pleasure of abuse and sexual power. It was not that they must repeat the violation but that the women's stories gave pleasure in the way that pornography does; a woman's narrative, reconstructed by the defence counsel, not only sexualized her, but it also was a 'pornographic vignette'.¹⁶⁹

Although causing physical injuries through sexual violence could be prosecuted under assault charges, constructions of the male sex drive and conjugal rights could mitigate a man's responsibility. In 1974 a man called his separated wife to threaten her life,

¹⁶⁶ For further discussion see O'Neill, pp.51-53.

¹⁶⁷ 'Husband Cleared of Wife's Rape Charge', *Truth*, 4 June 1968, p.9.

¹⁶⁸ Carol Smart, *Feminism and the Power of the Law*, London: Routledge, 1989, p.38.

¹⁶⁹ Catherine MacKinnon cit., *ibid.*, p.39.

and then went to her home and stabbed her. The man blamed the attack on his wife's lack of sexual willingness. Under cross-examination the wife agreed she had rejected her husband sexually for some time. Despite the wife giving evidence that the man had made previous threats on her life, a psychiatrist gave evidence that the stabbing was 'an explosion of released frustration in a state of automatism'. The jury found him guilty of intent to cause grievous bodily harm and acquitted him of attempted murder.¹⁷⁰

CONCLUSION

Legal discourses in criminal proceedings constructed a domestic assault as a contest between the state and an offender, which obscured a woman's actual experience of it. This made victims witnesses to a case against the Crown, which potentially put them in conflict with the state and subjected them to a revictimization. Normative constructions of marriage, family and gender, seldom transparent, shaped judicial responses that often reduced male responsibility for violence and shifted blame onto female victims. Statute law validated sexual possession of wives, and legal practices made it difficult for women to claim rape if they had once shared an intimate relationship with the accused. Discourses of rape prevented women having their claims of sexual violence being taken seriously. The construction of a domestic assault as a temporary aberration or outcome of domestic tension reduced male responsibility for violence and obscured future risk to women's safety. Ethnicity and class discourses shaped the image of the typical offender as working-class and/or Maori, a construction that protected middle-class offenders, potentially further undermining protection to middle-class women victims.

Men's violence towards wives and partners did not go unchallenged and the courts penalized men when they exceeded their disciplinary rights. A woman could expect protection from the courts when her husband's or partner's violence threatened her life or limb. However, penal policy privileged offender's needs over those of victims. Because discourses of marriage and gender encouraged wives to be economically and socially dependent on men, penalties often hurt women victims as well as male

¹⁷⁰ 'Wife Was Cold', *Truth*, 22 October 1974, p.11.

offenders. Punishing men was only effective when women decided to leave marriages, had other economic support, and/or could rely on police and court protection from further violence. These conditions were often inaccessible; some were variable over the period in question.¹⁷¹ As such, without other discursive and material support to meet women's needs, criminal justice remedies were often ineffective in protecting women, a material reality that reinforced a preference for a separation order under civil law.

Because men usually were physically stronger and had higher social and economic status, women and children were usually going to come off worse whenever fists might be raised or threatened. Men were most likely to be the perpetrators of violence in relationships, or at least of violence that had serious consequences. Although the courts penalized some men's violence against wives and partners, judicial responses ultimately reinforced the civic/domestic divide and normative constructions of gender that positioned women as providers of domestic and sexual services, and men as financial providers and heads of the family. These discourses reinforced the hierarchical gender order and sanctioned some violence. In this way, they upheld a family model that enabled men's violence against wives and partners and undermined women's capacity to resist it. The next chapter explores law governing marriage and families from 1960 until 1968.

¹⁷¹ See Chapters 5, 6, 7, 8.

Chapter 4

DOMESTIC LAW: 1960-1968.

Laws governing marriage and families were often referred to as “domestic” or “matrimonial” law. Proceedings emanating from petitions made under domestic law were referred to as “domestic proceedings”. Under domestic law until 1968, men’s violence against wives was constructed as “cruelty”, which was a matrimonial offence, a violation of the marriage contract. Cruelty was a ground for several actions under domestic law. This chapter identifies the discourses and practices that supported domestic law practices, how they upheld or undermined social structures that enabled men’s violence, and what they meant for married women’s lived experiences. Multiple and contesting discourses shaped the construction and application of domestic law. As in criminal justice, lawyers, judges and magistrates were ‘engaged in a range of discretionary decisions’ that affected ‘whether, which and how many individual’ petitions were discouraged, dismissed or supported.¹ This meant that although there were dominant discourses that shaped domestic law practices, women experienced legal and judicial practices unevenly.

THE LEGAL FRAMEWORK

Marriage was a legal contract. Domestic law embodied dominant discourses of the family that privileged the ideal nuclear family: husbands were providers and protectors of families, and wives kept homes and minded children. The state was concerned with the regulation of marriage because marriage was the foundation of the social order. Social order necessitated domestic order, and a healthy state was predicated on healthy families, in which men had disciplinary rights over wives and children. This rested on the theory that ‘men were “naturally” superior to women in ways that were good for the family and ultimately for social stability’.² It reinforced

¹ David Brown, ‘Recurring Themes in Contemporary Criminal Justice Developments and Debates’, in Julie Tolmie and Warren Brookbanks, eds, *Criminal Justice in New Zealand*, Wellington: Lexis Nexis Ltd., 2000, p.11.

² Colin James, ‘A History of Cruelty in Australian Divorce’, Australian and New Zealand Law and History Society Conference, Hobart, 10 December 2006, p.1. Retrieved December 2008 from www.anzlhesejournal.auckland.ac.nz.

the separation of domestic from civic space, which meant that ‘the events of the home life should be looked at in a different light from events taking place elsewhere’.³

Although the paramount aim of the law was to protect marriage, in some cases the public order was thought better served by releasing one spouse from the obligation of cohabitation. Disciplining those judged to be guilty of a matrimonial offence ensured the maintenance of a high standard of marriage.⁴ Cruelty was a matrimonial offence because it threatened the institution of marriage, the physical and psychological integrity of individual members of a family for whom the state was ultimately responsible, and the social order.⁵ Under the 1928 Divorce and Matrimonial Causes Act until 1965, and thereafter under the 1963 Matrimonial Proceedings Act, cruelty continued to be a ground for a decree of judicial separation and a necessary ingredient of the ground for divorce based on habitual drunkenness. Petitions for divorce were heard in the Supreme Court.⁶ As outlined in Chapter 1, under the 1910 Destitute Persons Act, “persistent cruelty” was a ground for maintenance and separation orders. It meant something more than a single act of cruelty. It was also a ‘common ingredient in desertion and constructive desertion cases’ where it raised the question of whether one spouse had reasonable cause for living apart.⁷ Petitions for separation were heard in the Magistrate’s Court and appeal cases were heard in the Supreme Court.

Because petitions for divorce on the grounds of habitual drunkenness and cruelty were rare, this chapter is primarily focused on persistent cruelty as a ground for a separation order and cruelty as a ground for reasonable cause to live apart under the 1910 Destitute Persons Act.⁸ Addressing cruelty under an act related to people’s economic well-being expressed the importance of marriage for economic stability,

³ John M. Biggs, *The Concept of Matrimonial Cruelty*, London: The Athlone Press, 1962, p.6.

⁴ A. Stanton, ‘Unlikely to be Reconciled’, *New Zealand Law Journal* (NZLJ), no.23, 16 December 1969, p.704.

⁵ For example, the community as a whole had an interest in cruelty because it could only discredit marriage, J.H. Luxford and P.R. Webb, *Domestic Proceedings Under the Jurisdiction of the Magistrates’ Courts in New Zealand*, 2nd ed., Wellington: Butterworths, 1970, p.vii.

⁶ C.G. Powles, ‘Cruel Intent’, NZLJ, no.23, 24 December 1963, p.648.

⁷ *Ibid.*, p.648.

⁸ For example, of 1,164 divorce petitions made by women in 1965, only 16 were made on the ground of habitual drunkenness and persistent cruelty, Department of Statistics, *New Zealand Official Yearbook* (NZOY), 1967, p.126.

and therefore, social stability. Unlike a divorce order, a separation order did not terminate all marital obligations; it removed an obligation to cohabit, but did not 'otherwise affect the marriage or the status, rights and obligations of the parties of the marriage'.⁹ Nor did it grant freedom to consort. Domestic law continued to discipline individuals when only a duty to cohabit had been suspended. One New Zealand Court of Appeal judgment held a man to be in fault for deliberately consorting with a separated woman when he knew her husband was trying to reconcile.¹⁰ Separation orders could be overturned. Even where a husband was found guilty of persistent cruelty 'the door is not necessarily bolted and barred for ever against him' and great care would need to be taken that it was not bolted against him where the wife was guilty.¹¹ If a wife was held responsible for her husband's cruelty, she might not have been granted relief. Resuming marital relations could nullify separation orders. In a New Zealand case, it was held that a single act of sexual intercourse interrupted the period during which a separation order had remained in full force.¹² This had consequences for petitions under divorce law. However, because this discouraged the possibility of reconciliation, the 1963 Matrimonial Proceedings Act allowed for a resumption of cohabitation, no longer than two months and regardless of whether sexual intercourse took place, without affecting a separation order or agreement, or ending desertion.¹³

The 1957 Summary Proceedings Act governed procedure in domestic cases, so although civil in nature, like criminal ones, they were adversarial.¹⁴ The discursive field of domestic law was thus wrought with contradictions and inconsistencies. Under criminal law the state as the injured party determined guilt or innocence and imposed a penalty for violation of the sovereign's peace. In domestic proceedings, the state, which had a vested interest, ruled over a private contest where an injured party sought redress for a breach of the matrimonial contract. Proving matrimonial fault put

⁹ Text from a standard agreement for which there were many examples in separation petitions of the Christchurch District Court, CAHS, CH927, 1970, ANZ, Christchurch.

¹⁰ *Warren v Fry and Another* 1970, *New Zealand Law Reports* (NZLR) 1970, pp.781-5.

¹¹ *Grieve v Grieve* 1960, NZLR 1960, pp.813-14.

¹² *Crawford v Crawford* 1962, NZLR 1962, p.633.

¹³ 'Review of Legislation – Family Law', *New Zealand Universities Law Review* (NZULR), vol.1, September 1964, p.329.

¹⁴ *Kilkenny v Nikolof* 1969, NZLR 1969, p.846.

a couple's relationship under intense scrutiny; the court was interested in the exact nature of the relationship that preceded the abuse.¹⁵

Separation and divorce orders were taken very seriously because of the consequences for society, especially the effect on the children.¹⁶ Children of "broken homes" were positioned as less likely to be good citizens and parents. One Supreme Court judge said that a separation order gave a wife the power to divorce her husband, it isolated the husband from his children, and in the case of an alcoholic especially, it could have grave consequences on his physical and mental condition.¹⁷ These constructions that embodied the ideal nuclear family, and discourses of victimhood and child welfare, contested those that constructed a husband's conduct as cruelty and made it difficult for women to leave violent marriages.

Because of the perceived effects of marriage breakdown on the social order, the standard of proof for petitions under domestic law was very high.¹⁸ For petitions on the ground of persistent cruelty, it was 'absolutely necessary to have proper evidence... someone whom had seen the husband cruel to his wife, or had seen him habitually drunk, or knew for a fact that he did not maintain her'.¹⁹ But because of the private nature of cruelty and women's experiences of shame, often it was difficult to prove.²⁰ Many women did not share their experiences of cruelty and when unable to tolerate it any longer found themselves without corroborative evidence.²¹ When cruelty was witnessed or shared, beliefs around domestic privacy and fraternal loyalties combined with interest in self-preservation to prevent witnesses coming forward. The Society for the Protection of Home and Family (SPHF) observed that witnesses were often reluctant to give evidence because they 'simply do not want to be mixed up in other people's troubles. Very often those witnesses are neighbours or work-mates, who have to remain in some way associated with the parties irrespective

¹⁵ Luxford and Webb, p.24.

¹⁶ *Lock v Lock* 1961, *Magistrates' Court Decisions*, vol.10, 1959-1963, pp.162-3.

¹⁷ *Smart v Smart* 1962, NZLR 1963, p.310.

¹⁸ *Spencer v Relph* 1969, NZLR 1969, p.716; *Rogers v Rogers* 1937, NZLR 1937, p.436.

¹⁹ Home and Family Society (HFS), Dunedin branch, 'Points of Law Affecting Women', AG-647-5, Hocken Library (HL), Dunedin.

²⁰ Lionel Rosen, *Matrimonial Offences with Particular References to the Magistrates' Courts*, London: Oyez Publications, 1965, p.185.

²¹ HFS records, Wellington branch, Annual Report 1958, p.7, MSX 3294, Alexander Turnbull Library (ATL), Wellington.

of the result. Very often they are afraid of repercussions, particularly if the parties are of a vindictive nature'.²² In what was really a private contest, it was difficult for judges and magistrates to determine the validity of claims. A commentator from the 1960s expressed the dilemma well:

The domestic history of years is poured forth by husband and wife in alternate streams of opposite colours; the memory of each is ransacked for the most trivial detail; the posture of each mind is antagonistic in the extreme, drawing memory and sometimes imagination after it in the attack or the defence....Unqualified accusations serve only to elicit absolute denials, and amidst a volume of evidence and at the end of a protracted investigation, the truth, obscured, disfigured and transformed by prejudice and passion, is indeed hard to find.²³

THE CONSTRUCTION OF CRUELTY

Cruelty and persistent cruelty were poorly defined in statute. Despite this, their meanings were thought of 'relatively uncontentious and settled'.²⁴ As with criminal law New Zealand judges frequently used English judgments to support ones in cases relating to cruelty.²⁵ The English case *Russell v Russell* 1897 had established the principle that causes must be 'grave and weighty'.²⁶ Cruelty had to be conduct that made 'married life quite impossible'.²⁷ Lord Asquith said 'it must exceed in gravity such behaviour, vexatious and trying though it may be, as every spouse bargains to endure when accepting the other 'for better or worse'. The ordinary wear and tear of conjugal life does not in itself suffice'.²⁸ Asquith's explanation exemplifies the ways in which discourses of marriage were premised upon a toleration and expectation of some level of cruelty. Wives were expected to accept a certain amount of violence as one of 'the ordinary incidents of marriage'.²⁹

²² Ibid.

²³ Biggs, pp.3-4.

²⁴ James, p.3.

²⁵ Department of Statistics, NZOY, 1965, p.244.

²⁶ Biggs, p.50; Luxford and Webb, p.22.

²⁷ *Dyson v Dyson* 1953, 2 All A.E.R., 1511, 1514, cit., Luxford and Webb, p.22.

²⁸ Cit., Biggs, p.54.

²⁹ P.H. Alpers, 'Violence and the Law', NZLJ, no.22, 3 December 1963, p.623.

The New Zealand judgments in *Rogers v Rogers* 1937 and *Valentine v Valentine* 1937 were important for establishing matrimonial cruelty.³⁰ *Valentine v Valentine* permitted evidence of past “condoned” cruelty to be admitted in present complaints. Cruelty was condoned when one party forgave the other and the guilty party was reinstated.³¹ The judge ruled that, although a wife’s complaint of persistent cruelty had previously been dismissed by a court, proof of acts of cruelty since then enabled evidence to be given as to the conduct of her husband towards her over the whole of their marital life, ‘but of course, recent conduct is the most important’.³² More significantly, ‘cruelty and persistent cruelty were questions of fact’ within the limits of the principles formulated in *Rogers v Rogers* 1937.³³ The New Zealand Supreme Court judge, citing an English legal text, offered a comprehensive legal definition of cruelty:

Conduct of such a character as to cause danger to life, limb or health (bodily or mental), or as to give rise to reasonable apprehension of such danger. In determining what constitutes cruelty, regard must be had to the circumstances of each particular case, keeping always in view the mental and physical condition of the parties, and their character and social status. In some cases one act may be so grievous as by itself to constitute cruelty, although this may seldom be the case; but a blow, followed by minor acts, may be enough, and continued acts of ill-usage, none of them, in themselves, sufficient to support such a charge, may accumulate until a case of cruelty arises. Such acts, however, if only continued for a short time, may be due to circumstances of the moment, and cause no real danger to the life, health, or even future happiness of the wife or husband. A course of conduct calculated to break the spirit of the sufferer (usually the wife) continued till health breaks down, or is likely to break down, under the strain is also a ground for relief. Threats of actual personal violence sometimes constitute cruelty, and the Court does not wait to act until such threats are carried into effect. Mere vulgar, or even obscene, abuse, or false accusations of

³⁰ At that time it had been thought necessary to declare some principles because of the numerous appeals made to the courts against orders. There were no apparent statistics as to how many orders resulted in appeals; *Rogers v Rogers* 1937, NZLR 1937, p.437.

³¹ Rosen, p.5.

³² *Valentine v Valentine* 1937, NZLR 1937, p.775.

³³ Luxford and Webb, p.24.

adultery, ... are not grounds for relief except on the principle of cumulative, or constructive, cruelty of a kind injuring health or calculated to do so.³⁴

Cruelty was, therefore, dependent on a situation and the individuals involved, and had to effect serious consequences. Persistent cruelty had to be ‘unlikely to cease...a settled or continuous attitude of cruelty’. If acts of cruelty were ‘frequently repeated at short intervals’ and the offender showed ‘no wish or intention of altering his conduct, that would fall within the definition’.³⁵ This could exclude a single act of cruelty, or even cruelty over a short period, or under stress or special circumstances such as ill-health. Physical violence was not necessary, ‘if a man keeps his wife in fear and subjection by threats that is cruelty’.³⁶

Rogers v Rogers 1937 reiterated that injury to health, both physical and mental, was necessary to establish a case of cruelty.³⁷ Whether injury occurred or not was a question of fact. The facts extended to the particular physical and mental condition of the injured party because conduct that caused injury to the health of one person might not have caused injury to another.³⁸ It was believed that, ‘if conduct, although savage in nature, has no effect on the other spouse’ there could be no justification for ‘removing the duty to cohabit’.³⁹ And not all conduct that caused injury was constructed as cruel; causes had to be ‘grave and weighty’ and mere proof of injury to health was not sufficient.⁴⁰

While the act was important, the effect, which distinguished cruel conduct from that which was not, and the domestic legal discourse from the criminal one, was more so. This meant that cruelty encompassed more behaviours than did “assault”. It could include mental and physical cruelty, and breaches of contract such as adultery.⁴¹ It necessarily allowed proof of conduct over time so that an act that did not constitute

³⁴ Judge Fair cit., *Rogers v Rogers* 1937, NZLR 1937, pp.439-440.

³⁵ Judge Fair cit., *ibid.*, p.440.

³⁶ Judge Fair cit., *ibid.*, p.438.

³⁷ From the late 1800s, proof of injury had been considered sufficient to establish cruelty, and the nature of the conduct became less relevant Biggs, pp.37-38; from 1870 cruelty included mental cruelty, Rosen, p.173.

³⁸ Biggs, p.8; Luxford and Webb, p.23; Rosen, p.182.

³⁹ Biggs, p.20.

⁴⁰ Rosen, p.178; Biggs, pp.46-47.

⁴¹ *Gibbs v Gibbs* 1960, NZLR 1960, pp.802-8; *McNally v McNally* 1960, NZLR 1960, pp.964-71.

cruelty might do so if it was regularly repeated. This enabled “trivial” acts to cumulatively constitute cruelty.

The need to prove injury to establish cruelty invited medical discourses to shape legal constructions. Doctors giving evidence of physical or mental injury could corroborate women’s claims. This provided further institutional support for claims made by the medical profession that it exercised a moral authority beyond the practice rooms. The increasing power of psychiatric discourses in the twentieth century widened the construction of mental cruelty so that it included many forms of mental distress. A husband who sulked and ignored his wife, seriously affecting her nervous stability, was held by the English Court of Appeal to be cruel. This would not have been contemplated in the 1800s.⁴² Growth in psychiatric discourses also encouraged the making of complaints founded on mental cruelty. These were said to be becoming increasingly frequent.⁴³ It was still necessary, however, that mental cruelty had physical symptoms.

Judgment in *Smart v Smart* 1962 held that frequent drunkenness over a period of time accompanied by bad language, insults and violent actions (though not personal violence against the wife) could amount to cruelty, especially when it was apparent to the husband that his conduct was causing distress. This was despite there being ‘no physical violence towards the wife of any great importance’. In that case the husband would frequently arrive home drunk, use foul language, act demandingly and unpleasantly, such as throwing the contents of the refrigerator on the floor or cutting up his wife’s clothing, and this bore ‘heavily upon the physical and mental health of the wife’. A doctor had given evidence that the wife suffered from high blood pressure due to emotional strain and that a breakdown in health could happen.⁴⁴

Until 1963, intention was a necessary prerequisite of persistent cruelty. This was removed by the English judgments in *Gollins v Gollins* 1963 and *Williams v Williams* 1963, which reflected the increasing power of victimhood discourses. It was claimed that there were many instances where spouses were not insane, ‘but either sick in

⁴² *Lauder v Lauder* 1949 cit., Rosen, p,175.

⁴³ Biggs, p.170.

⁴⁴ *Smart v Smart* 1962, NZLR 1963, pp.307-12.

mind or body, or so stupid, selfish or spoilt that they plainly do not appreciate or foresee the harm which they are doing to the other'.⁴⁵

NON-LEGAL DISCOURSES

A victim-centred approach, that is a focus on the effects of cruel conduct on a person, potentially offered women greater opportunity for protection than the offender-based approach in criminal law. However, establishing cruelty was a more subjective process because it involved a private affair between two individuals rather than an offence against the community as a whole. Standards of marital conduct were variable. In domestic law cases legal precedent was of little use because decisions rested on the particularities of the effect of the conduct alleged to be cruel.⁴⁶ This meant that magistrates and judges ruling on domestic cases had greater discretion. Where persistent cruelty was established, a magistrate still had discretionary power to make or refuse an order.⁴⁷ This meant that there was potential for the influence of non-legal and opaque discourses. Individual proclivities often explained the difference in Appeal Court judgments.⁴⁸ It was suggested that any experienced practitioner would pay far more attention to the personality of the judge before the case was to appear than to earlier cases, which might have furnished precedents.⁴⁹ One New Zealand magistrate actually went on record that he totally disregarded the law in domestic proceedings because he was dealing with human problems.⁵⁰

Because judicial culture perpetuated the power structures within the society it served, namely dominant positions in relation to gender, ethnicity and class, judicial discretion generally employed conservative constructions that privileged middle-class Pakeha males. The male-dominated and middle-class profession reinforced conservative discourses that shaped interpretations of the legal construction of cruelty. Gender discourses were especially influential in shaping judges' and magistrates' perceptions of women petitioners. Legal literature abounded with constructions of

⁴⁵ Powles, pp.648-50.

⁴⁶ Luxford and Webb, p.23.

⁴⁷ *Smart v Smart* 1962, NZLR 1963, p.310.

⁴⁸ Biggs, p.58.

⁴⁹ Scorpio, 'In Your Armchair and Mine. Sexual Discrimination?', NZLJ, no.5, 5 March 1966, p.117.

⁵⁰ B.S. Barry, 'Introduction and Discussion', NZLJ, no.10, 3 June 1969, p.344.

women that undermined their credibility.⁵¹ Some of these were satirical, but these also relied on “commonsense” to be thought humorous. The male ethos shared by the profession had implications for how judges and magistrates might perceive women petitioners. Like police practice, gender discourses embedded in judicial responses reproduced stereotypes of female behaviour such as “asking for it” or dishonesty, that shaped judgement of guilt or innocence, blame and responsibility.

Gender discourses that positioned women as the weaker sex and in need of protection supported women’s claims of cruelty, but this was dependent on a woman appearing weak. Putting up with cruelty or bearing it stoically could undermine a woman’s claim. In one New Zealand Court of Appeal case, it was argued that because the wife had previously returned to her husband on two occasions for the sake of the children, ‘she could not have felt life was utterly unbearable with the husband’.⁵²

Provocation had long been considered a defence to accusations of cruelty. Although shifts in gender discourses meant that some once “reasonable” demands made by husbands were now thought “unreasonable”, the court would inquire whether the conduct of the wife was unreasonable in the circumstances, irrespective of the husband’s demands.⁵³ A study of English matrimonial law concluded that ‘except with regard to those acts which are so severe that no degree of provocation can excuse them, conduct cannot be complained of when it results from normal retaliation to unjustifiable actions’.⁵⁴ This provided opportunity for both sexes, but discursive supports for the preservation of marriage and the responsibility of wives to sustain marriages meant that provocation was more likely to support male privilege. One female lawyer said that ‘some wives very definitely provoke the assault by an unreasonable or relentless attitude’.⁵⁵ The discursive construction of “nagging” was particularly powerful. In the English case *Douglas v Douglas* 1958, it was held that words could justify provocation.⁵⁶ However, the violence had to be proportional to the provocation. While a wife’s adultery could excuse a husband’s conduct, it did not

⁵¹ My reading of the NZLJ in this time period.

⁵² *Spencer v Relph* 1969, NZLR 1969, p.717.

⁵³ Biggs, pp.146-7.

⁵⁴ *Ibid.*, p.149.

⁵⁵ A woman lawyer, ‘Wife-bashing’, in Phoebe Meikle, ed., *United Women’s Convention 1975*, Wellington, United Women’s Convention, 1975, p.51.

⁵⁶ *Cit.*, Rosen, p.230.

justify a savage beating.⁵⁷ As discussed in previous chapters, beliefs around provocation could distort and redefine women's fighting back.

Gender discourses that positioned women as dishonest or cunning were evident in a New Zealand case in which a magistrate had criticized the wife's evidence for exaggerating.⁵⁸ These beliefs had wide circulation. An English legal academic said 'it is common practice to find that a wife who has fallen out with her husband drags up all matters of abnormal sexual practices against her husband, when at the time she was a willing party'.⁵⁹ Another legal academic said in reference to both parties that events are 'always exaggerated in aspect'.⁶⁰ This construction was more likely to disadvantage women because most complainants were women. Constructions of women as irrational shaped responses to women's "reasonable" fear of danger. It was held that such fear 'must not be an apprehension merely from an exquisite and diseased sensibility of mind', that is not irrational.⁶¹ This was difficult to prove without corroboration.

Once again, class discourses were a powerful influence on judicial responses. Middle and upper-class spouses were less likely than lower socio-economic ones to petition for separation orders in New Zealand, reinforcing the belief that cruelty was a preserve of a particular class. Class discourses contested with those of gender and made it difficult for some women to claim to be "victims". Historically the law recognized that there were different classes in society, but the distinction had lessened over time.⁶² However, discourses that accepted a certain amount of "rough and tumble" and constructed it as normal and a sign of spousal affection were in circulation in the 1960s. An English legal academic said that, 'there are some people who regard horseplay as a natural part of married life and some wives who regard an occasional thrashing as a sign of their husband's affection'.⁶³ A New Zealand marriage guidance counsellor who worked in the 1970s said that some women clients

⁵⁷ English judgments cit., *ibid.*, p.231.

⁵⁸ Reported in *McNally v McNally* 1960, NZLR 1960, p.965.

⁵⁹ Rosen, p.231.

⁶⁰ Biggs, p.3.

⁶¹ Lord Stowell cit., Rosen, p.194.

⁶² Rosen, p.228.

⁶³ *Ibid.*

told him ‘if he beats me he must love me’.⁶⁴ Class discourses probably persisted in interpreting “some people” and subtly shaped newer discourses.

DISCURSIVE TENSION IN PRACTICE

Legal discourses could, on the one hand, provide remedies to terminate marital duties to cohabit, and on the other, aim to preserve marriage and families. Conciliation provisions were first introduced in the 1939 Domestic Proceedings Act.⁶⁵ In the 1960s it was common practice for lawyers to write letters to husbands in an effort to modify their conduct. If no satisfactory change ensued and a woman wished to pursue legal remedies, an application was lodged in the court and the parties could be ordered to attend counselling before a hearing date would be set. However, because there was a lack of trained conciliators, dispensation from counselling was frequently granted.⁶⁶ One magistrate said that it was sometimes almost impossible, especially in rural areas, to obtain a counsellor’s services.⁶⁷ As a result the requirement probably had less impact in the early 1960s than it did in later years when the training of marriage guidance counsellors was revitalized under state patronage and the 1963 Matrimonial Proceedings Act intensified the court’s duty to encourage reconciliation.

The discursive encouragement of the preservation of marriage strongly shaped magistrates’ and judges’ approaches to cases alleging cruelty. One New Zealand magistrate said that he was not there to find out who was right or wrong, but to see if he could save a marriage.⁶⁸ In Joan Rotherham’s experience as a lawyer, a woman ‘really had to be getting beaten’ before the courts granted her relief, and there was no understanding of psychological violence.⁶⁹ The meaning of cruelty was restrained by a fear that relaxing the requirements would make divorce too easy, especially given that a petition for divorce could be made on the ground of a separation order in force for three years if the petitioner was “innocent”.⁷⁰ In the oft-quoted English case,

⁶⁴ Phone call with George Sweet, Marriage Counsellor, 10 February 2009.

⁶⁵ K.D. MacRae, ‘Conciliation in Domestic Proceedings in New Zealand’, *Family Court Review*, vol.11, issue 2, 13 September 1973, p.9.

⁶⁶ One magistrate said that there had been little to encourage use of the conciliation procedure where there had been a limited supply of people suitably trained and experienced, M.L. Morgan, ‘Introduction and Discussion’, NZLJ, no.10, 3 June 1969, p.338.

⁶⁷ Morgan, p.338.

⁶⁸ Barry, p.344.

⁶⁹ Interview with Joan Rotherham, 8 July 2008.

⁷⁰ See Chapter 1.

Kalefsky v Kalefsky 1951, the judge said ‘if the door of cruelty were opened too wide we should soon find ourselves, granting divorce for incompatibility of temperament. This is an easy path to tread, especially in undefended cases. The temptation must be resisted lest we slip into a state of affairs where the institution of marriage itself is imperiled’.⁷¹ Because the preservation of the family was thought best to serve the social order, separation orders should be reserved for cases where protection was really needed. In the New Zealand cases *Bulman v Bulman* 1959 and *Hunt v Hunt* 1965, the wives’ petitions for separation orders were denied because it was held there was no danger from molestation or interference from their husbands.⁷² Family discourses that privileged the ideal nuclear family also shaped other discursive fields, such as social welfare and employment, so that a wife would often remain financially dependent on a husband’s maintenance after separation or divorce. It was difficult for a man to keep two homes on one wage and men were often reluctant to make maintenance payments.⁷³ Magistrates were cognizant of this.⁷⁴ Although remedies under domestic law were preferred to criminal justice ones because punishing offenders often inadvertently punished wives, domestic law was also constrained in dealing adequately with women’s experiences of cruelty.

The discursive tension within legislation and judicial discretion had major implications for women’s lived experience. The tension enabled judges and magistrates to entrench themselves in certain positions from which they would not move.⁷⁵ One New Zealand magistrate said lawyers sent people to him from far away because the magistrate in a particular district would not make a separation order except in rare cases. He also knew of other areas where this occurred.⁷⁶ The appeal structure within the justice system was designed to address inconsistencies in judicial practices, but people had to be prepared to lodge an appeal, which was time-consuming and expensive. The Appeal Court was also reluctant to overrule a judge in cases of cruelty because actually hearing and seeing the parties was thought to be a great advantage in making judgments.⁷⁷ In *Smart v Smart* 1962, the judge came to a

⁷¹ Cit., Biggs, p.78.

⁷² B.D. Inglis, ‘Recent Developments in Family Law’, NZLJ, no.2, 1 February 1966, p.42.

⁷³ HFS records, Dunedin branch, ‘Points of Law Affecting Women’, AG-647-171, HL, Dunedin.

⁷⁴ Barry, p.244.

⁷⁵ Rosen, p.xi.

⁷⁶ Morgan, p.339.

⁷⁷ Biggs, p.7.

different conclusion based on the written evidence, but deferred to the original judgment because he had not actually heard or seen the parties. Upholding the appeal would only be replacing the magistrate's exercise of discretion with his own.⁷⁸

Other than an appeal there was little official pressure to constrain judicial practices. The judge interviewed for this study said that if a judge or magistrate was perceived to be stepping over the line and going beyond a degree of fairness, a representative of the local branch of the Law Society might go and speak with him and ask him to modify some of his views. This was usually done in an informal way because the representative probably knew the magistrate personally. This was sometimes well received and sometimes not. There was nothing compelling in this process: the magistrate or judge decided if he would act on the advice or not.⁷⁹ This meant a magistrate's personal beliefs system had a powerful effect on women's lives: judgments were more than 'uttering the truth of the law'.⁸⁰

WOMEN'S ACCESS TO AND USE OF THE LAW

Exploring women's use of separation and divorce remedies and legal services in practice indicates how wives used the law to resist husbands' violence, the discourses that supported or undermined their access to the law, and what impact these had on women's lived experience. Divorce and separation remedies were important to women because they terminated a duty to cohabit and enabled some form of economic independence. While the statistics used offer some enlightenment on wives' capacity to resist husbands' violence, their limitation suggests that the key to accessing women's lived experience is in the discursive constructions shaping it. The statistics used are also more reflective of Pakeha women's practices.⁸¹

Divorce statistics indicate that while a significant number of women used divorce remedies, a very small group made a petition on the grounds of cruelty coupled with habitual drunkenness, or on the grounds of a separation order (based on a finding of

⁷⁸ *Smart v Smart* 1962, NZLR 1963, p.310.

⁷⁹ Interview with a judge, 1 May 2008.

⁸⁰ Carol Smart, *Feminism and the Power of the Law*, London, New York: Routledge, 1989, p.11.

⁸¹ Bronwyn Labrum, 'Family Needs and Family Desires: Discretionary State Welfare in New Zealand 1920-1970', PhD thesis, Victoria University, Wellington, 2000, pp.54-56. Labrum said that at this time large numbers of Maori marriages continued to be established by Maori customs and were not ratified

persistent cruelty) being in force for three years.⁸² This suggests that divorce was not an important resource for wives to resist a husband's violence in the first instance. It is unknown how many women pursued divorce after a being granted a separation order. Such women might not have wished to divorce because the non-molestation provisions in a separation order ceased to have effect when a divorce decree was granted. Divorced spouses had to rely on civil legal remedies under the Summary Proceedings Act for protection. These were restrictive compared to those provided under the 1910 Destitute Persons Act. They were also heard in the Supreme Court, which meant it was a costly and slow process.⁸³ As well, divorce may not have been desirable for women who invested heavily in discourses of marriage that linked social respectability to staying married.

It is difficult to determine how many women made petitions for separation on the ground of persistent cruelty in this time period. There are no accessible statistics of separation petitions and orders until 1970. However, the 1910 Destitute Persons Act was thought to affect more people than any other legislation.⁸⁴ Generally, provisions under the act were regarded as a legal remedy for women.⁸⁵ It was the most important piece of legislation aiding wives with violent husbands. Despite this, the Department of Justice did not keep statistics for actions under this legislation, indicating that there was a lack of interest in the conduct on which they were based. Gender constructions that relegated women to the domestic sphere and discouraged taking women seriously probably shaped this response.

in law, and Maori had less engagement with family law processes because cultural discourses were more powerful in shaping Maori social practices.

⁸² The majority of divorce petitions were made on the ground of a separation agreement being in force for three years with women making up just over half of the petitioners. Adultery was the second most used ground to petition for divorce. In 1965 of 2440 divorce petitions, 1165 were made on the grounds of a separation agreement being in force for three years and women made 623 of these. 384 men and 273 women petitioned on the grounds of adultery. Of a total of 1165 divorce petitions by women, 16 were made on the grounds of habitual drunkenness coupled with cruelty. 49 women were granted a decree on the basis of a separation order being in effect for three years, Department of Statistics, NZOY, 1967, pp.126-7.

⁸³ Magistrate Gilliland to Secretary for Justice, 24 August 1971, Domestic Proceedings Act 1968 – Interpretations, 1970-1971, ABVP, 500, W4927, box 47, J 18-11-191, pt 1, Archives New Zealand (ANZ), Wellington.

⁸⁴ Martyn Finlay, *New Zealand Parliamentary Debates* (NZPD), 1968, 358, p.3369.

⁸⁵ Domestic proceedings were 'to secure rights given by the statute to wives', judgment in *Kilkelly v Nikoloff* 1969, NZLR 1969, p.846.

Census statistics indicate that over the 1960s a small but increasing minority of the population used separation remedies, either as a recorded agreement or a court-ordered one. It is unknown how many separated informally.⁸⁶ While the percentage of legally separated in the population was stable, actual numbers rose substantially. From 1961 to 1966 there was an 18.3% increase, from 12,990 to 15,367 adults.⁸⁷ Both the divorced and legally separated had increased numerically by 1971, and while some of the increase was a reflection of a shift in attitudes towards marriage, the increase was also facilitated by legislative changes introduced in 1968.⁸⁸ The figures indicate that from the early 1960s the belief in cohabitation as a duty was fading.

It is also unknown how many people petitioned unsuccessfully for separation orders. A report prepared by a probation officer on petitions under the 1910 Destitute Persons Act recorded over a six-week period in Auckland in 1960 suggests that many petitions were made. Of 77 cases 65% cited the reason for marriage breakdown as failure to maintain, 35% cited persistent cruelty and 10%, habitual inebriation.⁸⁹ It is not known how many of these progressed to a court hearing.

Petitions that did not cite cruelty did not mean there had been none. Other grounds may have been easier to pursue to escape violent marriages. Some lawyers were reported to have said that in one in three cases of divorce the wife had been bashed at some stage.⁹⁰ A woman lawyer said that in cases for separation or divorce and other domestic affair cases she handled, the majority of wives had described at least one assault.⁹¹ Some cruelty might have resulted in separation agreements. Separation agreements had been available as grounds for divorce since 1920.⁹² The SPHF reported that many domestic problems were settled by agreement before they reached

⁸⁶ Those that separated informally were thought to record themselves on the census as “married” rather than as “separated”, *New Zealand Census of Population and Dwellings 1966*, ‘Age and Marital Status’, p.7.

⁸⁷ *New Zealand Census of Population and Dwellings 1961*, ‘Age and Marital Status’, p.7; *New Zealand Census of Population and Dwellings 1966*, ‘Age and Marital Status’, p.7.

⁸⁸ Discussed in Chapter 7.

⁸⁹ Jennifer Daly, *MG Reflecting. A Portrait of Marriage Guidance New Zealand, 1949-1989*, Wellington: Marriage Guidance, 1990, p.16.

⁹⁰ A member of the New Zealand Homemakers’ Union cit., ‘Wife-bashing’, in Phoebe Meikle, ed., *United Women’s Convention 1975*, Wellington: United Women’s Convention, 1975, p.48.

⁹¹ A woman lawyer, ‘Wife-bashing’, *ibid.*, p.51.

⁹² See Chapter 1.

a stage of court proceedings.⁹³ Anecdotal evidence suggests that middle and upper-class men were subject to a greater extent to marriage discourses, which meant exposure of poor conduct could invite shame. Such men were more inclined to protect their reputations and social status and agree to separate rather than defend a petition. Lawyer Joan Rotherham recalls that middle and upper-class clients, whose husbands were often professional persons, were able to procure separation agreements because they could threaten police action if their husbands did not leave.⁹⁴ The judge interviewed for this study recalls that some middle-class women clients seeking separation agreements alleged physical and mental cruelty. Cruelty could also be raised indirectly when negotiating agreements. One woman client told her lawyer that she did not want her husband to have the children because he was a ‘bombastic bully’, an allegation that could support a claim of cruelty.⁹⁵

Shaming discourses also explain why some women did not readily admit to being treated cruelly. The judge interviewed for this study said that, as a lawyer, it often required a degree of probing to find out if cruelty was the cause of a wife’s problems. Women often used euphemisms, such as not being provided with sufficient money or that their husbands were drinking too much. These constructions were not as subject to shaming discourses because they did not bring a woman’s behaviour into question. Women also less readily admitted to physical cruelty than they did to psychological cruelty.⁹⁶

Women had strong investment in discourses that held them responsible for the well-being of marriage and shaped expectations of their behaviour. The interviewed judge found that even when women made petitions on the ground of persistent cruelty, they did not readily admit physical cruelty. When they did admit it, some offered excuses for their husbands’ behaviour which made it difficult for a lawyer to pursue their cases successfully. He thought that some women made incredible excuses for husbands’ cruelty, for example, ‘I am inclined to nag or do other things, which annoy him’.⁹⁷

⁹³ HFS records, Wellington branch, Annual Report 1958, p.5, MSX 3294, ATL, Wellington.

⁹⁴ Interview with Joan Rotherham, 8 July 2008.

⁹⁵ Interview with a judge, 1 May 2008.

⁹⁶ Ibid.

⁹⁷ Ibid.

In a 1972 study of 40 divorced and separated women, half the women alleged cruelty to themselves and/or their children, and 65% blamed themselves. Self-reported “faults” included, ‘by not being submissive I might have invited trouble’, ‘perhaps I put the children first by not accompanying him to the pub in the evenings’ and ‘I should have stuck up for my rights – I was inclined to give in to him for the sake of the peace’. Another woman said that ‘perhaps she talked too much’.⁹⁸ Similarly, one lawyer said that in her experience, women clients tended to complain about beatings when the marriage had reached a critical stage and they wanted a separation, but in general, many wives did not consider an occasional slap or thumping as sufficient reason to seek outside aid and bore it as part of the pattern of married life.⁹⁹

The exact number of women who sought legal remedies to escape cruelty is unknown, but the preceding discussion indicates that the law was difficult to access, that dominant discourses discouraged women from doing so, or that women used alternative solutions such as separation agreements or informal separations. However, the latter option was dependent on a husband’s co-operation, and if parties entered into a separation agreement, the wife could not get a deserted wife’s benefit if maintenance was not forthcoming. In some defended separation hearings both parties had expressed a wish to separate, but disagreed on the amount of maintenance.¹⁰⁰ It is probable that all three reasons applied, but shaming discourses and financial issues likely played a major part.

There was no legal aid in terms of state financial assistance to pay lawyers in domestic proceedings. This was essentially an outcome of discourses that privileged family preservation, and legal discourses that constructed cruelty as a breach of contract, therefore a private contest between two parties. Domestic proceedings were expensive; lawyers were employed primarily by the higher socio-economic classes.¹⁰¹ However, most court registrars were expected to assist parties, and the state had a ‘very long standing arrangement with the Law Society’ that the profession would give

⁹⁸ Ormond Wilson, ‘Divorced and Separated Families: Some Mothers’ Views of Causes and Effects’, MA thesis, Massey University, Palmerston North, 1972, pp.40-41.

⁹⁹ A woman lawyer, ‘Wife-bashing’, p.51.

¹⁰⁰ Observation by Barry, ‘Discussion’, p.344.

¹⁰¹ P.J. Evans and S.D. Ross, ‘Legal Aid in New Zealand and Abroad’, NZULR, vol.5, 1972-1973, pp.1-2.

what assistance it could.¹⁰² This promised more than it delivered. The Wellington Law Society was reluctant to supply a branch of the SPHF with the name of even one lawyer who was willing to act for their clients.¹⁰³ Its reluctance might have been understandable, but it meant women could not easily know who could help them. The Mothers' Union also observed that, although the Law Society had given an understanding that no one was to be deprived of legal services, few women knew of this or availed themselves of it.¹⁰⁴ Some women implored the Ministry of Justice to help secure free or cheap legal aid, but the Ministry was not forthcoming. It replied to one woman's requests that it was sorry to hear that the Auckland Law Society was unhelpful, but was sure that if the woman could establish that she could not afford legal services, the decision would be reconsidered.¹⁰⁵ Women who knew about and lived close to branches of the SPHF could access its solicitors, who worked on a voluntary basis or for small remuneration. Many women did this, as did state welfare agencies, which frequently referred women requiring legal advice to the Society. This occurred to such an extent as to embarrass the Society for over-using solicitors' voluntary services.¹⁰⁶ The dominance of discourses that encouraged financial dependence on husbands meant many women were excluded from accessing available legal remedies.

The adversarial nature of domestic proceedings, which potentially engendered stress and embarrassment, might also have discouraged women. Some measures had been introduced to reduce this. Since the 1939 Domestic Proceedings Act, petitions under the 1910 Destitute Persons Act had been heard in private, at least protecting the parties from public humiliation.¹⁰⁷ But questioning by the defence lawyer could still constitute a revictimization for a woman complainant. From 1958 there was a ban on publishing evidence in divorce cases and this had minimized the bitterness, distress

¹⁰² M. Smith for Secretary of Justice to Registrar of Magistrate's Court, 13 February 1970, Legislation – Destitute Persons Act, 1968-1970, ABVP, 500, W4927, box 47, J 18-11-190, ANZ, Wellington.

¹⁰³ HFS records, Dunedin branch, Minute Meetings, 1970, AG-647-171, HL, Dunedin.

¹⁰⁴ Submission by Mothers' Union September 1968, Committees Statutes Revision, 1968-1968, LE 1657, box 1, 1968/11, ANZ, Wellington.

¹⁰⁵ Minister of Justice to Miss McKenzie, 18 September 1968, Legislation - Destitute Person's Act and Domestic Proceedings Bill, 1967-1970, ABVP, 500, W4927, box 47, J 18-11-161, pt 3, ANZ, Wellington.

¹⁰⁶ HFS records, Dunedin branch, Minutes National Executive Meeting, Wellington 1968, AG-647-171, HL, Dunedin.

¹⁰⁷ D.F. Dugdale, 'Reforming Divorce Procedure', NZLJ, no.4, 4 March 1969, p.88.

and humiliation involved in divorce petitions.¹⁰⁸ But still, parties to a divorce petition had to relate their evidence in a courtroom often crowded with strangers.¹⁰⁹ The repetition of ‘sad little tales’ might also have hardened those obliged to listen, the repetition accustoming listeners to traumatic events and encouraging a trivialization of domestic law compounded women’s difficulties accessing it. Some lawyers called matrimonial law ‘agony law’, a ‘squalid appendage to the criminal side of the court’.¹¹⁰ The judge interviewed for this study recalls that cases involving cruelty were regarded as ‘incidental’ work.¹¹¹ Joan Rotherham recalls that there was not much interest in it, ‘it was considered a bit of a nuisance’ and there was very little training about it.¹¹² Petitions under domestic law were often referred to new lawyers in the firm.¹¹³ Inadequate training compounded their youth and inexperience. The Royal Commission on the Courts reporting in 1980 expressed concern that many newly qualified lawyers were unfamiliar with procedural requirements and suggested improvements in their training.¹¹⁴ Incorrect procedures could obstruct a woman’s petition. In one case the judge dismissed a petition for a separation order because the word ‘persistent’ had been substituted with ‘consistent’.¹¹⁵ Some lawyers refused to take on such work. So many refused that the Hamilton District Law Society sent out a circular to its members complaining that some of them were not ‘playing the game’.¹¹⁶ The Royal Commission criticized lawyers for failure to discharge their duties to the court and to their clients ‘by using procedures and tactics to delay the final determination of the case’.¹¹⁷ Delays could mean higher profits. Because women formed the majority of petitioners, these practices did not serve women’s interests well. The fact that most complaints over litigation made to the Royal Commission referred to matrimonial matters and most complaints about lawyers were from

¹⁰⁸ Redmer Yska, *Truth. The Rise and Fall of the People’s Paper*, Nelson: Craig Potton Publishing, 2010, p.125.

¹⁰⁹ Dugdale, p.88.

¹¹⁰ Martyn Finlay, NZPD, 1968, 358, p.3368; Ralph Hanan, NZPD, 1968, 358, 1968, p.3367.

¹¹¹ Interview with a judge, 1 May 2008.

¹¹² Interview with Joan Rotherham, 8 July 2008.

¹¹³ Ibid; interview with a judge, 1 May 2008.

¹¹⁴ Royal Commission on the Courts, *Report of the Royal Commission on the Courts*, Wellington: Government Printer, 1978, p.284.

¹¹⁵ *Grieves v Grieves* 1960, NZLR 1960, p.809.

¹¹⁶ Morgan, p.339.

¹¹⁷ Royal Commission on the Courts, p.283.

women, immigrants or Maori people, groups marginalized by dominant power structures, is evidence of this.¹¹⁸

Court delays prolonged a traumatic experience. One case occupied three full days over the course of four months.¹¹⁹ One probation officer reported that there were many cases of ‘severe cruelty where action for the protection of the complainant has been delayed by the volume of work, and there are cases where men have absconded as soon as they get wind of proceedings, leaving women and children in financially critical circumstances’.¹²⁰ This also meant that women petitioners citing persistent cruelty could be reconstructed as deserted wives rather than as wives who had cruel husbands.

The male domination of the legal profession might have discouraged women from approaching lawyers and sharing private information. The professions’s male ethos reinforced the attitude to domestic law as low status and discouraged its members from taking women and their complaints seriously. In 1969 Roma Mitchell, the only woman Supreme Court judge in Australia, was invited to speak at the Centennial Conference of the New Zealand Law Society. However, her speech titled, ‘The Family and the Law’, was intended only for the amusement of the wives who accompanied husbands to the conference, and was published in the *New Zealand Law Journal* under the heading, ‘An Address Given to the Ladies’.¹²¹

Women were legally able to enter the profession from 1896, but constructions of femininity discouraged them from doing so, or practising law when qualified. Women lawyers were rare before the 1970s. In 1969, of 2,720 members of the Law Society holding practising certificates, 45 were female (1.7%). In 1971, 4% of lawyers were female; in 1975 only 2.6% were.¹²² Joan Rotherham recalls being in 1973 the only female lawyer in Christchurch. She had found it difficult to get a job because most firms told her they did not employ female lawyers. Rotherham said a friend of hers

¹¹⁸ Ibid., pp.281-2.

¹¹⁹ B.D. Inglis, ‘Family Law’, NZLJ, no.10, 3 June 1969, p.327.

¹²⁰ Cit., Daly, p.16.

¹²¹ Roma Mitchell, ‘The Family and the Law’, NZLJ, no.10, 3 June 1969, pp.181-190.

¹²² Rachel Pond, ‘The Legal Response to Men’s Violence Against Women (ex-) Partners: Narrative Representation of Women’s Experiences and Discourse Analysis of Lawyers’ Talk’, PhD thesis,

who had trained at Oxford and had three years experience of English law had tried to get a job in the same year and had given up. She was told they did not have female lawyers here. However, having a female lawyer proved an advantage when women began to ring asking specifically for one.¹²³ Gender constructions also directed female lawyers into low status work. As one woman lawyer wrote: ‘the woman lawyer is indeed a rare bird most frequently found in the conveyancing department of some of the more enlightened law firms, Government Departments, Universities, but rarely in the Courtroom, and she is never found as a Judge’.¹²⁴ Joan Rotherham began her career in family law, an area thought suited to female attributes.

REASONABLE CAUSE TO LIVE APART

In the Magistrate’s Court, conduct that did not constitute persistent cruelty and did not justify a separation order could still be reasonable cause to live apart and justify a maintenance order.¹²⁵ ‘Reasonable cause’ fell short of ‘grave and weighty’, but was something more than the ‘mere wear and tear’ of marriage.¹²⁶ It enabled a wife to live independently from her husband, but did not provide the protection from molestation secured by a separation order. A maintenance order made on this basis was a temporary order, so less secure, because it was subject to a husband’s conduct. A change in his conduct could make the order redundant, but in the meantime, it defended a wife from disciplinary actions arising from desertion and gave her moral, legal and financial support for living apart. It was an alternative escape route from a violent marriage. It also provided the state with a resolution that potentially had less impact on the stability of marriage because there was a greater chance of reconciliation.

It had long been accepted at common law that a husband was freed from maintenance obligations where a wife deserted and voluntarily remained apart from him.¹²⁷ The law would not aid a wife who did not fulfil her duties. In this way, the state

Massey University, Palmerston North, 2003, p.38; Carolyn Henwood, ‘Women Lawyers Unite. Women and the Profession’, NZLJ, no.16, 2 September 1975, p.612.

¹²³ Interview with Joan Rotherham, 8 July 2008.

¹²⁴ Carolyn Henwood, ‘Women Lawyers Unite. Women and the Profession’, NZLJ, no.16, 2 September 1975, p.612.

¹²⁵ *Rolfe v Rolfe* 1959, NZLR 1959, p.1229.

¹²⁶ For example, *Grieve v Grieve* 1960, NZLR 1960, pp.806-14; *Rolfe v Rolfe* 1959, NZLR 1959, p.1227.

¹²⁷ *King v Wilson* 1959, NZLR 1960, p.274.

disciplined women who did not conform. However, the court could compel a husband to provide for his wife if, in its opinion, she had reasonable cause for refusing or failing to live with him. If a husband conducted relations with his wife so as to make life with him intolerable to her, then it was reasonable that he should support her elsewhere.¹²⁸ In 1959 the Supreme Court ruled that the fact a person may become a burden on the state was to be taken into account, and that a wife unjustifiably left her husband was not a bar to making a maintenance order for her.¹²⁹ This ruling embodied discourses of state responsibility and economics that privileged an independent family unit, and contested those that positioned a wife as “undeserving”. However, constructions around the latter persisted. One magistrate, later to become a judge in the Family Court, said that while ‘it is hard on the wife to have no maintenance...the law takes the proper view that if a wife, without reasonable cause, seeks to evade her duty to live with her husband, she must purchase her evasion with the price of maintaining herself’.¹³⁰

As in all domestic proceedings, there was ‘no hard and fast rule’.¹³¹ Discourses that made maintenance orders subject to women’s conduct were unpredictable. In the New Zealand case, *Wilson v Wilson* 1965, a wife was found to have reasonable cause to leave because her husband did not want her as a wife, but as a servant whom he was prepared to remunerate by her keep. The judge did not support compelling the wife to return to a life of great unhappiness because of the couple’s ‘mutual antipathy, which on his part would be manifested by him against her in abuse and ridicule’. This was despite the wife not being ‘wholly free from blame for the state of affairs’.¹³² In another case a maintenance order was made despite cruelty not being proven because the wife’s physical and mental health had deteriorated largely through the fault of the husband. However, the order could be cancelled if the wife did not endeavour to maintain herself or improve her health and then return to her husband.¹³³ Judgment in the New Zealand case, *Hodder v Hodder* 1961, upheld a maintenance order despite the wife not being found to be in constructive desertion i.e. desertion due to her

¹²⁸ The New Zealand case, *Watkins v Watkins* 1914, cit., Luxford and Webb, p.28.

¹²⁹ *King v Wilson* 1959, NZLR 1960, p.276.

¹³⁰ B.D. Inglis, ‘Maintenance of Deserting Wives’, NZLJ, no.2, 20 February 1962, p.59.

¹³¹ *King v Wilson* 1959, NZLR 1960, p.275.

¹³² *Wilson v Wilson* 1965, NZLR 1965, p.629.

¹³³ *Johnstone v Johnstone* 1937, reported in Luxford and Webb, p.29.

husband's conduct, because she was destitute and unable to work because of poor health. The fact that the husband was unwilling to return home added weight to the judgment.¹³⁴ In contrast, constructions of "undeserving" wives operated more powerfully in *M v M* 1968. In that case the wife was refused a maintenance order because the husband was not responsible for all the conditions that made it intolerable for her to stay with him.¹³⁵

SEXUAL VIOLENCE AND CRUELTY

As has been said, rape law had limited application to marital relations. A husband could not be charged with raping his wife, but a husband could be charged with rape if a separation order, a divorce decree, or a separation agreement were in force, the latter dependent on the terms of the contract. The circumstances where husbands could be charged with rape reflected a shift in gender discourses that limited husbands' rights over wives' bodies. Under domestic law, rape or sexual violence could constitute cruelty, but these were contested by discourses that supported male privilege and held procreation as a duty of marriage. Some cases outside the period are referred to because they set precedents that continued into the 1960s and 1970s.

In the period under study a criminal law text quoted Lord Dundedin, a Scottish judge, saying that 'if the wife is adamant in her refusal the husband must choose between letting his wife's will prevail, thus wrecking the marriage, and acting without her consent. It would be intolerable if he were to be conditioned in his course of action by the threat of criminal proceedings'.¹³⁶ This construction exemplifies the institutional support for men's right to sexual duties from wives and that a woman's experience of sexual relations was subservient to a husband's "needs". The English judgment in *Kelly v Kelly* 1939 suggested women had a right of refusal: 'the husband has not legal right to insist on his wife submitting to sexual intercourse on any and every occasion on which he may desire it...a wife has a right to refuse altogether to allow her husband to have sexual intercourse with her, and so long as she performs her other

¹³⁴ *Hodder v Hodder* 1961, NZLR 1961, pp.677-9.

¹³⁵ Reported in Luxford and Webb, p.30.

¹³⁶ Dated late 1960s or early 1970s, cit., Susan Edwards, 'Male Violence Against Women: Excusatory and Explanatory Ideologies in Law and Society', in Susan Edwards, *Gender, Sex and the Law*, Beckenham, Kent: Croom Helm Ltd, 1985, p.194.

wifely duties, he has no redress for such a refusal'.¹³⁷ But insistence did not necessarily constitute cruelty. In *Kelly v Kelly*, the husband's sexual practices were constructed as abnormal and had affected the health of the wife, but they did not amount to cruelty. She did however have reasonable cause to live apart and was entitled to a maintenance order. This judgment did not make clear if a wife who refused "normal" sexual relations could be held to be in constructive desertion i.e. was responsible for her husband's leaving, but it had long been held that refusal could cause injury to the other's health.¹³⁸

In the English case *Kalefsky v Kalefsky* 1951, judgment held that 'the wilful and unjustifiable refusal of sexual intercourse is destructive of marriage, more destructive, perhaps, than anything else. Just as normal sexual intercourse is the natural bond of marriage, so the wilful refusal of it causes a marriage to disintegrate'.¹³⁹ Therefore, if such a refusal was unjustifiable and caused injury to health, there was no bar to cruelty being established.¹⁴⁰ This standard could put pressure on women to comply with their husbands' sexual demands or risk 'constructive desertion' which meant they would not have been entitled to welfare benefits or maintenance. In practice, however, the English courts did not readily condemn anyone who refused sexual access to their spouse.¹⁴¹ In *Walsham v Walsham* 1949, judgment held that mere abstention could not amount to cruelty, even if it injured the denied party's health.¹⁴² This decision appears to have applied in the New Zealand case, *Paddison v Paddison* 1949, in which a husband was held liable to maintain his wife despite her refusal of intercourse.¹⁴³

While both parties could be held to be cruel where contraception was used without the other's consent, wives could claim and defend allegations of cruelty on this ground more easily than could husbands. *Coitus interruptus* was cruel on two grounds: it frustrated the wife's maternal instinct and it was injurious to the wife's health because it prevented the wife from having full satisfaction short of satisfaction of the maternal

¹³⁷ Cit., Luxford and Webb, p.29.

¹³⁸ Biggs, p.170.

¹³⁹ Cit., Biggs, p.172.

¹⁴⁰ Biggs p.172.

¹⁴¹ Ibid., pp.171-4.

¹⁴² Ibid., p.171.

¹⁴³ Reported in Luxford and Webb, p.29.

instinct.¹⁴⁴ A wife could more easily defend an allegation of cruelty because her use of contraception could be constructed as a fear of the consequences of childbirth.¹⁴⁵ These findings were premised on medical discourses that made a woman's health, especially mental health, contingent on satisfactory sexual relations and conservative discourses that embodied the belief that a woman's ultimate satisfaction came from having children.

Morality discourses were particularly powerful in shaping judicial responses to allegations of sexual violence. Women who endured "normal" sexual practices had little recourse to law, but the law would intervene when sexual practices were "unnatural", such as masturbation, sodomy and cross-dressing.¹⁴⁶ "Normal" sexuality was premised on gender difference, heterosexuality and reproduction. In the English case *Lawson v Lawson* 1955, great importance was attached to the husband's insistence on his wife masturbating him because it showed that he was a 'man who was given to filthy practices with his wife'.¹⁴⁷ However, it was difficult to prove both that the conduct occurred and the absence of consent.¹⁴⁸ The belief that it was difficult to rape a woman was also influential. An English wife's allegation of sodomy was dismissed because the magistrate did not believe it could be done without the other's consent.¹⁴⁹ Wives were also subject to allegations of "unnatural" conduct. A proven or suspicious association with another woman could be held to be cruel conduct towards the husband.¹⁵⁰

CONCLUSION

Domestic law regulated marriage as a legal contractual agreement. Cruelty constituted a breach of contract and the law provided remedies to it that altered its terms: divorce, separation and maintenance orders. Men's violence against wives was proscribed because it jeopardized marriage and indirectly, the social order. However, discourses embedded in law that aimed to preserve marriage and prescribed gender-specific duties and expectations, contested women's claims of cruelty. This was compounded

¹⁴⁴ Reported in Biggs, p.176.

¹⁴⁵ Lord Denning in *Fowler v Fowler* 1952, reported in *ibid.*, p.177.

¹⁴⁶ *Ibid.*, pp.170, 185; Rosen, pp.201-2.

¹⁴⁷ *Cit.*, Biggs, p.6.

¹⁴⁸ Rosen, p.201.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*, pp.201-2.

by the social arrangement in which married women were usually financially dependent on men. Women also made investments in these discourses, which might have discouraged them from pursuing legal remedies. Where women sought legal assistance, the low status of domestic law and the male ethos of the legal profession meant they could have poor legal support.

Dominant discourses of law and the family privileging the ideal nuclear family supported the belief that if the law intervened in ‘all but the most egregious cases, incalculable harm to the family’ might be done and the basic building block of society might be permanently weakened.¹⁵¹ Legal support for a husband’s right to control and discipline his wife, and constructions of women that engendered beliefs that women provoked or deserved the violence, powerfully contested women’s claims of cruelty and enabled a toleration of a certain level of violence within marriage.

The necessity of injury to prove cruelty focused attention on the female complainant and obscured a husband’s conduct. This dependency also provided opportunity. Medical discourses combined with gender ones to widen the legal meaning of cruelty. Mental distress and ill-treatment more easily constituted cruelty for women than for men, and some sexual practices were deemed more injurious to women. But as in any court of law, allegations had to be proven, and this was particularly difficult when conduct complained of was mostly private in nature.

Legal discourses that made cruelty a question of fact held judicial discretion essential. This invited multiple contesting discourses that intersected in various ways to shape court outcomes. Even where cruelty or persistent cruelty was proven, a magistrate could still deny a legal remedy.¹⁵² This made domestic court outcomes more unpredictable than in the criminal justice system. In the main the courts annulled duties to cohabit and ordered economic support for women in cases of serious cruelty not of their making, and where they had endured poor physical or mental health. Some women were granted reasonable cause to live apart with financial support from

¹⁵¹ Eva Buzawa and Carl Buzawa, *Domestic Violence. The Criminal Justice Response* (3rd ed.), Thousand Oaks, California: Sage Publications, 2003, p.3.

¹⁵² *Smart v Smart* 1962, NZLR 1963, p.310.

husbands when their claims fell short of 'grave and weighty' causes. Some women were granted legal remedies even when they were found to be partially responsible. However, overall, the threshold to prove cruelty was high, and only a small number of women gained support under the law relating to cruelty. Judicial decision-making under domestic law upheld the social structure that enabled cruelty in the first instance and reinforced male privilege. Colin James's description of Australian divorce law until the 1970s as a judicial instrument 'to preserve hierarchy in marriage-based family by the silencing of women and the empowering of men', can also be applied to judicial responses in the discursive field of domestic proceedings in New Zealand in the 1960s.¹⁵³ The next chapter explores social and material practices, which, on occasion, provided opportunity for women to leave violent marriages, but more often than not, compounded legal difficulties associated with leaving.

¹⁵³ Colin James, 'A History of Cruelty in Australian Divorce', Australian and New Zealand Law and History Society Conference, Hobart, 10 December 2006, pp.1-30. Retrieved December 2008 from www.anzlhesejournal.auckland.ac.nz.

Chapter 5

THE STATE AND LEAVING: OBSTACLES AND PATHWAYS

It was not easy for a woman to leave a violent marriage. While domestic law provided remedies for women whose complaints of violence met the standard of “legal cruelty”, dominant discourses within and outside the law often contested, and only occasionally supported, applications for such remedies. These included legal discourses and practices surrounding marriage, custody, maintenance and matrimonial property, as well as state provision of welfare, housing and employment. This chapter analyzes how the state, through its laws and social policies, affected women’s capacity to resist a husband or partner’s violence against them. Because laws and social policies changed unevenly, they are covered in various periods through the 1960s and 1970s.

CUSTODY

Whether the courts would grant the mother custody of children was a serious consideration for many women choosing to leave a marriage. Several statutes privileging child welfare governed custody directions by the court.¹ The 1908 Infants Act provided that the court could make a custody order ‘having regard to the welfare of the infant, and to the conduct of the parents’.² This was supported by the 1926 Guardianship of Infants Act which made children’s welfare the paramount consideration.³ The 1928 Divorce and Matrimonial Causes Act directed the court to make such an order as appeared just with regard to the custody, maintenance and education of the children.⁴ Finally, the 1963 Matrimonial Proceedings Act enabled the court to direct the whole or part of the matrimonial proceeds for the benefit of the

¹ The 1968 Guardianship Act would come into effect in 1970. Discussed in next chapter.

² Rutherford Ward, ‘Parental Misconduct and The Custody of Children’, in B. Inglis and A. Mercer, eds, *Family Law Centenary Essays*, Wellington: Sweet and Maxwell NZ Ltd, 1967, p.61; *New Zealand Statutes Reprints, 1908-1957*, 1908 Infants Act, vol.6, p.592.

³ Ward, p.60; *New Zealand Statutes (NZS)*, 1926, Guardian of Infants Act, p.481.

⁴ C. Irvine, ‘Custody of Infants’, *New Zealand Law Journal (NZLJ)*, no.5, 20 March 1962, p.97; NZS, 1928, Divorce and Matrimonial Causes Act, p.213.

children.⁵ Within this legislative framework, the moral, spiritual and emotional welfare of children was held equal in importance to a child's physical and economic well-being.⁶

Which parent should have custody was largely dependent on judicial discretion. Judges and magistrates could call for reports by Child Welfare officers, however, this involved only about 9% of custody disputes before the courts in the 1960s.⁷ In 1965 the Child Welfare Division prepared 114 reports on custody, but there were 1364 families on whom reports might have been obtained.⁸ It was not evident if the court already had sufficient information on the remaining families to make orders. Conflict between state agencies over the cost of such reports might also have discouraged the making of them.

Consequently, as with "legal cruelty",⁹ the personal predilections of individual judges and magistrates were important in shaping custody directions and enabled a wide range of legitimate outcomes. For example, members of the judiciary variously subscribed to the "mother principle", not enshrined in law, which held that young children should not be separated from their mothers, especially female children. De facto wives were less affected by custody law because they automatically had custody of their children, an effect of their non-contractual relationship.

In the first part of the twentieth century, the dominant belief was that custody should not be given to the "guilty" spouse and only in exceptional circumstances should access be granted to them.¹⁰ Judgment in *Low v Low* 1950 and *Palmer v Palmer* 1961 indicated a change. Conduct was important, but only so far as it affected a child's welfare.¹¹ In the first case an interim custody order was made in favour of a 'guilty' wife.¹² This reflected the emergence of the mother principle. However, older morality

⁵ *Hofman v Hofman* 1965, *New Zealand Law Reports* (NZLR) 1965, p.799; NZS, 1963, Matrimonial Proceedings Act, p.643.

⁶ Judgment in *Fleming v Fleming* 1948, reported in Ward, p.62.

⁷ Anthony J. Taylor, 'A Psychologist's View of Family Law', in B. Inglis and A. Mercer, eds, *Family Law Centenary Essays*, Wellington: Sweet and Maxwell NZ Ltd, 1967, p.102.

⁸ Taylor, p.102.

⁹ See previous chapter for definition.

¹⁰ Irvine, p.97.

¹¹ New Zealand cases reported in *ibid.*, pp.97-98; and Ward, p.61.

¹² Reported in Irvine, pp.97-98.

discourses persisted. Rutherford Ward's 1967 study of custody orders showed that few so-called 'guilty' spouses were awarded custody, especially in cases of adultery.¹³ Ward further observed that judges and magistrates were still motivated by a Victorian abhorrence of moral failing and appeared to condemn abandonment or adultery without question as immorality that would endanger the welfare of the child.¹⁴ Judgment in *M v M & L* 1964 demonstrates the discursive effect of this. The Court of Appeal reversed a custody order given to the mother of a six-year old girl, stating that too much emphasis had been laid on 'the mother principle'. It also held the wife's de facto relationship against her. One appeal judge found the wife to have 'shown such a brazen defiance of all that is regarded by decent people as proper and acceptable as to give him grave doubts whether she was the best person to give guidance and instruction to her daughter on adolescent problems and to guide her destiny on moral issues'.¹⁵ Her desertion of an "innocent" husband was the decisive factor in his reversing the order and awarding the husband custody. This belief had wide currency. In 1960 the Christchurch branch of the Society for the Protection of Home and Family (SPHF) supported a mother's petition for custody of two young daughters because it considered it undesirable that the children should remain in their father's care while he was in a de facto relationship.¹⁶

When social practices encouraged female economic dependence on men, leaving a husband for another man provided an exit from an oppressive marriage, but women risked losing custody unless they had proof of their husband's misconduct. It was thought a woman who had broken up a home by her conduct could not be a good mother, regardless of underlying reasons.¹⁷ Ward observed that the courts sometimes too readily labeled as unstable and weak in character a woman who took her children from the matrimonial home and went to live with another man.¹⁸ Shirley Smith wrote, this meant 'the petitioner, on proof of one act of adultery, may avoid or exact the payment of maintenance, get custody of the children, and damn black and guilty for

¹³ Ward, p.62.

¹⁴ Ibid., pp.62-64.

¹⁵ Ibid., pp.58-60.

¹⁶ Home and Family Society (HFS) records, Christchurch branch, Minute meetings, 21 September 1960, D7, MB309, Macmillan Brown Library (MBL), Christchurch.

¹⁷ For example, Ontario Court of Appeal judgment in 1945, reported as being relevant to NZ in Ward, p.65.

¹⁸ Ibid., p.65.

ever a spouse who may for years have suffered conduct legally short of mental cruelty, and at last found kindness elsewhere'.¹⁹

A woman who left her marriage without reasonable cause in the eyes of the court could be constructed as being in desertion, a matrimonial offence, which undermined her suitability to parent. The discursive effect of this construction was to encourage women to stay in violent marriages. One woman said that she stayed in a violent marriage in the 1950s because she 'knew' that by walking out she would lose custody of the children.²⁰ A report by the Auckland Social Welfare office said that many women said their husbands told them that they would lose their children if they walked out, and that they believed it.²¹

Normative motherhood discourses constructed a wife leaving a marriage and children as abandonment. Lawyer Joan Rotherham always advised her clients to take their children with them to avoid this consequence, as demonstrated in the New Zealand case, *Hofman v Hofman* 1965.²² In that case a woman on the advice of her solicitor and doctor left home because 'she found conditions within the home intolerable by her standards'. She was unable to take her children with her at the time. Her husband, despite impressing the magistrate as being extremely opinionated and domineering, subsequently gained custody of the children, two girls aged nine and four years, and a male infant aged one year. He then left with the children for Holland, making it impossible for the mother to have any access. The Court of Appeal simultaneously disapproved of the husband's action and deemed it legal, reflecting the contradictory nature of the legal and child welfare discourses in operation.²³

Normative discourses of motherhood also made women who did not meet expectations vulnerable to criticism and blamed a mother's conduct for any family problems. MP Esme Tombleson equated 'good sanitation' with functional families.²⁴

¹⁹ Shirley Smith, 'Introduction and Discussion', NZLJ, no. 10, 3 June 1969, p.340.

²⁰ Sue Kedgley, *Mum's the Word. The Untold Story of Motherhood in New Zealand*, Auckland: Random House Ltd, 1996, p.189.

²¹ F. Ashton, Auckland Social Welfare Office to Director General, p.2, 19 July 1978, Welfare-Family Abuse 1978-1980, AAYE, 7433, W5048, box 379, WEL 13-0, pt 1, Archives New Zealand (ANZ), Wellington.

²² Interview with lawyer, Joan Rotherham, 8 July 2008.

²³ *Hofman v Hofman* 1965, NZLR 1965, pp.796, 801.

²⁴ Esme Tombleson, *New Zealand Parliamentary Debates* (NZPD), 1961, 326, p.413.

One social worker described ‘problem’ families as having a ‘general air of disorganization’ in which only absolute essentials were dealt with, the parents moving from one minor crisis to another with no planning even for the immediate future. This interpretation made disorganization the cause rather than the effect of any problem, which was usually thought the responsibility of the mother. The social worker also said that depressed mothers were often not recognized as such; one depressed woman had a reputation among social agencies for her ‘laziness’.²⁵ This construction meant that women could be blamed when their ability to function was affected by a husband’s violence. It was hard to challenge such assumptions. Joan Rotherham recalls having to argue that a woman who was a below average housekeeper could also be a very good mother.²⁶

Gender discourses were mobilized through constructions of child development that held normal sexuality to be predicated on a clear distinction between the sexes in appearance, dress and behaviour. It was believed that a strong father figure was needed to avoid undesirable sexual orientations such as homosexuality, transvestism and hermaphroditism.²⁷ The best parents were manly men and womanly women, attributes that maintained heterosexual male privilege and made women vulnerable to violence.²⁸ There was pressure to perform according to the standards of masculinity and femininity.

When particular parents had equal merit, the mother principle was more likely to shape judicial decisions, especially in the case of young or female children.²⁹ Common belief held ‘a child of tender years is in general circumstances best in its mother’s care’.³⁰ Judgment in *Palmer v Palmer* 1961 said of a young child, that ‘a Court should not remove it from its mother’s care unless the interests of the child clearly and unmistakably calls for such an action’.³¹ A unanimous judgment by the Australian High Court in 1961 described the mother principle as not one founded on

²⁵ Avery Jack, ‘Problem Families’, *New Zealand Social Worker* (NZSW), vol.13, no.2, May 1967, pp.31, 33.

²⁶ Interview with Joan Rotherham, 8 July 2008.

²⁷ Taylor, pp.100-101.

²⁸ Barbara Ehrenreich and Deidre English, *For Her Own Good: 150 Years of the Experts’ Advice to Women*, New York: Anchor Press/ Doubleday, 1979, pp.246-7.

²⁹ Ward, p.64.

³⁰ Irvine, p.98.

³¹ Judge McCarthy cit., *ibid.*, p.98.

law, but on experience and the nature of ordinary human relationships: ‘A young child, particularly a girl, should have the love, care and attention of the child’s mother and...her upbringing should be the responsibility of her mother’ if it is not possible for both parents to be living together.³² However gender discourses contested the mother principle in the case of male children. *Palmer v Palmer* 1961, in which it was suggested custody of the male infant should be transferred in a couple of years to the father, went to the Court of Appeal. The mother principle operated to varying degrees within the three judgments given. Two judges ruled custody should go to the father, which weakened the mother principle. The case became an authority ‘for the proposition that as adolescence approaches’ there would be ‘a need to transfer custody to the father’, and because changes in custody were not good for a child, the father should be granted custody in the first instance.³³ Over the 1960s there was a developing tendency by the courts to invest custody of boys in the father, believing male guidance was important. The tacit belief was that a mother’s care could threaten a boy’s masculinity.

A grant of custody was also unpredictable when cruelty against a wife was proven. Constructions of “good” parenting could be unaffected by men’s violence against wives. Ward argued that conduct affecting the parents only, such as cruelty toward one of them, could be regarded as entirely unrelated to the conduct of the parent towards the child.³⁴ Two legal practitioners and academics, John Luxford and Dick Webb, agreed.³⁵ The construction of a domestic assault as a discrete event privileged physical injuries over psychological ones. The fact that sexually abused children could be considered ‘uninjured’ exemplifies the extent of the exclusion of psychological injuries.³⁶ Legal discourses constructed a domestic assault as a dispute between two parties, either as a breach of the social contract or a breach of the matrimonial contract. It was a relational matter. These constructions could obscure the material experience of female victims. There was no discursive space to consider

³² 1961, cit., *ibid.*, p.100.

³³ *Ibid.*, pp.98-100.

³⁴ Ward, p.61.

³⁵ John H. Luxford and P.R.H. Webb, *Domestic Proceedings Under the Jurisdiction of the Magistrate’s Courts in New Zealand*, Wellington: Butterworths & Co. (NZ) Ltd, 1970, p.237.

³⁶ A man was sentenced to 2 ½ years imprisonment for incest and indecent assault on two daughters ‘even though there had been no apparent psychological harm to the children and that the man had been a good father in all other respects’, ‘Man Jailed For Incest’, *Press*, 22 November 1977, p.4.

other parties to the event and there was no recognition of the psychological effects on children witnessing violence. A failure to recognize the possibility of violence as a deliberate controlling strategy obscured the use of children to maintain control over wives and partners.

Even when defined as cruelty, men's violence against wives was not necessarily a bar to access. Jill 'M' said her father was granted access despite physical and mental cruelty to the mother, an attempt on the mother's life, and neglect and drunkenness. He threatened the mother that he would kill the children if he ever got them alone. He told the daughter to tell her teacher her mother ran a brothel and made her read 'sexy' notes. He would force the younger children to call their mother dreadful names; when they refused he would 'belt' them.³⁷ Access could provide opportunity for men to continue their abuse of wives and children. One lawyer observed that 'quite commonly a father uses his right of access not as a means to maintain a relationship with a child but rather as an entrée into his wife's household. He may want to...become reconciled. He may wish to belabour her or heap recrimination on her. He may just want to keep an eye on her and to see how she is getting on without him'.³⁸ Knowing abusive fathers could gain access, even custody, some women may have believed their own and their children's interest was best served by staying in violent marriages where they could keep watch.

MATRIMONIAL PROPERTY

The ability to provide a home for children was crucial to women's capacity to leave a violent marriage. Gendered discourses of marriage that organized the sexual division of labour and denied women's access to a husband's financial rewards in the marketplace were embedded in matrimonial property law. De facto relationships were deemed non-contractual and as such were not subject to legal discipline. This meant de facto wives had no legal rights to possession or ownership of property held solely in the de facto husband's name. For married women, it was common practice at this time for the husband's name to be the only one on the property title. A husband's income was not considered matrimonial property and there was no recognition that a

³⁷ Jill M. to Ralph Hanan, 11 March 1968, Destitute Persons Act and Domestic Proceedings Bill 1967-1970, ABVP, 500, W4927, box 47, J 18-11-161, pt 3, ANZ, Wellington.

³⁸ Robert Ludbrook, 'Some Thoughts on Access Disputes', NZLJ, no.4, 4 March 1975, p.90.

wife's domestic services gained her any rights into the husband's home and chattels.³⁹ Under the 1952 Married Women's Property Act, the courts could make ownership orders only on the basis of established legal rights, general principles of the law of property and contracts, 'whatever might seem to be the justice of the case'.⁴⁰ Non-pecuniary contributions were not recognized. There was no recognition of the financial value of "women's work". The courts did recognize that 'when the parties by their joint efforts' saved money to buy a house then it belonged to them jointly.⁴¹ But, if by agreement a wife's earnings went towards living expenses and the husband's towards mortgage payments on the home, then it was not considered a joint venture and she had no claim.⁴² Because many women married young, quickly had children and were full-time mothers, few women were able to benefit from this law about joint venture.

Although in most instances wives were denied a share of the matrimonial home, they could be granted temporary occupation rights. The 1952 Married Women's Property Act gave the courts wide discretion to make a distinction between property or ownership rights, and the right to occupy a home despite a lack of ownership rights. This did not apply to divorced women.⁴³ It is unknown how often wives gained this concession, but because it was dependent on a separation order, difficult to obtain, as demonstrated in the preceding chapter, it is probable that few women benefited. One married woman said she had taken her children away from a cruel husband and father and had lived for years without a proper home while her husband continued to live in the matrimonial home with all of its furnishings.⁴⁴

Occupation orders were important because not only did they resolve accommodation issues, but provided for a wife's safety. Under the 1910 Destitute Persons Act 'it was an offence for a husband to trespass on any property occupied by his wife...while a

³⁹ Caroline Bridge, 'Reallocation of Property after Marriage Breakdown', in Mark Heneghan and Bill Atkin, eds, *Family Law Policy in New Zealand*, Auckland: Oxford University Press, 1992, p.233.

⁴⁰ P.B.A. Sim, 'The New Matrimonial Legislation', NZLJ, no.17, 22 September 1964, p. 395; *Hofman v Hofman* 1965, NZLR 1965, p.800.

⁴¹ G.E. Bisson, 'The Reform of the Law Regarding Maintenance and Settlement of Property Rights Between Spouses in Matrimonial Disputes', NZLJ, no.10, 4 June 1963, p.245.

⁴² *Ibid.*, p.246.

⁴³ *Ibid.*, p.245.

⁴⁴ 'Lyn Carrol, Letters - Law Unfair to Wives?', *Truth*, 5 May 1965, p.45.

separation order was in force'.⁴⁵ However, 'a separation order did not interfere with the rights of a husband in his own property',⁴⁶ and 'did nothing more than give a right to live separate and apart' from a husband without thereby 'committing the matrimonial offence of desertion'.⁴⁷ In other words, the effects of a separation order did not interfere with property rights. Under the 1951 Domestic Proceedings Amendment Act, nothing could prevent either party living in his or her half of the house during a separation order.⁴⁸ Unless the wife was entitled to exclusive possession of the matrimonial home, the husband did not commit a trespass by entering or remaining there if he was the owner or part owner of the building.⁴⁹

Under the 1928 Divorce and Matrimonial Causes Act, a rented home could be vested in either party.⁵⁰ The 1948 Tenancy Act gave the court power to vest tenancy in one of the spouses while married.⁵¹ This could provide protection for wives who lived in rented homes. In 1963 the court granted separation, maintenance and tenancy orders to a woman who endured physical assaults and with her children, was forced out of the house on many occasions by her husband and had to walk the streets until he went to sleep.⁵²

Although married women were able to apply to the courts for exclusive occupation rights, the time between an application and an order being made could be too long for wives subjected to a husband's violence. For safety reasons, some women were forced to abandon their homes.⁵³ Some women might not have had the resources, financial or emotional, to fight a court battle for possession. The woman who was granted a tenancy order in the preceding 1963 case was assisted by the SPHF; it provided legal support and placed the children in suitable homes while the mother went away for a

⁴⁵ Luxford and Webb, p.36.

⁴⁶ Judicial interpretation in *Connor v Connor* 1938, *ibid.*, p.37.

⁴⁷ *Ibid.*, p.37.

⁴⁸ HFS records, Christchurch branch, Meeting, 4 September 1953, D7, MB 309, MBL, Christchurch.

⁴⁹ In *Higgs v Higgs* 1953, a husband who had left home voluntarily after a separation order subsequently returned home and was charged with trespass. The court held that a husband could not be convicted of trespass in respect of entering or remaining upon a house if jointly owned, Luxford and Webb, pp.36-38.

⁵⁰ Bisson, p.247.

⁵¹ *Gray v Gray* 1967, *Magistrates Court Decisions*, vol.12, 1966-1969, p.63.

⁵² HFS records, Christchurch branch, Annual Report 1963, Series A2, MBL, Christchurch.

⁵³ One wife's experience self-reported in 'Lyn Carrrol, Letters – Law Unfair to Wives?', *Truth*, 5 May 1965, p.45.

complete rest.⁵⁴ The availability of remedies and access to them were two different things.

In 1963, new legislation governing marriage and divorce was introduced which indicated a 'vital philosophical change'.⁵⁵ The 1963 Matrimonial Proceedings Act and the Matrimonial Property Act, both of which came into force in 1965 and often worked in unison, signalled the emergence of new attitudes to marriage as a partnership, gender equality and the welfare of children. The first act replaced the 1928 Divorce and Matrimonial Causes Act and contained new provisions relating to ownership and possession of the matrimonial home and furniture.⁵⁶ When making a decree of divorce, or at a later date, the court could direct the sale of the home and distribute the proceeds in such proportions as it saw fit, and make tenancy and furniture orders.⁵⁷ It made an important reference to the children: 'the Court may if it thinks fit, instead of directing division of the proceeds between the parties of the marriage, direct the whole or any part of the proceeds be paid or applied for the benefit of the children of the marriage'.⁵⁸

Replacing the 1952 legislation, the 1963 Matrimonial Property Act widened court powers to settle property disputes and make orders which might be 'just', and to extinguish established legal rights, even in favour of a spouse who lacked any such interest.⁵⁹ This was a contentious provision.⁶⁰ 'Contributions by the spouses to the property would be relevant, but they were not to be limited to contributions in cash, but might include contributions in the form of services, prudent management, or otherwise howsoever.'⁶¹ In one judge's opinion, the new legislation enabled the courts to:

⁵⁴ HFS records, Christchurch branch, Annual Report 1963, Series A2, MBL, Christchurch.

⁵⁵ Bridge, p.233.

⁵⁶ Wilfrid Sim, 'The Matrimonial Proceedings Act 1963', NZLJ, no.5, 23 March 1965, p.102.

⁵⁷ NZS, 1963, Matrimonial Proceedings Act, pp.645-6, 649, 651.

⁵⁸ *Hofman v Hofman* 1965, NZLR 1965, p.799.

⁵⁹ *Ibid.*, p.800.

⁶⁰ A group of lawyers contested the extension of property rights to wives and suggested it was 'sneaked through' the legislature. Public Issues Committee of the Auckland District Law Society, 'Looking at Matrimonial Property', NZLJ, no.9, 20 May 1975, p.205.

⁶¹ Sim, 'The New Matrimonial Legislation', p.395.

Consider the true spirit of transactions involving matrimonial property by giving due emphasis not only to the part played by the husband, but also to the important contributions which a skilful housewife can make to the general family welfare by the assumption of domestic responsibility, and by freeing her husband to win the money income they both need for the furtherance of their joint enterprise...it can be said with confidence...that women who have devoted themselves to their homes and families need not suddenly find themselves facing an economic frustration...which their husbands or wives who are wage-earners have usually been able to avoid.⁶²

In *Hofman v Hofman* 1965 judgment held that both parties had made equal contribution to the acquisition of properties and should receive equal proceeds. In that case the wife had worked full-time until the birth of her fourth child and thereafter part-time. The amount of £750 was set aside for the benefit of the children to be administered by the Public Trustee.⁶³

The emerging discourses of marriage as a partnership bore fruit unevenly in legal contexts. Statute law did not compel judges and magistrates to treat property obtained during the marriage as communal property, enabling conservative discourses that privileged male property rights to persist. Judgment in *Sutton v Sutton* 1965 held that a contribution to property other than the matrimonial home could not be related to the matrimonial home: 'A wife, simply because she is a wife, cannot claim to be entitled to a beneficial interest in a matrimonial home towards which she has made no contribution of any kind, although she may have made contribution to other property.'⁶⁴ In *Richnow v Richnow* 1966, a wife who had lived with her husband in the matrimonial home for 27 years, providing housekeeping and assisting in repairs and renovations, but who had made no direct or indirect financial contributions, was awarded a one-quarter interest in the home.⁶⁵

⁶² *Hofman v Hofman* 1965, NZLR 1965, pp.800-1.

⁶³ *Ibid.*, pp.796, 802-3.

⁶⁴ New Zealand case cit., B.D. Inglis, 'Recent Developments in Family Law', NZLJ, no.2, 1 February 1966, p.40.

⁶⁵ Reported in S.C. Ennor, 'The Matrimonial Property Act 1963 – A New Deal?', NZLJ, no.22, 5 December 1972, p.503.

By 1968 it was apparent that to establish that a wife had made a contribution she ‘had to show that she had done rather more than merely be a good wife and housekeep: she had to show that she had made some effort or sacrifice of an unusual character’.⁶⁶ One magistrate told a man who was the housekeeper while his wife went out to work, that it was about time he pulled himself together and did something ‘worthwhile’ for a living.⁶⁷ Morality discourses persisted in shaping property orders. In one case the wife had walked out of the home for ‘no good reason’ and then went to live with another man. Evidence was given that she had put in many hours of hard and strenuous work as a builder’s labourer in their \$20,000 house. She was awarded \$3,000. The Court said, ‘why should the husband suffer because she voluntarily chose to walk out and make her home with another man?’⁶⁸ A legal academic considered the amount nothing like what the wife had put into the property, but still thought the outcome just.⁶⁹

Lack of entitlement to the matrimonial home disadvantaged women in crucial ways. It threatened their gaining custody of children. In one case a wife needed better accommodation and financial assistance before she could regain care of her children. The Superintendent of the Wanganui Child Welfare Division noted that if she had tenancy of a state rental house then undoubtedly she would have a greater claim on the children. Yet one was dependent upon the other.⁷⁰ Lack of entitlement enabled abusive husbands to control wives’ behaviour by threatening to put them out of the house. SPHF files attest to this.⁷¹ More importantly, it made leaving an oppressive marriage difficult for wives.

The 1963 Matrimonial Proceedings Act was nonetheless significant for the legal status of women. The act abolished most gender-specific provisions and enabled a married woman to have a different domicile from her husband, determined as if she were an unmarried woman and an adult, undermining the doctrine of coverture and

⁶⁶ B.D. Inglis, ‘Family Law’, NZLJ, no.10, 3 June 1969, p.332.

⁶⁷ Reported in Felix Donnelly, *Big Boys Don’t Cry*, Auckland: Cassell New Zealand, 1978, p.87.

⁶⁸ B.D. Inglis, ‘Introduction and Discussion’, NZLJ, no.10, 3 June 1969, p.337.

⁶⁹ *Ibid.*

⁷⁰ Reported in Bronwyn Labrum, ‘Family Needs and Family Desires: Discretionary State Welfare in New Zealand 1920-1970’, PhD thesis, Victoria University, Wellington, 2000, p.203.

⁷¹ For example, HFS records, Dunedin branch, Letter 15 August 1975, Client Correspondence 1975-1978, AG-647-40R, HL, Dunedin.

signalling a huge shift in the relations between spouses.⁷² Its effects, however, were contradictory. A petitioner's own misconduct as the cause of separation was no longer a bar to a decree of divorce.⁷³ Shifts in marriage discourses and associated social practices engendered the belief that it was not in the public's interest to preserve the bonds of marriage 'which have long ceased to be observed and the purposes of which have irremediably failed'.⁷⁴ To maintain marriages in this condition was thought to encourage "immorality" (de facto relationships or adultery) and unhappiness. But the strong social disapproval of divorce and the difficulty of acquiring orders that gave protection from violence after divorce might have deterred some women from seeking separation orders in the first instance.

VINDICTIVE LITIGATION

The contradictory nature of discourses is demonstrated by the opportunities for spouses to continue their abuse through what was known as "vindictive litigation". These were unevenly available to men and women, and men's privileged economic and social power made them more able to exploit them. The law allowed for appeal of court orders and for the filing and re-filing of applications for variation of custody and maintenance conditions. Maintenance orders in particular were re-contested.⁷⁵ Applications to vary custody orders could be used to continue harassment. In one case where a mother faced continual court proceedings for custody of her daughters, the Dunedin branch of the SPHF described the husband as 'stuck to his principles to the point of obsession'. He had used every solicitor, political party and legal association possible in pursuit of overturning the custody order.⁷⁶ Abusive husbands could also disrupt court processes through non-cooperation. One woman's separation order took almost two years because her husband would not turn up in court.⁷⁷ This meant she was unable to gain protection from the court during this time.⁷⁸

⁷² Sim, 'The Matrimonial Proceedings Act 1963', p.102.

⁷³ For example, a case where the husband was granted a divorce despite his wife's opposition and his matrimonial 'guilt', *Newell v Newell* 1965, NZLR 1965, pp.738-9.

⁷⁴ *Ibid.*, pp.738-9.

⁷⁵ Observation of domestic proceedings files in Christchurch District court, CAHS, CH927, 1970s.

⁷⁶ HFS records, Dunedin branch, Mrs K., 1979, Client case files 1970-1985, AG-647-165R, HL, Dunedin.

⁷⁷ Domestic proceedings files, Christchurch District Court, CAHS, CH927, box 6, case 128, 1970, ANZ, Christchurch.

⁷⁸ Without a separation order, the wife lacked the court's protection from non-molestation.

The law provided two specific ways for spouses to challenge the other party who had left the marriage. The first was to petition for divorce on the grounds of adultery and to sue for damages against the lover. After the 1963 Matrimonial Proceedings Act, women also could take this action. *G v G and Another* 1966 was the first defended case in which a wife sought damages for adultery against a third party. She was awarded £1500.⁷⁹ However, the inferior social and financial power of women made it less possible for women to do this. The second remedy was a tort of enticement and harbouring. This involved suing a third party for enticing the wife away or harbouring her against the husband's will. Adultery was not necessary. For a successful action, the husband had to prove that his wife would not have left but for the interference of the defendant. Reasonable cause to leave, such as cruelty, invalidated the action. Compensation was for the loss of a wife's companionship and domestic services.⁸⁰

In *Spencer v Relph* 1969, in which a husband brought a case of harbouring and enticement against his wife's new partner, the Court of Appeal overturned a finding in the Supreme Court that the wife had reasonable cause to leave. It found the wife's complaints of being belittled and humiliated, and being unaided in raising 12 children, as constituting 'normal wear and tear', a construction exemplifying low expectations of wifedom and marriage. However, the Court of Appeal did not rule in favour of the husband because it found the husband had already lost his wife, so harbouring was not the cause.⁸¹ Although this outcome favoured the wife, the legal process also cost her. She faced two hearings, one in the Supreme Court and one in the Court of Appeal. The process was a long one in which she was subjected to emotional, physical and financial stress, not least of which may have been the dismissal of her experience as 'normal wear and tear'. But other women could fare worse: their stressful proceedings had negative outcomes.

Spencer v Relph 1968 was thought to be the first reported case of a tort of this kind in New Zealand. These actions were rare because they were not considered 'in keeping with the times'.⁸² However, although the action was viewed as a remnant from the

⁷⁹ *G v G and Another* 1966, NZLR 1967, pp.72, 75.

⁸⁰ Supreme Court, *Spencer v Relph* 1968, NZLR, 1969, pp. 237-8.

⁸¹ Court of Appeal, *Spencer v Relph* 1969, NZLR 1969, pp.727, 734.

⁸² Supreme Court, *Spencer v Relph* 1968, NZLR 1969, pp.237-8.

time when a wife was considered the property of the husband, the law also recognized it as valid because it was still on the statute books.⁸³ From 1968 there was a short revival of this action, which can be interpreted as a backlash against the rising status of married women and their capacity to leave marriages. However, these actions were short-lived and repealed by the 1975 Domestic Actions Act, which indicated a reshaping of the moral order that made matrimonial fault less significant.

HOUSING

Because women had limited opportunity to retain family homes, having somewhere to go was a prerequisite to leaving a violent marriage. Discourses of “proper” families were embedded in state housing policy that favoured the nuclear family model and the detached family house.⁸⁴ This is explicit in the capitalization of the family benefit scheme in 1958, which enabled families to cash in future family benefit payments in order to buy a home. This scheme had contradictory effects for women. While it did enable income-stable families to own their own homes and gave some women property rights (it would be a joint family home), the husband did not necessarily make good the benefit that was diverted to mortgage payments. This could increase hardship for women who had little control over family finances. Solo mothers who lacked a working wage were excluded from the scheme, but as it was also hoped that good housing would encourage moral practices, some de facto families were admitted to it.⁸⁵ An unintended consequence of this was to give de facto relationships some legitimacy.

Policy based on a male breadwinner family made it difficult for separated mothers to find and maintain independent housing. Suitable accommodation sometimes did not exist. There was little cheap rental accommodation available.⁸⁶ Housing was the first major issue tackled by the Citizens’ Advice Bureau on its establishment in Auckland in 1970: one quarter of enquiries were about housing, especially rental accommodation.⁸⁷ Evictions were often the result of the loss of the breadwinner.⁸⁸

⁸³ Ibid.

⁸⁴ Labrum, pp.198-9.

⁸⁵ Margaret McClure, *A Civilised Community. A History of Social Security in New Zealand 1898-1998*, Auckland: Auckland University Press, 1998, p.154.

⁸⁶ Labrum, pp.198-9.

⁸⁷ Ian Dougherty, *For Your Information. A History of Citizens Advice Bureaux in New Zealand*, Palmerston North: Dunmore Press, 1998, pp.21-22.

⁸⁸ Labrum, p.202.

Domestic proceedings files of the Christchurch District Court in 1970 are peppered with complaints of housing difficulties. One woman had to stay with friends before she eventually obtained a one-bedroom flat without a washing machine or fridge.⁸⁹ Another stayed with her parents, but this was not suitable long-term. She subsequently returned to her husband until separating permanently eight years later.⁹⁰ Housekeeping positions to single men were an option, but were risky. Unmarried mothers' experiences of sexual harassment in this situation are well documented.⁹¹ The Council for the Single Mother and Her Child advised women to avoid them.⁹²

From the mid-1960s, solo parents emerged as a significant group of new tenants of state housing and by 1975 they constituted 27% of state tenants.⁹³ However, the SPHF said in 1973 that the waiting list was long. An interim arrangement could last up to two years and could mean 'cramped and frustrating living with relations, high cost accommodation or sub-standard living with ill effects on children'.⁹⁴ A Society for Research on Women survey indicated that many solo mothers experienced delays in allocation.⁹⁵ *Truth* related the experience of one deserted wife in 1961 who said she had consistently been refused state housing. Despite regular calls to the State Advances Corporation, she had waited seven years without getting a flat; meanwhile her two children aged seven and ten were boarded out. The Corporation conceded that her application had been lodged three years before and that no flat had yet been allocated. The Allocation Committee was made up of independent unpaid citizens who decided on the merit of each case.⁹⁶ What constituted merit was not explained, but the process allowed for the unlimited exercise of opaque morally charged

⁸⁹ Domestic proceedings files, Christchurch District Court, CAHS, CH927, box 221, case 13, 1975, ANZ, Christchurch.

⁹⁰ *Ibid.*, CAHS, CH927, box 1, case 23, 1970, ANZ, Christchurch.

⁹¹ For example, the Society for Research on Women recorded some unmarried mothers' experience of sexual danger, SROW, *The Unmarried Mother. Problems in Keeping Her Child*, Lower Hutt: Format Publishers Ltd, 1970, p.17.

⁹² Council for the Single Mother and Her Child, *Everything a Single Parent Needs to Know*, 2nd ed., Auckland: Manurewa Printers, 1976, p.12.

⁹³ A. Trlin, 'State Housing: Shelter and Welfare in Suburbia', in A. Trlin, ed., *Social Welfare and New Zealand Society*, Wellington: Methuen Publications Ltd, 1977, p.113.

⁹⁴ HFS records, Dunedin branch, Minutes of Federation meeting in February 1973, Correspondence and minutes, AG-647-96, HL, Dunedin.

⁹⁵ Angela Sears, for the Christchurch branch of Society for Research on Women, *Solo Mothers*, Christchurch: Argosty Press Ltd, 1975, p.15.

⁹⁶ 'Deserted Mother Waiting Years for State Flat', *Truth*, 7 November 1961, p.41.

discourses. Women deemed “undeserving” might have found it more difficult to find housing.

State housing was a significant support for women wishing to leave violent marriages because private rentals were more expensive and some landlords excluded solo parents who were seen as risky and often short of money.⁹⁷ However, it was still difficult to meet state rental payments. One woman who lived with four children in a state flat had very little left over after paying rent to feed and clothe her family.⁹⁸ It could be difficult for a woman on her own to get a state flat or house, as nobody could be sure of the rent. It could be deducted from her benefit, but benefits were barely adequate.⁹⁹ Landlords were also less inclined to rent properties to those with children. The Society for Research on Women reported many solo mothers had problems finding landlords who would accept children.¹⁰⁰ In the early 1970s the Wellington branch of the SPHF observed that rising costs had further disadvantaged ‘the deserted wife, widow or separated parent’ by forcing a number of families to accept unsuitable living conditions.¹⁰¹

State housing was even more significant for Maori women, who fared worse than Pakeha in the private rental market. One real estate agent said, ‘ninety percent of Wellington landlords specify no pets, no parties and no Maoris [sic] when they are letting flats and houses’.¹⁰² Similarly, *Truth* reported that nine out of ten landlords in Auckland refused to have ‘coloured tenants’.¹⁰³ Forbidding tenants to sublet or to enter into partnership with anyone from a ‘coloured race’ was said to be ‘universal practice’.¹⁰⁴

Voluntary groups provided some short-term emergency accommodation for women who left violent marriages. This was limited. The Salvation Army provided some

⁹⁷ Trlin, p.115.

⁹⁸ ‘Deserted Wives New Champion’, *Truth*, 29 August 1961, p.18.

⁹⁹ *Ibid.*

¹⁰⁰ Sears, p.15.

¹⁰¹ HFS records, Wellington branch, 73rd Annual Report, MSX 3295, Alexander Turnbull Library (ATL), Wellington.

¹⁰² ‘No Maoris Say Many Landlords’, *Truth*, 24 February 1965, p.3.

¹⁰³ ‘Coloured Tenants Not Wanted in Auckland’, *Truth*, 4 October 1966, p.8.

¹⁰⁴ Reported in R.H. Thompson, ‘Race Relations, Social Welfare and Social Justice’, in A.D. Trlin, ed., *Social Welfare and New Zealand Society*, Wellington: Methuen Publications, 1977, p.161.

emergency lodgings in the larger cities.¹⁰⁵ But it was difficult to stay in such lodgings for a long period and women would eventually have to find somewhere else to go. Additionally, the lodgings were not suitable for long-term stays.¹⁰⁶ Housing problems formed a significant part of the SPHF's caseload, but there was little it could do for women aside from assisting them to find a place, such as writing letters to support women's applications for state rental properties.¹⁰⁷

Women had the option of placing their children in foster care. The SPHF helped make temporary boarding arrangements for children. This could mean long separation periods for mothers and children. Records of the Christchurch branch in the 1950s suggest it was common practice for children to be boarded out. The Society was often called upon to find board for children of families deserted by one parent or to place them in already over-crowded children's homes.¹⁰⁸ Such work became increasingly more common.¹⁰⁹ The children cared for in private children's homes were usually from 'broken or disturbed homes'. For instance in 1971 there were no orphans among the 120 children cared for by the Auckland Anglican Church's social services.¹¹⁰ The thought of being separated from children might have been too difficult emotionally for some women to leave violent marriages and, if they did leave and were separated from their children, it also risked their losing custody.

The focus of state housing policy on the nuclear family model and its lack of provision of emergency accommodation made it difficult for women wanting to leave oppressive marriages to survive. It also undermined their safety, because women who petitioned for legal remedies under matrimonial law were often forced to remain in the same house as their husbands. Separation files in the early 1970s in the Christchurch District Court indicate that most women lived under the same roof as

¹⁰⁵ Winefride M. Dive, 'The Society for the Protection of Home and Family', NZSW, vol.6, no.1, January 1970, p.11; interview with a captain in the Salvation Army, 8 March 2008.

¹⁰⁶ The Society reported one client who said she could not stay in the home for a long time with the children and had to move into her parents' home, HFS records, Dunedin branch, letter, 2 September 1975, Client Correspondence 1975-1978, AG-647-40R, HL, Dunedin.

¹⁰⁷ HFS records, Wellington branch, Annual Report for 1958, MSX 3294, ATL, Wellington; for example, HFS records, Dunedin branch, letter, 2 September 1975, Client correspondence 1975-1978, AG-647-40R, HL, Dunedin.

¹⁰⁸ HSF records, Christchurch branch, Annual Report 1953, Series A2, MB309, MBL, Christchurch.

¹⁰⁹ HSF records, Christchurch branch, Annual Report 1955, Series A2, MB 309, MBL, Christchurch.

¹¹⁰ K.D. MacRae, 'The Failure of the New Zealand Marriage', NZLJ, no.7, 20 April 1971, p.160.

their husband for several months pending court action.¹¹¹ Women had to anticipate threats to their safety when husbands received papers. When one husband received court papers he grabbed his wife and threatened he would murder her if she went through with it. The wife eventually proceeded with a successful application some 12 years later.¹¹² The SPHF recognized the need for protection in this situation, but there is little acknowledgement of this in legal texts.¹¹³ Current knowledge considers the time of a woman's leaving as the most dangerous. Because of safety issues, having nowhere to go might have blocked access to legal remedies to cruelty or violence.

FINANCIAL RESOURCES

Relinquishing the right to be maintained by husbands meant women had to find an alternative source of income. Gendered discourses of marriage that shaped social organization made this difficult, the material effect of which was to expose women to increased risk of violence. Some couples were forced to stay together because they could not afford to separate.¹¹⁴ Every lawyer was said to be familiar with this.¹¹⁵ This section will discuss the three potential pathways to economic independence: maintenance, employment, and state welfare, and how these affected a woman's capacity to resist a husband's or partner's violence.

Maintenance

Gender obligations embedded in marriage discourses meant that husbands financially supported most separated and divorced women either through private maintenance arrangements or maintenance orders directed by the court.¹¹⁶ The law compelled a husband to maintain his wife where the wife could not reasonably be required to cohabit with him, or where he was not willing for the wife to live with him.¹¹⁷ In all circumstances a married father was obliged to maintain his children. The law did not provide for de facto husbands to maintain de facto wives, an effect of there being no

¹¹¹ Domestic proceedings files, Christchurch District Court, CAHS, CH927, 1970, ANZ, Christchurch.

¹¹² Ibid., CAHS, CH927, box 3, case 59, 1970, ANZ, Christchurch.

¹¹³ HFS records, Dunedin branch, Minutes of 1971 executive meeting, Committee and conference minutes, AG-647-171, HL, Dunedin.

¹¹⁴ Jennifer Daly, *MG Reflecting. A Portrait of Marriage Guidance New Zealand, 1949-1989*, Wellington: Marriage Guidance, 1990, p.28.

¹¹⁵ Martyn Finlay, NZPD, 1968, 358, p.3371.

¹¹⁶ Kay Goodger, 'Maintaining Sole Parent Families in New Zealand: An Historical Review', *Social Policy Journal of New Zealand*, issue 10, June 1998, p.125.

¹¹⁷ *Maffey v Maffey* 1971, NZLR 1971, p.691; the 1910 Destitute Persons Act emphasized conduct in determining maintenance orders.

legal contract. It did, however, compel fathers to maintain children of the union until a certain age (around five years).

Conservative discourses that constructed a mother's primary role as child-rearing and housekeeping underpinned a woman's right to maintenance. "Deserving" wives, especially if they had young children, were not expected to engage in paid work. This enabled some wives to gain financial support from ex-husbands until death.¹¹⁸ When couples could not agree on maintenance, women had to make an application to the court and prove a husband's matrimonial fault. Court judgments could be unpredictable.¹¹⁹ State economic concerns and constructions of child welfare meant that some husbands had to maintain "undeserving" wives. Judgment in *King v Wilson* 1959 held that 'unreasonable' cause for a wife leaving her husband was not a bar to maintenance, but something to be taken into account.¹²⁰ However, discourses that upheld conservative moral positions persisted and judicial attitudes towards spouses who transgressed generally accepted moral standards could be the crucial factor in the making of maintenance orders.

Because maintenance orders were intended only to relieve destitution, and were dependent on a husband's income, they were unlikely to be generous. Files do not provide evidence about the sums disbursed, so no comparisons can be made with the average household incomes, but observers close to the process said that payments were not usually enough to provide for a family.¹²¹ The maintenance order for one family of a mother and three children was less than that granted to an elderly couple on a pension. The daughter complained to the Minister of Justice that, if her mother had not taken in sewing and later gone out to work, her family would have gone hungry, naked and uneducated.¹²² In a *Listener* article discussing divorce, poet and teacher, Patricia Godsiff, warned women contemplating divorce that the court would

¹¹⁸ For example, a case where a marriage of three years duration had failed and some 30 years later the separated wife was still filing variation of maintenance applications. In this instance the wife often did not appear at hearings but the husband was still liable for his lawyer's fees. Apparently the courts were unwilling to make an order for costs, Lennard and Chesham, Baristers and Solicitors, to Minister of Justice, Ralph Hanan, 5 August 1968, Destitute Persons Act and Domestic Proceedings Bill, 1967-1970, ABVP, 500, W4927, box 47, J 18-11-161, pt 3, ANZ, Wellington.

¹¹⁹ *King v Wilson* 1959, NZLR 1960, p.275.

¹²⁰ Discussed in *Van der Oort v Van der Oort* 1967, NZLR 1967, p.871.

¹²¹ Interview with Robin O'Neill, former maintenance officer and court registrar, 15 May 2008.

¹²² Jill M. to Minister of Justice, Ralph Hanan, 11 March 1968, Destitute Persons Act and Domestic Proceedings Bill, 1967-1970, ABVP, 500, W4927, box 47, J 18-11-161, pt 3, ANZ, Wellington.

not care how much it cost them to stay alive, what the husband proved he could afford would be what they would get – if anything. She warned them to be prepared to work and earn extra money.¹²³

A sample record of maintenance orders registered with the courts in several cities and towns of an unidentified year in the 1960s indicates the number of women affected by maintenance orders registered with the court: Wellington had 2000 cases; Wanganui, 268; Christchurch, 2000; and Nelson, 200.¹²⁴ A court order did not ensure maintenance was paid: regular payments were dependent on a husband's co-operation. Defaulters could be determined not to pay.¹²⁵ Of these registered court orders, Wellington counted 500 defaulters (25% of orders); 30 in Wanganui (9%); and 100-150 complaints were made weekly in Christchurch.¹²⁶

A number of options were available to the court to enforce payments. Since 1919 attachment orders could be made against a husband's wages, which meant the employer took out the maintenance payment before the husband received his wages. This was dependent on an employer's co-operation. One probation officer said, 'some employers are unenthusiastic, if not openly unwilling to arrange deductions from an employee's wages, and this could lead to difficulty in finding employment if the legal implications were known to a prospective employer'.¹²⁷ Former maintenance officer Robin O'Neill said that attachment orders probably worked for about a year then the man would leave and change jobs. The men involved tended to be 'in the lower type of job'.¹²⁸ The outcome was that many women received maintenance on an irregular basis or failed to receive it at all.

¹²³ Patricia Godsiff, 'Memorandum on Divorce', *Listener*, vol.58, no.1485, 22 March 1968, p.8.

¹²⁴ These were the only cities and towns recorded on this minute sheet. The sheet appeared to be unconnected to documentation that preceded it or followed it. Minute sheet of Domestic Proceedings Bill, Destitute Persons Amendment Act 1960-1968, ABVP, 500, W4927, box 47, J 18-11-161, pt 2, ANZ, Wellington.

¹²⁵ *Ibid.*

¹²⁶ Minute sheet of Domestic Proceedings Bill, Destitute Persons Amendment Act, 1960-1968, ABVP, 500, W4927, box 47, J 18-11-161, pt 2, ANZ, Wellington.

¹²⁷ District Probation Officer, Dunedin, to Secretary of Justice, 8 May 1968, Destitute Persons Act and Domestic Proceedings Bill, 1967-1970, ABVP, 500, W4927, box 47, J 18-11-161 pt 3, ANZ, Wellington.

¹²⁸ Interview with Robin O'Neill, 15 May 2008.

Court maintenance officers were responsible for court-ordered payments. Robin O'Neill describes the process as follows: officers kept records and when payments were behind a notice of demand for payments was issued automatically. If there was no response a summons to court was served. If defaulters could not be found, as often they had 'shot through', a warrant for arrest was put out. O'Neill thought few defaulters were caught. Some escaped to Australia. New Zealand had reciprocal rights with Australia for maintenance enforcement, but this was dependent upon knowing a person's location. When an address was found and a case heard, O'Neill says most of 'those blighters just shot through again'.¹²⁹ The SPHF also expressed concern about the number of defaulters and the apparent ease with which they left the country.¹³⁰

When defaulters did appear in court, court practice was either to remit the arrears as a means to get the man back into a regular habit of payments, or to convict and sentence the defaulter to imprisonment, the warrant suspended so long as he paid current maintenance and so much off arrears, a policy of 'pay up or else', designed to coerce the man to carry out his obligations embedded in the marriage contract.¹³¹ It was a lengthy process; no action could be taken for 14 days after failure of a payment and it would be a month at the earliest before a hearing could eventuate, if it did at all.¹³² Defaulters could also exploit the discursive impetus to reconcile families. Often the defaulter would return to his wife and she would take him back. The Department of Social Security would not take any action because they did not want to interfere with the possibility of it becoming a more permanent relationship.¹³³

This delayed process enabled some men to continue abuse of wives. Because delays of up to 14 days were not punishable, men could be vindictive while still paying on time. O'Neill recalls one case where the wife would wait anxiously on a Friday from 3-3.30 p.m. Her husband would come to the court office at 3.55 p.m. There was no way for the cashier to process a cheque before the doors closed at 4 p.m; the wife

¹²⁹ Ibid.

¹³⁰ HFS records, Christchurch branch, Monthly meetings in 1969, D9, MB309, MBL, Christchurch.

¹³¹ Ibid; interview with Robin O'Neill, 15 May 2008.

¹³² A Dunedin probation officer said that there was frequently an excessively long period of time before the offender was brought to court, District Probation Officer to Secretary for Justice, 8 May 1968, Destitute Persons Act and Domestic Proceedings Bill, 1967-1970, ABVP, 500, W4927, box 47, J 18-11-161, pt 3, ANZ, Wellington.

¹³³ Interview with Robin O'Neill, 15 May 2008.

would have to wait until Monday for any money. The recession in 1967/68 sharply increased unemployment and exacerbated problems around maintenance payments.¹³⁴ Social researcher Kay Goodger argues that the recession might have further reduced the likelihood of some solo mothers obtaining a maintenance order: ‘the growing number of cases meant this could be several months after separation, during which there was no eligibility for assistance’.¹³⁵

The courts’ commitment to the married nuclear family and their ineffective management of maintenance defaulters made life difficult for many women. Some women found court maintenance officers unsupportive. Women complained incessantly to MPs about the court system and the fact that maintenance was always in arrears, applying pressure on the state to do something about it.¹³⁶ O’Neill thought it depended on the individual officer.¹³⁷ The Minister of Justice considered complaints were invariably unfair.¹³⁸ For women accustomed to inadequate support while married, payment defaults might have made little difference. Some husbands did not give wives living with them any or much financial support, instead expecting them to feed and clothe their children on the Family Benefit alone.¹³⁹

The Welfare State

Until 1938 social welfare in New Zealand was residualist, catering for a select group of the poor. In the main, families were expected to be financially responsible for destitute members, as indicated in an 1846 ordinance and the 1877 Destitute Persons Act.¹⁴⁰ People whose families were unable or unwilling to provide for them were reliant on Charitable Aid, and a few groups such as old-age pensioners and widows with children, had gained conditional entitlement to state welfare. From 1926, mothers of families that conformed to the ideal nuclear family gained some financial independence through a family allowance paid directly to them.¹⁴¹ Social and

¹³⁴ Goodger, p.133.

¹³⁵ Ibid.

¹³⁶ Ralph Hanan, NZPD, 1961, 327, pp.1954-5.

¹³⁷ Interview with Robin O’Neill, 15 May 2008.

¹³⁸ Ibid.

¹³⁹ Kedgley, p.214; Bronwyn Labrum observed that male control and tyranny over family finances was a common theme in Child Welfare Division case studies, Labrum, p.212.

¹⁴⁰ See Chapter 1.

¹⁴¹ McClure, p.42.

economic order was founded on an ideal family structure with a husband as a provider for, and head of, the family.

After the 1938 Social Security Act the state took ‘a collective responsibility for the welfare of all its citizens...in order to protect the unfortunate and safeguard the nation’s children’,¹⁴² to aid those who had ‘been deprived of the means of fending for themselves’.¹⁴³ In part, the legislation was a response to the events of the Depression that had exposed ‘the vulnerabilities of every individual in the face of wider forces’: prudence and beneficence could no longer assure economic security.¹⁴⁴ The important consequence of this legislation was to transform “needs” into welfare rights and link them to citizenship’.¹⁴⁵ However, not all needs were equal.

The new national state scheme of benefits was funded from general taxes and a new social security tax. The latter was levied on all private wages and salaries, and company incomes.¹⁴⁶ The tax would be redistributed, regardless of contribution, to citizens unable to work, or whose provider was unable to work. Although wives might have contributed to family income, workers were men. The needs of a married family with two children were implicitly built into a male worker’s wages, adjusted periodically by the Arbitration Court.¹⁴⁷ As such, the welfare state was tied to maintaining full employment for men at wages adequate to support a family.¹⁴⁸ Family discourses privileging the ideal nuclear family were embedded in social security: ‘social security was assessed on a household basis, and underwrote the income of the chief breadwinner, who was usually the man’.¹⁴⁹

¹⁴² Geoffrey W. Rice, ‘A Revolution in Social Policy, 1981-1991’, in Geoffrey W. Rice, ed., *The Oxford History of New Zealand*, 2nd ed., Auckland: Oxford University Press, 1992, p.483; see Margaret McClure’s *A Civilised Community* for the development of the 1938 Social Security Act.

¹⁴³ Royal Commission on Social Security, *Report of the Royal Commission on Social Security*, Wellington: Government Printer, 1972, p.46.

¹⁴⁴ McClure, p.61.

¹⁴⁵ Margaret McClure, ‘A Badge of Poverty or a Symbol of Citizenship? Needs, Rights and Social Security, 1935-2000’, in Bronwyn Dalley and Margaret Tennant, eds, *Past Judgement. Social Policy in New Zealand History*, Dunedin: University of Otago, 2004, p.143.

¹⁴⁶ McClure, *A Civilised Community*, pp.70, 84.

¹⁴⁷ *Ibid.*, p.39.

¹⁴⁸ Brian Easton, *Social Policy and the Welfare State in New Zealand*, Auckland: George Allen & Unwin Australia Pty Ltd, 1980, p.43.

¹⁴⁹ McClure, *A Civilised Community*, p.88.

Women relying on husbands who were poor providers, and especially women who “chose” to live outside a traditional family structure, thereby foregoing a financial provider, were anomalies in a welfare state founded on full employment, and a family model in which women were dependent on an income-earning husband. Supporting households headed by single women could undermine the whole system. This was complicated by the fact that problems facing separated wives were perceived to be partly voluntary in origin.¹⁵⁰ This explains why separated or unmarried mothers were expected to work despite the belief that mothers should stay at home with their children.

While there was provision for state support for married women when a husband did not fulfil his financial obligation, the gendered perspective of Labour’s programme meant insufficient recognition was given to the ‘domestic, invisible insecurity of women’, especially women who relied on the support of an unreliable husband.¹⁵¹ The new legislation made no specific provision for separated and divorced women or single mothers with children.¹⁵² Social Security benefits were first limited to wives who were able to satisfy the Social Security Commission that they were ‘deserted’ and had taken maintenance proceedings under the 1910 Destitute Persons Act.¹⁵³ In that case the state was prepared to support a woman who, through no fault of her own, had lost the support of a husband. In 1943 the benefit for deserted wives was extended to women who had commenced maintenance proceedings.¹⁵⁴ It also became practice then for a wife to receive the Widows Pension if her husband frequently defaulted in maintenance.¹⁵⁵ In 1946 the Family Benefit was made universal, providing a reliable supplement to income for all mothers. This was especially helpful for solo mothers deemed “undeserving” of state support and who were expected to go out to work.¹⁵⁶ However, the Family Benefit was not linked to rising costs and from 1946 it had steadily declined as a proportion of a family’s income, dwindling to a token

¹⁵⁰ Elizabeth Hanson, *The Politics of Social Security*, Auckland: University of Auckland, 1980, p.136.

¹⁵¹ Labour’s programme came from ‘the male workplace and an understanding of social rights in terms of the brotherhood shared by the band of socialist colleagues, Christian idealists and male workers who formed the core’ of the Party, McClure, ‘A Badge of Poverty or a Symbol of Citizenship?’, pp.146-7.

¹⁵² Royal Commission on Social Security, p.47; McClure, *A Civilised Community*, p.88.

¹⁵³ Royal Commission on Social Security, pp. 344-5.

¹⁵⁴ *Ibid.*, p.498.

¹⁵⁵ Jan Green, ‘The Society for the Protection of Women and Children: Dunedin Branch 1914-1945’, BA Hons essay, University of Otago, Dunedin, 1982, p.72.

¹⁵⁶ Goodger, p.126.

amount.¹⁵⁷ Melanie Nolan has argued its erosion encouraged some women to seek employment.¹⁵⁸

In 1954 the Social Security Commission was given discretion to continue a benefit for a deserted wife after divorce.¹⁵⁹ Any maintenance ordered had then to be paid directly to the Department of Social Security (DSS), which assumed responsibility for enforcing the order. This gave a wife a steady income rather than having to rely on spasmodic maintenance payments.¹⁶⁰ Robin O'Neill recalls that about half of the maintenance payments he collected went directly to the Department.¹⁶¹

In the 1960s three departments managed state welfare; the DSS administered benefits and supplementary assistance; the Child Welfare Division administered the Needy Families Scheme; and Maori Affairs Department targeted Maori families in need. All three departments employed social workers. Social welfare discourses in each of these departments varied. In Bronwyn Labrum's analysis, the DSS did not want to replace a man's duty to provide for his family, the Child Welfare Division was more sympathetic to women's actual needs, and the Department of Maori Affairs was more sympathetic to Maori needs than other departments.¹⁶²

In the 1960s, Social Security benefits were a crucial support for deserted women; around 1300 received the Widows Benefit each year.¹⁶³ An unknown number of deserted wives were also victims of husbands' violence. Esme Tombleson described some as having 'been knocked around or ill treated in other ways'.¹⁶⁴ Probation Officer K. Halstead had also observed this.¹⁶⁵ A husband's violence might also have been the cause of the relief observed among wives when their husbands left them 'deserted'.¹⁶⁶

¹⁵⁷ McClure, *A Civilised Community*, p.150, Goodger, p.133.

¹⁵⁸ Melanie Nolan, *Breadwinning: New Zealand Women and the State*, Christchurch: University of Canterbury Press, 2000, p.208.

¹⁵⁹ Royal Commission on Social Security, p.499.

¹⁶⁰ *Ibid.*, p.244.

¹⁶¹ Interview with Robin O'Neill, 15 May 2008.

¹⁶² Labrum, p.308.

¹⁶³ In 1961 there were 1282 benefits; in 1965, 1314; and in 1969, 1316. Report of the Department of Social Security, AJHR, 1961-1969, H.9.

¹⁶⁴ Else Tombleson, NZPD, 1961, 327, p.1595.

¹⁶⁵ K. Halstead's observation was related in Chapter 4.

¹⁶⁶ 'Some Relieved at Desertion', *Press*, 20 May 1965, p.2.

Women who did not qualify for a benefit for deserted wives could apply for an Emergency Benefit, provided for those suffering hardship which was not covered by other benefits.¹⁶⁷ Separated women who suffered hardship through non-payment of maintenance were often granted an Emergency Benefit, ‘even where they were at fault if they were unable by their own work or resources to maintain themselves or their children’.¹⁶⁸ But although the Emergency Benefit covered women in domestic difficulties and indicated state commitment to provide universal coverage, the sense of entitlement was more uncertain here.¹⁶⁹ In effect, Emergency Benefits provided a buffer for conservative discourses that marginalized individuals that did not conform to the ideal nuclear family, but simultaneously, by their very existence and application also contested them.

Discourses that privileged the ideal nuclear family and those that discouraged state expenditure contested petitions for assistance by women marginalized by morally charged ones.¹⁷⁰ State policy was to ameliorate problems and assist those in need, while simultaneously supporting marriage and avoiding major structural change. The Social Security Commission, responsible for decision-making around discretionary benefits, said it tried to balance its desire to help those in distress against its duty to the general taxpayer, both a fiscal duty and one to maintain a “civilized community”.¹⁷¹ The Head of the Commission, George Brocklehurst, declared it had no desire to extend the Deserted Wives Benefit to all types of women who had a maintenance order; and he did not agree that a woman who was responsible for the break-up of her own home should be able to place the DSS in the position of maintenance collector.¹⁷² Registrars too were mindful of budget allocations and of not letting circumstances expand or precedents grow.¹⁷³ Some pressure was placed on beneficiaries to seek a more satisfactory and permanent solution of their difficulties, either by settling their marital differences or seeking a court order.¹⁷⁴

¹⁶⁷ Labrum, p.31.

¹⁶⁸ Royal Commission on Social Security, pp.344-5.

¹⁶⁹ McClure, *A Civilised Community*, p.88.

¹⁷⁰ For example, K.D. MacRae, Director of Hutt Valley Marriage Guidance Council, ‘Marital Strife and The Family’, NZSW, vol.4, no.3, July 1968, p.33.

¹⁷¹ Maintenance Officers of the Social Security Department, 6 February 1970, Administration Domestic Proceedings Act, 1970-1970, AAYE, 7433, W5048, box 93, ADM 25-6-3, pt 1, ANZ, Wellington.

¹⁷² McClure, *A Civilised Community*, p.157.

¹⁷³ Labrum, p.102.

¹⁷⁴ Maintenance Officers of the Social Security Department, 6 February 1970, Administration Domestic Proceedings Act, 1970-1970, AAYE, 7433, W5048, box 93, ADM 25-6-3, pt 1, ANZ, Wellington.

Morally charged discourses that distinguished between the “deserving” and “undeserving” underwrote the DSS’s responses to women’s requests for assistance. Brocklehurst said that the basic legal requirements a deserted wife had to fulfil to qualify were interpreted sympathetically.¹⁷⁵ However, sympathy was less forthcoming to de facto wives, women with separation agreements, or women with no “justifiable cause” for leaving. Social security was about protecting people from events outside their control, not empowering them to live independent lifestyles outside the status quo. Despite *Truth*’s claim that the DSS’s sympathy extended even to the adulteress, in practice separated women were treated with suspicion and there was a reluctance to grant an Emergency Benefit.¹⁷⁶ The social power of these discourses is demonstrated in the SPHF’s objection to women with court orders for separation and maintenance automatically receiving the Widows Pension. It thought it was an easy option for women knowing the state would provide.¹⁷⁷

Morally charged discourses focused attention on the reasons women were solo parents rather than on their presenting need.¹⁷⁸ Esme Tombleson, hailed as the ‘deserted wives’ new champion’ by *Truth*, made it clear that her concern lay with the women who really needed help, who had been deserted through no fault of their own. Tombleson favoured investigation to prevent the “undeserving” from accessing benefits.¹⁷⁹ However, concepts of “need” were unstable, and increasing demands for assistance undermined discourses that marginalized such claimants. The 1964 Social Security Act emphasized need, and recognized families on both a legal and de facto basis.¹⁸⁰ Although the recognition was partially negative, to ensure that de facto relationships did not have greater advantages than married relationships in applications for income-tested benefits, it gave a certain legitimacy to this alternative family form.¹⁸¹

¹⁷⁵ Minister of Social Security to Mr Benton, 25 August 1967, Benefits and Pensions, 1966-1980, AAYE, 7433, W5048, box 113, B&P 6-3-5-1, pt 1, ANZ, Wellington.

¹⁷⁶ ‘State Aid for Mothers Whose Folly Leads Them To Divorce’, *Truth*, 26 July 1960, p.38.

¹⁷⁷ Green, p.76.

¹⁷⁸ Royal Commission on Social Security, p.245.

¹⁷⁹ ‘Deserted Wives New Champion’, *Truth*, 29 August 1961, p.18.

¹⁸⁰ Mark Henaghan and Pauline Tapp, ‘Legally Defining the Family’, in Mark Henaghan and Bill Atkin, eds, *Family Law Policy in New Zealand*, Auckland: Oxford University Press, 1992, p.40.

¹⁸¹ Report of the Department of Social Security, AJHR, 1965, H. 9, p.6.

The Social Security Commission had discretion to grant, withhold, or reduce Emergency Benefits.¹⁸² The level of benefit granted was unpredictable and often at less than generous rates; it was kept under constant review; and there was no right to earn extra money.¹⁸³ The most common Emergency Benefit for separated women with children appears to be the Emergency Unemployment Benefit, which distinguished them from more “deserving” solo mothers such as deserted wives, and signalled an expectation that they would become self-supporting through employment.¹⁸⁴ Because emergency grants were discretionary and directed to the relief of ‘hardship’, they called for more searching inquiries than did other benefits.¹⁸⁵ Discourses were reinforced through institutionalized practices. Applicants had to disclose personal circumstances that risked disapproval.¹⁸⁶ They faced unpleasant and lengthy questioning from inadequately trained staff (the qualification required in Auckland was said to be a driver’s licence).¹⁸⁷ One father complained that when he and his daughter applied for a benefit for deserted wives at a Social Security office, she had to fill in a long questionnaire and answer embarrassing questions at a public counter.¹⁸⁸ Staff could be patronizing. One DSS district officer with a 35-year working record, said he found most service delivery controlling and parental. He believed that staff selection, training and retention reinforced this attitude.¹⁸⁹

While Emergency Benefits could be made at the discretion of the social welfare worker and Registrar at a local level, extended payments depended on notification by

¹⁸² Royal Commission on Social Security, p.51.

¹⁸³ McClure, *A Civilised Community*, p.88; Royal Commission on Social Security, p.305; Minister of Social Security to Mr Benton, 25 August 1967, Benefits and Pensions, 1966-1980, AAYE, 7433, W5048, box 113, B&P 6-3-5-1, pt 1, ANZ, Wellington; Maintenance Officers of the Social Security Department, 6 February 1970, Administration Domestic Proceedings Act, 1970-1970, AAYE, 7433, W5048, box 93, ADM 25-6-3, pt 1, ANZ, Wellington.

¹⁸⁴ In 1966, the largest group of women receiving the Emergency Unemployment Benefit was those who cared for children, the sick or aged dependents, 481. The second group were those pending grants to other benefits, 255, and 175 women defined as semi-employables, Report of the Social Security Department, AJHR, 1966, H.9. p.13.

¹⁸⁵ Royal Commission on Social Security, p.305.

¹⁸⁶ Labrum, p.31; McClure, *A Civilised Community*, p.88.

¹⁸⁷ Labrum observed that officers were not skilled in responding effectively to men’s violence against wives or partners, Labrum, p.218; McClure, *A Civilised Community*, p.147.

¹⁸⁸ Neville Pickering, NZPD, 1960, 324, p.2263.

¹⁸⁹ R. Logan, Assistant Director, Benefits and Pensions Timaru Office, to Department of Social Welfare, Family and Children Violence and Child Support, 1978-1988, AAYE, 7433, W5048, box 391, F&C 3-3-2, pt 1, ANZ, Wellington.

Head Office.¹⁹⁰ A senior officer said that while he could immediately hand out a very small sum of up to about \$6 for food, a full report on the situation might not reach the Commission for up to four months.¹⁹¹ Some Social Security officers were themselves uncomfortable with the time it took to process applications.¹⁹² Having to experience face-to-face contact with distressed women in need challenged morality discourses that defined them as “undeserving”.

To get financial support while awaiting a benefit was difficult. Some women were forced to support their families for many months solely on the Family Benefit.¹⁹³ The SPHF was able to give temporary financial help to some women and the Department often referred clients to it.¹⁹⁴ A grant was usually conditional on commencing maintenance proceedings.¹⁹⁵ Kay Goodger says this put some women in a precarious economic position if their husbands were unable or unwilling to support them after separation, making some solo mothers living in hardship ineligible for the EB.¹⁹⁶ In 1964, of 6273 applications, 1007 were declined; in 1968, of 8345 applications, 1879 were declined.¹⁹⁷

Furthermore, many women had no knowledge of the existence of the Emergency Benefit, which was little publicized and applications not encouraged.¹⁹⁸ Not infrequently social workers encountered situations where there had been needless deprivation because people were unaware of the help available. Information leaflets were available only at the Social Security offices, ensuring most people were unlikely to see them.¹⁹⁹ The Department had 15 various pamphlets on benefits in 1965, but none mentioned the Emergency Benefit.²⁰⁰ Often people were referred to the DSS

¹⁹⁰ Maintenance Officers of the Social Security Department, 6 February 1970, Administration Domestic Proceedings Act, 1970-1970, AAYE, 7433, W5048, box 93, ADM 25-6-3, pt 1, ANZ, Wellington.

¹⁹¹ ‘Most Unaware of Benefits Available’, *Press*, 6 March 1968, p.2.

¹⁹² Labrum, p.232.

¹⁹³ The family benefit was made universal in 1946, McClure, *A Civilised Community*, p.144; Goodger, p.126.

¹⁹⁴ HFS records, Wellington branch, Annual Report 1962, MSX 3294, ATL, Wellington.

¹⁹⁵ Circular Memorandum – Assessed Maintenance Charge, Benefits and Pensions 1966-1980, AAYE, 7433, W5048, box 113, B&P, 6-3-5-1, pt 1, ANZ, Wellington.

¹⁹⁶ Goodger, p.125.

¹⁹⁷ Report of the Department of Social Security, AJHR, 1964, H.9, p.21; AJHR, 1968, H.9, p.26.

¹⁹⁸ Labrum, p.102.

¹⁹⁹ Royal Commission on Social Security, p.382.

²⁰⁰ McClure, *A Civilised Community*, p.156.

having had no idea of their rights to state assistance.²⁰¹ One woman who lived with serious violence for many years said that she did not consider leaving her husband until the late 1960s because she had no money and was not aware of any support available.²⁰² Benefits were intended to relieve hardship, not to empower women to make independent choices. Calculated silence could, in itself, have a significant impact on access to the Emergency Benefit.

Despite poor publicity, many women did benefit from emergency provisions. *Truth* reported hundreds of deserted and separated women with small children in Auckland living on state support.²⁰³ From the early 1960s demand for Emergency Benefits by solo mothers increased, indicating a shift in social practices that unsettled the state's restrictive welfare policy.²⁰⁴ Emergency Unemployment Benefits in force, for both men and women, increased from 1442 in 1961, to 1860 in 1965, to 2833 in 1968.²⁰⁵ These figures were not broken down further. Expenditure on Emergency Benefits more than doubled from 1967 to 1968; applications increased from 6893 to 8354.²⁰⁶ This was probably due to the recession in 1967, which resulted in a dramatic increase in unemployment. The number of Unemployment Benefits in force jumped from 230 in the first week of 1968 to 4424 in the last week of March 1968.²⁰⁷ In 1968, a change in classification of Emergency Benefits indicated that the increase due to separated and divorced women and unmarried mothers claims was significant. In 1969, 1194 Emergency Unemployment Benefits and 2321 Emergency Domestic Purposes Benefits were in force.²⁰⁸ Previously, a large proportion of the latter was categorized under the former, but the number also includes grants that previously would have been denied. While women's demands for state support had increased, these had been contained within emergency provisions. The discursive and material shift indicated by the re-classification is discussed further in the following chapter. Ultimately, the reluctance to grant an Emergency Benefit and its non-generous rates pressured

²⁰¹ Alfred Allen, NZPD, 1962, 1962, 331, p.1388.

²⁰² Interview with SPHF volunteer, Annie Bamber, 10 July 2008.

²⁰³ Russell Gault, 'The Abandoned Wife: A Major Problem for Welfare Men', *Truth*, 18 April 1967, p.40.

²⁰⁴ McClure, *A Civilised Community*, pp.155-9; Goodger, p.132; Labrum, pp.225-6.

²⁰⁵ At end of March for respective years, Report of the Social Security Department, AJHR, 1961, 1965, 1968, H.9.

²⁰⁶ In 1967 total expenditure on emergency benefits equaled £961,153, and in 1968, £2,236,658, Report of the Social Security Department, AJHR, 1967, H.9, pp.13, 26; AJHR, 1968, H.9, pp.13, 26.

²⁰⁷ Report of the Social Security Department, AJHR, 1968, H.9, p.10.

²⁰⁸ At the end of March, Report of the Social Security Department, AJHR, 1969, H.9, p.15.

beneficiaries to seek alternative solutions, such as reconciliation.²⁰⁹ Together with the difficulty of proving legal cruelty to obtain a separation order, social welfare practices provided limited opportunity for women to escape violent marriages.

As well as benefits administered by the DSS, this Department, the Child Welfare Division and Maori Affairs Department administered discretionary welfare provisions, which provided other opportunities for mothers to resist a husband's or partner's violence. The Needy Families Scheme was established in 1942 and administered by the Child Welfare Division to assist large and needy families living in poor housing conditions. A concern for child welfare was the primary driver. The scheme quickly developed into a 'more general welfare programme' and the construction of "need" enabled widows, deserted or separated women and their children, to be defined as needy families. This meant some women who lived with, or had escaped violence, could benefit. Families were assisted by grants for food, clothing, and furniture, and assistance with making rent payments. In a social climate shaped by the discursive imperative to preserve families, and in which the social and financial power of husbands made it difficult for wives to confront them, Child Welfare officers could be 'mediators', even 'saviours', for some women in these situations.²¹⁰

In 1951 a system of discretionary financial assistance was introduced through the DSS to aid beneficiaries unable to meet the basic costs of food, clothing and shelter. Originally intended to aid the elderly, the scheme was expanded to meet the needs of families, including widows and deserted wives.²¹¹ Women suffering hardship through the non-payment of maintenance could benefit from this scheme.²¹² For example, in 1960, 194 lump sums and 373 continuing sums were granted to divorced, separated or women living apart.²¹³ Eligibility was decided after an interview. The fund was cautiously administered and money approved was detailed down to the last penny. Despite these shortcomings, the scheme helped in a short-term crisis, such as buying

²⁰⁹ Maintenance Officers of the Social Security Department, 6 February 1970, Administration Domestic Proceedings Act, 1970-1970, AAYE, 7433, W5048, box 93, ADM 25-6-3, pt 1, ANZ, Wellington.

²¹⁰ Labrum, pp.189-193, 213.

²¹¹ Ibid., pp.31, 106.

²¹² William Tennent, NZPD, 1960, 324, p.2265.

²¹³ Report of the Department of Social Security, AJHR, 1961, H. 9, pp.16-17.

school uniforms, blankets or clothing and making rent payments.²¹⁴ Margaret McClure says that, in cases where women were living apart from their husbands, assistance was assessed with greater caution because the Department was determined not to take over the male breadwinner's role. The overwhelming feature of case studies was official determination to prevent men escaping financial responsibility for their families.²¹⁵

Maori women tended to be outside the main social welfare structure. General practice was for Maori Affairs Department officers to administer the needs of Maori, partly because of other agencies' reluctance to deal with Maori families. Bronwyn Labrum says that Maori welfare officers were used as a tool for managing race relations and assimilating Maori into a Pakeha way of life.²¹⁶ Maori too had this perception, which might have discouraged them from accessing assistance.²¹⁷ Labrum also noted that Maori had to fight harder to establish entitlements. Ultimately, Maori had greater difficulty accessing discretionary welfare than did Pakeha, which meant there was less opportunity for Maori women to resist a husband or partner's violence.²¹⁸

Mothers were the most frequent group to make contact with social workers or welfare officers. Male control over family finances and male drinking were frequently cited reasons for seeking help.²¹⁹ While discretionary welfare could be a godsend for some women, appeals for assistance could mean that a welfare officer visited the home, which invited intense scrutiny of the family and subjected women to individual officer's interpretations of their individual circumstances. The construction of the family as the primary influence on a child as a future citizen invited attention on the family.²²⁰ State social workers were especially concerned with parental inadequacy, and aimed to re-educate parents to prevent the perpetuation of poor emotional and physical health from one generation to the next.²²¹ However, because mothers were held primarily responsible for both child-rearing and marriage well-being, they were

²¹⁴ McClure, *A Civilised Community*, p.142.

²¹⁵ *Ibid.*, pp.143-4.

²¹⁶ Labrum, pp.308-9.

²¹⁷ HFS records, Dunedin branch, Professor John McCreary, SPHF conference, 1970, Correspondence 1959-1980, AG-647-93, HL, Dunedin.

²¹⁸ Labrum, pp.309, 315.

²¹⁹ *Ibid.*, pp.116, 212, 215, 298.

²²⁰ For example see Jack, p.35.

²²¹ Labrum, p.219.

more likely to be blamed. One social worker, while acknowledging fathers' failings, believed that children's welfare was largely dependent on the kind of mothering they received.²²²

Economic discourses reinforced the focus on mothers, namely the 'post-war emphasis on homes as a place with decent accoutrements'.²²³ Labrum noted that not only did social workers focus on a woman's domestic skills, but they also advised on furnishings and care of the house.²²⁴ The discursive effect of a focus on mothers was to mask men's violence against wives and partners and men's responsibility for this violence. Even when women were identified as victims of men's violence, they were still held responsible for family problems. One social-work file described the wife as having lost 'interest in the home because of the long period of friction with the husband and uncertainty. She has not maintained a satisfactory standard of housekeeping, and the furnishings are worn, and with the interior, have been damaged at times by the husband in fits of temper'. Although there was some recognition of violence, the primary focus was the wife's housekeeping skills.²²⁵ Even when fathers were acknowledged as aggressive, 'problem' families still were perceived as 'mother-dominated'.²²⁶ As previously mentioned, some social workers interpreted a woman's depression as laziness.²²⁷ Wives continued to be perceived as provoking violence.²²⁸ Mary Inglis observed that social workers tended to see 'wife assault' as a symptom rather than as the problem.²²⁹ These discursive constructions obstructed women making claims of legal cruelty. If abused women performed poorly as mothers and homemakers because they were depressed, confused, nervous or frightened as a result of violence, they could be blamed for that violence. But to prove legal cruelty to gain separation, custody, and maintenance orders, women needed to meet expectations of "good" wives.

²²² Jack, pp.31, 33, 37.

²²³ Labrum, p. 241.

²²⁴ Ibid., p.242.

²²⁵ Ibid., p.242.

²²⁶ Jack, pp.31, 33, 37.

²²⁷ Ibid., p.33.

²²⁸ Dive, p.13.

²²⁹ Mary Inglis, 'Physical Assault in Marital Conflict. A Social Problem Re-examined', MA thesis, Victoria University, Wellington, 1977, pp.10-11.

Sometimes the DSS passed cases over to the Child Welfare Division. This was a delaying tactic. A Child Welfare officer thought the DSS delayed making payments so as to give wives every incentive to reconcile. However, Margaret McClure observed that women were likely to receive a more sympathetic response from Child Welfare officers, who appeared more concerned with the needs of women and children and less encumbered by a fear of the state taking over a male breadwinner's role.²³⁰ Home visitation enabled Child Welfare officers to observe women's claims of need more directly, which could undermine the discursive imperative to preserve families or deny aid to "undeserving" families.

Child Welfare officers exploited the contradictions in economic discourses in ways that contested the assumptions underlying usual practices in the DSS. Some officers claimed that short-term help could prevent a mother having a break-down and that it was less expensive than the long-term institutionalization of children by the state.²³¹ The Rowland case file cited by McClure demonstrates how conflicting positions within economic discourses were employed to effect different outcomes. In this case, the maintenance officer refused to act for the wife if the husband left again, which would make her ineligible for a benefit for deserted wives, whereas the Social Security officer refused to grant supplementary assistance as the husband had returned home and was employed. In contrast, the Child Welfare officer supported the family because she saw it as being better off without an unstable drinking father.²³²

While state welfare provisions offered a financial alternative to the nuclear family, they provided only a marginal existence. Women beneficiaries were described as eking out a miserable existence and trying to do the best they could for their children. One woman with three school-age children and two pre-schoolers, one of whom was blind, was left after paying rent with £4, an inadequate sum, to feed and clothe the children and pay gas and electricity bills.²³³ Some survived only because of the kindness of neighbours and friends and because of organizations like Jaycees and the Salvation Army.²³⁴ Deserted wives receiving a benefit were allowed to earn an extra

²³⁰ McClure, *A Civilised Community*, p.144.

²³¹ *Ibid.*, p.145.

²³² *Ibid.*, pp.144-5.

²³³ 'Deserted Wives New Champion', *Truth*, 29 August 1961, p.18.

²³⁴ *Ibid.*; Esme Tombleson, NZPD, 1961,327, p.1595.

£3 a week, but this often proved insufficient in meeting expenses; wives receiving the Emergency Benefit were not allowed this.²³⁵ In a 1972 study of women beneficiaries, many reported they were unable to save any money, had to be especially thrifty to live within their means, and found obtaining adequate clothing a continuing problem.²³⁶

Employment

In the 1960s, paid employment provided a limited pathway to economic independence that could enable a woman to leave an oppressive marriage. The hegemony of discourses privileging the ideal nuclear family in the 1960s was evidenced by most women giving up paid work prior to marriage or upon engagement, and expecting to spend the rest of their lives in unpaid work looking after their homes and families.²³⁷ However, women had always been part of the workforce. Furthermore, women who lived apart from husbands and were judged as “undeserving” were expected to go out to work.²³⁸ The distinction between statutory benefits for widows and deserted wives and the Emergency Unemployment Benefit for most other solo mothers expressed this belief. Women who “chose” to form independent households were expected to provide for them: this was consistent with a welfare state based on full employment. The state enabled women to work to supplement benefits to avoid incurring more demands for assistance.²³⁹ This also extended to wives of beneficiaries who could earn up to £78 p.a. from domestic or nursing service without a reduction in the benefit. In 1963 there were 1083 concessions in force and 1170 in 1969.²⁴⁰ Beneficiaries were also employed through the DSS’s Home Help scheme to assist older or invalid people to stay in their homes and avoid institutional care; 108 people were employed in 1963, and 450 in 1969.²⁴¹ State efforts to avoid expenditure had the contradictory effect of contesting conservative discourses that discouraged married women in employment.

²³⁵ Esme Tombleson, NZPD, 1961,327, p.1595.

²³⁶ Ormond Wilson, ‘The Attitudes of Divorced and Separated Women Receiving Social Welfare Assistance’, NZSW, vol.10, no.2, July 1974, p.11.

²³⁷ Kedgley, p.226.

²³⁸ Goodger, p.126.

²³⁹ See Nolan, p. 211.

²⁴⁰ Report of the Department of Social Security, AJHR, 1963, H.9, p.12; AJHR, 1969, H.9, p.17.

²⁴¹ Not all employees were necessarily beneficiaries, Report of the Department of Social Security, AJHR, 1963, H.9, p.14; AJHR, 1969, H.9, p.20.

Paid employment had variable effects on women's capacity to resist a husband's or partner's violence. Roderick Phillips has argued that paid employment for women was a prime influence on their ability to initiate divorce proceedings.²⁴² Paid work decreased isolation and might have exposed women to alternative understandings about domestic relations, especially in regard to violence, that led women to question the acceptability of what they experienced in the home environment.²⁴³ However, employment and income could also have been seen as a threat to a husband or partner's power and might have initiated more violence. Furthermore, the more powerful male partner could appropriate a woman's earnings. A Salvation Army captain said that in her experience she did not think paid employment empowered women because 'the violence then became him controlling her wages as his own'.²⁴⁴ Alternatively, some women were able to secretly save money to enable them to leave. Co-founder of the Wellington Women's Refuge, Raewyn Good, saved up money for two years so she could leave her abusive husband.²⁴⁵ So too did SPHF volunteer, Annie Bamber.²⁴⁶ Social geographer Gordon Carmichael says that a higher involvement of married women in the workforce helped both sexes to meet other partners.²⁴⁷ In an environment where it was difficult to procure financial independence, a de facto husband might have provided a way out of a violent marriage.

Paid employment could empower women, but less so than for men. Gendered marriage discourses directed women into low-paid and often menial work. Women were disadvantaged by social attitudes to working mothers, and wage and promotion structures. Although not compelled to be by law, in practice the wage structure was based on what was required to support a man with a wife and two or three children.²⁴⁸ Social expectations held that a working man had a right to a living standard without

²⁴² Roderick Phillips, *Divorce in New Zealand. A Social History*, Auckland: Oxford University Press, 1981, p.80.

²⁴³ Holly Johnson, 'Rethinking Survey Research on Violence Against Women', in R. Emerson Dobash and Russell P. Dobash, eds, *Rethinking Violence Against Women*, Thousand Oaks, California: Sage Publications, 1998, p.45.

²⁴⁴ Interview with a Salvation Army captain, 8 March 2008.

²⁴⁵ Interview with Raewyn Good, 29 April 2008.

²⁴⁶ Interview with volunteer for Society for the Protection of Home and Family, Annie Bamber, 10 July 2008.

²⁴⁷ Goodger, p.132.

²⁴⁸ John Marshall, NZPD, 1960, 323, p.1718; Goodger, p.126.

his wife having to go out to housekeep in other people's houses.²⁴⁹ Clerical Worker's Union employee, Mary Batchelor, recalls women and men doing the same work, but men being paid more and given more opportunities. She saw many instances of unfairness in the wage structure and attitudes to women, including one in which Batchelor's Union hired a man to assist her and paid him almost twice as much as herself.²⁵⁰

Changing economic needs were reflected in changing discourses of the appropriateness of women's engagement in the paid workforce. The labour scarcity and an exceptionally high rate of labour turnover continued through to the 1960s. With more jobs than workers, women were encouraged to take up paid employment.²⁵¹ For the first time married women were specifically targeted for recruitment as teachers and nurses.²⁵² A buoyant economy made employment outside the home more possible for many women, but the situation varied considerably in different parts of the country.²⁵³ However, dominant discourses, which constructed women as reserve pools of labour persisted. State encouragement of women in employment was dependent on economic needs. Robert Muldoon thought that the attraction of married women to industry would diminish when the general labour supply improved and said, 'given equal pay for equal work the male worker will be preferred in most jobs'.²⁵⁴ When the recession hit in 1967, work opportunities for women fell.

After the Equal Pay campaign in the late 1950s, the Government Service Equal Pay Act was passed in 1960, but women still did not hold powerful negotiating positions. Private industry was under no obligation to pay women and men equally. The unfairness of wage structures made it difficult for women to provide for families on their wages only. In 1961 the female median income was 49% of the male median income, increasing slightly to 52% by 1971. Unequal pay, the higher proportion of females in part-time work, and the different occupational groups of males and females

²⁴⁹ Richard MacDonald, NZPD, 1960, 324, p.2266.

²⁵⁰ Interview with Mary Batchelor, ex-parliamentarian, 26 June 2008.

²⁵¹ Kedgley, p.192.

²⁵² Nolan, pp.224, 228.

²⁵³ Robert Muldoon, NZPD, 1961, 326, p.66.

²⁵⁴ Ibid.

explains the gap. For example, in 1961 and 1971, around one third of females were employed as clerical workers compared with 8% of men.²⁵⁵ The introduction of equal pay in the state arena provided opportunity to argue for it in the private sector. The campaign culminated in the 1972 Equal Pay Act, fully implemented in 1977.²⁵⁶ This made paid employment a more viable pathway to economic independence. However, older conservative discourses persisted. One woman recalls the principal of the school in which she worked as a teacher in the early 1980s telling her she was taking a job from a man and should be at home. She was married, but had no children at the time.²⁵⁷

Gendered discourses embedded in education discourses propelled women into low paid and lowly qualified jobs. Raewyn Good indicated it was hard to get out of the expectation that as a female you were a schoolteacher, or a nurse, or you did some job until you got married.²⁵⁸ More males than females chose university on leaving school; females were predominant in non-university training institutes and females intending to work in clerical or related jobs or within the health services were more than treble the male school-leavers in the late 1960s and early 1970s. In 1969 women made up 30% of university graduates and 20% of post-graduate enrolments.²⁵⁹

Labour statistics indicate that while the number of working women increased over the decade, the most significant change increase related to married women workers. In 1961, 28% of females were in paid employment, rising to 34% by 1971. Married women constituted 38% of the female work force in 1961, and ten years later, 50%. The percentage of divorced women working was stable, but the percentage of legally separated women in the female work force rose from 1.6% in 1961 to 2.2% in 1971.²⁶⁰ Because most informal separations were thought to record themselves as legally married rather than legally separated, an unknown portion of married women workers were women living apart from husbands.²⁶¹ It is probable that the increase in

²⁵⁵ Department of Statistics, *Miscellaneous Series 20. New Zealand Males and Females: A Statistical Comparison 1945-1978*, Wellington: Department of Statistics, 1981, pp.28, 31-32.

²⁵⁶ Department of Statistics, *New Zealand Males and Females*, p.31.

²⁵⁷ Personal correspondence with an acquaintance, 10 August 2008.

²⁵⁸ Interview with Raewyn Good, 29 April, 2008.

²⁵⁹ Department of Statistics, *New Zealand Males and Females*, pp. 16, 21.

²⁶⁰ *Ibid.*, pp.26-27.

²⁶¹ Department of Statistics, *New Zealand Census of Population and Dwellings 1961*, 'Age and Marital Status', p.7; *New Zealand Census of Population and Dwellings 1966*, 'Age and Marital Status', p.7.

numbers of both married and separated women in paid employment made possible more escapes from violent marriages, although an exact number cannot be established.

Compounding discrimination in employment, discourses of motherhood that directed mothers to care for children at home did not acknowledge a need for state-provided childcare and reinforced women's dependency on husbands or the state. It was very difficult for mothers to find adequate, if any, childcare, complicating their decision to work. There was very little available and what there was, was expensive, privately run and mostly of poor quality, the more reputable ones having long waiting lists.²⁶² In 1965 Sonja Davies and the vice-president of the National Association of Child Care Centres visited most child care centres and were shocked by what they saw; they thought some of very bad quality and that some supervisors had no idea of children's needs.²⁶³ In 1971 the Committee of Inquiry into Pre-School Education found a steadily growing number of working mothers who were unable to look to kindergarten to meet childcare needs.²⁶⁴ At this time there were 320 registered nurseries catering for more than 8000 children. Unless a woman could spare \$8-10 dollars a week, find a reliable nursery that had a vacancy, or a reliable neighbour, she was faced with a difficult problem if she had to seek paid employment.²⁶⁵

CONCLUSION

Discourses that aimed to preserve marriage and prescribed gender-specific duties flowed through law on custody, maintenance and "damages", and through state practices around employment, welfare and housing. The effect was to suppress discourses other than those privileging the ideal nuclear family. This worked against women leaving unsatisfactory marriages and finding legal remedies to cruelty. Conservative discourses supported women who met expectations of femininity, but made support less certain for women judged as "undeserving". In a contradictory fashion, "undeserving" status could be an advantage. Although de facto wives were

²⁶² Pauline Swain, 'Who Takes Care of the Caretaker's Daughter?', *Listener*, no.1664, 20 September 1971, p.11.

²⁶³ Kedgley, pp.229-30.

²⁶⁴ *Ibid.*, p.230.

²⁶⁵ Swain, pp.10-11.

excluded from protection afforded by domestic law, they were generally not subject to custody disputes or legal actions that could be described as harassment.²⁶⁶

While the ideal nuclear family dominated social practices and organization, discourses were multiple, contesting and contradictory. A labour shortage encouraged the employment of married women, which challenged the male breadwinner ethos and the female dependence on husbands. A concern with child welfare, a desire to avoid large scale marginalization of groups that could threaten social order and the material realities of women in need shaped state welfare practices, as did the desire to preserve the nuclear family, and a disinclination to usurp a father's obligation of financial provision and increase state expenditure.

At their worst, legal and social policy discourses and practices reinforced gender inequality. At their best, they weakened male privilege and empowered women to escape oppressive marriages. Overall however, women had limited choices. A 1968 *Listener* article captured a typical woman's lived experience. The author, describing herself 'as one of hundreds of unhappily married women', said she knew of vast numbers of women manacled to marriage by children and lack of finance. Because divorce was something 'not all of us can afford', she advised women to 'laugh in misery'.²⁶⁷ In the 1960s, this appears to be the most likely choice for many women living in violent marriages, such as 'Peggy', who said she did not leave because she had no money, no place to go, and if she left she would have been unable to take anything with her.²⁶⁸ When a woman did manage to leave, because she might not have received any money, life could remain difficult. 'Leonie's' experience of leaving indicated how hard it was. Leonie:

went from housekeeping job to housekeeping job for two years, living in. It was terrible, the men involved. Friends looked after my son for a while, then my husband came and took him away and put him in a St Barnaby's home. I couldn't do anything legal about it but I went to live in a boarding house and

²⁶⁶ Unless a de facto status was constituted after leaving a marriage.

²⁶⁷ No author, 'How to be Happy and Married Though Unhappily Married', *Listener*, vol.58, no.1493, 17 May 1968, p.7.

²⁶⁸ Alison Gray, *Mothers and Daughters*, Wellington: Bridget Williams Books Ltd, 1992, p.40.

worked in a shoe factory to get some money. They said if I got a decent place to go I could get him back so I got another housekeeping job with a widower. The house was shocking, but I got it fairly good, then I got my son out of St Barnaby's. Then I had health trouble. I had boils under my arms. I was really run down. The doctor advised me to sort myself out, Mark was going to a daycare place and I was working in a cake shop and waitressing at night after I came home.²⁶⁹

State practices meant freedom from a husband's violence often cost a high price. The next chapter explores and analyzes changes in domestic law and state practices, which increased women's capacity to resist a husband's or partner's violence against them.

²⁶⁹ Rosemary Barrington and Alison Gray, *The Smith Women. 100 New Zealand Women Talk About Their Lives*, Wellington: A.H. Reed & A.W. Reed Ltd, 1981, p.159.

Chapter 6

REFORM OF LEGISLATION GOVERNING MARRIAGE

BREAKDOWN

In the 1960s socio-economic changes converged with a shift in attitudes towards personal relationships, gender roles, marriage, and child welfare, which challenged the ideal nuclear family, and intensified public and political interest in “the family”. From the 1960s domestic law (law governing domestic or family relationships) increased in significance and developed as a particular area of practice and study.¹ Lawyer Don Inglis claimed that ‘scarcely a single area’ of domestic law was ‘left untouched’.² The convergence of changes also underwrote social welfare reform. Changes in domestic law that pertained to marriage breakdown, property, custody and marriage preservation, and changes in social welfare policy had implications for women’s capacity to resist violence by a husband or partner. Foremost amongst the legislative reforms was the 1968 Domestic Proceedings Act, legislation which governed marriage breakdown and replaced the 1910 Destitute Persons Act. This chapter explores the changes that underwrote reforms, however, it focuses specifically on the 1968 Domestic Proceedings Act, and what this legislative change meant in practice for women’s capacity to resist violence by a husband. The following chapter focuses on other legislative changes and social welfare reform that impacted on women’s ability to forge independent lives free from violent husbands or partners.

FACILITATORS OF REFORM

Discursive shifts in the construction of marriage, marriage breakdown, child welfare and gender equality were the main facilitators of reform of domestic law and social welfare policy.

¹ Bill Atkin attributes this primarily to the work of Professor Don Inglis and Professor Dick Webb, Bill Atkin, ‘Harmonising Family Law’, *Victoria University of Wellington Law Review* (VUWLR), 37: 2006, p.466.

² B.D.(Don) Inglis, ‘Family Law’, *New Zealand Law Journal* (NZLJ), no.10, 3 June 1969, pp.325, 335.

Shifts in Marriage Expectations and Family Formations

Between 1945 and 1971 marriage became almost universal and occurred at very young ages. Fertility rates increased steadily until 1960 for women aged 20-24 years and until as late as 1970 for teenagers.³ These rapid changes in the formation, size and function of the typical New Zealand family matched changes in wider social practices around ex-nuptiality, marriage breakdown, non-registered unions and women's roles. Although marriage and marital status persisted as critical to family formation, Gordon Carmichael locates a 'major reappraisal of traditional morality' beginning in the 1950s when the level of adolescent and young adult pre-marital sexual activity rose appreciably.⁴ Early marriage was linked to pre-nuptial conception or was quickly followed by conception so that many females became pregnant then married, or married and became pregnant, before the age of 21 years.⁵ Thus, getting married was still a means for younger ages to legitimately have sexual relations.

Marriage formations were meshed with changing notions of marriage. Although husbands were still considered heads of families, ideals of companionship and equality spread.⁶ This is indicated by women marrying men closer to their own age; now just a year or two older.⁷ From at least 1920, discursive constructions of the home as a sanctuary from the outside world supported an expectation of emotional fulfilment in marriage. Expecting sexual fulfilment in marriage followed.⁸ The fact that a couple more typically acquired matrimonial property through their joint efforts subsequent to marriage also had an impact on expectations and obligations.⁹

³ For an in depth discussion of changes regarding family size and formation see Ian Pool, Arunachalam Dharmalingham and Janet Sceats, Janet, *The New Zealand Family from 1840. A Demographic History*, Auckland: Auckland University Press, 2007, pp.171-184; and Kay Goodger, 'Maintaining Sole parent Families in New Zealand: A Historical Review', *Social Policy Journal of New Zealand*, issue 10, June 1998, pp.122-152.

⁴ Gordon Alexander Carmichael, 'Aspects of Ex-nuptiality in New Zealand: towards a Social Demography of Marriage and the Family Since the Second World War', PhD thesis, Australian National University, Canberra, 1982, p.128.

⁵ Pool, Dharmalingham and Sceats, pp.178-9.

⁶ Eric Olssen and Andree Levesque, 'Towards a History of the European Family in New Zealand', in Peggy G. Koopman-Boyden, ed., *Families in New Zealand Society*, Wellington: Methuen Publications (NZ) Ltd, 1978, p.18.

⁷ Pool, Dharmalingham and Sceats, p.180; Jack Lloyd, 'Marital Breakdown', in Peggy G. Koopman-Boyden, ed., *Families in New Zealand Society*, Wellington: Methuen Publications (NZ) Ltd., 1978, p.148.

⁸ Erik Olssen and Andree Levesque reported in Sandra Coney, 'Affairs of the Heart' in Sandra Coney, ed., 'Affairs of the Heart', in Sandra Coney, ed., *Standing in the Sunshine. A History of New Zealand Women Since They Won the Vote*, Auckland: Penguin Books Ltd, 1993, p.177; Olssen and Levesque, p.18.

⁹ Lloyd, p.148.

Family size began to fall from 1961.¹⁰ The average size of completed families fell from a high of four children in 1961 to 2.5 by the end of the decade.¹¹ Coupled with increased life expectancy, child-raising, once the main aim of marriage, now occupied much less time.¹² Most couples would spend about half of their married life on their own after the children had left home.¹³ Fewer children and shorter child-raising periods brought the actual marriage relationship under greater scrutiny and forced couples to re-examine their relationships.¹⁴ It also removed one of the main reasons women cited for staying in unsatisfactory relationships, that is, for the sake of the children.¹⁵

The maturing of “baby boomers”, the product of a rise in marriage and fertility rates after World War II, and the trend towards early marriage strengthened discourses that challenged the ideal nuclear family. Separation statistics show 20% of all women belonging to the cohorts married prior to 1970 were separated before 15 years of marriage.¹⁶ The separated and divorced proportion of the population became more visible.¹⁷ Individuals marrying for companionship were thought more likely to divorce if their psycho-emotional needs were not met.¹⁸ The likelihood of divorce was statistically linked to whether women had married at a young age and were pregnant at the time of marriage or shortly thereafter. The ‘shotgun’ wedding was notorious for

¹⁰ *New Zealand Census of Population and Dwellings, 1971*, ‘Ages and Marital Status’, p.2; Pool, Dharmalingham and Sceats, p.213.

¹¹ Kedgley, Sue, *Mum’s the Word. The Untold Story of Unmarried Motherhood in New Zealand*, Auckland: Random House Ltd, 1996, p.193.

¹² Olssen and Levesque, p.18

¹³ K.D. MacRae, ‘Marital Strife and the Family’, *New Zealand Social Worker* (NZSW), vol.4, no.3, July 1968, p.35.

¹⁴ *Ibid*; Sephanie Coontz, *Marriage, A History: from Obedience to Intimacy, or How Love Conquered Marriage*, New York: Penguin Group (USA), 2005, p.254.

¹⁵ This was a common reason cited by women for delaying leaving violent marriages in women’s narratives reported in, Domestic Proceedings Files, Christchurch District Court, CAHS, CH927, 1970, Archives New Zealand (ANZ), Christchurch; Susan Woodhouse, ‘How Battered Women can get Help’, *Readers’ Digest*, 1980, Private Papers of Doris Church.

¹⁶ Pool, Dharmalingham and Sceats, p.188.

¹⁷ Goodger, p.131.

¹⁸ Novitz, Rosemary, ‘Marital and Familial Roles in New Zealand: The Challenge of the Women’s Liberation Movement’, in Peggy G. Koopman-Boyden, ed., *Families in New Zealand Society*, Wellington: Methuen Publications NZ Ltd, 1978, p.77; Lloyd, p.148.

its failure.¹⁹ The subsequent increase in divorces from the mid-1970s has been linked to this pattern of family formation in the 1960s.²⁰

Increasing numbers made it difficult to regard the separated and divorced as separate and apart from the community.²¹ Between 1961 and 1966 the number of people aged 15-24 years increased from 170,000 to 240,000.²² From 1966 to 1971, legal separations rose by 67.5% and divorces by 28.9%. The greatest numerical increase in the legally separated was in the 25-34 year age group and the greatest percentage increase was in the 16-24 year age group.²³ Solo parenting was found more among the more recent birth cohorts of women, especially among those who bore children during adolescence. However, it was usually not more than three years before they formed another union.²⁴

By the end of the 1960s more unmarried mothers kept their babies.²⁵ The percentage of unmarried mothers choosing to do this increased from 20% in 1960 to 28% in 1970.²⁶ In 1970 around 30% of ex-nuptial babies were adopted and around 30% remained with solo mothers.²⁷ Ex-nuptial live births increased from 5242 in 1962, to 8300 in 1970.²⁸ There was also a greater preference for de facto unions among the younger ages. This is partially reflected in the rising ex-nuptial rate. In 1970 around one-quarter of ex-nuptial births involved de facto unions. From this time formal marriage was neither 'the driver of family structures nor a pre-determinant of family formation'.²⁹

¹⁹ Pool, Dharmalingham and Sceats, p.188; K.D., MacRae, 'The Failure of the New Zealand Marriage', NZLJ, no.7, 20 April 1971, pp.163-4; P.R.H. Webb, 'Separation Orders Under the Domestic Proceedings Act 1968', NZLJ, no.1, 20 January 1970, p.14.

²⁰ Pool, Dharmalingham and Sceats, pp.188-9.

²¹ P. Avery Jack and Jim Robb, 'Social Welfare Policies: Development and Patterns Since 1945', in A.D. Trlin, ed., *Social Welfare and New Zealand Society*, Wellington: Methuen Publications (NZ) Ltd, 1977, p.41.

²² Susan Butterworth, 'Autre Temps, Autre Moeurs', *Listener*, vol.75, no.1793, 1974, p.14.

²³ *New Zealand Census of Populations and Dwellings, 1971*, 'Ages and Marital Status', p.7.

²⁴ Pool, Dharmalingham and Sceats, p.189.

²⁵ *Ibid.*, p.186.

²⁶ Carmichael, p.177.

²⁷ Pool, Dharmalingham and Sceats, p.186.

²⁸ Annual Reports of the Child Welfare Division, Department of Education, *Appendices to the Journals of the House of Representatives* (AJHR), 1962-1968; D.P O'Neill, R. Hudon, B.M. O'Connell, A.A. Donnell, Research Section of the Department of Social Welfare, 'Ex-nuptial Children and Their Parents', Wellington, 1976, p.357.

²⁹ Pool, Dharmalingham and Sceats, pp.180-2, 186.

Changes in marriage expectations and emergent discourses of individuals as victims shaped by social circumstances fed into attitudes towards marriage breakdown. In the 1950s marital fault was popularly assumed: ‘the guilty party was blamed and divorce granted according to adultery, cruelty, desertion.’³⁰ Over the 1960s the view of situational ethics promoted sympathy and helping rather than condemning and punishing. This discursive move is clearly indicated in the view of British marriage guidance expert David Mace, reported in the *Dominion* in 1956, that ‘the whole concept of matrimonial offences is ridiculous. Who is guilty, who is innocent – these are questions asked when we have just two victims in an overwhelming situation’.³¹ A *Truth* survey in 1966 showed 80% of the population favoured divorce by consent.³² It was recognized that a matrimonial “offence” was a symptom rather than a cause of marriage breakdown.³³ It implied a shared responsibility. MP Martyn Finlay’s view, that it was rare that only one partner was to blame for a breakup, was widely shared.³⁴

These changes implied a lessening of the constraints on leaving a “bad” marriage. The construction of marriage as a partnership weakened the view of it as a strict legal contract and implied a greater toleration of marriage breakdown. This was an international phenomenon among western countries. In the early 1950s the British Royal Commission on Marriage and Divorce had endorsed a view of marriage as a partnership of equals.³⁵ The shift away from matrimonial fault was explicit in the 1969 British Divorce Reform Act, which introduced the basic ground for divorce as ‘irretrievable breakdown of the marriage’, and in the 1969 Californian Family Law Act, which introduced the one ground for divorce, other than incurable insanity, as ‘irreconcilable differences’.³⁶ New Zealand’s involvement in Commonwealth conferences meant it was exposed to these newer ideas.³⁷

³⁰ Jennifer Daly, *MG Reflecting. A Portrait of Marriage Guidance New Zealand, 1949 to 1989*, Wellington: Marriage Guidance, 1990, p.11.

³¹ Reported in B.D. Inglis, ‘Family Law’, p.329.

³² ‘Statistics in Divorce’, *Truth*, 12 January 1966, p.19.

³³ Luxford, John H., and Webb, P.R.H., *Domestic Proceedings Under the Jurisdiction of the Magistrate’s Courts in New Zealand*, Wellington: Butterworths & Co. (NZ) Ltd, 1970, p.30.

³⁴ Martyn Finlay, *New Zealand Parliamentary Debates* (NZPD), 1968, 358, p.3371.

³⁵ G.E. Bisson, ‘The Reform of the Law Regarding Maintenance and Settlement of Property Rights Between Spouses in Matrimonial Disputes’, NZLJ, no.10, 4 June 1963, p.243.

³⁶ Luxford and Webb, p.vi.

³⁷ For example, a discussion in the NZLJ around matrimonial property references a paper given by a Canadian legal academic given at the Second Commonwealth and Empire Law Conference, Bisson, p.244; Several meetings between Commonwealth and state attorneys-general were held each year, Report of the Department of Justice, AJHR, 1968, H.20, p.15.

Child and Family Discourses

Stability and continuity of family life were thought to be the most important factors in the development of a child. In the 1960s stability meant a family bound in marriage. Anxiety around juvenile delinquency in the 1950s had brought family dynamics under closer scrutiny.³⁸ In the 1950s and 1960s delinquency was blamed on ‘broken homes’.³⁹ Appreciation of the social environment for child development altered discourses on children that fed into the wider discursive field of the family. Parental responsibility shifted from simply meeting material needs, such as getting food on the table, to ‘something much deeper’ that involved socializing children in a more deliberate way, managing their environment, and helping to build a better life for all.⁴⁰ Unsatisfactory childhood experiences produced inadequate parents and/or criminals. Child welfare became central to social and economic stability. Minister of Justice, Ralph Hanan, told parliament in 1968 that unhappy homes retarded the emotional development of children and sowed the seeds of serious misbehaviour.⁴¹ Children were identified as the community’s most valuable resource.⁴²

Changing understandings around children impacted on attitudes to marriage and marriage breakdown. Firstly, they converged with the devaluing of legal marriage to erode the distinction between children born within and outside marriage. All children were valuable to the community. The 1969 Status of Children Act removed all such legal distinction and promised all children equal status. It evoked the ‘essential dignity of the human being’, reflecting the rising importance of the individual within the family and of children’s rights.⁴³ Because the law of legitimacy had been a powerful incentive to marry, marriage could be said to have lost its hold on determining people’s political and economic rights.⁴⁴

³⁸ Report of the Department of Justice, AJHR, 1967, H.20, p.6.

³⁹ For example, Ralph Hanan, Minister of Justice, NZPD, 1963, 336, p.1289.

⁴⁰ ‘Home Management Concept Changing’, *Otago Daily Times*, 31 May 1971, p.13.

⁴¹ Ralph Hanan, NZPD, 1968, 358, p.3363.

⁴² P.H.T. Alpers, ‘Violence and the Law’, NZLJ, no.22, 3 December 1963, p.623; Royal Commission on Social Security (RCSS), *Report of the Royal Commission on Social Security*, Wellington: Government Printer, 1972, p.216.

⁴³ Dugald J. McDonald, ‘Children and Young Persons in New Zealand Society’, in Peggy G. Koopman-Boyden, ed., *Families in New Zealand Society*, Wellington: Methuen Publications (NZ) Ltd, 1978, p.51; Luxford and Webb, p.303.

⁴⁴ Luxford and Webb, p.304.

Secondly, the focus on a child's psychological health and family environment challenged the belief that the preservation of the marriage was always in a child's best interests. Child Welfare officers began to recognize that the family could also be a source of problems.⁴⁵ MP Esme Tombleson pointed to the neglected child in two-parent families.⁴⁶ The Society for the Protection of Home and Family (SPHF) was 'amazed' at the number of psychological problems in the better type of homes, indicating how changing constructions brought previously unseen conduct into view.⁴⁷ These findings raised the question of whether it was fair to the children to continue in a bad marriage and implied that sometimes a good divorce was a better solution.⁴⁸ One Marriage Guidance counsellor said they were not going to tell people they had to make their relationship work just because they had a couple of children.⁴⁹ This afforded a sense of legitimacy to alternative family forms. As early as 1956 the Child Welfare Division had begun to make a distinction between unmarried mothers who lived alone and those within a de facto relationship. In 1960 the Division felt that, while it was still necessary to guard against the danger that an illegitimate child might be born into an unsatisfactory environment, in actuality, in many cases the child was born into a stable de facto situation.⁵⁰

Constructions of stability changed from marriage ties to something more functional. One magistrate refused to grant consent to a pregnant girl to marry because he thought both the mother's and unborn child's welfare depended on whether the proposed marriage could be expected to be stable. The legitimate birth of the child was not the paramount consideration.⁵¹ Similarly, another magistrate in a custody hearing held that a stable de facto relationship was equivalent to one sanctified by marriage.⁵² Rutherford Ward interpreted this to mean that taking 'children to live in the atmosphere of a stable and harmonious de facto relationship, from a household

⁴⁵ Bronwyn Dalley, *Families Matters. Child Welfare in Twentieth-Century New Zealand*, Auckland: Auckland University Press, 1998, p.258.

⁴⁶ Esme Tombleson, NZPD, 1961, 326, p.410.

⁴⁷ 'Protection Society's Work Increased', *Press*, 3 November 1971, p.6.

⁴⁸ MacRae, 'Marital Strife and the Family', p.35.

⁴⁹ Dorothy Fraser reported in Daly, p.25.

⁵⁰ Report of the Child Welfare Division, Department of Education, AJHR, 1960, E.4, p.6.

⁵¹ Case discussed in Luxford and Webb, *Re L. (An Infant)* 1968, p.304.

⁵² Rutherford Ward, 'Parental Misconduct and the Custody of Children', in B.D. Inglis and A.G. Mercer, eds, *Family Law Centenary Essays*, Wellington: Sweet and Maxwell Ltd, 1967, p.66.

constantly embroiled in marital warfare' was a 'much more responsible attitude to their welfare'.⁵³

The move to an appreciation of function over form is indicated in statements made by Ralph Hanan. In 1963 he said delinquency was largely a by-product of the 'broken home'.⁵⁴ Five years later he said that that 'a formal bond' without vitality was not 'performing the social function of stable and sound marriage'.⁵⁵ Hanan's view was also shaped by the belief that restrictive divorce laws had contributed to the rise in de facto relationships.⁵⁶ The 1967 extension of the marriage allowance by the New Zealand Army to de facto relationships of twelve months duration where there was a legal impediment to marry expressed this.⁵⁷ Paradoxically, it made a liberal divorce law essential for the survival of the institution of marriage.

Despite emerging discursive supports, alternative family forms were strongly resisted. Some magistrates condemned de facto relationships (as discussed in Chapter 4). Helping agencies were often disapproving. The Salvation Army often sought to marry clients in de facto relationships 'as part of dealing with their stress'.⁵⁸ The SPHF claimed that, like drunkenness, de facto relationships often caused problems for children.⁵⁹ A Marriage Guidance trainee counsellor believed there was an absolute belief that it was not appropriate to work with de facto couples - a contradictory position, given that Marriage Guidance also considered separation an appropriate solution to unsatisfactory marriages.⁶⁰ Discursive pressures to stay in "bad" marriages persisted. Marianne Thorpe, a counsellor in the early 1970s, recalled seeing many clients trapped in tragic and violent circumstances. The women involved often felt an obligation and loyalty to their children, to their parents and their in-laws.⁶¹ Pro-family rhetoric remained strong and family law throughout the 1970s continued to be based on the assumption that marriage was the preferred living arrangement.⁶² However, by

⁵³ Ward, p.66.

⁵⁴ Ralph Hanan, NZPD, 1963, 336, p.1289.

⁵⁵ Ralph Hanan, NZPD, 1968, 358, p.3394.

⁵⁶ Ibid.

⁵⁷ 'De Facto Wives Recognised by Armed Forces', *Truth*, 31 January 1967, p.10.

⁵⁸ Interview with a captain in the Salvation Army, 8 March 2008.

⁵⁹ 'Protection Society's Work Increased', *Press*, 3 November 1971, p.6.

⁶⁰ Jo Valentine reported in Daly, p.39.

⁶¹ Reported in *ibid.*, p.40.

⁶² Mark Henaghan and Pauline Tapp, 'Legally Defining the Family', in Mark Henaghan and Bill Aitkin, eds, *Family Law Policy in New Zealand*, Auckland: Oxford University Press, 1992, p.9; Anne

1970, as Margaret Tennant has demonstrated, ‘the preservation of the nuclear family was less likely to be touted as the basis of social order’.⁶³

Gender and Human Rights Discourses

Moves to equality between the sexes, such as the 1960 Equal Pay Act, reinforced the view that domestic law was out of keeping with the times.⁶⁴ The decline of the Common Law view of the spouses as one person had begun in the late nineteenth century and ended with the 1963 Matrimonial Proceedings Act. Gender equality had implications for the legal concept of marriage and encouraged a view of marriage as a partnership of independent equals.⁶⁵

Human rights discourses intertwined with changing views of marriage breakdown and child welfare to increase sympathy for individuals subject to the quasi-criminal nature of domestic proceedings, where one adversary was pitted against another.⁶⁶ The Department of Justice reported in 1967 that ‘resentment and anxiety associated with these matters and with quarrels about maintenance and custody are a running sore on the body of society and they diminish’ human happiness.⁶⁷ Individual well-being was linked to social well-being. Ralph Hanan believed it was of the greatest importance to both affected individuals and the community that family disputes should be dealt with in a manner that was dignified, fair and humane.⁶⁸ Less recrimination after proceedings was beneficial for all concerned, especially for children, as parents had to co-operate over their future care. It also made reconciliation more possible.⁶⁹

Individuals with political capital who subscribed to humanitarian views of social justice were central to domestic law reform. These included Ralph Hanan, John Robson, Owen Woodhouse and Martyn Finlay. Hanan is described as ‘one of the

Else observed that marriage continued to be seen as the basis on which the good order of society was maintained’ Anne Else, ‘Editorial – Sex Education’, *Broadsheet*, no.3, September 1972, p.1.

⁶³ Margaret Tennant, *The Fabric of Welfare. Voluntary Organisations, Government and Welfare in New Zealand, 1840-2005*, Wellington: Bridget Williams Books, 2007, p.140.

⁶⁴ Bisson, p.241.

⁶⁵ Bisson says the Common Law view of the spouses as one person was first broken by the Married Women’s Property Act 1884, which enabled married women to hold separate property, *ibid.*, pp.241-2.

⁶⁶ Ralph Hanan, NZPD, 1968, 358, p.3367.

⁶⁷ Report of the Department of Justice, AJHR, 1967, H.20, p.6.

⁶⁸ Ralph Hanan, NZPD, 1968, 358, p.3367.

⁶⁹ Dr Jack Dominian reported in Luxford and Webb, p.30.

country's most forward-looking Ministers of Justice'.⁷⁰ He was fortunate to have 'an outstanding civil servant, John Robson, as his Secretary for Justice'.⁷¹ Reforming domestic law was part of Hanan's aim to reform the law in general. He believed that it had to be constantly reviewed if it was to conform to the needs of society and to avoid injustice.⁷² A liberal tradition and humanitarianism, seeking a better deal for people before the law, characterized Hanan's reform efforts. Penal reform was another example of this.⁷³ As a Supreme Court judge from 1961 and a Court of Appeal judge from 1973, Owen Woodhouse exercised a liberal approach that promoted equal rights for women and a more humane and sympathetic law. His judgments set precedents, and were widely cited.⁷⁴ His 1967 'Woodhouse Report' on accident compensation that recommended a 'no-fault' scheme, was a reform with wide implications. Its influence can be seen in one lawyer's call for a 'Woodhouse report' in domestic law.⁷⁵ Martyn Finlay, MP and later Minister of Justice, was also an 'advanced liberal on social issues'.⁷⁶

Changes in family formation, a greater toleration of marriage breakdown, the extension of child welfare to include a psychological dimension, and changing attitudes towards gender equality and social justice challenged the dominance of the ideal nuclear family. The state was forced to re-appraise its regulation of marriage. While not directly addressing men's violence against wives and partners, this re-appraisal would have wide implications for women's capacity to resist such violence.

THE 1968 DOMESTIC PROCEEDINGS ACT

The 1968 Domestic Proceedings Act had three main objectives: to improve the quality of decisions around marital law and achieve greater justice for the affected parties, to encourage reconciliation, and to ensure fair maintenance.⁷⁷ Indicative of the

⁷⁰ Atkin, p.466.

⁷¹ G.P. Barton, 'Hanan, Josiah Ralph 1909-1969', *Dictionary of New Zealand Biography*. Retrieved April 2009 from www.dnzb.govt.nz.

⁷² Report of the Department of Justice, AJHR, 1961, H.20, p.4.

⁷³ Discussed in Chapter 4.

⁷⁴ A Department of Justice committee on matrimonial property adopted Woodhouse's liberal approach, S.C. Ennor, 'The Matrimonial Property Act 1963 – A New Deal?', NZLJ, no.22, 5 December 1972, p.503.

⁷⁵ Shirley Smith, 'Introduction and Discussion', NZLJ, no.10, 3 June 1969, p.340.

⁷⁶ Michael Bassett, 'Hon Dr Allen Martyn Finlay (1912-1999)'. Retrieved December 2009 from http://www.michaelbassett.co.nz/article_finlay.htm.

⁷⁷ Wilfrid Sim, 'New Matrimonial and Family Legislation', NZLJ, no.2, 4 February 1969, p.44.

contradictory nature of discourses, the act acknowledged that preserving marriages at all costs would be departing from the public good, encourage illicit relationships and would deprive children of the full family life that was their divine right.⁷⁸ While the state's interest in a child's future endorsed the imperative to preserve marriages, breakdown could be preferable to violence or hatred in a home.⁷⁹ Relaxing legal constraints to leave marriages strengthened the institution of marriage because unhappy spouses would then be free to enjoy a happy marriage with another.⁸⁰ This meant children of unhappy marriages could be raised in a substitute, but happy and stable family. The act did away with the fault provision and shifted focus from individual parties to outcomes: the issue was 'not the isolation of responsibility for the causes of domestic trouble but an estimation of their effects.'⁸¹ Assigning fault discouraged reconciliation, bitterness following an adversarial process impacted on the children's future welfare, the parties were social victims and a matrimonial offence was but a symptom of marriage breakdown.⁸² Compounding these constructions was the material fact that it was difficult for magistrates to assign fault in the time available to them.⁸³ The act strengthened the view of marriage as a 'viable companionate relationship'.⁸⁴ However, the dual aims of encouraging reconciliation and making it easier to obtain separation orders were contradictory. In practice it was difficult to satisfy both requirements.

The emphasis on reconciliation counterbalanced the relaxing of legal constraints for separation. The act imposed a duty 'on the court, and on lawyers acting for each spouse, to give consideration to the possibility of reconciliation, and to take all proper steps towards assisting reconciliation'.⁸⁵ It created special legal proceedings solely for conciliation and provided for court-ordered conciliation and the nullification of

⁷⁸ Ralph Hanan, NZPD, 1968, 358, p.3394.

⁷⁹ Luxford and Webb, p.vii.

⁸⁰ Lord Gardiner reported in Anthony J.W. Taylor, 'A Psychologist's View of Family Law', in B. Inglis and A. Mercer, eds, *Family Law Centenary Essays*, Wellington: Sweet & Maxwell (NZ) Ltd, 1967, p.104.

⁸¹ Judge Woodhouse cit., B.D. Inglis, 'Serious Disharmony and Discretion to Refuse a Separation Order', NZLJ, no.5, 20 March 1973, p.99.

⁸² Ralph Hanan, NZPD, 1968, 358, p.3363; Department of Justice, Domestic Proceedings Bill Summary of Evidence, p.7, Destitute Persons Act, 1967-1970, ABVP, 500, W4927, box 47, J 18-11-161, pt 3, ANZ, Wellington.

⁸³ 'Solicitor Speaks on New Act', *Press*, 26 February 1969, p.2.

⁸⁴ Webb, p.12.

⁸⁵ *New Zealand Official Yearbook (NZOY)*, 1972, p.255.

separation orders if behaviour or circumstances changed.⁸⁶ The message was explicit: only when reconciliation had failed would it be appropriate to consider separation orders.⁸⁷

Reflecting the public interest in maintaining stable families, not families at any cost, the act introduced a wholly new basis for separation orders. Separation orders could be made on the grounds:

Section 19: (a) that there is a state of serious disharmony between the parties to the marriage of such a nature that it is unreasonable to require the applicant to continue or, as the case may be, to resume, cohabitation with the defendant, and that the parties are unlikely to be reconciled; or

(c) that since the marriage any act or the behaviour of the defendant affecting the applicant has been such that in all the circumstances the applicant cannot reasonably be required to continue, or, as the case may be, resume cohabitation with the defendant.

The conviction and sentence for a serious assault against the applicant or child of the applicant, or a sexual offence against a child of the family, was retained (section 19, clause b) despite opposition, but “seriousness” was now measured as a fine of \$50 or more. Despite some objection to retaining this clause,⁸⁸ the Department of Justice believed it provided ‘a clearcut ground’ for a specific situation ‘in which a wife may want immediate protection and a separation following physical violence by the husband’.⁸⁹ In the event, few separation applications proceeded on this ground.

Domestic law reform was about re-writing the marriage contract, altering its prescriptions and proscriptions in order to modernize and strengthen the institution of marriage, and the legal and economic position of married women. It only indirectly

⁸⁶ Ibid.

⁸⁷ Inglis, ‘Family Law’, p.326.

⁸⁸ The Law Society submitted that if the assault did not create a state of serious disharmony or an unreasonableness to cohabit, then a conviction and fine should not be grounds for a separation order, Submissions of Canterbury Legislation Committee for NZ Law Society, Domestic Proceedings Bill, Destitute Persons Act, 1960-1968, ABVP, 500, W4927, box 47, J 18-11-161, pt 2, ANZ, Wellington; it was submitted that retaining the clause allowed a wife to seek separation from a husband ‘after the kind of weekend brawl that is not uncommon...against which there would be no defence’, Martyn Finlay, NZPD, 1968, 358, p.3370. Finlay did not present this as his personal view.

⁸⁹ Department of Justice, Domestic Proceedings Bill Summary of Evidence, p. 9, Destitute Persons Act 1967-1970, ABVP, 500, W4927, box 47, J 18-11-161, pt 3, ANZ, Wellington.

addressed problems of men's violence against wives. However, the new grounds for separation orders did have implications for the court's treatment of it. "Serious disharmony" potentially encompassed a greater range of conduct that could preclude cohabitation. Clause (c) was thought wide enough to include adultery.⁹⁰ Conduct did not have to be 'persistent'; a single act of cruelty could make it unreasonable to resume cohabitation.⁹¹ Conversely, the construction of fault as a symptom rather than a cause of marriage breakdown also de-emphasized the violent person's responsibility for cruelty, a construction that intersected with notions of provocation that operated around women. Law professor Don Inglis believed that, 'matters of adultery and cruelty' were not 'faults' per se 'because often these matters form merely the tip of the iceberg of matrimonial discord'.⁹² Some viewed serious disharmony as potentially opening the door to 'cruelty without culpability' because it enabled divorce without fault.⁹³ What the changes meant in practice however, was far from certain. 'Serious disharmony' was undefined, leaving the interpretation of it to the judiciary.⁹⁴

With the relaxation of the threshold for separation orders, the non-molestation clause was omitted. Automatic penal sanctions were counter-productive to the interests of justice, and to the desire to promote stable families and co-operation over children post-separation. The Department of Justice felt it was unnecessary and unjust to make every defendant a potential criminal.⁹⁵ The view of both parties as victims of an overwhelming situation reinforced the removal of penal sanctions. Owen Woodhouse, as a Court of Appeal judge, thought that as a separation order had been preceded by failed efforts at reconciliation neither party could be regarded as successful. As both were so obviously losing, penal sanctions did not follow.⁹⁶ The Law Society favoured the retention of automatic non-molestation orders. However, this appeared driven by a desire to retain the seriousness of separation orders rather than a desire to protect

⁹⁰ Department of Justice, Domestic Proceedings Bill Summary of Evidence, p.9, Destitute Persons Act, 1967-1970, ABVP, 500, W4927, box 47, J 18/11/161, pt 3, ANZ, Wellington.

⁹¹ P.B.A. Sim, 'Legislation', *New Zealand Universities Law Review* (NZULR), vol.3, October 1969, p.463.

⁹² For example, B.D. Inglis, *The Family, the Law, and the Courts: an Inaugural Address Delivered on 28th June 1973*, Wellington: Victoria University of Wellington, 1973, p.8.

⁹³ P. Sim, p.462.

⁹⁴ Webb, p.13.

⁹⁵ Department of Justice, Domestic Proceedings Bill Summary of Evidence, p.12, Destitute Persons Act, 1967-1970, ABVP, 500, W4927, box 47, J 18-11-161, pt 3, ANZ, Wellington.

⁹⁶ Judge Woodhouse reported in Inglis, 'Serious Disharmony and Discretion to Refuse a Separation Order', p.99.

women and children. Men's violence against wives was still considered a limited problem. Don Inglis emphasized that only a few people needed recourse to domestic law.⁹⁷ This view attests to the importance of statistics in creating a social reality.⁹⁸

A separate non-molestation order was introduced, providing for either spouse to seek protection.⁹⁹ This made it easier for the judiciary to award separation orders. Without automatic penal sanctions, the consequences for the parties were less, and questions of fact could be decided on a lower threshold of evidence, a balance of probabilities.¹⁰⁰ In theory, the new non-molestation order widened the definition of molestation and covered children of the marriage. In one lawyer's view the new order meant that 'he can't ring you up persistently, he can't sit in the car outside the gate and watch, he can't follow a child'.¹⁰¹

The privileging of property rights, and the emphasis on reconciliation and conciliation limited protection conferred by a non-molestation order. Unlawful entry to, or remaining on the land or building, was still required to constitute a trespass. This meant that unless the party in whose favour the non-molestation order was made was entitled to the exclusive possession of the home, the other party did not commit a trespass by entering if he or she was the owner or part-owner.¹⁰² A Department of Justice report submitted 'it would be going a long way to make a man guilty of a criminal offence for doing no more than enter property that he owns, whether jointly or not'.¹⁰³ Property rights remained privileged over individuals' rights to safety. In practice this disadvantaged women because men were more likely to be property owners and women were more likely to be seekers of protection.

The non-molestation order was dependent on a state of separation; when a separation order or agreement ceased so too did the non-molestation order.¹⁰⁴ This created some

⁹⁷ Inglis, 'Family Law', p.325.

⁹⁸ Discussed in Chapter 4.

⁹⁹ Luxford and Webb, p.36.

¹⁰⁰ Webb, p.11.

¹⁰¹ Women, Violence and Justice seminar, 29 November 1980, p.6, Women and Violence, 1978-1980, ABKH, W4105, 30-0-9 2, ANZ, Wellington.

¹⁰² Luxford and Webb, pp.36-37.

¹⁰³ Department of Justice, Domestic Proceedings Bill Summary of Evidence, p.12, Legislation - Destitute Persons Act, 1967-1970, ABVP, 500, W4927, box 47, J 18/11/161, pt 3, ANZ, Wellington.

¹⁰⁴ H. Y. Gilliland, magistrate, to Secretary for Justice, 24 August 1971, Domestic Proceedings Act 1968, 1970-1971, ABVP 500 W4927, box 47, J 18-11-191, pt 1, ANZ, Wellington.

confusion and dispute about when and if cohabitation had resumed, and whether the order was still effective for police to act on. Although a person could consent to a temporary waiving of a non-molestation order for the purposes of reconciliation or issues relating to the children, it raised an evidentiary problem whether consent was given. It was thought the judge would believe the most plausible person, an unpredictable outcome.¹⁰⁵ As victimhood was primarily measured by the extent of physical injury and such effects of violence as depression and fear were seldom acknowledged, some women's testimonies or complaints may have been misjudged. The provision potentially enabled abusive husbands to excuse their violations of the order and send their wives the explicit message that they could still have access to them when they wanted.

By including informal separations, the non-molestation order was available to a wider group of women, but the divorced spouse and de facto wife remained excluded, although they still had recourse to less effective and more costly remedies under the 1957 Summary Proceedings Act.¹⁰⁶ Extending the non-molestation order to de facto marriages was not considered.¹⁰⁷ This indicates that protection of women or men from abusive and molesting ex-partners might not have been the primary aim. In 1976 the Minister of Justice David Thomson, said, a 'breach of a non-molestation order is a criminal offence and, because of this serious consequence, these orders have traditionally been available only between husbands and wives'.¹⁰⁸ This implied that violation of the marriage contract, thus of the obligation of protection, was the offence. It was also debated whether de facto wives were in fact as exposed to violence as wives who were formally married.¹⁰⁹

Conciliation processes and the provision for consent orders, i.e. agreements endorsed by the court, benefited some spouses by reducing the need for adversarial litigation.¹¹⁰ Proceedings could be dismissed if the court was 'satisfied that they are frivolous or

¹⁰⁵ Women, Violence and Justice, 29 November 1980, p.8, Women and Violence, 1978-1980, ABKH, W4105, 30-0-9 2, ANZ, Wellington.

¹⁰⁶ Discussed in Chapter 4.

¹⁰⁷ For example, the Department of Justice did not mention it in the Summary of Evidence for the legislation. Department of Justice, Domestic Proceedings Bill Summary of Evidence, Legislation - Destitute Persons Act, 1967-1970, ABVP, 500, W4927, box 47, J 18-11-161, pt 3, ANZ, Wellington.

¹⁰⁸ David Thomson, NZPD, 1976, 408, p.4515.

¹⁰⁹ Ibid.

¹¹⁰ Webb, p.13.

vexatious or an abuse of the procedure of the Court'.¹¹¹ However, this was rare because of the impact on an individual's legal rights. Conciliation processes did not protect women from the risk of violence or abuse; women could be pressured into "agreements" and unscrupulous individuals could exploit the imperative to conciliation to delay proceedings for months, even years.¹¹² The opportunity for harassment by cross-filing in different courts still existed and gave the spouse with greater economic resources, most likely the husband, an 'additional and unfair weapon against the other'.¹¹³ One woman's re-application for separation orders in 1975 was delayed until 1978 because her husband cross-filed for divorce in the Supreme Court.¹¹⁴

The act's aim to pursue fairer maintenance by one spouse of another placed a much greater emphasis on questions of need and whether a wife was able to earn enough to provide adequately for herself while fulfilling her duty towards the care of her children.¹¹⁵ Only married women could apply for maintenance for themselves. Husbands could apply for maintenance, but on more narrow grounds.¹¹⁶ Conduct was still held relevant, but was not to be a paramount consideration because it did not serve the interests of the children.¹¹⁷ The court was forbidden to refuse a wife an order because of her wrongful conduct if she had responsibilities to children and because of her health was unable to meet her needs.¹¹⁸ However, the court could decline a maintenance application if the husband was willing to support the wife on her return to him, unless it opined that she could not reasonably be expected to cohabit.

The increasing social reality of de facto relationships following a marriage breakdown and the changing status of women in paid employment propelled the revision of a husband's duty to maintain his legal wife. The present position in law, though not always practised, was that a legal wife and her children had absolute priority over a de

¹¹¹ *Andrew v Andrew* 1969, *New Zealand Law Reports* (NZLR), 1970, p.292.

¹¹² 'Solicitor Speaks on New Act', *Press*, 26 February 1969, p.2.

¹¹³ Report of the Royal Commission on the Courts, AJHR, 1978, H.2, pp.149-50.

¹¹⁴ Christchurch District Court Files, CAHS, CH927, box 3, case 62, 1970, ANZ, Christchurch.

¹¹⁵ Report of the Department of Justice, AJHR, 1969, H.20, p.6.

¹¹⁶ W.R. Atkin, 'Spousal Maintenance. A New Philosophy?', NZULR, vol. 9, December 1981, p.346.

¹¹⁷ Report of the Department of Justice, AJHR, 1969, H.20, pp. 6, 7; Leslie Gandar, NZPD, 1968, 358, p.3376.

¹¹⁸ P.R.H. Webb, 'Maintenance of Wives under The Domestic Proceedings Act, 1968', NZLJ, no.22, 2 December 1969, p.685.

facto wife and her children, and a first legal family over a second. The act gave the courts greater flexibility in determining these priorities so that a husband's financial responsibility to others was relevant. In some situations it was thought neither realistic nor in the public interest to give a first wife preferential treatment, even in the case of a de facto relationship.¹¹⁹ Changing discourses of child welfare and the corresponding focus on the consequences of marriage breakdown rather than the cause, underpinned this view.

THE 1968 DOMESTIC PROCEEDINGS ACT IN PRACTICE

Domestic proceedings in the magistrates' courts were organized as a separate division alongside the civil and criminal divisions, a reflection of the new importance conferred on marriage and family.¹²⁰ A separate record book and statistics were created for domestic proceedings, which made patterns of domestic action much more visible. This section uses national statistics and selected case files of the Christchurch District Court to examine judicial practices more closely.¹²¹

Legal Aid

A short discussion of the introduction of legal aid for domestic cases is warranted because it improved the capacity of women's recourse to the new law. The newer concern with social justice and a more "just" law made a case for legal aid for civil proceedings. Justice implied that a party should be represented, even if this was at the expense of the public purse. Women especially were disadvantaged by a lack of legal aid.¹²² Legal aid was intended to ensure that 'no person shall be prevented by lack of means from having a meritorious case heard and determined by the appropriate Court or Tribunal'.¹²³ It enabled legal representation for those unable to afford a solicitor and many more women subsequently used the law.¹²⁴ An analysis of the 2744

¹¹⁹ Department of Justice, Domestic Proceedings Bill Summary of Evidence, p. 15, Legislation - Destitute Persons Act, 1967-1970, ABVP, 500, W4927, box 47, J 18-11-161, pt 3, ANZ, Wellington.

¹²⁰ NZOY, 1972, p.254.

¹²¹ The selection process for case files from the Christchurch District Court is outlined in the Introduction.

¹²² Discussed in Chapter 5; Submission by Mothers' Union, September 1968, Committee Statutes Revision - Domestic Proceedings, 1968-1968, LE 1, box 1657, 1968/11, ANZ, Wellington.

¹²³ It did not apply to criminal proceedings, provision for which, although less developed, was already available through the Offenders Legal Aid Act 1954, C. Irvine, 'Legal Aid', NZLJ, no.19, 18 October 1966, p.461.

¹²⁴ It was 'clear from the ever increasing volume of applications that the scheme is meeting a pressing social need', Report of the Legal Aid Board, 1972, H.20D, p.3.

applications in 1970, the first year of its operation, revealed that most of the applicants were women and the scheme was judged as ‘meeting a real need of women whose marriages had broken down’.¹²⁵ In 1971, 96% of all actions under domestic law taken in the Magistrate’s Court involved legal aid.¹²⁶ Legal aid services were also supplemented by the provision of free legal advisers through the establishment of Citizens’ Advice Bureaux and legal advice centres in the early 1970s.¹²⁷

The legal aid scheme had some shortcomings. It excluded divorce and legal advice that did not lead to proceedings. This encouraged litigation that might not otherwise have occurred as it was necessary for a solicitor to issue proceedings to get protection for costs. It was thought parties who might otherwise have settled their disputes amicably could find themselves in an adversary situation by being forced to go to court to obtain legal aid.¹²⁸ The likelihood that seeing a solicitor would result in litigation might have discouraged some women from engaging the legal process. Women who feared their husbands might not have wished to harass them in any way or might have felt unable to face them in court. As well, the \$30 initial contribution was thought to act as a deterrent for those without any financial resources.¹²⁹

Women’s Use of Separation Orders and Court Responses

The number of applications and orders for separation rose steadily over the 1970s. In part, the increase reflected the opportunity for financial independence provided by the Domestic Purposes Benefit (DPB), discussed further in the next chapter.

Paradoxically, the greater inclination to grant separation orders placed pressure on the Department of Social Security to provide financial support more readily to separated wives, and financial provision in turn weakened the courts’ power to constrain women and enforce marital obligations. The DPB undermined the law’s power to regulate marriage because after 1973 judgments in separation hearings did not affect a woman’s right to it.

¹²⁵ Report of the Department of Social Security, AJHR, 1971, H.9, p.22

¹²⁶ Report of the Legal Aid Board, AJHR, 1971, H.20D, p.11.

¹²⁷ Royal Commission on the Courts (RCC), *Report of the Royal Commission on the Courts*, Wellington: Government Printer, 1978, p.289; Report of the Department of Justice, AJHR, 1972, H.20, p.18.

¹²⁸ Report of the Justice Department, AJHR, 1978, H.2, p.148; P.J. Evans and S.D. Ross, *Legal Aid in New Zealand and Abroad*, NZULR, vol.5, 1972-1973, p.13.

¹²⁹ Evans and Ross, p.13.

Table 6.1. Statistics for Separation Orders

Year	Separation Orders	Women Applicants	Serious Disharmony
1970 applications orders made	781 448 (57%)	441	330
1971 applications orders made	2706 929 (34%)	907	745
1973 applications orders made	4199 1466 (35%)	1394	1335
1975 applications orders made	5342 1922 (36%)	1837	1746
1977 applications orders made	6027 2564 (43%)	2408	2389
1979 applications orders made	5295 2200 (42%)	2051	2093

(New Zealand Official Yearbook, 1972-1981)

The gap between numbers of applications and orders does not accurately reflect the court's inclination to grant orders because many applications never made it to a court hearing. An unknown number resulted in agreements or reconciliation. Marriage Guidance statistics suggest around 20% of conciliation processes resulted in reconciliation.¹³⁰

In 1970 and 1975 just over a third of selected case files from the Christchurch District Court resulted in court orders (that is, no agreement was reached between the parties and the court made an order as it saw fit). In 1980 around one quarter did so. Many applications also resulted in consent orders, which involved an agreement by the parties, endorsed by the court: 27% in 1970, and around 40% in 1975 and 1980. In

¹³⁰ At the Court Conciliation Centre, Auckland, in 1971 reconciliations were reported in 20% of the cases where the conciliator had been able to see both parties, K.D. MacRae, 'Conciliation in Domestic Proceedings', NZLJ, no.8, May 1973, p.189.

many of these cases, maintenance was the only really contested issue. Of the 125 applications, only two were dismissed.¹³¹ Not all applicants were serious about going to court. One conciliator said that some applications were used as ‘a weapon’ to make partners realize how precarious the marriage relationship was.¹³²

National statistics show that women overwhelmingly made up the majority of applicants and that most applications were on the ground of “serious disharmony”. Some applications combined this with “conduct” or “assault”. For example, in 1977, 2408 separation orders included 2240 on the grounds of ‘serious disharmony’, 80 on the grounds of ‘serious disharmony and defendant’s conduct’, and seven on the grounds of ‘serious disharmony and assault’.¹³³ In a study of 100 applications for separation in Auckland in 1977, husbands’ violence was frequently cited; ‘physical violence and verbal abuse and/ or arguing’ was alleged in 34 and 35 applications respectively.¹³⁴ Two-thirds of selected Christchurch case files in 1970 and 1975 recorded violence and just over half did so in 1980. This suggests that the ground of serious disharmony often involved a husband’s violence. Only one file recorded an application by a husband on the basis of violent conduct and several husbands made counter-allegations of violence; but overwhelmingly, the files indicated that marital violence was a gendered problem, characterized by male perpetrators and female victims. The new legislation was thus especially significant for women leaving violent marriages.

Judicial Practices around Separation Orders

This section uses law reports and selected case files to identify the constructions of men’s violence against wives in circulation, and their impact on wives’ lives. Judgments were reported for their purported significance to legal thinking and practice; law reports were important for conveying and establishing general principles. Very few cases were reported. Law reports relating to separation

¹³¹ However, there were no recorded outcomes for around one quarter in 1970 and 1980, and 14% in 1975;

Christchurch District Court Files, CAHS, CH927, box 7, case 176, 1970; CH927, box 221, case 13, 1975, ANZ, Christchurch.

¹³² MacRae, ‘Conciliation in Domestic Proceedings’, p.188.

¹³³ *New Zealand Justice Statistics (NZJS)*, 1977-78, Part A, p.107.

¹³⁴ P.R.H. Webb, ‘Serious Disharmony and Unreasonable Behaviour’, NZLJ, no.23, 20 December 1977, p.514.

proceedings were more frequent in the early 1970s, which suggests that debate around the interpretation of the law had settled by the mid-1970s. Case files from the Christchurch District Court provide insight into judicial practices particular to one district and group of individuals, but they are also a rich source of the discourses drawn on to interpret men's violence against wives, and the material experiences of women who used the law to resist it. Shifts in judicial practices were also more visible in these files than in law reports.

In theory, the new ground of serious disharmony disposed of the need to prove fault. Although the new law did not offer new constructions of men's violence against wives or of cruelty, newer beliefs around marriage breakdown and companionate marriage made it easier to claim serious disharmony on account of behaviour that did not meet the legal standard of cruelty. Marriage as a companionate relationship meant that if there was no 'mutual love and affection, understanding and sympathy, and encouragement and dependence', the marriage could be interpreted as having 'foundered' and could be 'legally interred'.¹³⁵ It also meant that a wife was 'entitled to be treated in a normal and reasonable way'.¹³⁶ Claiming unhappiness and falling out of love could be enough to gain a separation order. This made it easier to use the law, and some women may have preferred this claim to avoid aggravating violent husbands. The concern that the new legislation could lead to 'cruelty without culpability' was realized in this sense.¹³⁷

However, the judiciary resisted this construction for some years. Cruelty continued to be approached as it had been under the 1910 Destitute Persons Act and older constructions around innocence and blame persisted in obscuring violence and men's responsibility for it. This meant that the discursive imperative to consider reconciliation was more powerful in practice than a willingness to accept that some marriages were over.

¹³⁵ Webb, 'Separation Orders Under the Domestic Proceedings Act', p.12.

¹³⁶ Judgment reported in Christchurch District Court Files, CAHS, CH927, box 3, case 85, 1970, ANZ, Christchurch.

¹³⁷ P. Sim, p.462.

Judgement in *Edwards v Edwards* 1970, ‘a landmark for family lawyers’, demonstrates the extent to which the discursive imperative to preserve marriage and support reconciliation left men’s violence against wives poorly acknowledged. In that case, a wife unsuccessfully appealed against a magistrate’s refusal of a separation order. She had alleged her husband was an alcoholic for many years and that in recent months, he had frequently threatened and assaulted her, and had threatened to kill her. The husband did not deny the allegations, but said that they were exaggerated. On the evidence heard, the magistrate did not consider the husband was an alcoholic, accepted that he loved his wife and children and found his conduct and his wife’s unhappiness did not constitute serious disharmony. The wife appealed, but the judge held reconciliation still possible. He ruled in the husband’s favour because of the evidence before him ‘and having regard to the children’s future’.¹³⁸ The desire to give a husband a second chance for the sake of the children was still common.¹³⁹ However, discourses of child welfare did address men’s violence against wives when reconciliation was not thought possible. Judgment in *Eland v Eland* 1970 found the husband’s desire for reconciliation insincere and ruled it was better to end the marriage because it was not good for the children to be ‘exposed to bickering and disharmony’.¹⁴⁰

As in *Edwards v Edwards* 1970, early judgments in the Christchurch District Court continued to focus on reasons for serious disharmony rather than the disharmony itself. Women who endured “considerable violence” corroborated by assault convictions or a doctor’s letter were usually granted separation orders, but toleration of a some level of physical violence persisted, especially that which did not result in obvious physical injury.¹⁴¹ One woman testified that, ‘we had a good argument and he jumped up and grabbed me around the neck and slammed me round the chair. Every time I went to answer back he told me to shut up. He came into the bathroom and

¹³⁸ P.R.H. Webb, ‘Case and Comment - Separation Orders and Serious Disharmony’, NZLJ, no1, 19 January 1971, pp.9-10.

¹³⁹ For another example, judgment in *Davies v Davies* 1970 explicitly expressed the desire to give the husband a second chance despite a finding he had acted ‘very irrationally and unwisely’ and ‘did not show his wife sufficient consideration’, P.R.H. Webb, ‘Case and Comment – Two Decisions Under the Domestic Proceedings Act 1968’, NZLJ, no.14, 4 August 1970, p.315.

¹⁴⁰ Judgment in *Eland v Eland* 1971, reported in P.R.H. Webb, ‘Case and Comment - Domestic Proceedings Act 1968 – Serious Disharmony’, NZLJ, no.16, 7 September 1971, p.367.

¹⁴¹ For example, Christchurch District Court Files, CAHS, CH927, box 1, case 12, 1970, ANZ, Christchurch.

wanted to chuck me out the window....It is very high. He pushed me into the chair and he twisted my polo neck skivvy and v neck jersey and I had burn marks around my neck where he twisted it'.¹⁴² Their son was present, screaming and shaking. The magistrate said that while it was a 'forceful action', it was not a very serious assault in the sense that no serious consequences flowed from it. He did however regard it as 'not an insignificant matter as far as the wife is concerned'. In this case serious disharmony was established, but on the basis that the wife had withdrawn from marital relations, along with a combination of other factors, 'the principal ones being the difficulty over the application of the husband's monies, the earlier resort by the husband to drinking and gambling which by itself affects the family's standard of living and the consequential strains from that,' and the husband's later adherence to religious practices, which made life onerous for the family. The considerable violence went largely unacknowledged.

Husbands continued to be judged primarily according to their compliance with their contractual duties as a husband and citizen. Generally, failing to adequately maintain a family, excessive alcohol habits, criminal activities and extra-marital liaisons constituted larger failings than did men's violence against wives. Judgement in one separation hearing read, 'firstly the defendant is a convicted criminal of major proportions', having associated with criminal types, and discussed criminal activities in front of the children who were at an impressionable age.¹⁴³ In that case the violence against the wife and children was brutal. In another, the magistrate believed there was nothing more likely to cause repugnance and distress to a wife than a husband not washing, adding that there was, of course, his assaults, but 'admittedly these are not major matters as far as assaults are concerned'.¹⁴⁴ The wife had alleged frequent minor assaults and threats of more serious ones that necessitated the police being called to her home on several occasions. And in a third case, the magistrate said, 'another element has entered into this which in my judgment places the applicant's

¹⁴² Christchurch District Files, CAHS, CH927, box 4, Case 90 (two cases are numbered 90 in this year), 1970, ANZ, Christchurch.

¹⁴³ *Ibid.*, box 3, case 59, 1970.

¹⁴⁴ *Ibid.*, box 3, case 85, 1970.

case beyond any question. It is that the defendant formed an association with another woman. In addition there was a serious assault'.¹⁴⁵

Older constructions around matrimonial fault and punishment persisted. One magistrate believed that even when the parties were unlikely to be reconciled, it was wrong to grant a separation order to a party who had not made enough effort to save the marriage.¹⁴⁶ This meant that the failure of women to meet older expectations of femininity continued to mitigate men's violence. In *Mitchell v Mitchell* 1972 the judge held that his discretionary powers overrode the legislature's intent to do away with matrimonial fault because it could not have intended that a party who created the state of disharmony should gain a separation order. The separation order granted to a wife in the lower court was overturned on the basis that the serious disharmony was brought about by the wife's clandestine liaison with another man. In that case the wife alleged that she left home several times because of her husband's bad temper and sundry assaults following arguments over money. The lower court had found the long history of differences and assaults had established 'serious disharmony'.¹⁴⁷ The judge interpreted the wife physically fighting back as 'a violent argument, an exchange of blows' and as 'minor mutual assaults'.¹⁴⁸ Fighting back did not fit with the construction of victimhood, which was contingent on passivity. Don Inglis interpreted the judgment to mean that a separation order would not necessarily be granted to an applicant who seemed responsible for the state of 'serious disharmony'.¹⁴⁹

The wife in this case unsuccessfully appealed, but notions of matrimonial fault continued, though to a lesser degree. The Court of Appeal ruled that 'any moral judgment upon the misconduct of actions of either party has no place in an application', but disharmony due to the conduct of one party could have an indirect effect.¹⁵⁰ In this case the separation order would have deprived the 'innocent' husband of his legal right to petition for a quick divorce. The judgment meant that an order 'may be refused' when there were unjust consequential circumstances, consistent with

¹⁴⁵ *Ibid.*, box 9, case 217, 1970.

¹⁴⁶ Inglis, *The Family, the Law, and the Courts*, p. 7.

¹⁴⁷ *Mitchell v Mitchell* 1972, NZLR, 1973, 1, pp.336, 338, 343.

¹⁴⁸ *Ibid.*, pp.335, 341.

¹⁴⁹ Inglis, 'Serious Disharmony and the Discretion to Refuse a Separation Order', p.101.

¹⁵⁰ Judge McCarthy *cit.*, *Mitchell v Mitchell* 1973, NZLR, 1973, 2, pp.190-203.

the new focus on outcomes.¹⁵¹ However, unqualified notions of innocence and blame persisted. In *Hunt v Hunt* 1978 a separation order granted in a lower court was quashed. The judge did not believe the order should have been granted in favour of the party who was responsible for the serious disharmony because this was not ‘just’.¹⁵²

Proving a state of ‘serious disharmony’ was especially difficult in cases involving sexual violence. In *Maffey v Maffey* 1970 a wife alleged her husband was selfish and overbearing, ‘particularly evidenced by his excessive demands and insistence for sexual intercourse despite her remonstrations and medical advice’ after childbirth.¹⁵³ The magistrate concluded that the main cause of the parties’ matrimonial troubles lay in their sexual relations, that the wife had not proved her case and her objection to conjugal sexual relations, while real and on-going, was due to her personality and psychological make-up, a construction that blamed the wife. Although there was no evidence of extra-marital sexual relations, the wife’s apparent ‘infatuation’ with a mutual friend ‘cast considerable doubt on her allegations that sex had been repugnant to her throughout her marriage’.¹⁵⁴ This expressed the belief that if the wife could feel sexual attraction towards another man, then there was no basis for claim of repugnance of sexual relations with her husband. She was also denied a maintenance order because her husband was willing to support her on her return to him and the court did not consider that it was unreasonable to require the wife to cohabit.¹⁵⁵ The Supreme Court dismissed the wife’s appeal.¹⁵⁶ In effect, the court sanctioned the husband’s right to demand sex from his wife on his terms, supporting the common law position that the marriage contract contained conjugal rights. There was no victimhood in obliging husbands’ sexual demands so long as these demands constituted “normal” sexual practices without physical violence.

¹⁵¹ Inglis, *The Family, the Law, and the Courts*, p.7.

¹⁵² P.R.H. Webb, ‘Case and Comment – Domestic Proceedings Act 1968 – Appeal against a Separation Order’, NZLJ, no.1, 23 January 1979, p.6.

¹⁵³ P.R.H. Webb, ‘Case and Comment – It is a Case of the Particular Couple’, NZLJ, no.8, 4 May 1971, p.176.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*, p.178.

¹⁵⁶ *Maffey v Maffey* 1971, NZLR, 1971, pp.692-3.

The case files also indicate a discursive exclusion of sexual aggression as constituting violence. Although marital rape did not incur legal sanctions, the interpretation of some sexual behaviours as non-contractual persisted, such as excessive or “unnatural” demands.¹⁵⁷ Such a finding could support other evidence to prove serious disharmony or unreasonableness to expect cohabitation. In one case the magistrate granted the wife a separation order because he found that the husband sulked; did not speak for long periods; made unreasonable sexual demands, such as when he was infected with a sexually transmitted disease, and shortly after his wife had given birth and still had stitches; that he drank, made threats and had struck his wife on occasions; and that because of his actions she needed medical care.¹⁵⁸ The fact that consequences flowed from the husband’s physical and sexual violence was central to constructing the violence as beyond the obligations implicit in the marriage contract.

The success of women’s claims of unreasonable sexual practices was also dependent on an individual magistrate’s ability to conceptualize the very possibility. One magistrate did not believe a woman’s claims of excessive demands because he could not conceive that her husband could demand sex in only a half-hour lunch break with the two pre-school children present: she therefore was lying.¹⁵⁹ When unreasonable sexual behaviours were admitted, the common attitude was to label them as a problem of sexual relations or personal failings rather than of violence, such as in *Maffey v Maffey* 1970.¹⁶⁰ Law professor Dick Webb considered that a major cause of marriage breakdown was the failure of one spouse to understand the other’s sexual needs and responses and adapt to them.¹⁶¹ Lawyer Joan Rotherham recalls a magistrate describing her client’s allegations of frequently forced intercourse as one of ‘sexual problems’. She thought that the courts ‘did not know what to do about sexual violence’ and did not see forced or coerced sex as violence.¹⁶² Previous sexual experience worked against women’s claims. In one case where the wife claimed her husband forced her to participate in sexually deviant practices the magistrate readily accepted her husband’s evidence that she was sexually forward because she had

¹⁵⁷ “Unnatural” sexual practices such as sodomy were illegal, further discussed in Chapter 4.

¹⁵⁸ Christchurch District Court Files, CAHS, CH927, box 8, case 182, 1970, ANZ, Christchurch.

¹⁵⁹ *Ibid.*, box 4, case 89, 1970.

¹⁶⁰ Discussed previously in this chapter.

¹⁶¹ Webb, ‘Separation Orders under the Domestic Proceedings Act 1968’, p.13.

¹⁶² Interview with Joan Rotherham, 8 July 2008.

previously lived with someone else. He concluded both parties were responsible for their sexual relations.¹⁶³

Discourses in psychology redefined conjugal rights as sexual need. This is indicated in Dick Webb's view that many spouses failed 'to realise the therapeutic value of sexual intercourse in their partners' times of need'.¹⁶⁴ The new construction had a similar outcome to the older version, but as a "need" it was more imperative that it should be met. This undermined the belief that marriage was for better or worse and widened acceptable reasons for marriage breakdown. While discourses of sexual need provided opportunity in situations of lack of sex or excessive demands, in practice it operated more powerfully in the first. Webb thought the new law would provide earlier relief before 'permanent sexual aridity' was established, but in other cases it might be that psychological instability or immaturity existed and could be remedied.¹⁶⁵ This construction encouraged women who endured unwanted sex to interpret their complaints as a personal failing and to seek remedy to such "defects" in themselves.

Over the decade judicial practices around separation orders aligned more closely with parliament's intentions, as indicated in the Court of Appeal judgment in *Mitchell v Mitchell* 1973, which ruled that moral judgments had no place in the making of separation orders. Case files indicate that by the later 1970s the courts more readily accepted claims of serious disharmony. One magistrate said in 1976 that 'it is...a great pity when two young people with two children are not able to make their marriage work...they are the only two that can make it work, neither the court nor anybody else can force people to live together if they are not able to or not willing to'.¹⁶⁶ In 1975 another magistrate said, 'if two human beings who spend their lives together and their nights together are not able to communicate then that is only an indication of serious disharmony of such a nature that it is unreasonable to expect the parties to live together'.¹⁶⁷ The introduction of the statutory Domestic Purposes Benefit in 1973 enabled women to bypass legal sanctions and reinforced the shift, but

¹⁶³ Christchurch District Court, CAHS, CH927, box 7, case 176, 1970, ANZ, Christchurch.

¹⁶⁴ Webb, 'Separation Orders under The Domestic Proceedings Act 1968', p.13.

¹⁶⁵ Up until now the law provided relief only where there was a complete withdrawal of intercourse, *ibid.*, pp.13-14.

¹⁶⁶ Christchurch District Court Files, CAHS, CH927, box 223, case 66, 1975, ANZ, Christchurch.

the change also signalled the court's newer interpretation of marriage as a companionate relationship rather than a strict legal contract. Fewer notes of evidence were recorded in case files as the decade progressed, a reflection of the decline in the importance of investigating matrimonial fault and an acceptance of claims of serious disharmony.¹⁶⁷ However, court outcomes were still dependent on the persuasion of individual magistrates.

Orders for Tenancy and Occupation

Under the 1968 Domestic Proceedings Act, spouses could apply for tenancy and occupation of the matrimonial home. This enabled the spouse to remain in the family home regardless of ownership rights. National statistics show that women readily applied for such orders, and were the main beneficiaries (see Table 6.2), a fact related to the high proportion of custody orders vested in mothers. However, excluding 1970, the success rate for occupation applications halved over the decade.

¹⁶⁷ Ibid., box 225, case 115, 1975.

¹⁶⁸ Cross-examinations in the early 1970s were often long and humiliating. An extreme example was one woman's evidence that was recorded over 56 pages and contained very intimate details. By 1980 judgments and records were brief and the inquisitorial approach was minimal, *ibid.*, box 5, case 109, 1970.

Table 6.2. Affiliated Orders.

Year	Matrimonial Home	Tenancy	Non-molestation
1970 applications orders made in wife's favour	153 94 (61%) 99%	60 48 (80%)	175 118 (67%)
1971 applications orders made in wife's favour	899 295 (33%) 98%	230 83 (36%)	608 241 (40%) 98%
1973 applications orders made in wife's favour	2189 445 (20%) 95%	528 119 (23%)	1963 251 (13%)
1975 applications orders made in wife's favour	2996 635 (21%) 96%	496 150 (30%)	2326 214 (9%)
1977 applications orders made in wife's favour	3459 749 (22%) 92%	561 149 (27%)	2680 308 (11%)
1979 applications orders made in wife's favour	2974 490 (16%) 90%	435 173 (40%)	2116 158 (7%)

(New Zealand Official Yearbook, 1972-1981; New Zealand Justice Statistics, 1970-1980)¹⁶⁹

Lawyer Joan Rotherham recalls that throughout much of the 1970s women were able to stay in the house for a long time, but this changed with the realization that women could work and have an income, get re-housed and get a mortgage. Equality also implied greater responsibility. Some thought the increased expectation of financial independence unfair to women. One women's group submitted that women were

¹⁶⁹ The percentage represents success rates of applications, not a true representation as some cases did not proceed, or were carried over to the following year. Angela Lee's study of the 1982 Domestic Protection Act indicates that interim orders that did not become final orders might not have been recorded, Angela Lee, 'The Development and Impact of the Domestic Protection Act 1982', MA thesis, Victoria University, Wellington, 1986, p.74. Where there is no percentage for orders made in wife's favour these are not provided in Justice statistics. It is assumed that in these cases, 100% were made in the wife's favour.

ready to accept equal responsibilities on the condition that they received equal pay.¹⁷⁰ The clean-break principle espoused in the 1976 Matrimonial Property Act (discussed in next chapter) meant that by 1980 women were much less likely to get an occupation order and if they did it was only temporary.¹⁷¹ Women's access to alternative accommodation played a part. Case files in 1970 record that many women were living with their husbands when making separation applications, a situation favouring the making of an occupation order. In 1975 significantly fewer women were, which removed the necessity for making an order and avoided legally compromising one party's property rights.

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Non-molestation Orders

The new legislation provided for a separation non-molestation order. These were especially important for women because they helped to keep them safe from a husband's violence after separation. Applicants were overwhelmingly women.¹⁷² From 1973 onwards, many more applications for non-molestation orders accompanied those for separation in the national figures (between 40-50 %), a pattern also apparent in the selected case files.¹⁷³ The increasing number of women applying for such orders indicates the strong relationship between violence and applications for

¹⁷⁰ Submission by Married Women's Association to Domestic Proceedings Bill, Statutes Revision Committee, Domestic Proceedings, 1968-1968, LE 1, box 1657, 1968/11, ANZ, Wellington. The narrower provisions for the maintenance of husbands acknowledged workplace inequality. Although practically the same, different treatment reflected the fact that a 'wife, generally speaking, may not be capable of doing any work at all ... and one would normally expect the husband to be the breadwinner and have an occupation', Ralph Hanan, NZPD, vol. 356, 1968, p. 1316. This however, was of little consequence when women were overwhelmingly the recipients of maintenance orders.

¹⁷¹ The clean-break principle favoured separating matrimonial property quickly so both parties could begin new lives free from entanglement with past relationships, discussed further in subsequent chapter, interview with Joan Rotherham, 8 July 2008.

¹⁷² Selected Christchurch case files recorded only one application for a non-molestation order made by a man, Christchurch District Court Files, CAHS, CH953, box 124, case 16, 1980, ANZ, Christchurch.

¹⁷³ From 1975, applications for non-molestation accompanied most applications for separation that contained allegations of violence by a husband in the selected Christchurch case files.

separation, and that more women were not tolerating or were more able to resist a husband's violence.

National statistics indicate that the courts' willingness to grant non-molestation orders did not keep pace with women's demands (see Table 6.2). Similarly, fewer non-molestation orders were granted as a proportion of separation orders, falling from 17% in 1973 to 7% in 1979.¹⁷⁴ Case files indicate that interim orders (temporary orders until a hearing could take place) were infrequent, and *ex-parte* orders, (those made without notice to the other party) rare. *Ex-parte* orders required strong physical evidence, such as hospitalization and police charges, a medical certificate confirming injuries and an assault conviction.¹⁷⁵ Many magistrates were reluctant to grant orders under these conditions because it meant the husband could not even return home to pick up his clothes without risking police arrest.¹⁷⁶ Co-founder of the Christchurch Battered Women's Support Group Doris Church recalls that to gain emergency or *ex-parte* orders women had to have quite concrete evidence, reasons and witnesses, and that they could be waiting a long while.¹⁷⁷

Law professor Dick Webb's study of 100 separation applications in 1977 showed that the judiciary was disinclined to grant non-molestation orders and thought them appropriate only for serious cases. Forty-six of the applications for separation he studied were accompanied by applications for non-molestation orders. Webb considered that 33 appeared to have very good reasons since, if the allegations were true, the applicants would need protection. The remaining 13 he judged to lack justification. This meant Webb considered 72% of applications valid (compared with a national success rate of 11% in that year). Webb also observed that a further six applicants who had not made an application would have been justified to have done so. Based on his analysis, at least one separation application in three should have been accompanied by a non-molestation order.¹⁷⁸

¹⁷⁴ Figures assessed from the Tables 6.1 and 6.2.

¹⁷⁵ Christchurch District Court Files, CAHS, CH927, box 223, case 61, 1975; box 224, case 91, 1975; box 223, case 74, 1975, ANZ, Christchurch.

¹⁷⁶ Women, Violence and Justice, 29 November 1980, Women and Violence 1978-1980, ABKH, W4104, 30-0-9 2, ANZ, Wellington.

¹⁷⁷ Interview with Doris Church, 22 March 2008.

¹⁷⁸ Webb, 'Serious Disharmony and Unreasonable Behaviour', p.514.

Anecdotal evidence reinforces the claim that the judiciary was disinclined to grant orders. One of the founding members of the Wellington Women's Refuge, Raewyn Good, recalled her lawyer saying in the late 1970s that non-molestation orders were only for 'the really bad cases'. She got the impression that one had to be 'practically dead' to get one.¹⁷⁹ Lawyers' attitudes might also have contributed to the low success rate of non-molestation applications. Joan Rotherham recalled that often these were made under legal aid. She claims that some firms gave them a low priority and were more interested in the lawyers bringing in good money from financially endowed clients than valuing 'socially important and helpful work'.¹⁸⁰

To make an order the court had to be satisfied it was 'necessary for the protection of the applicant or of any child of the family'.¹⁸¹ One lawyer said that, although corroboration was not a legal requirement, many judges relied on a doctor's certificate or a neighbour's evidence, neither easy to get.¹⁸² Corroboration was preferred because of the serious consequences of the order on a man's legal rights, especially when it might obstruct his access to children. Selected case files also indicate that it was difficult to gain non-molestation orders without corroboration. Common practice was to adjourn proceedings when a woman's testimony was uncorroborated.¹⁸³ Civil rights discourses contested women's applications for protection. A magistrate or judge might resist interfering with a husband's legal rights even where a woman's claims were corroborated. One woman unsuccessfully re-applied for non-molestation and property orders in 1981. She gave evidence her husband was an alcoholic, was aggressive, broke windows and furniture and threw things at his family, and that they were all frightened of him. Police had been involved and assault charges had been laid in the past. The husband had also spent time in a psychiatric hospital for treatment of his alcoholism.¹⁸⁴ The selected case files indicated that very occasionally both parties consented to non-molestation orders being made, but it was more common for a woman to drop an application when her husband gave consent to other orders applied

¹⁷⁹ Interview with Raewyn Good, 29 April 2008.

¹⁸⁰ Rotherham claims that this attitude is still current, interview with Joan Rotherham, 8 July 2008.

¹⁸¹ *New Zealand Statutes*, 1968 Domestic Proceedings Act, 1, 1968, p.695.

¹⁸² *Women, Violence and Justice* 29 November 1980, Women and Violence, 1978-1980, ABKH, W4105, 30-0-9 2, ANZ, Wellington.

¹⁸³ For example, Christchurch District Court Files, CAHS, CH927, box 223, case 58, 1975, ANZ, Christchurch.

¹⁸⁴ *Ibid.*, CH953, box 124, case 6, 1980.

for. Perhaps a woman did not think it worthwhile continuing litigation for just the one order; or thought consent to other orders indicated more reasonable behaviour was likely; or had used the application to increase her bargaining power to gain other orders.¹⁸⁵

Legal discourses that privileged civil and property rights persisted in impeding the granting of non-molestation orders. In one case in 1975 a husband, after having left the home, would return at random and follow the wife around the house. He had frequently assaulted her while living together. She had permanent injuries and feared for her safety. She gave evidence he used access rights to the child to harass her, made persistent calls (one morning these numbered over 20) and was awaiting assault charges against her. The application was adjourned because the husband was a joint owner of the property.¹⁸⁶

Applications based on non-physical violence were unpredictable. In a 1975 case, one woman successfully applied for an order alleging her husband had an abrasive temper, was verbally abusive and used bad language.¹⁸⁷ In another case the same year, a woman who had filed for a separation order, awoke to her husband pinning her down and covering her nose and mouth with his hand. He had once tried to smother her before. She struggled, managed to get free, slipping out when the defendant fell asleep. She said she was afraid he would return, and alleged he prowled around at night and spied on her. Her application was adjourned *sine die* (not dismissed but without a future date set for resumption).¹⁸⁸ Constructions of child welfare supported some women's claims. In one case in 1970 a magistrate granted an order because he accepted the wife's evidence that the comings and goings of the father without any warning were causing the children distress. There were no allegations of physical

¹⁸⁵ For example, in one case for maintenance and non-molestation orders the husband consented to a maintenance order and the application for non-molestation did not proceed. In that case, while a separation agreement was in force, the husband still came to the house at all hours, took showers, harassed the wife and had threatened to kill her. It is not known if the molestation abated; *ibid.*, CH927, box 224, case 77, 1975.

¹⁸⁶ *Ibid.*, CH927, box 223, case 72, 1975.

¹⁸⁷ *Ibid.*, box 222, case 45, 1975.

¹⁸⁸ *Ibid.*, box 224, case 97, 1975.

violence.¹⁸⁹ Non-molestation orders also applied to children. One order was granted because the husband had abducted one child and placed him in a foster home.¹⁹⁰

The common practice of adjourning applications *sine die* reflected a belief that the threat of an order would be enough to compel reasonable behaviour and that molesting behaviour was often temporary, an outcome of the emotionally charged situation. Dominant constructions of a domestic violent assault contested the new legislation's potential for a relaxing of criteria for granting such orders. In practice, male abusers appeared to be given the benefit of the doubt. Both magistrates and women applicants were prepared often to accept a man's promises to respect boundaries. Some women had to endure long periods of harassment before the court was convinced there was a need for protection. In one case a woman applied for orders in March 1976, describing her 19-year marriage as marred by her husband's heavy drinking and violent behaviour. Police and doctors had been involved on several occasions. A separation order was granted in July; the non-molestation application was adjourned twice, the second time after the husband promised to respect his estranged wife's privacy, despite the police having charged him with several offences. An order was finally granted one and a half years after the application. Over this time the woman had to endure abuse, damage to her property and random visits at all hours when her husband was drunk. The court file was four inches thick.¹⁹¹ The delay in granting this particular order might have been influenced by the social fact of the husband's white-collar occupation status. Selected case files indicate that the judiciary had difficulty conceiving that men could be simultaneously be upstanding citizens and violent and unreasonable husbands.

Even in straightforward cases it took at least two months to get a non-molestation order. It took time to secure a hearing date. Women who remained in matrimonial homes had little recourse to police intervention for molestation that was not covered under criminal law. Conciliation processes and failure of court processes meant longer waits. Three months after one application, the lawyer was unaware if papers had been

¹⁸⁹ Ibid., box 4, case 90 (there were two cases numbered 90 in this year), 1970.

¹⁹⁰ Ibid., box 6, case 128, 1970.

¹⁹¹ Ibid., CH927, box 222, case 26, 1975.

served on the husband.¹⁹² Sometimes bailiffs had difficulty in locating husbands to serve a summons. One woman's application was delayed by this fact for almost a year despite her husband being convicted of assault after attempting to strangle her with a belt.¹⁹³ Magistrates were disinclined to make orders without notice (i.e. the other party having an opportunity to defend an application), an effect of civil rights discourses embedded in law. Even when non-molestation orders were granted, they could not always be put into effect because the order could not be served on a husband due to his unknown whereabouts.¹⁹⁴

Keeping an order could be as difficult as obtaining one. One woman successfully applied for a non-molestation order after police advised her to do so, but this was revoked four months later by another magistrate who saw nothing in the evidence to support its necessity for the family's protection. Although her husband had not been physically violent since separation, the wife alleged he would spend his days driving back and forth past where she lived, sit outside her house in his car, and follow her if she left the house. He made threats to kill her, and the police were often called to protect her. He had also tried to drive her new de facto partner off the road.¹⁹⁵

Ultimately, the effectiveness of a non-molestation order was only as good as court efforts to discipline violations of it.¹⁹⁶ The courts treated breaches of such orders leniently. In 1978, of 82 breaches of separation or non-molestation orders by men, 21 were dismissed, 5 were discharged under section 42, 20 were convicted and ordered to come up for sentence, 21 were fined, 5 were convicted and discharged, 7 received prison sentences and 2 received probation.¹⁹⁷

Penalizing violations was contingent on the existence of an occupation order if the wife remained in the matrimonial home. In *Police v Smith* 1972 the husband was charged with entering a house occupied by his wife while a non-molestation order was in force. He had entered the house drunk, refused to leave, was violent and

¹⁹² Ibid., box 2, case 36, 1970.

¹⁹³ Ibid., box 223, case 74, 1975.

¹⁹⁴ For example, ibid., box 223, case 54, 1975.

¹⁹⁵ Ibid., box 225, case 107, 1975.

¹⁹⁶ Police efforts in this regard were discussed in Chapter 2.

¹⁹⁷ NZJS, 1977-78, Part B, pp.56-57.

damaged a wall in the kitchen. The legal question was whether the defendant could be a trespasser on premises of which he was a joint owner. In the event, the magistrate considered occupation and possession as two different things and as the wife had occupation orders, the defendant's presence in the matrimonial home constituted a trespass. He was duly convicted.¹⁹⁸

CONCLUSION

The 1968 Domestic Proceedings Act embodied discursive shifts in child welfare, marriage and marriage breakdown. Emerging constructions sometimes converged, and sometimes contested and contradicted each other, which created tensions within judicial practices. By the later 1970s there was a clear relaxation of constraints on leaving marriages and less inquiry into the causes of marriage breakdown. The law's focus moved from assigning 'fault' to assisting the 'parties to recover from the effects of marriage' breakdown, and the courts adopted a social service role.¹⁹⁹ While not directly addressing men's violence against wives, the 1968 Domestic Proceedings Act increased wives' capacity to resist that violence by making it easier to get separation orders, and non-molestation orders covered more misconduct, and were made available to a wider group of wives. However, the belief that marriage breakdown was not solely attributable to one party of the marriage, and that both parties were victims of a situation, obscured "cruelty" or violence, and made cruelty without culpability possible. Discursive constructions around civil rights and child welfare discouraged the making of non-molestation orders and compromised the safety of women and children. The implications of gender equality discouraged the granting of occupation orders and reduced expectations of a husband's duty to maintain his family, but did not acknowledge that women earned less than men and had fewer job opportunities, and were largely responsible for the upbringing of children. Along with social welfare reform, the next chapter analyzes further domestic law reform that impacted on women's capacity to leave oppressive marriages and relationships, and forge independent lives.

¹⁹⁸ *Police v Smith* 1972, *Magistrates Court Decisions*, vol.13, 1969-1973, p.426.

¹⁹⁹ W. Atkin, p.354; Report of the Department of Justice, AJHR, 1971, H.20, p.3.

Chapter 7

VIABLE PATHWAYS TO LEAVING

The 1968 Domestic Proceedings Act was part of a cluster of changes that impacted on women's capacity to forge independent lives, free from violent husbands or partners. Changing attitudes towards personal relationships, gender roles, marriage, marriage breakdown, child welfare and social justice shaped further reforms in domestic law pertaining to custody, matrimonial property and marriage dissolution. Combined with newer ideas around social development, these shifts also had implications for social policy. This chapter analyzes what discourses shaped other domestic law and social welfare reforms, and how these increased the viability of a woman's choice to leave a violent marriage or relationship. In particular, this chapter analyzes the 1968 Guardianship Act, the 1968 Matrimonial Property Amendment Act, the 1968 Matrimonial Proceedings Amendment Act, and the 1975 Domestic Actions Act. The primary welfare reform affecting women's capacity to leave oppressive marriages was the introduction of the statutory Domestic Purposes Benefit in 1973.

WELFARE REFORMS

In the 1960s the environmental view of social development encouraged the idea of investing in people, and welfare policy shifted from ameliorating negative circumstances to developing human resources.¹ The 1968 National Development Conference set up a Social and Cultural Committee, which linked economic goals to social ones: 'Better education, health, and living conditions and freedom from fear of poverty not only raise people's aspirations, but tend to stimulate effort and self help, and enhance the capacity to produce.'² Investing in people benefited the whole community, and served the capitalist aims of economic growth and self-reliance. This implied a re-assessment of "need", and reinforced by concerns around social justice,

¹ Royal Commission on Social Security (RCSS), *Report of the Royal Commission on Social Security*, Wellington: Government Printer, 1972, p.216. The environmental view of social development reflected the belief that people were shaped by their social circumstances.

² The National Development Council was set up to co-ordinate government and non-government bodies in forward planning and meeting economic targets, *ibid.*, pp.7-8.

challenged traditional state welfare provisions.³ Of particular significance, the definition of poverty extended to unmet psychological needs. Benefits had to be sufficient to provide for basic necessities and to preserve self-respect.⁴ The state's interest in the psychological dimension of poverty was said to parallel public concern over youth behaviour.⁵

The environmental view of social development had powerful implications for constructions of victimhood, personal responsibility and social justice. Dysfunctional family living, once a private family affair that incurred shame and withdrawal, was re-defined as a social ill that demanded community responsibility and action.⁶

Individuals who did not meet social expectations were constructed as victims of circumstance and deserved sympathy rather than censure, reinforcing humanitarian and social justice imperatives. A sense of justice was moving beyond strict legal rights towards greater state involvement in producing equitable and just outcomes. This view could be seen among proposals made by leaders of change, such as Ralph Hanan and Sir Owen Woodhouse.

Shifts in the construction of child welfare identified in the preceding chapter raised the importance of motherhood and awarded economic value to stay-at-home mothers. Valuing all children implied treating all families alike and afforded a sense of legitimacy to unmarried parenthood, making all solo mothers “deserving” of state assistance. The contemporary research on child deprivation and disturbance had concluded that children under three years of age should not be separated from their mothers. The political debate around a mother's wage to recompense for the valuable service they gave the community indicated the emphasis on the value of motherhood.⁷ The Society for the Protection of Home and Family (SPHF) claim, ‘a mother may be the making or the unmaking of the best of children’, reflected the higher status

³ A.D. Trlin, ‘Introduction’, in A.D. Trlin, ed., *Social Welfare and New Zealand Society*, Wellington: Methuen Publications (NZ) Ltd, 1977, p.i; The Family Policy Report Group of the Social Developmental Council, *Families First*, Wellington: The Council, 1981, p.8.

⁴ RCSS, p.61.

⁵ Margaret McClure, *A Civilised Community. A History of Social Security in New Zealand 1898-1998*, Auckland: Auckland University Press, 1998, p.150.

⁶ May, Helen, *Minding Children, Managing Men. Conflict and Compromise in the Lives of Postwar Pakeha Women*, Wellington: Bridget Williams Book Ltd, 1992, p.3.

⁷ RCSS, p.232.

accorded to mothers.⁸ This made motherhood more inclusive and solo mothers came to be distinguished by the fact they cared for dependants rather than by their marital status.⁹ The 1972 Report of the Royal Commission on Social Security (RCSS) held that ‘motherhood and childhood are entitled to special care and assistance’ and ‘all children shall enjoy the same social protection’.¹⁰

Changing attitudes to child welfare, victimhood and social justice, combined with the increasing visibility of solo mothers and their demands for state assistance to encourage a more sympathetic Department of Social Security (DSS). The difficult living conditions of deserted wives and widows had been a political issue from the early 1960s. MP Esme Tombleson often spoke of their plight and *Truth* ran several articles exposing their problems and calling for state assistance.¹¹ The importance of a child’s psychological welfare brought about a new emphasis on the important role of the natural mother of a child, and a greater recognition of the dangers of bringing up a child in extreme poverty.¹² Adequate income and hands-on mothers were important for children.¹³ The increased status of all children extended political interest to all mothers. In 1967 Ralph Hanan said provisions for the maintenance of solo mothers were ‘in an underdeveloped state’.¹⁴

The DSS felt it had a responsibility to ensure that women were not encouraged to work to an extent that it would be against the best interest of their children.¹⁵ Marriage and adoption as a solution to ex-nuptial conceptions and births was declining at the same time that the numbers of ex-nuptial births and legal separations were rising,

⁸ Home and Family Society (HSF) records, Dunedin branch, Annual report 1965, AG-647-125, Hocken Library (HL), Dunedin.

⁹ RCSS, p.18.

¹⁰ *Ibid.*, p.59.

¹¹ For example, Esme Tombleson, *New Zealand Parliamentary Debates* (NZPD), 1961, 327, p.1595; ‘Deserted Wives’ *New Champion*, *Truth*, 29 August 1961, p.18; ‘Deserted Mother Waiting Years for State Flat’, *Truth*, 7 November 1961, p.41.

¹² McClure, p.156.

¹³ Research into the adopted child in the late 1960s suggested such a child was vulnerable to emotional disturbances and aggressive behaviour, and that low income was more significant for child welfare than a parental characteristic might be, Gordon Alexander Carmichael, ‘Aspects of Ex-nuptiality in New Zealand: towards a Social Demography of Marriage and the Family Since the Second World War’, PhD thesis, Australian National University, Canberra, 1982, p.120.

¹⁴ *Cit.*, Kay Goodger, ‘Maintaining Sole Parent Families in New Zealand: A Historical Review’, *Social Policy Journal of New Zealand*, issue 10, June 1998, p.132.

¹⁵ Department of Social Security, *A Research Paper on Widows and Deserted Wives on the Widows Benefit*, Wellington: Department of Social Security, 1968, p.34.

which intensified pressure on the DSS. The belief that the family environment was virtually the only environment in which it was safe to bring up children precluded a return to an institutional solution, which was also expensive. The government recognized that families did not always conform to the traditional structure, and that state agencies should respond to this changing pattern.¹⁶ There was also strong public support for the state to assist solo mothers, evidenced by the overwhelming support for it in submissions to the 1969 RCSS.¹⁷

A prosperous economy was crucial to new ideas in social security thinking. The RCSS believed that needs had to be ‘redefined in context of a more prosperous general community’ that was ‘better able to bear the cost’. In other words, social security could and should support those in “need”. The RCSS successfully contested fears of increased state expenditure such as expressed by the Social and Cultural Committee of the National Development Conference, and claimed that the expanding economy could accommodate improvements. It did not foresee future benefit costs as radically departing from the relative cost burden that had been accepted in the past. Because children were a stake in the future for everyone, the community should share in the cost of child-raising.¹⁸

Pragmatism also underwrote a reassessment of state support of solo mothers. For a long time managing maintenance payments to separated wives had caused problems for various state agencies. Much time was spent attempting to improve the maintenance system, but effective solutions had proved elusive and women continued to make complaints.¹⁹ The increasing public demand for assistance and newer family formations (especially men forming second families) contested the belief that men should be primarily financially responsible for their families. It was proving unrealistic to expect the majority of men to support two families adequately, especially if one was a de facto family disadvantaged by the social security system.²⁰

¹⁶ RCSS, pp.216, 241.

¹⁷ This did not apply to solo fathers, a reflection of gender discourses that organized social practices. The RCSS claimed that men were less likely to undertake caring duties and could more easily find well-paid jobs, *ibid.*, p.249.

¹⁸ *Ibid.*, pp.7, 101, 216-7.

¹⁹ See Chapter 5 under subheading, ‘Maintenance’, for discussion of maintenance difficulties for wives.

²⁰ B.S. Barry, ‘Introduction and Discussion’, *New Zealand Law Journal* (NZLJ), 3 June 1969, no.10, p.344.

Individual experiences played a part in undoing conservative discourses. Margaret McClure argued that ‘the daily experience of registrars at the local level had overcome decades of official departmental resistance to lessening the responsibility of the male head of a household for his family’.²¹

Improved access to public assistance was seen as the solution.²² It seemed logical that ‘the country, must contribute, through social security benefits, to one or other family, and sometimes to both’.²³ Children should not suffer financially on account of their parent’s conduct.²⁴ In 1968, the DSS pragmatically, and ever so cautiously, introduced the Family Maintenance Allowance to separated and other women who had lost the support of their husbands; it was, however, discretionary. The Social Security Commission also grouped benefits payable to all women who had lost the regular support of husbands or long-term partners and who qualified for an Emergency Benefit under the one generic term, ‘Domestic Purposes Benefit’.²⁵ The discursive term “domestic purposes” embodied the belief that young children should be primarily cared for by their natural mothers.

Conservative punitive discourses persisted to limit access to the Emergency Benefit. The moral clause in social security legislation could still be mobilized to distinguish between “deserving” and “undeserving” mothers. Some solo mothers complained staff was unhelpful and some said they were denied benefits without knowing why.²⁶ But there was a greater inclination to grant the benefit as indicated by the rising numbers of recipients as seen in Table 7.1.

²¹ McClure, p.179.

²² Goodger, p.133.

²³ Roma Mitchell, ‘The Family and the Law. An Address Given to the Ladies’, NZLJ, no.10, 3 June 1969, p.187.

²⁴ Ibid., p.187; the Department of Justice argued that a man who was separated from his first family and formed another should be expected to maintain his second family and not be given the impossible task of maintaining both, McClure, p.179.

²⁵ George Brocklehurst, Chairman Social Security Commission, to Mr B.J. Cameron, Secretary for Justice, 23 August 1968, Destitute Persons Amendment Act, 1960-1968, ABVP, 500, box 47, J 18-11-161, pt 2, Archives New Zealand (ANZ), Wellington.

²⁶ Society for Research on Women, Christchurch branch, *Solo Mothers*, Argosty Press Ltd, Christchurch, 1975, p.50.

Table 7.1. Annual Numbers of Emergency Domestic Purposes Benefits in Force.

Year	Number
1969	2321
1970	3092
1971	4432
1972	6186

(Report of the Department of Social Security, Appendices to the Journals of the House of Representatives, 1972, H. 9, p.16.)

Furthermore, in 1973 the Emergency Benefit for domestic purposes became a statutory one, the Domestic Purposes Benefit (DPB), institutional recognition that young children cared for by their mothers were likely to be healthy and well adjusted to society. Beliefs around social justice were significant: children who fell outside the ideal nuclear family should not be excluded. So too were discourses of social development and motherhood as evidenced in the RCSS statement: ‘the community service given by a mother is, in terms of human investment, at least as valuable socially and economically and at least as onerous as the service she would give in paid employment’.²⁷

The DPB radically altered the balance of power in heterosexual relationships by giving women the option of staying or leaving, marrying or not marrying. Its effect on women’s capacity to leave unsatisfactory marriages or relationships was dramatic, as indicated in Table 7.2. How many of these women were affected by a husband’s or partner’s violence is unknown, but the DPB removed a major obstacle to leaving violent marriages or relationships by enabling financial independence. As such, it was the most significant state social policy for mothers’ capacity to resist a husband’s or partner’s violence.

²⁷ RCSS, pp.232, 241.

Table 7.2 Domestic Purposes Benefit in Force 1973-1980

Year	Benefits in Force	Benefits to solo parents	% Separated from legal spouse	% Separated from de facto spouse
1973	9234			
1975	17231	15882		
1977	28401	25759	61.9	7.2
1979	35385	32713	61	10.4

(source: Annual Reports of the Department of Social Welfare, Appendices to the Journals of the House of Representatives, 1973-1980.)

However, discursive support for the DPB was not consistent with women's subsequent use of it. A sympathetic construction of solo mothers as victims of social circumstances, conservative discourses that held mothers primarily responsible for child-care and constructions of child welfare that privileged stay-at-home mothers had driven state support. It was intended to promote stable families as 'a means of fostering acceptable behaviour and social values'. While the DPB constituted a pragmatic response to a social need, diversity was tolerated only in so far as it contributed to stability.²⁸ (The ensuing conflict over women's uptake of the DPB is discussed in Chapter 8).

CUSTODY AND ACCESS

Newer attitudes towards child welfare, gender equality and marriage made new outcomes possible in custody disputes, in particular, the raised importance of the parent-child relationship. This was indicated in law student Rutherford Ward's proposition, that, if both parental homes provided adequate physical comfort and security, the wealthier parent should not be privileged. The child's interest was best served by the parent most able to meet the child's emotional, spiritual and moral needs.²⁹ In theory, the importance of meeting a child's psychological needs undermined the significance of matrimonial "fault" for child welfare, and enabled marriage and parenthood to be considered separately. A mother who left a marriage without "reasonable cause" should not be disadvantaged in a custody hearing, reducing the risk of her losing custody. However, both older morality discourses and

²⁸ May, p.232.

²⁹ Rutherford Ward, 'Parental Misconduct and the Custody of Children', in B. Inglis and A. Mercer, eds, *Family Law Centenary Essays*, Wellington: Sweet and Maxwell NZ Ltd, 1967, p.68.

newer constructions of child welfare obscured men's violence against wives as a consideration in child welfare, and contested the newer opportunities. This section, based on law reports and selected case files of the Christchurch District Court, demonstrates how discourses of child welfare and gender shaped custody and access hearings.

The child-centred 1968 Guardianship Act consolidated custody and guardianship law.³⁰ It clarified the difference between custody and guardianship: custody involved day-to-day care and possession of the children and could be given to one parent without depriving the other of guardianship, which was the general right to control the child's upbringing in areas such as education and health. This reflected the belief that both parents were important to a child's welfare and that co-operation on guardianship matters would maintain the non-custodial parent's interest in the child.³¹ The act provided for specialist reports and checks on court ordered arrangements.³² It gave the mother equal status with the father as guardian of the children of the marriage, which was consistent with the construction of marriage as a partnership and with presumption around equality of the sexes. It also improved the position of the non-custodial parent. This was a double-edged sword for women who left violent marriages. Co-operation over guardianship issues was unlikely to be simple for such wives.

In the 1970s custody and guardianship orders increased dramatically. Most custody orders were awarded to mothers, although more orders were made to fathers as the decade progressed. In 1971, of 872 custody orders, 801 were awarded to the mother, and 40 (4.6%) to the father; in 1975, of 1882 orders, 1694 were to the mother and 120 (6.4%) to the father; and in 1979, of 2295 orders, 1968 were to the mother and 198

³⁰ B.D. Inglis, 'Family Law', NZLJ, no.10, 3 June 1969, p.333.

³¹ B.D. Inglis, *Family Law*, Wellington: Sweet & Maxwell (NZ) Ltd, 1970, p.483.

³² While magistrates could already call on such expert witnesses as social workers in the Department of Social Security and Child Welfare Division, the new allocation of public monies for this purpose made the provision realizable, Report of the Department of Justice, *Appendices to the Journals of the House of Representatives* (AJHR), 1969, H.20, p.6; provision for checks had already been available in Britain for many years, Inglis, 'Family Law', p.333.

(8.6%) to the father.³³ This should not be interpreted as the courts having a strong preference for vesting custody in the mother. In practice, few custody orders involved defended hearings. Applications for custody usually accompanied those for separation, with many couples having agreed already on custody to the mother, but not necessarily on access to the father.³⁴

The 1968 Guardianship Act laid down the ‘Golden Rule’ that the paramount interest was the welfare of the child and that parental conduct was relevant only as it affected this.³⁵ This expressed the newer beliefs that not every bad spouse was a poor parent, and rarely was one person totally blameworthy.³⁶ Law professor Don Inglis feared that lessening the legal significance of ‘misconduct’ implied that a person could be cruel and inconsiderate towards the other spouse and still insist on custodial rights.³⁷ This meant that men’s violence against wives might not be a major consideration in custody hearings, although its impact on child welfare, especially over a long period, was acknowledged to some degree. In one case a social worker recognized that the ‘considerable disharmony’, that involved physical violence, was affecting the emotional development of the children.³⁸ But the focus on outcomes, the construction of a domestic violent assault as a discrete event resulting from a build-up of emotional tension, and the fact that the parties were usually living apart at the time of a custody hearing, weakened the influence on custody and access decisions.

A 1992 viewpoint claimed that parental conduct could be ‘potentially a strong lever for courts to keep relationships together’ because ‘if you leave you may lose everything’.³⁹ This proposition depended on what parental conduct was held relevant to the welfare of a child at the time. In the 1970s women who did not have ‘reasonable cause’ to leave the matrimonial home continued to be disadvantaged in

³³ Department of Justice, *Statistics of Justice*, 1971, p.85; 1975, pp.104, 108; *New Zealand Official Yearbook* (NZOY), 1981, p.251.

³⁴ This is a general pattern in selected case files from the Christchurch District Court.

³⁵ Section 23(1) reported in P.M. Bromley and P.R.H. Webb, *Family Law*, Wellington: Butterworths, 1974, pp.538-9.

³⁶ P.R.H. Webb and J.G. Adams, *Family Law 1986 Style*, Auckland: Legal Research Foundation Inc., 1984, p.140.

³⁷ Inglis, ‘Family Law’, p.330.

³⁸ Christchurch District Court Files, CAHS, CH927, box 222, case 26, 1975, ANZ, Christchurch.

³⁹ Mark Henaghan, ‘Legally Rearranging Families’, in Mark Henaghan and Bill Atkin, eds, *Family Law Policy in New Zealand*, Auckland: Oxford University Press, 1992, p.152.

custody disputes because ‘support of the institution of marriage’ persisted as relevant to child welfare.⁴⁰ In *D. v R.* 1971, the Court of Appeal confirmed a custody order in favour of the father of two young daughters in the interest of the children’s moral well-being. ‘The father had done his best to preserve the family unit’ and his wife had broken ‘up the family home to live in adultery for her own selfish purposes’.⁴¹ The Minister of Justice, Ralph Hanan, believed that the courts should seriously consider even an isolated instance of adultery by a wife when making maintenance or custody orders.⁴² At a 1978 seminar on solo parents, Penny Fenwick expressed concern at the apparent increasing tendency to grant women custody only as long as they adopted and lived by the dependent female stereotype.⁴³ In custody hearings, then, the courts maintained power to discipline women.

Where women had endured a husband’s violence, women’s behaviour needed to be above reproach for successful custody applications, all else being equal. This was particularly difficult in cases involving non-physical violence that did not produce injury. Constructions of a domestic violent assault did not consider depression, anxiety or poor functioning as injury, and the focus on outcomes meant that women who suffered from such might have been judged not be the preferred caregiver. It also meant that sexual violence could be constructed as not causing harm.⁴⁴ There was some understanding of the fear and risk of future violence, but this tended to be within a context of habitual drinking: drinking was the problem rather than violence.

An acceptance of corporal punishment of children made it difficult to problematize violence against children. A parent’s right to inflict punishment on their child had always been recognized at common law and was embodied in the 1961 Crimes Act, which justified ‘reasonable’ force. The belief that physical punishment was important for a child’s development was indicated in the legal right of teachers to discipline

⁴⁰ Judge Turner reported in Bromley and Webb, p.549.

⁴¹ *Ibid.*, p.548; P.R.H. Webb, ‘The Eclipse of the Unimpeachable Parent in Custody Proceedings’, NZLJ, no.4, 7 March 1978, p.63.

⁴² Ralph Hanan, NZPD, 1968, 356, p.1316.

⁴³ ‘Marriage for Better or Worse’, *Press*, 13 June 1978, p.12.

⁴⁴ Even in an incest case involving two young daughters, the judge said, ‘there had been no apparent psychological harm to the children and the man had been a good father in all other respects’, ‘Man Jailed for Incest’, *Press*, 22 November 1977, p.4.

students outside school hours for behaviours condoned by parents.⁴⁵ This encouraged an interpretation of physical conduct as discipline rather than violence. In a 1970 case, a magistrate considered a husband smacking his step-daughters' bottoms for riding on the road and leaving a high chair in the driveway which he subsequently drove over, as 'not unmerited or too severe'. The wife had complained of his constant severe treatment of the girls.⁴⁶

In the selected case files, custody orders were usually granted to mothers. Many such orders were consent orders (court-endorsed agreements), and where the courts directed an order, there was considerable evidence to indicate the mother was the better custodian. However, men's violence against wives did not emerge as a significant factor shaping custody outcomes. Its lack of significance was especially apparent in access orders.⁴⁷ In one case, although a magistrate denied a father access, this was because of his extensive criminal convictions. He did not cite the father's violence against the children related in the wife's evidence.⁴⁸ Whereas previously the non-custodial party could be denied access on the basis of matrimonial "guilt", the newer belief that children who maintained a real relationship with both parents had better future outcomes meant it was rare for the courts to deny access. This had the contradictory effect of enabling access even in situations whereby it might pose an actual threat to a child's welfare. Two legal academics of the time observed that access could be awarded to fathers 'who might well strike the reader of the reports as being unsatisfactory men'.⁴⁹ The importance attached to post-separation contact with a father and the lack of acknowledgement of psychological injury, meant witnessing violence was not viewed as detrimental to child welfare.⁵⁰ It also obscured the use of access by some husbands to continue abuse of wives, a common situation related in the selected case files.

⁴⁵ In one case the courts upheld a teacher's right to have disciplined a student found smoking after school apparently condoned by his father, reported in Inglis, *Family Law*, p.514.

⁴⁶ Christchurch District Court Files, CAHS, CH927, box 4, case 89, 1970, ANZ, Christchurch.

⁴⁷ For example, in this case the husband was violent to the wife and to a lesser degree to the children and was granted access, *ibid.*, CH927, box 4, case90? (two cases are marked 90).

⁴⁸ *Ibid.*, CH927, box 3, case 59, 1970.

⁴⁹ Bromley and Webb, p.530.

⁵⁰ For example, in this case the husband was violent to the wife and to a lesser degree to the children and was granted access, Christchurch District Court Files, CAHS, CH927, box 4, case90? (two cases are marked 90), 1970, ANZ, Christchurch.

In any case, claims of violence had to be proven. Otherwise, the importance given to having two parents meant abusive husbands and fathers were given the benefit of the doubt, which put wives' and children's safety at risk. One woman gave evidence of serious violence that included a strangulation attempt and threats to kill her, and violence and sexual abuse of the children. The husband continued his violence after the wife and children had left the matrimonial home. He had also been a patient at a psychiatric hospital on several occasions. The magistrate found the evidence inconclusive because of conflicting evidence of the parties. His impartial position, a principle of law, meant risk to safety was poorly acknowledged. The mother gained custody with 'reasonable access' for the father (two hours every Sunday afternoon). The magistrate emphasized that children needed their fathers just as much as their mothers. He also warned her that if she used bad language with her children, she risked losing custody.⁵¹ The judgment appeared to minimize the risk of sexual molestation to children. In contrast, in another very similar case in which a doctor gave evidence of sexual abuse, very limited supervised access was given.⁵²

When parents "agreed" on custody, the courts' attitude was to defer to parental decisions without inquiry as to whether these were actually consensual and in the children's best interest. The following case in 1975 demonstrates how this failed to protect children and penalized the wife. The wife gave evidence of a physical assault and numerous threats. She had left the home on occasions for safety reasons. She applied for separation and custody, but the husband left the home taking one of the children with him and was granted interim custody of that child. Some time later the couple reconciled. Four years later the wife re-applied for separation, non-molestation and custody orders. She obtained a non-molestation order. The husband obtained interim custody of two children, and the wife, of one child. The husband then applied for custody of the child in his wife's care. Despite the non-molestation order, the husband continued to break into his wife's home, cause damage, be violent and threatening, and would take or deliver a child as it suited him. He had been taken into police custody at least once. The wife relinquished all rights to custody because she believed that, if she had any one of the children, she would have to live in constant

⁵¹ The wife obstructed the access order for a year in order to keep her children safe. At a later hearing she did agree to access but it is not clear it went ahead, *ibid.*, CH927, box 7, case 157, 1970.

⁵² *Ibid.*, CH927, box 5, case 109, 1970.

fear of her husband's violence, and that would not be in the interest of the children regardless of any court orders. The court endorsed the "agreement" and the husband gained custody of all three children. He later sent the older two to live with their mother. When they arrived, one was covered in bruises and the other complained of sore ribs where his father had punched him. On hearing the husband intended to leave the country with the youngest child, the wife applied for a warrant to remove the child from his care. The child was taken to Strathmore Girls' Home and three days later released into her father's care. The wife successfully applied for custody. A neighbour's evidence reveals the consequences of the court ignoring the husband's violence and the police failure to implement the non-molestation order. The neighbour had witnessed violence against the wife and had been most concerned about the children's welfare. The children irregularly attended school. During the day the husband would drink and have parties. When he had the youngest child only, he would take her around the hotels where he drank all day.⁵³ This implies that child-care arrangements were considered private matters, an effect of the civic/domestic divide, unless the parents chose to make it a public one by applying to the court.

MATRIMONIAL PROPERTY

As discussed previously, women's increasing participation in paid employment, the rising value of motherhood and the financial contribution of many young wives to acquiring matrimonial property challenged the prevailing view that women did not have a financial interest in matrimonial property. So too, the increasing incidence of marital separation and the formation of second families demanded a faster resolution. The implications of gender equality for citizenship reinforced the questioning of women's status under law. Ralph Hanan, Minister of Justice, said in 1963 that, 'so long as a distinction of any kind exists many women are entitled to feel that they are not wholly accepted by the law as full citizens of the community they live in'.⁵⁴ The right of a person to participate in a common culture was a developing idea in notions of citizenship at this time. This was indicated in constructions of belonging and participation that shaped the recommendations of the 1969 RCSS.⁵⁵

⁵³ Ibid., CH927, box 221, case 10, 1975.

⁵⁴ Ralph Hanan, NZPD, 1963, 335, 1963, p.217.

⁵⁵ See McClure, pp.166-173.

Lingering imperatives to preserve the family and maintain male privilege contested arguments for gender equality in law. One contributor to the *New Zealand Law Journal* thought equal property rights would deter reconciliation and that ‘it was in the main only the avaricious woman who demanded every penny piece not only from future income of her husband but also from his capital position’.⁵⁶ A female colleague agreed that equality between the sexes was a false premise for law changes and granting further rights would be ‘dangerous’ for the family.⁵⁷ Both these arguments relied on constructions of women as inherently dishonest and the need for male domination to ensure domestic and social order. However, spousal inequality before the law could not be maintained alongside newer constructions of marriage and gender, even if it was a slow and long process, the old story of two steps forward and one step back.

The 1968 Matrimonial Property Amendment Act reversed the Court of Appeal’s view that a wife had to establish that she had done more than merely be a good wife and housekeep to make a claim on matrimonial property. An order could be made even where there had been no financial contributions to the property.⁵⁸ The “normal” contribution of a dutiful wife was enough to secure a legal share in a home. Conduct was irrelevant.⁵⁹ But judicial resistance to treating a wife as an equal partner in marriage persisted so that a general principle emerged that awarded wives one-third or less of the matrimonial home.⁶⁰ Some judges appeared to value household services as 1% for every year of marriage.⁶¹ Outcomes were highly variable with some judgments markedly favouring wives and others, husbands.⁶²

A 1971 judgment indicates the limits of the construction of marriage as a partnership. Although the act did not explicitly canvass property outside the matrimonial home, in

⁵⁶ G. Skelton, ‘Introduction and Discussion’, NZLJ, no.10, 4 June 1963, p.252.

⁵⁷ C.G.P. Wallace, ‘Introduction and Discussion’, NZLJ, no.10, 4 June 1963, p.252.

⁵⁸ Inglis, ‘Family Law’, p.332; B.D. Inglis, ‘Introduction and Discussion’, NZLJ, no.10, 3 June 1969, p.337.

⁵⁹ Report of the Department of Justice, AJHR, 1969, H.20, p.6; P.B.A. Sim, ‘Legislation’, *New Zealand Universities Law Review* (NZULR), vol.3, October 1969, p.470.

⁶⁰ Caroline Bridge, ‘Reallocation of Property after Marriage Breakdown’, in Mark Henaghan and Bill Atkin, eds, *Family Law Policy in New Zealand*, Auckland: Oxford University Press, 1992, p.234.

⁶¹ Pauline Vayer, ‘Women Lawyers Unite. Matrimonial Property’, NZLJ, no.16, 2 September 1975, p.616.

⁶² Public Issues Committee of the Auckland District Law Society, ‘Looking at Matrimonial Property’, NZLJ, no.9, 20 May 1975, p.206.

this case the wife was awarded a one-third interest in the home as well as a one-quarter interest in all other property acquired by the couple during the marriage. The decision was subsequently reversed in a 2-1 Court of Appeal judgment to confine the wife's interest to the matrimonial home, with two judges believing the notion of marriage as a partnership 'could be pushed too far'.⁶³ As lawyer Pauline Vayer, pointed out, the very title of the act was a misnomer because there was no real concept of matrimonial property. Rather, most judges regarded a wife's application as a request for a share in the husband's property, rather than for a right to a share in matrimonial property. The onus of proving entitlement was therefore on the wife. Not even the existence of a Joint Family Home secured the wife a half-share on divorce. Vayer believed that judicial discretion gave a wife no sense of security about her financial position in the event of a marriage breakdown since her rights would not be known until a court order was made.⁶⁴ As before the amendment, the uncertainty of outcomes may have deterred some wives who lived with violence from pursuing separation. This seems more probable than the belief that the promise of capital payments might cause a wife to 'misbehave' i.e. leave a marriage.⁶⁵ Social fears around women and economic independence persisted.

In 1975 Justice Minister Martyn Finlay introduced the Matrimonial Property Bill in the conviction that 'marriage is a partnership of equals and that both husband and wife make an equal contribution to the marriage partnership'.⁶⁶ As an equal it was only just that a wife had an equal share. The 1976 Matrimonial Property Act removed judicial discretion, replacing it with a detailed and structured code, and gave women entitlement based on 'mutuality and equality'.⁶⁷ The desire for justice and for a quick resolution to marriage breakdown (the clean-break principle), expressed the act's underlying philosophy that 'marriage is a partnership of equals and that each partner should leave the marriage with an appropriate capital resource to form the basis of new housing and financial investment'.⁶⁸ This principle relied on the new attitude to women in employment. Whereas once 'women were not expected to support

⁶³ S.C. Ennor, 'The Matrimonial Property Act 1963 – A New Deal?', NZLJ, no.22, 5 December 1972, pp.502-3.

⁶⁴ Vayer, pp.615-6.

⁶⁵ Public Issues Committee of the Auckland District Law Society, p.205.

⁶⁶ Martyn Finlay, Minister of Justice, NZPD, 1975, 402, p.5115.

⁶⁷ Bridge, 231; Martyn Finlay, NZPD, 1976, 408, p.4723.

⁶⁸ W.R. Atkin, 'Spousal Maintenance: A New Philosophy?', NZULR, December 1981, 9, p.338.

themselves and would have had difficulty in finding employment if they wanted', now it was expected they could and would seek employment.⁶⁹

While the clean-break principle was seen to be fair to both parties, in practice it disadvantaged women and children.⁷⁰ The act elevated women's status by placing equal value on housekeeping and childcare contributions, but this applied only to tangible assets. Intangibles such as qualifications, the benefits of employment and, especially, ongoing income from employment, were not matrimonial property. As lawyer Caroline Bridge concluded, the domestic contribution was perceived as playing a lesser role in the acquisition of such assets, yet this was inconsistent with the act's philosophy.⁷¹ In another vein, Penny Fenwick considered the act could be less than equitable because working women usually also did all the household chores.⁷² In practice the clean-break principle meant the re-housing needs of women and children were overridden.⁷³

Introduced under a Labour government in 1975, the Matrimonial Property Bill had also covered de facto marriages. However, the National government excluded de facto marriages because of a concern for traditional values and 'responsibility'.⁷⁴ Justice Minister David Thomson believed it would be quite wrong to equate de facto unions with lawful ones and de facto spouses should demonstrate a responsibility to the other party by regularizing that union.⁷⁵ Some supported the inclusion of de facto relationships because they enabled men to avoid their responsibilities and exclusion would encourage more of this.⁷⁶ But the non-regulation of de facto unions meant the parties were left to fend for themselves, equating to the "law of the jungle"; a legal endorsement of male privilege and female vulnerability in relationships not governed by a legal contract.

⁶⁹ Ibid.

⁷⁰ Bridge, pp.247-51.

⁷¹ Ibid., p.235.

⁷² 'Marriage for Better or Worse', *Press*, 13 June 1978, p.12.

⁷³ Bridge, p.236.

⁷⁴ Mark Henaghan and Pauline Tapp, 'Legally Redefining the Family', in Mark Henaghan and Bill Atkin, eds, *Family Law Policy in New Zealand*, Auckland: Oxford University Press, 1992, p.22.

⁷⁵ Ibid., pp.23-24.

PRESERVING MARRIAGE

The 1968 Matrimonial Proceedings Amendment Act shortened the waiting time for a divorce on certain grounds from three to two years.⁷⁷ It was hoped this would reduce de facto numbers and benefit the children involved.⁷⁸ However, there was some unease with the relaxation of legal restraints on marriage breakdown. Although Ralph Hanan emphasized that the act would not make divorce easier,⁷⁹ this effect was unavoidable. To counter this, the 1975 Domestic Actions Act signaled that the courts were as much about preserving marriages as they were about dissolving them. Although the act removed the right to sue for compensation for adultery or for harbouring (giving shelter to a spouse in flight), it maintained the right to sue for enticement of a spouse.⁸⁰ Because such cases were heard in the Magistrate's Court, this legal action was a cheap way to sue for costs.⁸¹ A number of applications to the court claiming enticement of a spouse followed.⁸² Paul East's opinion as a lawyer was that the act would discourage many people from leaving an oppressive marriage, and that lawyers would need to advise clients who formed extra-marital permanent relationships of the risk of having proceedings of enticement brought against them.⁸³ In *Watt v Shelbourne* 1977, despite a wife's domestic unhappiness, a husband brought a successful action for enticement. East also believed the right to sue for enticement of a spouse 'could be used as a weapon to subject a spouse to continual matrimonial misery rather than allow that person to obtain a divorce and start a new life'.⁸⁴ Thus it provided abusive husbands with a legal means to continue harassment of wives. East thought it doubtful that a defence of ill-treatment applied to an action of enticement so it might be that 'when a husband has subjected his wife to violent assaults and she is persuaded by a third person to leave the husband and live with that third person' the

⁷⁶ MP Richard Prebble reported in Henaghan and Tapp, p.24.

⁷⁷ Matrimonial Proceedings Amendment Bill, Law and Justice, 1961-1971, AAFD, 811, W3738, box 600, CAB 21/1/6, pt 1, ANZ, Wellington.

⁷⁸ 'Solicitor Speaks on New Act', *Press*, 26 February 1969, p.2; Ralph Hanan, NZPD, 1968, 358, p.3394.

⁷⁹ Ralph Hanan, NZPD, 1968, 358, p.3395.

⁸⁰ Paul East, 'Enticement – The Writ of Ravishment Revived', NZLJ, no.23, 20 December 1977, p.509.

⁸¹ Doug Wilson, 'Enticement of a Spouse: A revival?', NZLJ, no.16, 7 September 1976, pp.383-4.

⁸² East, p.510.

⁸³ *Ibid.*, p.509.

⁸⁴ *Ibid.*, pp.509, 511.

husband could still bring a successful action for enticement, the violence being only important in so far as damages were concerned.⁸⁵

However, the act was inconsistent with newer beliefs around gender equality and marriage as a partnership. In 1979 the Court of Appeal overturned the lower court's finding in *Watt v Shelbourne*. Judge Richardson considered that, in view of the widespread recognition of the equality of the sexes, women and men were equally able to make their own independent decisions on matters as important as marriage breakdown. As such, the court should be wary of drawing inferences of enticement.⁸⁶ The act was removed from the statute books in 1980.

CONCLUSION

Shifts in understandings around child welfare, marriage and marriage breakdown, gender equality, and social development shaped domestic law and social welfare reforms in the late 1960s and 1970s. These had variable effects on women's capacity to leave oppressive marriages or relationships and forge independent lives. The introduction of the Domestic Purposes Benefit in 1973 was the most significant reform for giving state support to women with children to leave violent marriages or relationships. Wives gained greater rights to matrimonial property, which improved their financial well-being post-separation and ability to provide a home for their children. However, the limited definition of matrimonial property and the inferior status of women in paid employment meant the law in practice continued to privilege men. Although emergent discourses indicated that a spouse's conduct was not necessarily relevant to child welfare, older moral constructions continued to hold a woman's commitment to marriage as in the interest of a child. To be successful in custody hearings, then, women's behaviour usually had to be beyond reproach. The belief that having two parents involved in a child's life was crucial to child well-being obscured the significance of men's violence against wives, and sometimes against children, to child welfare and wives well-being. The construction of a domestic assault as a discrete event occurring as a result of emotional tension reinforced this

⁸⁵ Judge North had said that case that, 'the fact that a husband ill-treats his wife may be very relevant to the measure of damages in an action for enticement, but I must confess I find some difficulty in seeing why a third party who deliberately persuades a wife to leave her husband and thus break up the marriage should be entitled to plead by way of defence that he took this action with the object of rescuing the wife from a life of unhappiness', reported in *ibid.*, p.510.

⁸⁶ *Shelbourne v Watt* 1979, *New Zealand Law Reports* (NZLR), 1979, 1, p.57.

minimization. It was rare for the courts to deny any access, or order supervised access. For this reason, some women might have believed staying in a violent relationship offered better protection for children and themselves. The next chapter analyzes the construction of men's violence against wives and partners as a social problem and the naming of it as "domestic violence", a label facilitated by discursive and material shifts identified in Chapters 6 and 7.

Chapter 8

THE NAMING OF DOMESTIC VIOLENCE AS A SOCIAL PROBLEM

Changes outlined in preceding chapters were part of discursive shifts that facilitated men's violence against wives and partners to be named as a social problem. The development of a feminist consciousness, awareness that social structures and practices had discriminatory outcomes for women on the basis of their sex, was crucial to this process.¹ So too were law and social policy reforms, which had increased women's capacity to resist a husband or partner's violence, and the widening interest of the state in the social conditions of individuals. Feminists re-interpreted men's violence against wives and partners within a framework of male domination and named it "domestic violence". Feminist claims intersected and sometimes competed with other cultural discourses in circulation. Domestic violence became highly contested and its meaning vigorously disputed. This chapter analyzes the feminist construction of domestic violence and its subsequent development as a mainstream issue.

FEMINIST MOVEMENT

Various changes over the 1960s including the increase in women's participation in paid employment, marriage at earlier ages, decreased fertility and a reduction in years spent child-raising, encouraged a re-appraisal of women's role.² Coupled with the fact that women were more educated, the changing role of women opened a discursive space for the articulation of issues affecting women.³ Marriage continued to be seen

¹ Major sources for the women's movement and "second wave" feminism in New Zealand are Christine Dann, *Up From Under. Women and Liberation in New Zealand, 1970-1985*, Wellington: Allen & Unwin, 1985; Charlotte Macdonald, *The Vote, the Pill and the Demon Drink. A History of Feminist Writing in New Zealand, 1869-1993*, Wellington: Bridget Williams Books Ltd, 1993; Sandra Coney, *Standing in the Sunshine. A History of New Zealand Women since They Won the Vote*, Auckland: Penguin Books (NZ) Ltd, 1993.

² The Society for Research on Women (SROW) claimed that the reduction in years spent child-raising 'left women with a less highly valued role in the home in the later part of their lives', SROW, Wellington branch, *Urban Women*, Wellington: SROW, 1972, p.16; Medical student Conan Fowler observed that middle-aged women could find themselves with little to do beyond cooking and cleaning, Conan Fowler, 'A Study of Depression in Middle-Aged Housewives', Medical Student Dissertation, Otago University, Dunedin, 1972, p.2.

³ Charlotte Macdonald, 'The Changing Role of Women. 1960s', in Charlotte Macdonald, ed., *The Vote, the Pill and the Demon Drink*, Wellington: Bridget Williams Books, 1993, p.143.

as women's destiny, but its organization became increasingly problematic. Margot Roth's letter to the *Listener* in 1959, criticizing the situation of women at home, was reported to be well received amongst housewives.⁴ In 1963 in the United States of America, Betty Friedan's *The Feminine Mystique* articulated the 'problem that had no name', and was widely read in New Zealand.⁵ In 1966 the *New Zealand's Woman's Weekly* ran an article claiming women were restless and bored in suburbia. In the same year the Linden Playcentre ran a lecture series on 'The Changing Role of Women'; exceptional attendance was reported. The Society for Research on Women (SROW) was subsequently established to research women's lives.⁶ Conflict over women's role pervaded the many letters published in the magazine *Thursday*.⁷ Women began to speak out.

Sociological and psychiatric discourses supported women's dissatisfaction. In 1968 Dr Fraser McDonald coined the term 'suburban neurosis' after treating 'whole streets' of women for depression, a construction that attributed women's dissatisfaction to geographical isolation.⁸ He referred to women as the 'Negroes' of New Zealand society, applying discourses of racial discrimination to gender relations.⁹ Jane and James Ritchie's research into motherhood also unsettled the assumption that stay-at-home mothers were happy and fulfilled.¹⁰

As in other western societies, an awareness of women's second-class status made New Zealand a fertile ground for international ideas around women's liberation and women's rights.¹¹ In the early 1970s there was a rapid growth of feminist groups in

⁴ Margot Roth, 'Housewives or Human Beings?', in Charlotte Macdonald, ed., *The Vote, the Pill and the Demon Drink. A History of Feminist Writing in New Zealand, 1869-1993*, Wellington: Bridget Williams Books Ltd, 1993, pp.138-14; Helen May, 'Postwar Women 1945-1960 and Their Daughters 1970-1985', PhD thesis, Victoria University, Wellington, 1988, p.123.

⁵ Sue Kedgley, *Mum's the Word. The Untold Story of Motherhood in New Zealand*, Auckland: Random House Ltd, 1996, p.223; May, p.194.

⁶ *Ibid.*, pp.224-5; Dann, p.3.

⁷ Dann, p.3.

⁸ Kedgley, p.221.

⁹ Kathleen Macdonald, 'Opinion', in Charlotte Macdonald, ed., *The Vote, the Pill and the Demon Drink*, Wellington: Bridget Williams Books, 1993, p.159.

¹⁰ The research took place in 1963 and was published in 1970, Kedgley, pp.219-21.

¹¹ Sandra Coney, 'The Origins and Early Years of the Women's Liberation Movement. Breaking Free', in Sandra Coney, ed., *Standing in the Sunshine. A History of New Zealand Women since They Won the Vote*, Auckland: Penguin Books Ltd, 1993, p.142.

New Zealand, termed the “second wave” of feminism.¹² Whereas first-wave feminism focused mainly on overturning legal obstacles to equality, such as voting and property rights, second-wave feminism addressed a wide range of issues, which included the right to control one’s fertility, sexuality and body. Second-wave groups challenged ‘women’s oppression’ in both ‘the private and public spheres’.¹³ The New Zealand women’s movement was inspired largely by feminist developments in Britain and the United States of America.

The women’s movement can be located in the re-assessment of traditional structures of power that pervaded the western world in the 1970s: ‘Everything that had been an established principle of life was up for question’.¹⁴ The women’s movement drew on discourses of civil rights, trade unionism, decolonization and anti-war, and utilized concepts such as ‘human rights’, ‘anti-discrimination’, ‘subordination’ and ‘liberation’ to support its own demands for women’s rights.¹⁵ The link between women’s liberation and wider social issues is indicated in feminist participation in protest movements. Ann Charlotte, a founding member of Buller Women’s Refuge, said that feminists such as herself, embraced as feminist such causes as racism and the Vietnam War, and were radicalized by becoming involved in these issues.¹⁶

The women’s movement spread rapidly. The first national conference for women’s liberation was held in 1972. It attracted huge numbers and wide media publicity.¹⁷ Many groups formed, some short-lived and others more enduring. Several feminist magazines were established, including *Broadsheet* and the lesbian publication *Circle*. In 1972 the National Organization for Women (NOW) formed, modelled after the North American organization, to act as a catalyst in directing change for the benefit of

¹² Jane Vanderpyl, ‘Aspiring for Unity and Equality: Dynamics of Conflict and Change in the “by Women for Women” Feminist Services Groups, Aotearoa/New Zealand, 1970-99’, PhD thesis, University of Auckland, 2004, p.97.

¹³ *Ibid.*, p.99.

¹⁴ ‘James’ cit., Barbara Brookes, ‘When Dad was a Woman: Gender Relations in the 1970s’, in Caroline Daley and Deborah Montgomerie, eds, *The Gendered Kiwi*, Auckland: Auckland University Press, 1999, p.239.

¹⁵ Charlotte Macdonald, ‘Women’s Liberation 1970s’, in Charlotte Macdonald, ed., *The Vote, the Pill and the Demon Drink*, Wellington: Bridget Williams Books, 1993, p.162; Dorothy Page, *The National Council of Women. A Centennial History*, Auckland and Wellington: Auckland University Press/ Bridget Williams Books with the National Council of Women, 1996, pp.131-2.

¹⁶ Interview with Ann Charlotte, co-founding member of the Buller Women’s Refuge, 24 April 2008.

¹⁷ Coney, p.142.

women. In 1973, the first of four United Women's Conventions were held. These were large-scale gatherings with hundreds having to be turned away from the 1975 convention in Wellington.¹⁸

In this decentralized movement, the meaning of liberation was highly contested and independent feminist groups were often at variance in terms of aims and philosophies. The main conflict that emerged was between 'libertarian positions and what were later to be judged as politically correct feminist positions'.¹⁹ Women's rights groups, such as NOW, espoused a liberal feminist focus, which sought change in an orderly way within existing society. They adopted traditional bureaucratic means of organization.²⁰ In contrast, women's liberationist groups adopted a 'radical, feminist analysis of the situation of women, and a militant style of pushing for changes'.²¹ They were influenced by 'diverse ideological influences', which included radical feminism, socialist feminism and the gay liberation movement.²² Arguably, radical feminism was the more influential. Its proponents argued that men's power was 'sustained by the whole of our culture' and that the family was the 'key site of patriarchal power,' which was maintained through the control of women's sexuality.²³ 'Women's liberation' in these contexts implied radical change.²⁴ There were also generational differences between the two groups; liberationist groups tended to be young and urban-based.²⁵ At the same time, there was overlapping membership between women's rights and women's liberation groups.²⁶

Following the North American example, women's liberationists organized as small and leaderless groups known as "collectives". Hierarchical organization was viewed as maintaining masculine systems of domination and did not serve feminist goals and

¹⁸ Dann, p.19.

¹⁹ Jenny Coleman, 'An Introduction to Feminisms in a Postfeminist Age', *Women's Studies Journal*, vol.23, no.2, November 2009, p.7.

²⁰ Vanderpyl, pp.101, 106; Valerie Bryson, *Feminist Political Theory. An Introduction*, Hampshire: Palgrave Macmillan, 1992, pp.2-3.

²¹ Dann, p.152.

²² Vanderpyl, p.102.

²³ Bryson, p.3.

²⁴ Vanderpyl, p.102.

²⁵ Page, p.131.

²⁶ Vanderpyl, pp.98, 100; for example, Dorothy Page's history of the National Council of Women distinguishes it from the women's liberation movement, p.132; Phillida Bunkle's history of the women's movement identifies and defines these two strands, Phillida Bunkle, 'A History of the

values.²⁷ Most groups adopted a radical feminist position, which excluded males.²⁸ Whereas women's groups in the nineteenth century had restricted their activities to women mostly from a sense of propriety, liberationist groups did so deliberately.²⁹ Creating a women-only group was the first step in feminist resistance to a social order perceived to oppress women. These groups used consciousness-raising (CR), a technique borrowed from the Chinese Cultural Revolution and adopted by social revolutionary groups the world over.³⁰ Sharing experiences enabled women to become aware of their own and other women's 'disabilities', seeing them as imposed by society and the law on the basis of their sex.³¹ This encouraged solidarity among women and located women's experiences in social structures, transforming the personal into the political.³² As described in the feminist magazine, *Broadsheet*, 'CR makes us see through our experience and those of other women our common oppression; and that this oppression is the result of the rule of male supremacy in our society'.³³ By the mid-1970s the collective form of organization became increasingly prescriptive and a key point of difference between "women's rights" groups.³⁴

Despite internal contestation, the "second wave" challenged the gender order embedded in social organization by sharing women's experiences in small groups or public events, protesting, circulating feminist analyses and making submissions on legislation, thereby "unsilencing" women. In a male-dominated society, one strategy by which men controlled and exploited women was said to be through women's silence. If women's silence meant powerlessness, then their voices were power. For the personal to become political, it first had to be announced, hence the movement's

Women's Movement – Part 2', *Broadsheet*, no.73, October 1979, pp.26-28; Phillida Bunkle, 'A History of the Women's Movement – Part 3', *Broadsheet*, no.74, November 1979, pp.26-28.

²⁷ Vanderpyl, p.109.

²⁸ Not all of the early women's liberation groups initially excluded men, but Jane Vanderpyl claims this was the norm by 1975, *ibid.*, p.108.

²⁹ Margaret Tennant, *The Fabric of Welfare. Voluntary Organisations, Government and Welfare in New Zealand, 1840-2005*, Wellington: Bridget Williams Books, 2007, p.175.

³⁰ Coney, p.143.

³¹ Hilaire Barnett, *Introduction to Feminist Jurisdiction*, London: Cavendish Publishing Ltd, 1998, p.19.

³² Hilary Haines, 'Women's Mental Health as a Feminist Issue', *Women's Studies Journal*, 5 (2), December 1989, p.27.

³³ 'Consciousness Raising', *Broadsheet*, no.2, August 1972, p.5.

³⁴ Vanderpyl, pp.109-10; Sandra Coney observed an 'imperative' towards conformity and correct lines, Sandra Coney, 'Comment', *Broadsheet*, no.75, December 1979, p.32.

slogan: 'break the silence'.³⁵ 'Speaking out' was a crucial step, both politically and psychologically.³⁶

The women's movement accelerated the process of women moving into traditional areas claimed by men, such as politics and law, and challenged barriers in a more forceful way than ever before. In 1972 women were encouraged to ask their political candidates questions around attitudes to women.³⁷ Women were thought to have been the largest section of non-voters, but in that year Sonja Davies claimed, that women voters played a lead role in the defeat of the National government that had paid them so little attention.³⁸ In contrast the Labour government had promised to 'look seriously at the status of women'.³⁹ However, in 1974 Labour women picketed their own party's conference because women's issues were relegated to the bottom of the agenda.⁴⁰

Women united through women's issues. In 1975 the Women's Electoral Lobby was formed to pressure for more women in politics and greater political attention to women's issues.⁴¹ Carolyn Henwood urged her sister lawyers 'to pull our weight and try to improve our own status and the status of women in general'.⁴² Some women purposefully sought out political positions believing that 'reform from within the system' was the quickest way to achieve change.⁴³ Mary Batchelor entered parliament in 1972 as proof of her conviction. Marilyn Waring would not quit as an MP in the

³⁵ Kyungja Jung, 'The Politics of 'Speaking Out': NESB Women and the Discourse of Sexual Assault in Australia' *Asian Journal of Women's Studies*, no.3, vol.4, 1998, p.116.

³⁶ *Ibid.*, p.116.

³⁷ For example, 'Election Questions', *Broadsheet*, no.4, October 1972, p.5.

³⁸ Sonja Davies, 'Women in New Zealand', in John Robson and Jack Shallcross, eds, *Spirit of an Age. New Zealand in the Seventies*, Wellington: A.H & A.W. Reed Ltd, 1975, p.145.

³⁹ Dann, p.42.

⁴⁰ *Ibid.*, pp.45-46.

⁴¹ *Ibid.*, p.45. The Women's Electoral Lobby had originated in Australia. Economic issues dominated the 1975 election, which saw the election of a National government. Labour had begun its tenure with a balance of payments surplus of \$1,000 million and ended with a balance of payments deficit of \$1,000 million. Unemployment figures also had risen sharply. The success of the National Party was attributed to the 'Muldoon phenomenon'. Although not necessarily liked or respected, Robert Muldoon was seen as 'the leader who was best equipped to lead New Zealand out of its economic difficulties', Alan McRobie, 'The Politics of Volatility, 1972-1991', in Geoffrey W. Rice, ed., *The Oxford History of New Zealand*, Auckland: Oxford University Press, 1992, p.390-1.

⁴² Carolyn Henwood, 'Women Lawyers Unite', *New Zealand Law Journal* (NZLJ), no.16, 2 September 1975, p.613.

⁴³ Most of the 72 political women interviewed were motivated by 'change and the power to initiate change', Alison Stephens and Sue Upton, *Politics and Porridge: a Study of Political Women*, SROW, 1986, p.56.

late 1970s because, as the only woman in government, she felt a responsibility to stay and fight for women's issues.⁴⁴ Women's demands also drove law firms' greater willingness to hire female lawyers. Lawyer Joan Rotherham recalls women ringing firms, asking for a woman lawyer and saying goodbye if the firm did not have one.⁴⁵

THE STATE AND WOMEN'S RIGHTS

Feminist demands for equal rights resonated with other cultural discourses that supported an end to discrimination on the basis of gender, at least in formal law. The 1972 Equal Pay Act, which introduced equal pay in the private sector, and the 1976 Matrimonial Property Act, which gave wives an equal share in the matrimonial home, can be viewed in this light. International support for women's rights reinforced local efforts. In response to women's demands and in preparation for International Women's Year (IWY) in 1975, the Labour government set up the Select Committee on Women's Rights in 1973. Two Labour women politicians, Mary Batchelor and Dorothy Jelich, were part of the Committee that prepared the final report. The Committee was charged with investigating discrimination against women in New Zealand and recommending policies for its elimination.⁴⁶ A record number of submissions were received for a select committee. Women exploited the opening of discursive and political spaces to assert feminist demands by giving evidence of discrimination against them, and their widespread dissatisfaction with women's status.⁴⁷ This did not yet include men's violence against wives and partners.

Phillida Bunkle, historian and woman's liberationist, described the Committee's report, *The Role of Women in New Zealand Society*, as the 'first official document to adopt basic feminist premises'. The Report accepted that 'women's inferiority' was a social rather than a biological construction.⁴⁸ The construction of marriage as a partnership of equals, the focus on a family's functioning rather than its legal status, equal rights and the linking of women's participation in the paid workforce with the economic well-being of the country, shaped the report. These newer discourses

⁴⁴ Interview with Mary Batchelor, 26 June 2008; Marilyn Waring reported in Janet McCallum, *Women in the House. Members of Parliament in New Zealand*, Picton: Cape Catley, 1993, p.131.

⁴⁵ Interview with Joan Rotherham, 8 July 2008.

⁴⁶ Select Committee on Women's Rights, *The Role of Women in New Zealand Society. Report of the Select Committee on Women's Rights, June 1975*, Wellington: Government Printer, 1975, pp.5, 7.

⁴⁷ Davies, p.146.

⁴⁸ Phillida Bunkle, 'The Yellow Paper', *Broadsheet*, no.32, September 1975, p.25.

contested conservative beliefs, which had placed women primarily in the domestic sphere and made them financially dependent on men, conditions that had facilitated men's violence against wives and partners.

Although radical feminists, who opposed any endorsement of the belief a woman's place was in the home, were critical of the report,⁴⁹ it should be considered radical for its time. It recommended non-sexist education; legislative changes to enact the principle of equal partnership and to outlaw discrimination on the basis of sex; and state funded child-care and family planning centres. The difficult question of women's control over their fertility was left to the Royal Commission on Contraception, Sterilization and Abortion.⁵⁰

The political mobilization of women forced the state to respond in some way. The Labour government set up the Committee on Women, a small consultative body as a channel between women's organizations and the state.⁵¹ Although lacking an executive role and labelled conservative by radical feminists, the Committee provided a political space for women's demands to be voiced and state funds to research women's issues.⁵² The government also officially recognized the United Nations initiated International Women's Year (IWY) and appointed a co-ordinator for one year.⁵³ IWY was the first year of the United Nations Decade for Women 1975-1985, which aimed to promote equality, to integrate women into development programmes and to recognize the importance of women in all areas of society around the world.⁵⁴ The report also fed into the 1977 Human Rights Commission Act, which made discrimination on the basis of gender, race and religion, illegal.

Despite feminist disagreement over the effect of IWY on feminist developments, ultimately, IWY broadened the political basis for pursuing women's rights, made it more palatable to women and men threatened by women's liberation, and put

⁴⁹ Ibid., 'The Yellow Paper', p.26.

⁵⁰ Select Committee on Women's Rights, pp.32, 43, 64, 83-85, 91-92, 98, 102.

⁵¹ Dann, p.42.

⁵² Julie Thompson, 'Broadsheet's Predictions Realised', *Broadsheet*, no.38, April 1976, p.7.

⁵³ Dann, p.42.

⁵⁴ Louis Robertson, *The History of the Wellington Branch of the National Council of Women, 1916-2000. The Story of Energy and Enterprise*, Wellington: Wellington Branch of the NCW, 2006, pp.57-58.

women's issues firmly on the political agenda.⁵⁵ It extended the range of feminist discursive positions. This increased differences within the movement and also made the movement vulnerable to conservative discourses that did not acknowledge the centrality of social structures and practices for discriminatory outcomes. This could be seen in two women's refuges that developed out of IWY projects, places of sanctuary for women escaping a husband's or partner's violence, discussed later in this chapter.

The influence of conservative discourses in parliament made it difficult for women drawing on feminist discourses. Mary Batchelor said her first years were not easy and she felt unwanted by the Labour Party.⁵⁶ Referring to women liberationists, Prime Minister Robert Muldoon asked, 'have you noticed how the ugliest ones always have the loudest voices?'⁵⁷ Muldoon reportedly did not appoint Marilyn Waring to Cabinet in 1978 because he saw her as 'too influenced on women's issues by militant feminists'.⁵⁸ The tabloid newspaper *Truth*, which published numerous articles in support of "social victims" such as solo mothers, beneficiaries and Maori, considered women's liberation a 'disease' and its proponents, 'moaning minnies'.⁵⁹

Feminist demands for equal rights and liberation were resisted because feminism was perceived as having subversive implications for the ideal family: it was 'dangerous for family units, personal relationships and spiritual values'.⁶⁰ Indeed, radical feminists, who were often loud and visible, viewed the ideal nuclear family as making women "sick". Some advocated women-only communities. The rapid changes that had occurred engendered social anxiety, and feminism was identified as the primary culprit. Men and women united to counter feminist influence: the 'Save Our Homes' campaign was one such example.⁶¹ The name "feminist" became synonymous with the name "home wrecker", and "liberation" became a dirty word for some women. Some women's rights' groups explicitly distinguished themselves from liberationists.

⁵⁵ See Rosslyn Noonan, 'IWY: the Bitter End', *Broadsheet*, no.39, May 1976, p.16, and Sandra Coney, 'IWY: the Bitter End', *Broadsheet*, no.39, May 1976, p.19, for an example of varied opinions.

⁵⁶ Recall Labour women picketing their own conference; interview with Mary Batchelor, 26 June 2008.

⁵⁷ Reported in Sandra Coney, 'Kicking Against the Pricks', *Broadsheet*, no.5, 1972, p.12.

⁵⁸ Reported in McCallum, p.131.

⁵⁹ For example, 'Ladies: You're Missing The Bus', *Truth*, 15 June 1971, p.15; 'That'll Fix the Naggers!', *Truth*, 5 October 1971, p.1.

⁶⁰ Sandra Coney, 'Editorial', *Broadsheet*, no.49, May 1977, p.10.

⁶¹ *Ibid.*

In 1977 the president of the National Council of Women reportedly said that women's liberation was 'aiming a knife at the heart of the family'.⁶²

NAMING DOMESTIC VIOLENCE

There was no specific proposal concerning men's violence against wives and partners at the first women's liberation national conference in 1972; nor were questions asked of politicians contesting the election that year. The Select Committee on Women's Rights did not discuss it, which suggests it did not receive evidence of it. However, as feminists scrutinized the private world of domestic relations it was not long before men's violence against wives and partners emerged as a problem of major social proportions.

Feminists began to explicitly acknowledge men's violence against wives or partners from 1973. A *Broadsheet* edition that year included Sandra Coney criticizing an Andy Capp comic strip in which Capp 'biffed' his friend Ted's wife saying 'that's what she needs', along with a brief acknowledgement of the establishment of the first British Women's Refuge in Chiswick, London.⁶³ The following year the Auckland Women's Liberation organized two 'speak-outs' in which women shared their experiences of health, sexuality and violence.⁶⁴ *Broadsheet* produced an issue on women and violence, adopting the terms 'domestic violence' and 'battered wives', used by North American and English groups. Authors drew on a range of discourses. Speaking from a radical feminist position, Julie Thompson claimed that 'at the base of all violence to women is power. The powerlessness of women manifests itself in many ways, but nowhere does it have more consequences than within the family'.⁶⁵ Newer and older discursive constructions of gender intertwined to shape Sandi Hall's construction of men's violence against wives or partners. While claiming that gender inequality in marriage contributed to it, Hall simultaneously made a distinction between provoked and unprovoked violence, and claimed that the incidence of such violence was low on farms where couples mutually contributed to their income. Only one of three

⁶² Cit., Carol Jeffcott, 'Letters – The Family Makes Women Sick', *Broadsheet*, no. 47, March 1977, p. 2.

⁶³ Sandra Coney, 'Editorial – Sex Mania?', *Broadsheet*, no.15, November 1973, p.2.

⁶⁴ Dann, p.17; 'The Speakout', *Broadsheet*, no.26, January 1975, p.8.

⁶⁵ Julie Thompson, 'Editorial – Women and Violence', *Broadsheet*, no. 21, August 1974, p. 2.

examples Hall used was from New Zealand, which reflected the inadequacy of information and of a theoretical basis from which to address what was known.⁶⁶

By 1975 male violence against wives and partners was firmly on the feminist agenda. The United Women's Convention of that year held a 'Wife-bashing' workshop in which the New Zealand Homemakers' Union presented a paper it had published the previous year in its magazine. Using dominant constructions of violence, it saw 'wife-bashing' as an un-premeditated, alcohol-related, stress-induced, trans-generational behaviour that also included 'victim-provoked violence'.⁶⁷ It did, however, acknowledge the latter cause was disputed, that 'wife-bashing' was not limited to the lower socio-economic classes, and that many women stayed in violent relationships because as a mother responsible for childcare it was difficult to be financially independent. Like Hall's analysis, the Homemakers' Union's paper constituted the political action of "speaking out". But, also like the article by Hall, it did not offer any radically different discursive positions for women to resist a husband or partner's violence. Notably, however, the Convention did make a recommendation to outlaw rape within marriage.⁶⁸

As discourses on domestic violence emerged, feminist groups were organized to support women victims of it. This was central for the development of a feminist analysis. The Christchurch Women's Centre, established in 1973 to provide a place for women to meet, was the first group to set up a refuge for women. The Centre was a collective venture among feminist groups that included Sisters for Homophile Equality, and university and anarchist feminists. The women's groups tithed to pay the rent and invested much time and labour in painting and cleaning up the 'dreadful old dump'.⁶⁹ How to encourage other women to think about women's issues led to a discussion on domestic violence, although not by that name. Morigan Sievers, a founding member, recalled talking about women who were being harmed by men in some way and having nowhere to go. Sievers was aware that some women took

⁶⁶ Sandi Hill, 'Battered Wives', *Broadsheet*, no.21, August 1974, pp.15-16.

⁶⁷ An unnamed member of the New Zealand Homemakers' Union, 'Wife-bashing', *United Women's Convention 1975*, Wellington: United Women's Convention, 1976, pp.48-49.

⁶⁸ Committee on Women submission to Committee on Violent Offending, p.20, Women and Violence, 1978-80, ABKH, W4105, 2 30-0-9, pt 2, Archives New Zealand (ANZ), Wellington.

⁶⁹ Interview with Morigan Sievers, 9 July 2008.

women into their own homes, that there were social networks that helped in some way, but that nothing was formalized. Her awareness of men's violence against wives had emerged from CR groups where she and other women talked about their experiences as girls growing up and what had happened to them: 'We knew about that because we could see or hear about it from other women.' Sievers said the Collective wanted to do something about it because they wanted to change systems and structures in society for women.⁷⁰

There was an opportunity to rent a house adjoining the Centre and it was decided to use it as a place for women to come to if they needed for whatever reason to leave their situation. Two women from Sisters for Homophile Equality lived in one room there, and the group advertized and organized bedding, mostly from their own pockets.⁷¹ After an initially slow period, the refuge was overwhelmed with an influx of women, and was always full even without advertizing its address.⁷² At first the refuge was open to homeless women, but the plight of desperate women and children fleeing violent husbands and partners presented as a main problem.⁷³ Morrigan Sievers recalled that initially there were enormous problems. There was no confidentiality about the house, which made the residents vulnerable to harassment or further violence, and no one really knew what to do with the women and children who came. Access to benefits was poor; even when the Domestic Purposes Benefit (DPB) became a statutory right it took time to process an application, and financial support was difficult to get. There had been a lot of discussion around this issue with many feminists not wishing to be involved with that kind of service to individuals because it was thought not to address bigger problems and diverted energy that could be used to move forward politically. Thus a group formed within the Collective to become the first refuge group in New Zealand. In 1974 the Christchurch Women's Refuge Centre (CWR) was established.⁷⁴

In the same year two short-lived places of sanctuary for women were established in Auckland. Although neither was exclusive to women escaping violent relationships,

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Diane, 'The Refuge Centre', *Broadsheet*, no.31, July 1975, p.22.

⁷³ Dann, p.129.

⁷⁴ Interview with Morrigan Sievers, 9 July 2008; Dann, p.129.

providing for such women increased the visibility of the problem of men's violence against wives and partners. Strawberry Villa was open to anyone, but had a special reputation as a refuge for women, providing emergency shelter on its premises as well as, through an informal network, satellite accommodation in volunteers' homes.⁷⁵ As an outgrowth of action to meet housing needs of single parents, Potiki Mana was established to provide emergency shelter for separated mothers and children.⁷⁶ The most significant Auckland shelter established for women escaping violent marriages and relationships was Halfway House for Women (AHH) in 1975, which was inspired by Halfway House for Women in Melbourne, Australia. Its collective successfully petitioned the Auckland City Council for a house to carry out a pilot scheme to meet the need for emergency accommodation for women. It aimed to 'reveal the true nature of the problem of homeless women'.⁷⁷ In the same year the Dunedin Collective for Women held a feminist seminar in which it was suggested a women's shelter should be established for women facing extreme domestic situations.⁷⁸ A working party was formed and the Dunedin Women's Refuge (DWR) was established a year later.⁷⁹

AN INFORMED THEORETICAL BASIS AND POLITICAL IMPLICATIONS OF FEMINIST ACTION

The Refuge Movement was 'a tangible outgrowth of the spirit of the Women's Movement', which developed out of CR.⁸⁰ The first refuges were a woman-defined 'creative and practical solution' to the problem of women having nowhere to go.⁸¹ However, they were much more than an emergency social service. The Christchurch, Auckland and Dunedin refuges developed from independent feminist action that intended refuges to be 'the frontline in the struggle for social change'.⁸² The Auckland Halfway House Collective, for example, had two aims: in the short term, to provide temporary accommodation for women who needed to leave intolerable domestic situations and in the long term, to provide data about the needs of women and the

⁷⁵ 'Strawberry Villa', *Broadsheet*, no.25, December 1974, p.9.

⁷⁶ 'Potiki Mana', *Broadsheet*, no.18, April 1974, p.5

⁷⁷ 'More Progress with the Halfway House', *Broadsheet*, no.28, April 1975, p.14.

⁷⁸ 'Feminists Seeking Women's Shelter', *Otago Daily Times*, 13 March 1975, p.20.

⁷⁹ Fran J. Cammock, 'A History of the Establishment of Dunedin Women's Refuge, 1976-1977', BA Hons research exercise, University of Otago, Dunedin, 1994, pp.11-13.

⁸⁰ Mary Hancock, *Battered Women: An Analysis of Women and Domestic Violence, and the Development of Women's Refuges*, Wellington: The Committee on Women, 1979, p.18.

⁸¹ Cammock, p. 2.

⁸² 'Getting Organised. Part 3', *Broadsheet*, no.61, July 1978, p.23.

extent to which these were being met, and to provide the means to enable women to recognize their own potential as individuals, and therefore be a spearhead of social change.⁸³

Refuges were run on a collective basis and 24-hour roster system to provide temporary accommodation and support for a woman to make choices about her future. No one was in charge or could tell any woman what to do. Women residents were also initially involved with the running of the house and making collective decisions.⁸⁴ Being a member of these collectives demanded intense personal commitment, ideologically, practically and financially.⁸⁵ In the early days, refuges were run entirely on a volunteer basis. While a particular social environment supported the emergence of refuges, the individuals involved were also central to their establishment, bravely and at great personal cost forging a new path for women in hostile territory.

Ultimately, the political power of refuges was dependent on the individual women who volunteered or used them. To be effective, discourses 'require activation through the agency of individuals whom they constitute and govern...as embodied subjects. This occurs through the identification by the individual with particular subject positions within discourses'.⁸⁶ When women identified with the subject positions offered in feminist discourses, they helped circulate these positions. The material fact that refuges were nearly always full supported feminist claims that domestic violence was a social problem. Women's choice to use feminist refuges supported female empowerment. Raewyn Good, a co-founding member of Wellington Women's Refuge (WWR), claimed that the Salvation Army in Wellington did not get a lot of demand because it let husbands in when they came to visit and made the women go to church. In contrast, when the WWR opened in 1981 it was inundated with women seeking accommodation.⁸⁷

⁸³ 'More Progress with the Halfway House', *Broadsheet*, no.28, April 1975, p.14.

⁸⁴ Hancock, p.22.

⁸⁵ Doris Church, a co-founder of Christchurch Battered Women's Support Group, today says that in some ways she would not do what she did again because it took up so much of her life and energy, but that it was worthwhile because of the major changes that occurred, interview with Doris Church, 22 March 2008.

⁸⁶ Chris Weedon cit., Jung, p.134.

⁸⁷ Interview with Raewyn Good, 29 April 2008.

Refuges contested discursive practices that had obscured men's violence against wives and partners. In providing temporary accommodation for women in violent marriages or relationships with nowhere else to go, refuges gave women a choice to live outside a traditional marriage or relationship. One woman said she had made several breaks from a violent marriage, but failing to get support from her parents and doctor she went back. One day she read a notice in the paper about DWR, looked up the word refuge in the dictionary and went there.⁸⁸ In fostering a woman only community, women were able to meet with, and gain support from, others with similar experiences of abuse. The realization that their experiences were not unique helped them to feel less isolated, less inclined to self-blame, and open to developing a feminist awareness. This is indicated in one resident's thankyou letter in which she said it was good to know other people understood and that she was not crazy.⁸⁹ Women's living and working together destabilized social beliefs around women's nature, such as women's alleged "cattiness" and jealous disposition, enabling a feeling of solidarity to emerge. Christine Bird, a founding member of CWR, recalls initially being distrustful of the Collective, feeling that women were not to be entirely trusted and were inherently manipulative and 'backstabbing'. The reality for her proved otherwise.⁹⁰ Similarly, the AHH Collective found little evidence for the 'women are catty and competitive myth'.⁹¹

As exclusively women's organizations, refuges destabilized conservative discourses of gender by providing opportunity for women to learn a diversity of skills and gain experience in areas previously denied them. Julie Thompson, a member of the AHH Collective, believed that as a group the women faced their lack of knowledge about the world outside the domestic front and their lack of confidence in dealing with officialdom. Rather than structured on the 'male' ethos, viewed as a need to dominate and control, refuges operated as self-help groups, and promoted themselves as encouraging women's independence and undermining their traditional reliance on

⁸⁸ Reported in Cammock, p.41.

⁸⁹ Sheryl Hann, *Palmerston North Women's Refuge Herstory, 1979-2001*, Palmerston North: Palmerston North Women's Refuge Inc., 2001, p.68.

⁹⁰ Christine Bird, 'Lighting up Oppression', in Maud Cahill and Christine Dann, eds, *Changing Our Lives, Women Working in the Women's Liberation Movement, 1970-1990*, Wellington: Bridget Williams Books Ltd, 1991, p.133.

⁹¹ Bronwyn Banks, Joy Florence and Jenny Ruth, *He Said He Love Me Really. Experiences at a Women's Refuge*, Auckland: The Halfway House Collective, 1979, p.47.

men.⁹² This can be seen in the DWR's aim to 'assist the individual woman to redress, using her own strengths and outside help, the unequal basis of her relationship with her male partner'.⁹³ The practice of feminist values of co-operation and non-hierarchy that promoted women interacting 'with one another as people with a desire to share' was intended to subvert male values, seen as 'a need to dominate and control', and provide a model for social change.⁹⁴ Feminist groups shared knowledge about how to engage with the legal and social welfare system for women leaving marriages and knowledge about their mistakes and successes as a refuge within the refuge context.⁹⁵ Ultimately, refuge organizations aimed to enable women, whether helping or living there, to develop qualities such as self-confidence and assertion, showing them how to accept and trust other women, and to have more respect for their own and other women's abilities and possibilities.⁹⁶ All of these were prerequisites to feminist action. Very simply, a refuge promised a 'transformative experience' for individual women; refuges were potentially 'living laboratories of social change'.⁹⁷

There were differences in the original policy direction amongst the first refuges. These stemmed from the potentially conflicting principles of independent decision-making (empowering individual women) and fomenting a feminist awareness (empowering women as a group). The Christchurch and Auckland Collectives were the most interventionist, actively encouraging a feminist awareness among residents. AHH was the most radical (at least in rhetoric): it explicitly aimed to destroy patriarchy; it excluded wives who did not wish to separate from abusive husbands (in part this was based on limited resources); it had a policy of 'no return' to encourage women to realize the step they were taking was a final one; and it preferred separation as a solution to domestic violence. It intended to 'break up as many marriages as possible' and 'encourage women to live with other women'.⁹⁸ Policy in practice, however, was largely dependent on individual women on duty and the refuge was

⁹² Julie Thompson, 'Editorial – Feminist Alternatives', *Broadsheet*, no.39, May 1976, pp.4-5.

⁹³ 'Getting Organised. Part 3', *Broadsheet*, no.61, July 1978, p.20.

⁹⁴ Thompson, 'Editorial - Feminist Alternatives', pp.4-5.

⁹⁵ For example, 'Getting Organised. Part 3', pp.20-23; Diane, 'The Refuge Centre', pp.22-24.

⁹⁶ 'Getting Organised. Part 3', p.21.

⁹⁷ R. Emerson Dobash and Russell P. Dobash, 'The Politics and Policies of Responding to Violence against Women', in Jalna Hanmer and Catherine Itzin, eds, *Home Truths About Domestic Violence. Feminist Influences on Policy and Practice. A Reader*, London: Routledge, 2000, pp.199-200.

⁹⁸ Banks, Florence and Ruth, pp.9, 70, 101-2, 108.

known to operate quite differently from its 'staunch publication booklet'.⁹⁹ The CWR also placed more emphasis on women leaving relationships. In contrast, the DWR Collective did not put pressure on women to follow a particular course of action or to adopt a particular ideology and allowed women to stay regardless of their intentions towards future relationships with abusive partners.¹⁰⁰

At the very least, refuges were a material symbol of domestic violence as a social problem, women's dependence within marriage, and women's economic disadvantage. Refuges provided a focus for feminist action. Some women's groups began to focus on the single issue of men's violence against wives and partners. Although division was also apparent, the close contact with the daily lives of sufferers demanding immediate redress provided a base level of consensus, and discouraged paralysis. When conflict emerged over the aims of the DWR, for example, the heavy burden of the day-to-day running of the refuge obscured confrontation between radical and moderate women.¹⁰¹ The practical engagement with the structures of everyday life made it difficult to maintain the radical feminist agenda. This can be seen in choices made by some women from the AHH Collective to allow women who had previously gone back to a husband to return to the refuge. The immediate encounter with a woman in need would have made it difficult to turn the woman away.

Refuges provided an empirical basis for the production of feminist knowledge, which facilitated new discursive positions and possibilities for women. A radical feminist interpretation of domestic violence was a 'subject-centred discourse that privileged the female speaking subject'.¹⁰² It constructed domestic violence 'both as an inevitable outcome in a society in which men are valued more than women and have more power than women; and as one of the means by which men maintain their status and power'.¹⁰³ By constructing women as victims rather than blaming them for provoking or deserving violence, feminist discourses converged with victimhood

⁹⁹ Ibid., p.122; interview with Raewyn Good, 29 April 2008.

¹⁰⁰ 'Getting Organised. Part 3', pp.20-23; Cammock, p.19.

¹⁰¹ Hancock, p.23.

¹⁰² Kathy Ferguson reported in Jane Vanderpyl, 'An Unstable Achievement: Conflicts in Feminist Collective Organising', *Women's Studies Journal*, 14 (1), Autumn 1998, p.26.

¹⁰³ Dann, p.131.

discourses and supported women's demands for state and community assistance. This also challenged constructions of masculinity as protective of women and children. Centred on women's experiences, a feminist analysis provided direction for feminist action and exposed the social and legal support given to perpetrators of domestic violence, such as pressure from helping agencies for wives to return to violent homes. The first step in this process was to inform people that husbands were beating their wives.¹⁰⁴ The AHH Collective, for instance, gained information from women residents to 'use as a weapon against patriarchal oppression', and its members produced the publication, *He Said He Loved Me Really* in 1979.¹⁰⁵ It re-defined the housing problem as one of domestic violence. All three refuges lobbied to gain public and political support for women victims of male violence, often through local and national politicians.

PUBLIC RESPONSES TO REFUGES

Support for women's refuges grew slowly. The first independent women's refuges claimed they got little community support, rather disbelief and hostility.¹⁰⁶ This was because refuges were seen to threaten the family. Christine Dann reports that refuges were accused of exaggerating the problem, breaking up viable marriages, forcing feminism down others' throats and creating problems where there were none before.¹⁰⁷ The AHH Collective said they neither got, nor expected support, and felt under siege. Even husbands and male friends who had previously been seen as friendly and sympathetic reportedly became threatening, resentful of the time the women spent together.¹⁰⁸ When Halfway House was first proposed, some city councillors did not believe there was any need for such a place in New Zealand; they did not think New Zealand men could be as violent as Australian men.¹⁰⁹ The mayor of Dunedin claimed that domestic violence did not happen there.¹¹⁰ Law agencies expressed similar disbelief. Joan Rotherham took information about the CWR to the

¹⁰⁴ Julie Thompson, 'Halfway House, a Self Help Refuge for Women', *Broadsheet*, no.42, September 1976, p.21.

¹⁰⁵ Banks, Florence and Ruth, pp. 163, 166.

¹⁰⁶ For example, Sue Culling of the Dunedin refuge recalled a hostile atmosphere in Dunedin and no community support, Cammock, p.11.

¹⁰⁷ Dann, p.130.

¹⁰⁸ Banks, Florence and Ruth, p. 121.

¹⁰⁹ Thompson, 'Halfway House, a Self Help Refuge for Women', p.21; Banks, Florence and Ruth, p.104.

¹¹⁰ Cammock, p.17.

Law Society and asked for it to be included in the Law Society Bulletin so that other lawyers would know that there was a place for women victims of domestic violence to go. The Society met and decided not to include the information because the Law Society Committee, made up solely of men, felt there was not a problem with domestic violence in Christchurch.¹¹¹ In Australia feminists experienced similar difficulty having their claims that domestic violence was a social problem taken seriously.¹¹²

The media was often not supportive. Newspaper reports depicted AHH as being possessed by a 'siege mentality', possibly a reflection of the refuge's policy of keeping their location a secret.¹¹³ Refuges alleged that social agencies were often not supportive; in particular, refuges had tremendous problems getting agencies to take the confidentiality of their address seriously.¹¹⁴ The AHH declined to be interviewed on a television program intended to expose investigation procedures of the Department of Social Welfare because it feared repercussions from the Department.¹¹⁵ The Dunedin Collective frequently found itself in confrontation with the local social welfare office over benefit queries.¹¹⁶ Refuges alleged that police had been unwilling to support women seeking its services and had refused to provide escorts for roster women and occupants wishing to collect possessions; relations with the Department of Social Welfare were difficult; and church agencies (including the YWCA) believed that emergency needs for women were already being met. All these groups made accusations and allegations that the refuge was wrecking homes. For this reason, the Dunedin Collective claimed that the Salvation Army refused to help them in any way.¹¹⁷ One member of the Dunedin Collective recalls 'the first two years were so tough that she had basically burnt out by then'.¹¹⁸ Australian refuges had similar

¹¹¹ Joan Rotherham was part of getting the CWR up and running, assisting in cleaning up the house and scrubbing floors, interview with Joan Rotherham, 8 July 2008.

¹¹² Suellen Murray, *More Than Refuge. Changing Responses to Domestic Violence*, Crawley: University of Western Australia Press, 2002, p.97.

¹¹³ Banks, Florence and Ruth, p.108.

¹¹⁴ For example, the AHH Collective, *ibid.*, pp.105-6.

¹¹⁵ *Ibid.*, p.109.

¹¹⁶ 'Memorandum for Policy Group – Emergency Housing', p.2, Organization and Departments – Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

¹¹⁷ Cammock, pp.17-18, 38, 60-61; the National Collective of Independent Women's Refuges reported the many difficulties Refuges faced, 'Analysis of Information Received from Refuges on Problems Areas, 1981', Organization and Departments – Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

¹¹⁸ Reported in Cammock, p.18.

experiences. Suellen Murray reports a volunteer at Nardine Women's Refuge recalling ringing police for assistance because a woman was being attacked by her partner, but instead of complying with the request, the police raided the refuge because it was believed the women were 'drug taking hippies'.¹¹⁹

Once they were running, thereby demonstrating they were meeting a real need and providing face-to-face contact, refuge groups found that sympathy did eventually develop. In part this was an outcome of the IWY broadening the movement and creating interest in women's issues. Two women from the AHH Collective were interviewed on the *Tonight at Nine* programme in 1976, and were involved in making *Women and Violence*, screened on national television in 1977. Radio Hauraki gave AHH free advertising time, *City News*, a central Auckland newspaper, offered the Collective a regular column and many suburban newspapers ran free articles and advertisements.¹²⁰ From 1976 the Christchurch *Press* gave CWR supportive publicity and the Collective felt it was gaining acceptance within the wider community as a result of much lobbying and was gaining some respect from the agencies they dealt with.¹²¹

With few alternatives, hard-pressed agencies could use refuges as places to leave people while simultaneously disregarding the feminist mission of the refuges – this was the case with police on night patrol, who used the CWR to take women out of a violent situation.¹²² In this way, reliance on, and contact with refuges generated support. In the late 1970s the Chief Social Worker of the Christchurch Methodist Central Mission wrote in support for the CWR's appeal for council funds because she had found the personnel to be well-informed and concerned individuals who were willing to extend themselves. So too did the Christchurch Chief Superintendent of Police, the local Citizens' Advice Bureau, and Catholic Social Services.¹²³

¹¹⁹ Murray, p.36.

¹²⁰ Banks, Florence and Ruth, pp.107-8.

¹²¹ Leonie Stewart, 'Caught in a Vicious Circle', *Press*, 2 September 1976, p.17.

¹²² R. Wilson, Department of Social Welfare, Christchurch, to Acting Director General, 6 May 1976, Organization and Departments – Women Refuge, 1976-1981, AAYE, 7433, W5048, O&D 144-0, pt 1, ANZ, Wellington.

¹²³ Mary Stubbs, 1 October 1976; Mr Twentyman, 4 October 1976; Phyllis Zeff, 28 September 1978; Rev. T. Cahill, 27 September 1976, Organization and Departments – Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

Despite such encouragement, there was little financial support. The DWR procured no external economic contributions; the Collective itself found the funds for establishing and running the house. The CWR felt it was an ‘orphan’ amongst projects to help the destitute. After several years, it appealed unsuccessfully to local and national politicians for a bigger, more comfortable house to replace its cold cramped premises. The Housing Corporation denied funding for a home because the CWR did not cater for men, therefore was ineligible.¹²⁴ This may have been a reflection of a conflict between civil rights discourses that did not discriminate on the basis of gender and feminist ones that called for affirmation policies. Reliant on their own financial resources, feminist refuges were often run down, overcrowded, and under constant threat of closing.¹²⁵

THE DISCURSIVE FIELD OF DOMESTIC VIOLENCE

Feminists were not the first to talk about men’s violence against wives or partners, but were the first to name it as a problem of major social proportions and interpret it within a framework of male dominance. For decades, the Society for the Protection of Home and Family (SPHF) publicized at least annually the family problems it dealt with, including violence, which it attributed to immorality and alcohol.¹²⁶ *Truth* had repeated magistrates’ comments on an apparent increase in ‘wife-bashing’ in the 1960s and reported court accounts of male assaults on wives and partners, but probably more for their sensationalist impact or as a means to criticize the establishment.¹²⁷ In 1973 *Truth* claimed in ‘Booze Leads to a Bash’ that wife-bashing was ‘an everyday occurrence’ after husbands arrived home drunk from the pub.¹²⁸ But despite claims by *Truth*, the SPHF or the judiciary, many people did not believe that such behaviour actually occurred, and even those who were aware of it did not believe it affected sufficient numbers of women or was of sufficient severity to warrant public concern.¹²⁹

¹²⁴ ‘Centre Searches for New Refuge’, *Press*, 7 August 1978, Organization and Departments – Women Refuge, 1976-1981, AAYE, 7433, W5048, pt 1, ANZ, Wellington.

¹²⁵ Hancock, p.23; National Collective of Independent Women’s Refuges Inc., ‘Analysis of Information Received from Refuges on Problem Areas, 1981’, Organization and Departments – Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

¹²⁶ For example, ‘Protection Society’s Work Increased’, *Press*, 3 November 1971, p.6.

¹²⁷ My analysis of court reports of wife assault published in *Truth* in the 1960s, for example, ‘Too Many Assaults on De Facto Wives’, *Truth*, 9 June 1964, p.19.

¹²⁸ ‘Booze Leads to a Bash’, *Truth*, 23 January 1973, p.2.

¹²⁹ R. Emerson Dobash and Russell P. Dobash, *Violence Against Wives: A Case Against the Patriarchy*, New York: The Free Press, 1979, p.2.

Multiple changing discourses that had emerged in the 1960s intersected to strengthen the power of feminist discourses in the 1970s.¹³⁰ This is indicated in Joan Rotherham's belief that the development of women's refuges was indicative of a change in some people's attitudes; people were beginning to listen to women differently and support grew.¹³¹ This section analyzes support for feminist discourses of domestic violence.

Domestic Relations

Women's demands for equality in the domestic sphere converged with a general 'deepening concern for the condition of personal and intimate relationships'.¹³² Changing discourses had "exposed" the costs of conservative bourgeois gender constructions that favoured separate spheres and gender hierarchy. These costs included juvenile delinquency, public violence, increasing marriage breakdowns, poor mental health outcomes for married women and isolation of fathers from families. Rather than protecting marriages and families, traditional values were being depicted as a threat to the social order. A study initiated by the Department of Justice, for example, found that among the divorced group there were disproportionately few working wives, a conclusion that contested 'a favourite contention' of protagonists for 'family sanctity', that working wives threatened it.¹³³ It was on this basis that the Social Development Council (SDC) asked in 1977 whether it was time to question men's lack of participation in the home.¹³⁴ Domesticity was central to many current social issues, such as sex education, censorship and abortion.¹³⁵

In particular, emergent discourses that directed attention towards the family environment and domestic relations, such as those of child welfare, child abuse and public violence, and the construction of marriage as a partnership, contested the civic/domestic boundary thereby enabling domestic violence to be identified as a

¹³⁰ Some of these emerging discourses were discussed in preceding chapters, especially as they related to domestic law and social welfare changes.

¹³¹ Interview with Joan Rotherham, 8 July 2008.

¹³² W.H. Oliver, 'The Awakening Imagination, 1940-1980', in Geoffrey W. Rice, ed., *The Oxford History of New Zealand*, 2nd ed., Auckland: Oxford University Press, 1992, p.566.

¹³³ Sue Patterson, *Divorce in New Zealand. A Statistical Study*, Wellington: Department of Justice, 1976, pp. 22, 27.

¹³⁴ Social Development Council, *Housework and Caring: Can Men Do Better?* Wellington: Social Development Council, 1977, p.1.

¹³⁵ Oliver, p.566.

problem of social proportions. The home, while claimed as the solution to social woes, was also seen as the producer of them, and required external regulation for the sake of the individuals within a family and the citizens of society more generally. State agencies began to explore violence within the home. In these non-feminist discourses, violence within the home emerged as a problem primarily because of its alleged impact on children as future parents and citizens.

Child Welfare

Violence against children had re-asserted itself in public consciousness in the 1960s following the 1962 publication of Henry Kempe's and associates' paper, 'Battered Child Syndrome'.¹³⁶ The emotive title attracted the attention of the popular press and propelled research in to child abuse.¹³⁷ The earliest major discussion of child abuse in New Zealand in this period was in the 1959 Child Welfare Division Annual Report, but after 1962 the Division began to investigate the problem more seriously and amassed notes on around 400 families.¹³⁸ From the early 1960s *Truth* declared child cruelty to be increasing in both volume and viciousness, and appealed to the public to help fight it.¹³⁹ The Plunket Society discussed child abuse at its 1964 annual conference; in 1964 the Health Department urged hospitals to be vigilant; and the Department of Justice commenced a study of preventive measures in 1965.¹⁴⁰ In 1965 the National Party asked for detailed investigations to be made with a view to prevention.¹⁴¹

In 1967 the Child Welfare Division conducted a nation-wide survey of ill-treatment of children, which was published in 1972.¹⁴² It restricted the definition of child abuse to physical violence, consistent with understandings of violence that operated in criminal

¹³⁶ Bronwyn Dalley, 'Deep and Dark Secrets. Government Responses to Child Abuse', in Bronwyn Dalley and Margaret Tennant, eds, *Past Judgement. Social Policy in New Zealand History*, Dunedin: University of Otago Press, 2004, p.175.

¹³⁷ David M. Ferguson, Joan Fleming and David P. O'Neill, *Child Abuse in New Zealand. A Report on a Nationwide Survey of the Physical Ill-Treatment of Children in New Zealand*, Wellington: Government Printer, 1972, pp.15-16.

¹³⁸ Dalley, pp.178-9.

¹³⁹ 'Public Must Help in Fight Against Child Cruelty', *Truth*, 1 September 1965, p.4; 'Bashers Must be Jailed', *Truth*, 20 November 1962, p.1; 'More Child Bashings. Welfare Workers Look to Public', *Truth*, 13 September 1967, p.2; 'You Could Stop a Baby's Agony', *Truth*, 28 October 1969, p.1.

¹⁴⁰ Dalley, pp.179-180.

¹⁴¹ Reported in 'Public Must Help in Fight against Child Cruelty', *Truth*, 1 September 1965, p.4.

¹⁴² By 1972 the Division was absorbed into the Department of Social Welfare, Ferguson, Fleming and O'Neill, p.13.

law. The study concluded that child abuse was more prevalent amongst socio-economic disadvantaged families, non-Pakeha families, and unmarried mothers.¹⁴³ This masked the incidence of abuse in mainstream families.¹⁴⁴ The report's identification of mothers as the primary abusers obscured the gendered power relationships that usually governed domestic relations.¹⁴⁵ Despite concluding that child abuse was not a significant social problem in New Zealand, the 1972 report confirmed the belief that it was transmitted from one generation to the next.¹⁴⁶ This implied a need for strategies of early detection and prevention and invited greater scrutiny of the domestic sphere, at least in families distinguished by class discourses.¹⁴⁷

The Department of Justice's particular interest in young offenders sustained its concern around violence in the home throughout the 1960s-1970s, because violence within the family was believed to shape future relationships as parents and citizens.¹⁴⁸ Most young offenders appearing before the Children's Court for crimes of violence were said to be victims of violence in their own families.¹⁴⁹ Mary Schumacher's 1971 report *Violent Offending* showed that around a quarter of violent offenders had experienced physical violence as children.¹⁵⁰

However, more established discourses that equated a child's welfare with the preservation of the family contested imperatives for state interference in cases of child abuse. Bronwyn Dalley observed that although children's rights were becoming more important, these remained tightly constrained within a wider family context. This complicated decisions regarding removal of children.¹⁵¹ Changing discourses on

¹⁴³ Dalley, *Family Matters*, pp.181-3.

¹⁴⁴ Bronwyn Dalley says that a concern with child abuse was linked to rising numbers of ex-nuptial births, *ibid.*, p.184; a belief echoed in *Truth*, for example, 'Illegitimate too often Target for Beatings', *Truth*, 28 October 1969, p.3.

¹⁴⁵ Dalley, pp.181-4.

¹⁴⁶ Ferguson, Fleming and O'Neill, p.146.

¹⁴⁷ *Ibid.*, p.158.

¹⁴⁸ Chiswick Family Aid child therapist cit., Cherry Raymond, Public Affairs Officer of MHF, to Allocations Advisory Committee, Organization and Departments – Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

¹⁴⁹ D. Sullivan, magistrate, in 'Violence: the Losers', *Listener*, vol.82, no.1915, 21 August 1976, p.20.

¹⁵⁰ Mary Schumacher, *Violent Offending. A Report on Recent Trends in Violent Offending and Some Characteristics of the Violent Offender*, Wellington: Government Printer, 1971, p.37.

¹⁵¹ Bronwyn Dalley, *Families Matters. Child Welfare in Twentieth-Century New Zealand*, Auckland: Auckland University Press, 1998, pp.255-6.

social development that challenged physical discipline of children simultaneously constrained state interference. The belief that the ‘real root of the matter often goes back to the childhood of the person being cruel’, extended sympathy to offenders, eroded individual responsibility and weakened resolve to protect children from abusers.¹⁵² Discourses that supported the domestic/civic divide evoked public sympathy even for brutal parents and further contested state interference.¹⁵³

Despite contestation, children’s rights continued to gain status and child abuse continued to receive political attention. In 1972 Prime Minister Norman Kirk considered child abuse in ‘most need of attention’.¹⁵⁴ Child welfare drove the establishment of the Mental Health Foundation (MHF), a private trust, which aimed to promote favourable early life experiences to nurture good mental health.¹⁵⁵ The 1974 Children and Young Persons Act was intended to promote the well being of the child, and strengthened powers of outside agencies to interfere with the family by giving a legal mandate for preventive supervision.¹⁵⁶ However, it also directed that the well-being of the child should be in the context of his/her family by emphasizing the need to reduce the disruption of family relationships. This meant that child safety could be sacrificed to the preservation of families. The difficulty of knowing what to do with a child once the state removed her or him from parental care complicated such decision-making. Foster and institutional care had its own difficulties. Child abuse persisted as a social issue. In 1978, Dr David Geddis, Medical Director of Plunket, claimed it was a major problem and the Year of the Child in 1979 helped sustain a focus on violent families.¹⁵⁷

Public Violence

From the late 1950s until the early 1970s *Truth* led a campaign against perceived escalating street violence, blaming judicial leniency and calling for tougher

¹⁵² ‘Public Must Help in Fight against Child Cruelty’, *Truth*, 1 September 1965, p.4.

¹⁵³ Bronwyn Dalley gave examples of protests such as ‘interference with the liberty of the subject’ and ‘bureaucratic public servants riding rough-shod over a mother’s love’, Dalley, *Families Matter*, p.256.

¹⁵⁴ Norman Kirk, *New Zealand Parliamentary Debates* (NZPD), 1972, 378, pp.111-12.

¹⁵⁵ Mental Health Foundation of New Zealand, ‘History’. Retrieved 21 January 2010 from <http://www.mentalhealth.org.nz/page/21-History>.

¹⁵⁶ Dalley, *Families Matter*, p.266.

¹⁵⁷ Linda Bryder, *A Voice for Mothers. The Plunket Society and Infant Welfare, 1907-2000*, Auckland: Auckland University Press, 2003, pp.206-7; for example, ‘Refuge for Women a Great Need’, *Post*, 24 September 1981, Women – Violence, 1979-1981, AAYK, W3123, box 31, ANZ, Wellington.

sentencing.¹⁵⁸ In 1969 the *New Zealand Herald* expressed similar concern around safety on the streets.¹⁵⁹ By the early 1970s, “law-and-order” was firmly on the political agenda. A Department of Justice initiated study in 1971 concluded that violent crimes were increasing and the primary perpetrators were male.¹⁶⁰ The belief that violent crime was dramatically increasing persisted throughout the 1970s.¹⁶¹ Considerable increases to the police force were planned in 1972.¹⁶² A time of national affluence undermined the older belief that poverty was responsible for crime. The roots of adult crime were seen to reach deep into childhood. In this way, constructions of violent crime directed attention to the home environment and indicated prevention as a primary strategy for the state.¹⁶³

Discourses of class, ethnicity and behaviour relating to alcohol shaped dominant understandings of both public violence and private violence, especially amongst state agencies.¹⁶⁴ This was indicated in police submissions to the Select Committee on Violent Offending in 1978, and in the 1979 Operation POW, an Auckland police operation that aimed to clean up the streets and reassert the power of the police by concentrating on the hotels of South Auckland.¹⁶⁵ However, elsewhere anxiety around violence encouraged a wider view. By 1970, *Truth*'s campaign, which had focused on stranger violence, included domestic violence. In January of that year *Truth* listed recent bashings to convince the Department of Justice of the seriousness of the situation. Of the 21 examples, four were male assaults against legal or de facto wives.¹⁶⁶ Discursive constructions that made all people subject to the risk of violence motivated people to be more aware of violence around them. This culminated in the

¹⁵⁸ For example, ‘Bashers Must be Jailed’, *Truth*, 20 November 1962, p.1.

¹⁵⁹ Martin Finlay, NZPD, 1969, 363, p.2260.

¹⁶⁰ Schumacher, pp.8-9.

¹⁶¹ Norman Kirk reported that violent crime per 10,000 of the population had risen by 180% in the last 14 years, Norman Kirk, NZPD, 1972, 378, pp.112-13; MP Michael Wigram refers to ‘the mounting violence and lawlessness’, NZPD, 1977, 415, p.4426.

¹⁶² Report of the Department of Justice, *Appendix to the Journals of the House of Representatives* (AJHR), 1972, H.20, p.4.

¹⁶³ Department of Justice, *Crime and the Community. A Survey of Penal Policy in New Zealand*, Wellington: Government Printer, 1964, pp.13-14.

¹⁶⁴ Magistrate D. Sullivan said that most court work was generated by alcohol, reported in ‘Violence: the Losers’, *Listener*, vol.82, no.1915, 21 August 1976, p.20; ‘Moore Says’, *Truth*, 3 September 1974, p.6.

¹⁶⁵ *Parliamentary Select Committee on Violent Offending: Submissions of the Commissioner of Police, 29 May 1978*, Wellington: Government Printer, 1978, pp.25, 27-30, 32; Jane Kelsey and Warren Young, *The Gangs: Moral Panic as Social Control*, Wellington: Victoria University of Wellington, 1982, p.57.

¹⁶⁶ ‘Bashing Record Bodes Ill for 70s’, *Truth*, 27 January 1970, p.5

1976 police campaign, 'Speak Up', to encourage people to call the police whenever they saw something suspicious.¹⁶⁷ While the campaign did not explicitly reference men's violence against wives or partners, watching out for children, reporting child cruelty, looking out for one's neighbours and for suspicious activity on one's street, encouraged greater scrutiny of homes and contested those civil liberties discourses which had often protected abusers.¹⁶⁸

Discourses attentive to the home environment intertwined with those of public violence to widen the discursive field in which crime was constructed. The encouragement of multi-disciplinary research following Mary Schumacher's 1971 report, *Violent Offending*, undermined the power of traditional "experts" such as the police, to define it, and provided greater potential for social science statistics to present material realities.¹⁶⁹ Psychological and sociological discourses were particularly powerful in contesting older understandings. A 1976 *Listener* article, 'Violence: the Losers', reported speakers with social science backgrounds claiming at a convention that the law picked on the poor but ignored middle-class violence. They named 'unofficial' violence as having far greater human cost than 'official violence', which captured activities of gangs, vandals and thugs. Allan Nixon claimed 'the real problems of violence...are those the enforcement authorities don't hear about – violence in the home'.¹⁷⁰ Nixon proposed better care of children so that they did not become criminals and victims, and better care of victims so that their suffering was minimized and they were protected from further victimization as remedies to the problem of violent assault.¹⁷¹ This construction supported feminist claims.

Concern around public violence was at such a level that in 1977 parliament set up a Select Committee on Violent Offending 'to consider the incidence and causes of violent offending...and means of reducing such offending'.¹⁷² This enquiry furthered public debate about violent crime, which opened the field at a political level to

¹⁶⁷ Ian Cross, 'Speaking Up', *Listener*, 27 March 1976, no.1894, vol.81, p.10.

¹⁶⁸ This effect is indicated in the discussion around civil liberties in Ian Cross, 'Policeman at the Door', *Listener*, 3 September 1973, vol.74, no.1764, p.12.

¹⁶⁹ Schumacher, p.50.

¹⁷⁰ Peter McKellar, D. Sullivan, Robert Gidlow and Allan Nixon reported in 'Violence: the Losers', *Listener*, vol. 82, no. 1915, 21 August 1976, pp.20-21.

¹⁷¹ Allan Nixon, 'Understanding Violent Assault', *Listener*, vol.89, no.2011, 1978, p.21.

¹⁷² Report of Select Committee on Violent Offending, Fourth Draft, 16 December 1977, Select on Violent Offending, 1977-199, ABGX, 16127, W3706, box 84, pt 3, ANZ, Wellington.

feminist and others' constructions of domestic violence. For example, Wellington social workers advocated that non-molestation orders should be extended to de facto relationships because experience had shown them how vulnerable de facto wives were.¹⁷³ The Select Committee quickly accepted claims that domestic violence against wives and partners was a social problem. It actively sought information from state agencies, which intensified state scrutiny of domestic relations. Information it received confirmed feminist claims about the needs of 'battered' women, such as for emergency housing.¹⁷⁴ As Fran Cammock observed, the Select Committee began a dialogue with the police and other social agencies regarding the high incidence of domestic violence, thereby enabling gradual change.¹⁷⁵

International and Social Science Discourses

From the mid-1970s social science research into domestic violence proliferated.¹⁷⁶ Following renewed concern about child abuse, violence in the home emerged as a focus of study. According to Rebecca and Russell Dobash, the construction of 'a new liberal agenda' in the mid-1960s had 'a profound and diverse impact on social science...;The civil rights movement, the Vietnam war, the upheavals in the cities and on campuses, and the Women's Liberation Movement all provided evidence of the conflict conception of the world', and many social scientists sought to capture the dynamic processes of conflict and social change.¹⁷⁷ This conflict model framed research into the family. Although it disguised the link with gender inequality, research results also disrupted commonly held myths around domestic violence, thereby providing support for feminist claims.

Consistent with other research, Richard Gelles's 1972 study maintained the family provided a basic training for violence 'by exposing children to violence, by making them victims of violence' and by 'inculcating children with normative and value

¹⁷³ J. Lambie to Director General of Department of Social Welfare, 23 August 1978, Welfare – Family Abuse, 1978-1980, AAYE, 7433, W5048, box 379, WEL 13-0, pt 1, ANZ, Wellington.

¹⁷⁴ 'Memorandum for Policy Group – Emergency Housing', p.3, Organization and Departments – Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

¹⁷⁵ Cammock, p.40.

¹⁷⁶ Mary Inglis, 'Physical Assault in Marital Conflict – A Social Problem Re-examined', MA thesis, Victoria University, Wellington, 1977, p.12.

¹⁷⁷ Rebecca and Russell Dobash cit., Daniel G. Saunders, 'Wife Abuse, Husband Abuse, or Mutual Combat? A Feminist Perspective on the Empirical Findings', in Kersti Yllö and Michele Bograd, *Feminist Perspectives on Wife Abuse*, Newbury Park, California: Sage Publications Inc., 1990, p.93.

systems that approve of the use of violence on family members'.¹⁷⁸ International research showed that domestic violence had a severe physical and psychological impact on women's health, linked it to child abuse, and dispelled the myth that it was a lower-class phenomenon.¹⁷⁹ Research results implied a need for 'places of sanctuary...where a woman can take her children when violence is out of control'.¹⁸⁰ Although such research identified the violence as an outcome of family interactions or as provoked, views that ignored gender relations, most research identified women and children as the victims in need of assistance. The British psychiatrist, Jasper Gayford, for instance, employed notions of female provocation by adopting terms for women, such as 'Fanny the Flirt', 'Go-go Gloria' and 'Tortured Tina', but also called for places of sanctuary for them.¹⁸¹

The first social science studies from a feminist perspective appeared from 1976. Rebecca and Russell Dobash challenged a family conflict framework and focused on the marital relationship. Their extensive study of police and court records in two Scottish cities and in-depth interviews with victims showed women were victims of male violence to a far greater extent within marriage than outside it. They concluded that 'the hierarchical structure of the patriarchal family historically has legitimized wife-beating for subordination, domination and the control of women'.¹⁸²

British developments were especially significant for the naming of domestic violence as a major social problem in New Zealand. In 1974 Erin Pizzey, founder of Chiswick Women's Aid in 1971, published her exposé of domestic violence in Britain, *Scream Quietly or the Neighbours will Hear*, and 'brought the issue of wife-beating out of the closet, where it had been for many decades'.¹⁸³ Chiswick Women's Aid had evolved from women coming together to do something about rising food prices, an expression of the relationship between the women's movement and social protest.¹⁸⁴ Pizzey's

¹⁷⁸ Hancock, p.13.

¹⁷⁹ Ibid., p.8; Inglis, p.9.

¹⁸⁰ J. J. Gayford, 'Wife Battering: a Preliminary Survey of 100 Cases', *British Medical Journal*, no.1, 25 January 1975, pp.194-7.

¹⁸¹ Reported in Mildred Daley Pagelow, *Family Violence*, New York: Praeger Publishers, 1984, p.115.

¹⁸² Reported in Mildred Daley Pagelow, *Woman-Battering. Victims and Their Experiences*, Beverly Hills: Sage Publications, 1981, pp.25-26.

¹⁸³ Raewyn Dalziel, *Focus on the Family. The Auckland Home and Family Society 1893-1993*, Auckland: Home and Family Society, 1993, p.58.

¹⁸⁴ Erin Pizzey, *Scream Quietly or the Neighbors Will Hear*, Short Hills, New Jersey: Ridley Enslow Publishers, 1977, p.9.

book was instrumental in making domestic violence against women a social issue around the world. It had a huge impact on Yoka Neuman, a founding member of the DWR. Neuman set out to discover if such a problem existed in Dunedin and made her home available as a safe place for women to go to until the DWR was formally established.¹⁸⁵ Christchurch feminists who set up New Zealand's first refuge were influenced after reading of similar ventures in Britain, believing that a need must also exist here.¹⁸⁶ The United Kingdom Select Committee on Violence in Marriage appointed in 1974 was a potent model for both feminist and political action, in particular for the New Zealand Select Committee on Violent Offending. The British report strongly endorsed the provision of refuge facilities, acknowledged the lack of social and legal support for women victims and lamented the apathy towards, and ignorance of the problem that it encountered.¹⁸⁷ The British 1976 Domestic Violence and Matrimonial Proceedings Act followed, which would influence subsequent law reform in New Zealand.

Victimhood Discourses

From the mid-1970s articles about domestic violence in New Zealand began to appear in non-feminist literature. In 1975 the *Listener* reproduced a documentary broadcast on the National Programme, 'Wife-beating, the Hidden Violence', on the difficulty of determining how common it was in New Zealand, a question probably prompted by Pizzey's exposé.¹⁸⁸ Victimhood discourses were especially powerful in shaping debate on all forms of violence, evident in the measuring of violence by its human cost.¹⁸⁹ These had two key components that prompted the construction of men's violence against wives and partners as a social problem. First, there were numerous victims. This is considered a necessary condition for a problem to be constructed as serious and in need of public attention. Secondly, victims suffered long-lasting

¹⁸⁵ Cammock, pp.9-10, 13-15.

¹⁸⁶ Stewart, p.17.

¹⁸⁷ 'Quotes from the Select Committee on Violence in Marriage Ordered by House of Commons, Britain 1977', Committee on Violent Offending, Women and Violence, 1977-1979, ABGX, 16127, W3706, box 84, pt 6, ANZ, Wellington.

¹⁸⁸ Cindy Beavis, 'Wife-Beating: the Hidden Violence', *Listener*, vol.77, no.1832, 11 January 1975, p.8.

¹⁸⁹ 'Violence: the Losers', *Listener*, vol.82, no.1915, pp.20-21.

damage. And thirdly, victim status was argued to be unambiguous, although this often went unrecognized.¹⁹⁰

Victimhood was a powerful social construct. Its impact on state policies was indicated in the 1977 Evidence Amendment Act, which followed similar British legislation. Introduced by MP Jim McLay, who was noted for his interest in law reform pertaining to women, the act made a woman's sexual history irrelevant in prosecutions for rape. The popular media recounted women's experiences and positioned them as victims. This was empowering for women. In a *Press* article, 'Beaten and Assaulted – Women Fighting Back', a victim perspective prompted an acknowledgement of the material difficulties (finance and accommodation) women faced when leaving violent relationships, and re-interpreted women's aggression in violent marriages as fighting back rather than as vindictive.¹⁹¹ This perspective destabilized the belief that women "liked" to be beaten and provided empowering discursive positions for women.

A general concern with victims indirectly exposed domestic violence. Articles about "social victims" such as deserted and separated wives often carried subtexts of men's violence against wives. For example, 'Life's Just a Long Battle' was a story of poverty among affluence. As part of *Truth's* campaign on poverty, it focused on a young mother and child's experience of having to sleep in a car for four months because 'she had no money and nowhere to go'.¹⁹² Further reading revealed that the woman had fled a drunken, violent husband.

The State and the Voluntary Sector

Changing discourses of economic and social development encouraged an expansion of state welfare services. This was indicated in policies of the 1975 National Government, which reinforced 'the state's role as provider of support'.¹⁹³ The increased role of the state in welfare in partnership with voluntary organizations was

¹⁹⁰ Amy Chasteen, 'Constructing Rape: Feminism, Change, and Women's Everyday Understandings of Sexual Assault', *Sociological Spectrum*, vol.21, issue 2, April 2000, p.5. Retrieved April 2008 from <http://weblinks2.epnet.com/delivery.asp...>

¹⁹¹ Leone Stewart, 'Beaten and Assaulted – Women Fighting Back', *Press*, 2 September 1976, p.17.

¹⁹² Reference to this campaign is made in 'Something is Rotten in the State of Welfare', *Truth*, 2 May 1972, p.52; 'Life's Just a Long Battle', *Truth*, 18 April 1972, p.6.

¹⁹³ McRobie, p.393.

evidence of a shift in attitudes to violence against wives and partners.¹⁹⁴ The voluntary sector can be seen as a meeting place of civil society and state bureaucracies, which facilitates a change in the thinking of both. A strong voluntary sector was viewed as essential to a ‘comprehensive social welfare system’.¹⁹⁵ As in nineteenth century England and New Zealand, state interventions had an internal momentum: an initial intervention led to further disclosures, which led to further demands for regulation or legislation. Ultimately, state discourses contributed to the process of institutionalizing feminist discourses of domestic violence.

Local council efforts to meet emergency housing demands converged, albeit accidentally, with feminists’ efforts to provide women with an alternative to staying in a violent marriage or relationship. When the Citizens Advice Bureau was established in Auckland in 1970, housing was the first major issue it tackled, prompting one in four inquiries.¹⁹⁶ Since 1973 an emergency housing scheme was in operation whereby local councils leased a house from the Housing Corporation for a nominal rental, which enabled relationships to develop between refuges and local governments. The Auckland Halfway House was an example of this. By the mid-1970s the need for emergency housing was pressing. In 1979 the National Government increased the emergency house allocation by five to 25. It had intended the houses to go to ‘families in need’, but government policy-makers were not sure if this included solo mothers and chose to be guided by material need. Women refuges were included because in many areas solo female parents had the greatest need and were the highest users of emergency housing.¹⁹⁷ In 1981 three women’s refuges were allocated houses under the emergency housing scheme, bringing the total to nine.¹⁹⁸

¹⁹⁴ Margaret Tennant states ‘the key feature of social welfare in the twentieth century was the enormous extension of the state’s role’ and that in the 1970s ‘the scale of government assistance to non-statutory agencies increased markedly’, Margaret Tennant, ‘Welfare Organisations’, in Anne Else, ed., *Women Together. A History of Women’s Organisations in New Zealand, Ngā Ropū Wāhine o te Moru*, Wellington: Department of Internal Affairs and Daphne Brasell Associates Press, 1993, pp.115-7.

¹⁹⁵ Report of the Department of Social Welfare, AJHR, 1978, E.12, p.5.

¹⁹⁶ Ian Dougherty, *For Your Information: A History of Citizens Advice Bureau in New Zealand*, Palmerston North: Dunmore Press, 1998, pp.20-21.

¹⁹⁷ ‘Memorandum for Policy Group - Emergency Housing’, Organization and Departments – Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

¹⁹⁸ ‘Women Receive Three Refuges’, *Dominion*, 14 October 1981, Women -Violence, 1979-1981, AAYK, W3123, box 31, ANZ, Wellington.

The Department of Social Welfare's recognition that refuges provided an essential service counteracted reluctance to aid them. The Department was also becoming more reliant on refuges for social services. In 1979 the Dunedin Director of Social Welfare wrote a letter supporting the Dunedin Women's Refuge application for Mental Health Foundation funding saying 'it was the only local agency providing residential care for these women and their children'.¹⁹⁹ The material fact that refuges were overwhelmed with women and children seeking accommodation after fleeing violent marriages demonstrated the continuing need for them. From May 1 to November 20, 1977, 33 women and 87 children had passed through the DWR's doors.²⁰⁰ In its first 11 months, the Wellington Women's Refuge gave 90 women, many with children, temporary accommodation. Dozens more had been given counselling advice over the phone or were referred to other agencies.²⁰¹ Although emergency housing did not directly address domestic violence, it intersected with feminist goals by assisting victims, increasing the visibility of domestic violence, and giving refuges social credibility.

Despite focus on the home, the relationship between domestic violence, marriage breakdown and benefit rates had not been closely scrutinized. The connection had been suggested. Around 1974, the Conciliation Service of the Justice Department reported 43% of cases where wives reported assault,²⁰² at the 1975 United Women's Convention, a lawyer claimed the majority of wives she dealt with described at least one physical assault while married;²⁰³ and Ormond Wilson's 1972 study of solo parenthood published in the *New Zealand Social Worker* had exposed a sub-text of domestic violence.²⁰⁴ In 1977 the Department of Justice and the Department of Statistics requested information on marriage and families from state and non-state

¹⁹⁹ T. Comer, Director of Social Welfare to Mr Metcalf, MHF, 15 August 1978, Organization and Departments - Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

²⁰⁰ Dunedin Women's Refuge letter, Organization and Departments - Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

²⁰¹ '90 Women Took Refuge', *Post*, 3 December 1980, Women - Violence, 1979-1981, AAYK, W3123, box 31, ANZ, Wellington.

²⁰² 'Conciliation Services Parliamentary Select Committee on Violent Offending: Appendix, Wife Assault', Welfare - Family Abuse, 1978-1980, AAYE, 7433, W5048, box 379, WEL 13-0, pt 1, ANZ, Wellington.

²⁰³ A woman lawyer, 'Wife-bashing', *United Women's Convention 1975*, Wellington: United Women's Convention, 1975, p.51.

²⁰⁴ Ormond Wilson, 'The Attitudes of Divorced and Separated Women Receiving Social Welfare Assistance', *New Zealand Social Worker*, vol.10, no.2, July 1974, pp.11, 13, 15, 17, 19, 21.

agencies.²⁰⁵ The Director of Marriage Guidance researched violence in homes while overseas under a Churchill Fellowship in 1978, and the Director of Social Services planned to carry out an extensive study into what was being done in Australia.²⁰⁶ In the same year the Minister of Social Welfare, Bert Walker, called for reports from all social welfare officers about the extent of ‘wife-bashing’ in their areas; this was preparation for submissions to the Select Committee on Violent Offending.²⁰⁷ The increasing number of women engaging legal and social welfare processes to escape violent marriages produced a large body of documentation that affirmed domestic violence was a major problem. In turn, women’s increasing resort to legal advice increased lawyers’ awareness of it. Women related their experiences of violence through the new counselling provisions established in the 1960s within the Social Security Department.²⁰⁸ Similarly, the interview process for applying for the DPB meant social workers encountered more women alleging domestic violence.

The empirical evidence generated by state agencies mounted. In 1978, a one-week survey by an Auckland office of DPB and Emergency Maintenance applications showed that 41.5% of applicants had been physically assaulted. The Napier and Hastings offices both gave an estimate of around 25%.²⁰⁹ In the same year the Hamilton office reported that one interview in 16 revealed a definite allegation of assault, although an unspecified number of cases made some comment about violence.²¹⁰ It was estimated there were between 5100 and 8500 assaulted wives among the 20,462 DPB applicants in the March year 1977-1978.²¹¹ Auckland social workers estimated about one-third of married or de facto wives they saw had been physically abused.²¹² In 1978 the state-supported Marriage Guidance Council

²⁰⁵ Dougherty, p.56; ‘Parliamentary Select Committee on Violent Offending: Wife Assault’, p.1, Welfare - Family Abuse, 1978-1980, AAYE, 7433, W5048, box 379, WEL 13-0, pt 1, ANZ, Wellington.

²⁰⁶ Bert Walker, NZPD, 1978, 420, p.2789.

²⁰⁷ Ibid., pp.2788-9.

²⁰⁸ Bronwyn Labrum, ‘Family Needs and Family Desires: Discretionary State Welfare in New Zealand 1920-1970’, PhD thesis, Victoria University, Wellington, 2000, p.216.

²⁰⁹ ‘Parliamentary Select Committee on Violent Offending: Appendix, Wife Assault’, Welfare - Family Abuse, 1978-1980, AAYE, 7433, W5048, box 379, WEL 13-0, pt 1, ANZ, Wellington.

²¹⁰ C. Smith to Assistant Director, 19 July 1978, Welfare - Family Abuse, 1978-80, AAYE, 7433, W5048, box 379, WEL 13-0, pt 1, ANZ, Wellington.

²¹¹ ‘Parliamentary Select Committee on Violent Offending: Appendix, Wife Assault’, Welfare - Family Abuse 1978-1980, AAYE, 7433, W5048, box 379, WEL 13-0, pt 1, ANZ, Wellington.

²¹² F. Ashton to Director General, 19 July 1978, Welfare - Family Abuse, 1978-1980, AAYE, 7433, W5048, box 379, WEL 13-0, pt 1, ANZ, Wellington.

estimated that about one third of their cases involved ‘wife-assault’. This figure suggested the Council saw around 2057 assaulted wives in the March year 1977-1978.²¹³ Police submissions reported that ‘domestic disputes’ made up around 10-11% of all telephone calls.²¹⁴ The Department of Social Welfare estimated between 0.7-3.6% of women living in a married situation over the previous year had been subject to physical assault that became known to at least one social agency.²¹⁵ The final report of the Select Committee on Violent Offending recommended the state establishment of family crisis centres (as operated in Adelaide, Australia), state funding of women’s refuges, and a re-examination of non-molestation orders, possibly extending them to de facto relationships.²¹⁶

These statistics supported a public perception that domestic violence was increasing.²¹⁷ Women’s use of the law to resist domestic violence added weight to this. Applications for separation orders had risen from 2706 in 1971 to 5295 in 1979, and applications for non-molestation orders had risen from 608 in 1971 to 2116 in 1979.²¹⁸ A 1978 study of separation applications demonstrated the extent to which domestic violence contributed to marriage breakdown, which led the researcher, law professor Dick Webb, to describe the situation as ‘a distinct blot on the national escutcheon’.²¹⁹ Paradoxically, as more women used legal remedies to escape violent marriages, the incidence and visibility of separation violence increased, and further propelled demands for law changes.²²⁰

²¹³ ‘Parliamentary Select Committee on Violent Offending: Appendix, Wife Assault’, Welfare - Family Abuse, 1978-1980, AAYE, 7433, W5048, box 379, WEL 13-0, pt 1, ANZ, Wellington.

²¹⁴ *Parliamentary Select Committee on Violent Offending: Submissions of the Commissioner of Police, 29 May 1978*, p.24.

²¹⁵ ‘Parliamentary Select Committee on Violent Offending: Wife Assault’, Welfare - Family Abuse, 1978-1980, AAYE, 7433, W5048, box 379, WEL 13-0, pt 1, ANZ, Wellington.

²¹⁶ ‘Violent Offending – The Remedies’ and ‘Minute Sheet, Select Committee on Violent Offending’, Royal Commissions, 1977-1979, ABVP, 7404, W4927, box 124, ADM 23-7-47-3, pt 2, ANZ, Wellington.

²¹⁷ ‘Violence in Families’, MHF, 9 November 1978, Women and Violence, 1977-1980, ABKH, W4105, 2 30-0-9, pt 1, ANZ, Wellington.

²¹⁸ *New Zealand Official Yearbooks*, Justice section, 1972-1980.

²¹⁹ P.R.H. Webb, ‘Serious Disharmony and Unreasonable Behaviour’, NZLJ, no.23, 20 December 1977, p.514.

²²⁰ Australian legal academic, Colin James, claims that as more women left bad marriages, men used more violence. Colin James, ‘A History of Cruelty in Australian Divorce’ Australia and New Zealand Law and History Society Conference, Hobart, 10 December 2006, p.29. Retrieved December 2008 from www.anzlehesjournal.auckland.ac.nz.

DOMESTIC VIOLENCE BECOMES A MAINSTREAM ISSUE

From the mid-1970s a groundswell of support quickly developed in urban areas for the establishment of places of sanctuary for women and children escaping violence. Non-feminist mainstream groups began to support women victims of domestic violence. Domestic violence became a common subject canvassed by the media to the extent that a *Listener* article declared that its victims had ‘become fashionable’, ‘almost respectable’.²²¹ By the early 1980s there was widespread support for state funding for refuges and for changes in legal and police responses. This section analyzes factors that contributed to the mainstreaming of domestic violence. These include women’s increasing use of the law to leave marriages, the exposure of domestic violence in the middle and higher classes, support from the media and political elites, an upsurge in protest action, and the founding of a national refuge movement. Although Mary Batchelor, a parliamentarian supporting women’s rights, claimed that in the late 1970s there was no political awareness of domestic violence as a general problem, or if there was, parliamentarians ‘did not give a damn’, domestic violence as a political issue was now on the agenda.²²²

Despite some hostility and lack of material support, feminist and non-feminist refuges continued to be established. The SPHF opened a refuge in Christchurch in 1976 offering short-term shelter to women and children who had left their homes because of physical violence or mental pressures.²²³ In 1976 the Nelson Women’s Emergency Centre and the Napier Women’s Centre were established, outcomes of IWY projects.²²⁴ In 1978 the Wanganui Community Service Council, a body made up of state and voluntary welfare organizations, set up the Wanganui Women’s Emergency Refuge.²²⁵ Similarly, Palmerston North Women’s Refuge (PNWR) was established in 1979 from a wide basis of community support and with a feminist orientation, as was the Wellington Women’s Refuge (WWR) in 1981.²²⁶ The latter was also a beneficiary

²²¹ Sandra Coney, ‘Pizzey’s Politics Re-examined’, *Broadsheet*, no.67, March 1979, p.6; Lynne Dawson-Hyde, ‘A Place to Go for Battered Women’, *Listener*, vol.91, no.2052, 21 April 1979, p.41.

²²² Interview with Mary Batchelor, 26 June 2008.

²²³ ‘Refuge Centre in Avonside’, *Press*, 22 November 1976, p.7.

²²⁴ Hancock, p.22.

²²⁵ ‘Wanganui Women’s Emergency Refuge’, Organization and Departments - Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Christchurch.

²²⁶ Hann, pp.60-4; interview with Raewyn Good, March 2008.

of Sir Roy McKenzie, who reportedly gave the refuge \$15,000 towards set up costs after being asked for \$1500.²²⁷

In 1978 the Christchurch Battered Women's Support Group (BWSG) was established, quickly becoming arguably the most vocal and aggressive protest group for 'battered women's' rights. Its co-founding member, Doris Church, said she had endured years of physical and mental abuse. Her personal experience of a lack of social and legal support after she left her violent marriage inspired her to speak out. Her reported experiences included police refusal to act on a non-molestation order, her husband being let off on assault and burglary charges under section 42 of the Crimes Act, and an occupation order taking six months while she and her children lived in cramped conditions. Most people she spoke to about the violence blamed or disbelieved her, or accused her of exaggerating. Church said the head psychologist at the local psychiatric hospital told her that all 'battered women' were mentally ill or asked for it, and that she was an exception. Church discussed the situation with friends from the National Organization of Women, several of whom had had similar experiences, and thought that if it was this difficult to gain assistance for a 'well educated woman' involved in women's rights issues, then it must be impossible for other women. She went with two friends to the *Press* to 'expose this injustice', which resulted in the front-page article 'Women Who Live in Fear of Middleclass Wife-bashers'.²²⁸ The public response was reported to be overwhelming, which indicated just how far feminist discourses had become invested with power. Church says her 'phone went wild with calls': 'Wives of lawyers, accountants, clergymen and policemen rang up to tell their experiences, to ask advice, and to express relief that they were not the only victims of violence in their social circle' and 'every media outlet in the country was interviewing her'.²²⁹

The BWSG gave advice and support, and provided short-term satellite accommodation for women determined to leave violent marriages and relationships. It aimed to demonstrate that domestic violence occurred in all classes. As a middle-class

²²⁷ 'Notable Philanthropist Dies', *Press*, 4 September 2007, A, p.8.

²²⁸ Interview with Doris Church, 22 March 2008.

²²⁹ Jacqueline Steincamp, 'Standing up to the Bullies', *More* (dated around 1985) p.18, Private Papers of Doris Church.

group, it attracted middle and higher-class women, women who might not have wanted to be seen at the local refuge because of class perceptions.²³⁰ Healthy finances procured from donations and publications by John and Doris Church sustained the group's independence. The BWSG engaged in very public protest action such as "sit-ins" (a protest involving occupation of a site and refusal to move) in streets, in the police station and outside the courts. They successfully exploited the news media, articles often appearing on a weekly basis, if not daily, in a variety of newspapers, thereby directing attention towards discriminatory police and court practices. Christchurch police behaviour was consistently under scrutiny, forcing its commander to respond and defend police practice. Through these actions, the BWSG made police practices an object of social debate.

Increasing concern about domestic violence, primarily feminist driven, led to research being done in New Zealand, providing evidence of the extent of the problem. Mary Inglis's 1977 study appeared to be the first. Her findings refuted the belief that domestic violence was a lower-class phenomenon and women stayed in violent marriages because they "liked" to be beaten.²³¹ In 1976 the position of women in violent marriages was raised at a National Council of Women conference address.²³² In the same year the National Organization of Women organized a seminar on rape and most importantly, conducted a national survey on rape victims through the *New Zealand Woman's Weekly* (NZWW), which demonstrated how far discourses of violence against women had become mainstream. The finding that a quarter of the respondents had been raped while under the age of 15 years, and that long-term rapists were usually fathers or father figures, other relatives or husbands, provided support for feminist claims that the home was a potentially dangerous place for some women and children.²³³ In 1977 the National Organization of Women held a Seminar on Solo Parents, which included a 'violence workshop' that formed the basis for a

²³⁰ Interview with Doris Church, 22 March 2008; generally, those who sought accommodation in refuges tended to be from the disadvantaged socio-economic classes. For example, the DWR said most of its residents were from the lower classes, but middle-class women did phone, Cammock, p.22.

²³¹ Inglis, pp.63-64.

²³² Robertson, p.66.

²³³ Auckland Rape Crisis Centre, '1981 Questionnaire on Rape', in Hilary Haines and Max Abbott, eds, *Rape in New Zealand. Papers Presented at the Rape Symposium, Wellington, September 1982*, Wellington: Mental Health Foundation, 1983, pp.131-2.

submission to the Select Committee on Violent Offending.²³⁴ In 1978 Miriam Jackson conducted the 'Battered Wives' Questionnaire' in the NZWW. Her findings indicated there were thousands of battered women, and the social and legal support they received was poor.²³⁵ The Committee on Women set up a working committee to study violence against women, claiming that women were more likely to be exposed to violence in the home than anywhere else, and in 1979 it published Mary Hancock's *Battered Women. An Analysis of Domestic Violence and the Development of Women's Refuges*.²³⁶ In the same year Hamish Galloway, a law student, produced a research paper, 'Battered Wives: the Legal Response to the Problem in New Zealand', which exposed the lack of legal support for women in violent relationships, and proposed specific legal remedies: 'emergency civil remedies for protection and occupation of the matrimonial home'.²³⁷ In 1980 the Women, Violence and Justice Seminar was held, which primarily focused on rape and domestic violence.²³⁸

Among the most influential research was that of John Church, a co-founding member of the Christchurch BWSG, Doris Church's second husband. As a respectable middle-class, married, male, he was impervious to the anti-male and anti-family criticisms directed at feminists and he himself was less physically vulnerable to threats. The BWSG exploited his credibility by making him its spokesperson.²³⁹ Having an identifiable spokesperson was important for media support. Doris Church reports that the media was less likely to publish views of the CWR because its Collective declined to forward a named spokesperson.²⁴⁰ While there was a range of positions on domestic violence, the power invested in them varied. Coming from an academic background, John Church's claims might have been seen as more "credible" by mainstream groups than, for instance, the AHH publication *He Loved Me Really*.

²³⁴ Submission by NOW, Women Solo Parent Sub-Committee, to Select Committee on Violent Offending, Women and Violence, 1977-1979, ABGX, 16127, W3706, box 84, pt 6, ANZ, Wellington.

²³⁵ 'Battered Women's Questionnaire', *New Zealand Woman's Weekly*, 5 June 1978, p.11; Susan Woodhouse, 'How Battered Women Can Get Help', *Readers Digest*, February 1980, pp.47-48, Private Papers of Doris Church.

²³⁶ Miriam Dell to Mr J. Walton, Commissioner of Police, 2 May 1978, Women and Violence, 1977-1980, ABKH, W4105, box 2, 30-0-9, pt 1, ANZ, Wellington.

²³⁷ Hamish Galloway, 'Battered Wives: the Legal Response to the Problem in New Zealand', Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, pt 6, ANZ, Wellington.

²³⁸ Women, Violence and Justice Seminar, Women and Violence, 1978-80, ABKH, W4105, 2 30-0-9, pt 2, ANZ, Wellington.

²³⁹ Interview with Doris Church, 22 March 2008.

²⁴⁰ Ibid.

Experiences at a Women's Refuge. The latter challenged the social order by declaring the overturn of patriarchy as one of its aims, and its findings appeared to be ignored.²⁴¹ The power of an academic background is indicated in the Christchurch Office of Social Welfare's endorsement of John Church's character as a 'reputable person' and 'a meticulous researcher'.²⁴² Groups labelled as "feminist" had less social power. This can be seen in the deliberate avoidance of any association with feminism in *More* magazine's description of a BWSG meeting as 'a crowd of young and youngish women, of more than average good looks and style – no feminists, these'.²⁴³ This article indicated that domestic violence was being viewed no longer as a radical fringe issue, but as one for the mainstream. It also indicated fears around feminism and, given that Doris Church identified as a feminist, it indicated the power of media discourses to undermine particular subject positions generated by feminist discourses on domestic violence.

The first research based on individual New Zealand women's experiences of domestic violence appeared in 1979. Alongside *He Said He Loved Me Really*, John and Doris Church published *How to Get Out of Your Marriage Alive*, which gave women practical advice on how to leave a violent marriage safely. As a support group less encumbered by the taxing efforts required to run safe homes and under consistent leadership, the BWSG adopted research and protest as strategies towards social change. John and Doris Church produced influential books exposing how the police and court responses supported batterers and failed to protect women and children: *Listen to Me, Please. The Legal Needs of Domestic Violence Victims* (1981) and *The Police and You: A Guide for the Victims of Domestic Violence* (1982). The publications proved popular, controversial and effective. In 1981 MP Mike Moore told the BWSG that he thought many MPs had read *Listen to Me Please*.²⁴⁴ Gregory Ford, police psychologist and major innovator of police reforms of 'domestic

²⁴¹ Outside feminist publications, no other references to this book have been located.

²⁴² S. Greenwood, Christchurch District Office of Social Welfare, to Director General 17 July 1978, Welfare - Family Abuse, 1978-80, AAYE, 7433, W5048, box 379, WEL 13-0, pt 1, ANZ, Wellington.

²⁴³ Jacqueline Steincamp, 'Standing Up to the Bullies', Private Papers of Doris Church; interview with Doris Church, 22 March 2008.

²⁴⁴ BWSG newsletter, no.10, 2 July 1981, Private Papers of Doris Church.

disputes' policy in the 1980s, extensively used their research and acknowledged their criticisms.²⁴⁵

In 1977 the Mental Health Foundation (MHF) adopted broader objectives, which aimed to promote mental health and well-being of all New Zealanders and to further measures likely to prevent or reduce the incidence of mental ill health in the community.²⁴⁶ Domestic violence was an appropriate problem for the Foundation to address because of 'the considerable amount of mental and personality disturbance occurring as a result of and subsequently leading to further domestic violence'.²⁴⁷ The MHF was a significant driver of an increased awareness of domestic violence in New Zealand and in constructing it as a social problem, especially in terms of the mental health consequences for the victim. It located causes of domestic violence in both personal experiences (especially the witnessing or being a victim of parental violence) and in a social context (factors including gender inequality, 'blame-the-victim' attitudes, and attitudes towards women).²⁴⁸ In 1978 it organized Mental Health Year, advocating on a wide variety of issues that included domestic violence. To encourage awareness, it brought Erin Pizzey to New Zealand. Pizzey, dubbed 'Britain's patron saint of battered wives', was recognized as the world's most experienced organizer of refugees.²⁴⁹ Pizzey challenged the government to recognize domestic violence as a national problem.²⁵⁰ Her tour was highly successful in raising awareness. Her claims that 'a battered child grows up to batter' and that abused women often abuse their children, were powerful incitements to action around child welfare and delinquency.²⁵¹ Public meetings followed, which further exposed the extent of

²⁴⁵ Gregory Ford, 'Domestic Disputes: A Police Perspective. An Analysis of Domestic Dispute Complaints Attended by the Police in Hamilton', MA thesis, University of Waikato, Hamilton, 1985, pp.8-9, 14, 16.

²⁴⁶ Mental Health Foundation of New Zealand, 'History'. Retrieved January 2010 from <http://www.mentalhealth.org.nz/page/21-History>.

²⁴⁷ Cherry Raymond, Public Affairs Officer for MHF, to Allocations Advisory Committee, p.2, Organization and Departments - Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

²⁴⁸ Hilary Haines (MHF) to Moira Lake (Committee on Women), 10 Nov 1983, Administration: Violence against Women, 1982-84, ABKH, W4105, 30-2-13-19, box 18, pt 1, ANZ, Wellington.

²⁴⁹ Cherry Raymond, Public Affairs Officer for MHF, to Allocations Advisory Committee, Organization and Departments - Women Refuge, 1976-81, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington; Pauline Ray, 'When Domestic Tiffs Become Bloody Lacerations', *Listener*, vol.90, no.2032, 9 December 1978, p.18.

²⁵⁰ Leonie Stewart, 'Govt Must Help Women's Refuge', *Press*, 9 November 1978, p.6.

²⁵¹ Ray, p.19; reports of child abuse appeared with increasing frequency in daily newspapers, for example, Pauline Ray, 'Child Abuse. The Tangled Web', *Listener*, vol.89, no.2005, 3 June 1978, p.8; it

domestic violence in communities. Around one-third of women attending meetings claimed they had grown up in violent homes and/or were living in violent relationships. Further refuges were established.²⁵²

After the MHF's failed proposal to take the initiative in setting up a refuge or refuges similar to Chiswick Family Aid, it took a lead role in getting refuge groups together to form a national body. By the late 1970s it was known that the Department of Social Welfare was aware of, and sympathetic to the need for refuges, but that it preferred to provide assistance through an established sponsoring body.²⁵³ Cherry Raymond, Public Affairs Officer for the Foundation, initiated contact with the Christchurch Battered Women's Support Group, a group more in line with Pizzey's model for refuges. It is probable that the BWSG played an important role as a link between the Foundation and feminist refuges. In May 1979 Raymond called a national meeting of Women's Refuges' advocates. Representatives shared information and the MHF pledged to continue to help refuges at a national level and provided seeding money for gatherings.²⁵⁴ A national body was important, not only because it was essential to attract state funding, but also because it strengthened and unified a feminist position, and could collate local data to produce national statistics and information about domestic violence.

In 1981 some 13 independent women's refuges formed an incorporated National Collective for Independent Women's Refuges (NCIWR). The national body enabled refuges to exchange information, discuss mutual problems and to represent the interests of women's refuges in general, despite considerable difference amongst individual refuge policies. The same year, Sir Roy McKenzie contributed towards a nationwide study of women's refuges and domestic violence to be used to lobby for permanent state funding.²⁵⁵ Sir Robert Jones later provided the national office rent-free for three years, a donation, and a parcel of shares in his properties from which the

was a common theme in *Truth*; in 1979 a national conference on child abuse was held in Dunedin, Brian Easton, 'Violence Against Children', *Listener*, vol.94, no.2087, 12 January 1980, p.68.

²⁵² 'Violence in Families', MHF, Women and Violence, 1977-80, ABKH, W4105, 2 30-0-9, pt 1, ANZ, Wellington.

²⁵³ Cherry Raymond, Public Affairs Officer for MHF, to Allocations Advisory Committee, Organization and Departments - Women Refuge, 1976-81, AAYE, 7433, W5048, O&D 144-0, pt 1, ANZ, Wellington.

²⁵⁴ Hann, p.60.

²⁵⁵ *Ibid.*, p.77.

NCIWR still benefits to this day.²⁵⁶ Such philanthropic endorsement was a sign of social acceptance of women's refuges.

The increasing acceptance of women's refuges, though still somewhat conditional, was a result of refuges being established from collaborative groups and also of a change in attitudes within some independent feminist women's refuge collectives. Whereas the first independent refuges had a radical feminist orientation that positioned them in contest with mainstream society, over the late 1970s and early 1980s some feminist collectives became less radical, which made communication with non-feminists easier.²⁵⁷ Stephanie Riger has reported the difficulty for feminist organizations in maintaining a balance between maintaining feminist support and attracting resources and clientele.²⁵⁸ Refuges needed to negotiate with social and political elites because their existence was tenuous; a reliance on enormous levels of individual energy and insecure funding was not sustainable.

A 1979 study of the Christchurch Women's Refuge found that it 'had become more of a social agency, providing services to an underprivileged group, rather than a catalyst for altering the position of women'. They concluded that while the refuges had forced public discussion on domestic violence and had aided some individual women, they had done little to 'destroy the patriarchal nuclear family', which was seen by radical feminism as providing the conditions for it.²⁵⁹ However, the CWR contested any accusation that it had been 'co-opted by the system' and maintained it had changed some policy as a result of experiences.²⁶⁰ The Dunedin Women's Refuge deviated from its original aims to such an extent that in 1982 a course through Marriage Guidance was a prerequisite to working at the refuge.²⁶¹ Fran Cammock has claimed that refuges became less radical as they integrated into the welfare framework.²⁶² Ann Charlotte indicated that refuges were forced to take a much more middle of the road

²⁵⁶ Interview with Raewyn Good, 29 April 2008.

²⁵⁷ For example, Housing Corporation had issues with the anti-male stance of Christchurch Women's Refuge in the mid-1970s but with a change of administration at the Refuge, the District Office reconsidered its application for emergency housing, 'Memorandum for Policy Group – Emergency Housing', Organization and Departments - Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

²⁵⁸ Reported in Vanderpyl, 'An Unstable Achievement', p.9.

²⁵⁹ Reported in Vanderpyl, 'Aspiring for Unity and Equality', p.141.

²⁶⁰ 'Letters - Christchurch Women's Refuge Replies', *Broadsheet*, no.72, September 1979, p.3.

²⁶¹ Cammock, p.32.

²⁶² *Ibid.*, p.38.

standpoint because of the need for government funding and conditions that came with it.²⁶³ This concurs with conclusions in Jan Vanderpyl's 2004 thesis, which has traced the shifts in Rape Crisis from constructing the collective as a radical alternative to emphasizing the development of a professional service.²⁶⁴ From the late 1970s, many feminist service groups made use of state funding through the Department of Labour's temporary employment schemes that paid for workers.²⁶⁵ The entry of paid workers, who were delegated primary responsibilities and were on site more often than most voluntary members, also had repercussions for the collective structure by creating a distinction between the paid and the non-paid workers. The CWR for instance, developed a management committee and shifted to majority voting.²⁶⁶

"De-radicalization" was also a result of the high volunteer staff turnover in refuges, which made a consistent ideology untenable. As radical feminists left collectives, sometimes from disillusionment, they were often replaced with volunteers with no experience in radical feminist politics.²⁶⁷ As domestic violence became perceived as a mainstream issue, the participation of women volunteers described as moderate, middle-class or with church backgrounds influenced practices.²⁶⁸ For example, the first Buller Women's Refuge Collective was made up of a lawyer's wife, a farmer's wife, Catholic women from a social justice background, and feminists. The non-feminist women were thought less likely to take risks.²⁶⁹ Maintaining a strong radical feminist position might have also alienated non-feminist women as clients. Interviews with 100 women with the surname Smith published in 1981 testified to the conservatism of New Zealand women and a general lack of sympathy with liberationist goals of radical social transformation.²⁷⁰ Charlotte Macdonald has

²⁶³ Interview with Ann Charlotte, 24 April 2008.

²⁶⁴ Vanderpyl, 'An Unstable Achievement', pp.7-40.

²⁶⁵ Vanderpyl, 'Aspiring for Unity and Equality', pp.184-6.

²⁶⁶ Ibid., pp.158-9.

²⁶⁷ Fenwick and McKenzie reported in *ibid.*, p.142; Hancock, p.23.

²⁶⁸ Cammock, pp.29-30.

²⁶⁹ Interview with Ann Charlotte, 24 April 2008.

²⁷⁰ For example, women saw the family as the loser of women's liberation, thought the movement selfish, thought it responsible for the break-up of many homes, some were highly critical of women in general, Rosemary Barrington and Alison Gray, *The Smith Women. 100 New Zealand Women Talk About Their Lives*, Wellington: A.H. Reed & A.W. Reed Ltd, 1981, pp.165-173, 187-199.

observed that by the 1980s, the ‘second wave’ of feminism had come to be termed the women’s movement and the word ‘liberation’ was employed less often.²⁷¹

Macdonald’s history of the writings of the women’s liberation movement demonstrates how feminist discourses entered mainstream consciousness, but had been sapped of their radical potential.²⁷² Christine Dann observed in 1985 that, for all the feminist efforts in producing evidence of discrimination against women, the myth that women ‘had never had it so good’ persisted.²⁷³ However, radical positions did not totally disappear. The state’s policy of using community organizations to service social needs and its reliance on feminist refuges had supported the development of a national body. While the national body was clearly integrated into the state welfare network and attracting clientele still influenced local refuges, a national body gave the feminist organization a powerful political voice. It also enabled some refuges to maintain their independent stance for longer than they might have if they stood alone. For example, although Auckland Halfway House’s policy of not letting a woman back a second time conflicted with national policy; the NCIWR got around it by negotiating it as a housing issue and once other refuges were established in Auckland, the second-time woman could go there.²⁷⁴ Pockets of radical feminist refuges continued through to the early 1990s.²⁷⁵ Where this occurred in an extreme form, the needs of women clients were not met.²⁷⁶

Collective processes and a feminist analysis also contributed to a weakening of a radical feminist position. As a woman’s organization for women, a good relationship was necessary with social agencies to meet the needs of women residents. The CWR dropped its emphasis on fomenting a feminist awareness because it proved difficult in practice and it was recognized that the chief concern of its women clients was

²⁷¹ Charlotte Macdonald, ‘A Place to Stand. 1980s and 1990s’, in Charlotte Macdonald, ed., *The Vote, the Pill, and the Demon Drink*, Wellington: Bridget William Books Ltd, 1993, p.206.

²⁷² Macdonald’s assessment of feminism in the early 1990s simultaneously acknowledged that a number of feminist issues had gained public recognition at the same time as real movement towards gender equality proved elusive, *ibid.*, p.210.

²⁷³ Dann, p.147.

²⁷⁴ Interview with Raewyn Good, 29 April 2008.

²⁷⁵ When Morigan Sievers was first employed by the Christchurch Women’s refuge Collective in the early 1990s she was not allowed to have contact with either the police or the Men’s Violence Project because ‘we were not to be working with men who were the abusers’, interview with Morigan Sievers, 9 July 2008.

²⁷⁶ Personal communication with workers of an unidentified women’s refuge, 2004-5.

survival, not politics.²⁷⁷ Even the radical AHH accepted that they could not turn ‘residents into instant feminists’ especially when women were in times of crises.²⁷⁸ Material experiences also shaped the development of a feminist analysis: the frequent witnessing of women residents who beat their children, along with women’s violence to each other, contested an analysis exclusive to male domination.²⁷⁹

“DOMESTIC VIOLENCE” ENTERS THE POLITICAL ARENA

The entry of feminist women into parliament and the development of domestic violence as a mainstream issue helped to foment political interest within the House. In 1976 MP Edward Latter had asked the Justice Minister why de facto spouses could not obtain non-molestation orders.²⁸⁰ The following year the Minister of Social Welfare was asked to give account of state assistance to women victims of domestic violence and rape.²⁸¹ Beyond the provision of emergency housing, Bert Walker was not able to respond.²⁸² The following year Mary Batchelor presented her private member’s bill, the Domestic Violence Bill 1978, which pressured the National Government to act more quickly than it might have.²⁸³

Batchelor’s knowledge of domestic violence had come from friends’ experiences, but as an MP she says she was ‘faced with this issue quite a lot’ and realized ‘it was a generalized thing’. Networking amongst other feminist groups such as the Christchurch Women’s Refuge and the BWSG also influenced her. She says that the general feeling at that time was that women had made their beds and had to lie in them. In contrast, she believed that ‘if your bed is uncomfortable you should be able to get up and leave it’.²⁸⁴

Modelled on British legislation, the 1978 Domestic Violence Bill extended the law on non-molestation orders in two ways: firstly, by enabling spouses and de facto partners to gain an injunction while in a relationship, it gave the police power to arrest, without

²⁷⁷ ‘Letters - Christchurch Women’s Refuge Replies’, *Broadsheet*, no.72, September 1979, p.3.

²⁷⁸ Banks, Florence, Ruth, p.80.

²⁷⁹ For example, observing these behaviours affected the way Morrigan Sievers viewed domestic violence, interview with Morrigan Sievers, 9 July 2008.

²⁸⁰ Edward Latter, NZPD, 1976, 408, p.4515.

²⁸¹ Birch on behalf of Marilyn Waring, NZPD, 1977, 415, p.4475.

²⁸² Bert Walker, NZPD, 1977, 415, p.4475.

²⁸³ Mary Batchelor, NZPD, 1978, 420, p.2785; Marilyn Waring, NZPD, 1982, 444, p.1127.

²⁸⁴ Interview with Mary Batchelor, 26 June 2008.

warrant, any person breaking that injunction; and secondly, by providing for an injunction that would exclude the violent spouse from the matrimonial home.²⁸⁵ Through these actions the bill aimed to prevent the situation whereby women and children could be thrown out onto the street by a violent man or forced to flee in the middle of the night, and most importantly, to prevent violence within the marriage. Women's experiences of police inaction and having nowhere to go drove the bill's proposals. Although the bill was dropped because the government had alternative legislation planned, Batchelor was surprised at the amount of assistance she did get and the interest it generated in the public, which indicated how far 'domestic violence' had entered into public discourses.²⁸⁶

CONCLUSION

The emergence of a strong, autonomous women's movement provided a material and discursive basis for a women-centred analysis of domestic violence against women. Feminists announced domestic violence as a social problem in which men were primarily the perpetrators and women and children, the victims. A feminist analysis interpreted it through a framework of male domination, which provided new discursive positions for women to resist domestic violence and contested conservative discourses that viewed women as "asking for it" or "deserving it". Importantly for women's choices, feminists established refuges. These gave women a real alternative to staying in a violent marriage and provided empirical evidence of the extent of the problem.

In the context of conflict and social change in the western world, feminist discourses of domestic violence intersected with changing discourses of victimhood, public violence, child welfare and gender equality. Legal and social welfare practices, along with the expansion of sociological and psychological discourses, supported feminist claims and the need to assist victims of domestic violence. As these discourses gained currency by being institutionalized into state policy and practices, they destabilized and undermined the power of conservative discourses that had obscured the incidence of domestic violence, blamed women for it, and denied social and legal support to them. However, both more established and emergent discourses contested feminist

²⁸⁵ Mary Batchelor, NZPD, 1978, 420, p.2785.

²⁸⁶ Interview with Mary Batchelor, 26 June 2008.

positions. The next chapter identifies and analyzes discourses that acquired dominance in the discursive field of domestic violence; questions to what extent feminist discourses of domestic violence were institutionalized; and analyzes the impact of these discourses on women's capacity to resist a husband's or partner's violence.

Chapter 9

MULTIPLE COMPETING DISCOURSES, AND STATE RESPONSES

By the late 1970s, domestic violence had been named a social problem. Discourses that had directed attention to domestic relations, especially those that referenced gender, marriage and children, had exposed domestic violence and destabilized the assumption of privacy of the domestic sphere. There was support for parliament to respond to the needs of victims. However, the meaning of domestic violence was strongly contested. Feminist discourses had grown out of women's experiences, but for state agencies and for many politicians, domestic violence was a social problem because of its effects on social stability: marriage breakdown, a rising numbers of beneficiaries, disengaged fathers, and the impact of violence on children as future citizens and parents. This chapter examines discourses that countered feminist positions. Some of these are the same discourses that facilitated the adoption of domestic violence as a mainstream issue discussed in the previous chapter. The chapter then examines discourses that strengthened feminist claims and the dominant discourses that shaped state responses, culminating in the 1982 Domestic Protection Act.

GENDER DISCOURSES

Fundamental aspects of the traditional gender order persisted. Many male politicians were committed to such an order. This raised conflict over granting equal rights where it might undermine male privilege. Parliamentary support for women's rights was driven more by external pressure than internal convictions. Although male politicians were socially concerned and humane, this did not translate into a significant redistribution of power and an abdication of the head of the family role. Helen Clark claimed that most male MPs were used to women playing a subordinate and service role in their own lives.¹

¹ Helen Clark cit., in Arthur Baysting, Dyan Campbell and Margaret Dagg, *Making Policy Not Tea. Women in Parliament*, Auckland: Oxford University Press, 1993, p.11.

Mary Batchelor described key figures in parliament, though ‘very nice men’, as not really wanting gender equality.² Many of these men, such as Jerry Wall, Norman Kirk and Bill Rowling were social conservatives of a typically “old Labour” kind, often Catholic, and committed to the ideal nuclear family. Female politicians frequently endured personal slights on their sexuality or appearance by male politicians.³ Batchelor says that the general feeling was that women’s problems were not large problems for the country: ‘give the little lady an ice cream, she will be happy sort of thing, that was very much the attitude in those days and that was one of the nicer ones’.⁴

The power vested in these individuals because of their political positions had far-reaching consequences for policies that affected the material realities of women and girls who had been subjected to various forms of violence. Male politicians used discursive constructions of women as hysterical, abnormal or irrational to obstruct claims they perceived as challenging the social order. In one such incident Marilyn Waring was met with ‘dead silence’ when she questioned party members about the rehabilitation of girls from state-managed residential homes back into families where they had been subjected to sexual violence. One colleague told her that ‘normal women don’t think like that’ and that was the end of the matter.⁵ When Mary Batchelor presented her private member’s bill on domestic violence in 1978 she recalled men in the Labour caucus being against violence but believing ‘there were more important things’; domestic violence ‘was not wide enough to have to think about too much’. Batchelor said many were against taking any action at all and remembers ‘those guys in parliament standing up and saying that they agreed with so and so, but they would come up with some little spin of theirs that they would not

² For example, Mary Batchelor believed her friend Jerry Wall ‘did not want women to get equality’ and ‘wanted them back down’: ‘He he had a lovely wife and a big family and took care of them, but as far as he was concerned that was their place.’ She thought her first boss, Norman Kirk, was not really into equal pay. Batchelor said Bill Rowling refused to treat her as an equal in parliament and persisted in making her life difficult there. She says there were women that could do that too, but it was just the atmosphere that he could do that on the basis of her being a woman, interview with Mary Batchelor, 26 June 2008.

³ Baysting, Campbell, Dagg, pp.11, 77-78, 80, 138.

⁴ Interview with Mary Batchelor, 26 June 2008.

⁵ Around 1976 to 1977 Marilyn Waring recalled there were a lot of young women breaking out of places like Miramar Girls Home and Weymouth just weeks before they were going to be rehabilitated with their families. Waring visited these homes and it became obvious to her that the girls were not interested in going home to be further subjected to incidents of rape and incest. That was why they were running away, Marilyn Waring reported in Baysting, Campbell and Dagg, p.118.

vote on something because of...’⁶ While some opposed the extension of non-molestation orders to de facto relationships because of the alleged negative impact on marriage, Batchelor said that what you were really fighting was the lack of political will to do anything.⁷ Conservative gender discourses obstructed the adoption of domestic violence as a political issue at that time.

VICTIMHOOD DISCOURSES

Although victimhood discourses acknowledged that mostly women and children were the victims of serious domestic violence, they also blamed victims for that violence. Victim precipitation was a common theme among studies concerned with domestic violence.⁸ Allan Nixon, a criminology lecturer, simultaneously promoted victim rights (see previous chapter) and claimed that ‘the criminal incident’ was ‘normally the result of interaction between offender and victim, and the final outcome’ depended on ‘the behaviour of *both* parties’.⁹ Similarly, Mary Inglis, in her study of physical assault and marital conflict, highlighted the need to assist women victims of domestic violence, but also blamed women. She claimed that the women were usually dominating, the husbands more passive and dependent, and likely to have experienced negative relationships with dominating mothers. Thus, Inglis argued, women caused brutality and reinforced men’s impulses towards violence and, because women reared males, any violence perpetrated by adult men was essentially their mothers’ responsibility.¹⁰ The director of the Campbell Centre for Counselling, a Presbyterian initiative offering group therapy for ‘wife batterers’, said he was sure that provocation played a part, and women exaggerated most of the violence.¹¹ The discursive effect of these constructions was to reduce male responsibility for the violence and disempower women victims. This enabled collusion with violent men and weakened the imperative to assist victims.

⁶ Interview with Mary Batchelor, 26 June 2008.

⁷ Ibid.

⁸ Rebecca Emerson Dobash and Russell Dobash, *Violence Against Wives. A Case Against Patriarchy*, New York: The Free Press, 1979, pp.135, 195. For example, social scientist Richard Gelles, who claimed domestic violence was common and that the family served as a basic training ground for violence, also claimed that most physically violent incidents were caused by the victim’s verbal behaviour, such as ‘nagging’ and the ‘liberated woman’s attacks on her husband’s chauvinistic attitude’, *ibid.*, pp.134-5.

⁹ Allan Nixon, ‘Understanding Violent Assault’, *Listener*, vol.89, no.2011, 15 July 1978, p.20.

¹⁰ Mary Inglis, ‘Physical Assault in Marital Conflict – A Social Problem Re-examined’, MA thesis, Victoria University, Wellington, 1977, p.62.

¹¹ ‘Help for Husbands’, *Press*, 20 July 1978, p.11.

Allegations that women were also perpetrators of domestic violence further undermined the need to assist women as a group. The Director of the National Society on Alcoholism and Drug Dependence claimed that husband-bashers could be one of New Zealand's social problems.¹² *Time* magazine, while previously carrying only a few paragraphs on wife abuse, published a two-page spread in 1978 on husband battering.¹³ The Director of Auckland's Lifeline claimed that more women hit men than men hit women.¹⁴

Some feminist discourses disempowered women victims. While Erin Pizzey's 1978 visit to New Zealand had drawn attention to domestic violence as an issue, she also drew on notions of victim precipitation. Pizzey divided women victims into two groups: women who genuinely wanted to leave violent marriages and those who were addicted to it and taunted husbands to attack them.¹⁵ As a refuge founder, her criticism of local feminist refuges' policies of male exclusion and a secret location of a safe house, undermined their social credibility. The Mental Health Foundation's proposal for the establishment of women's refuges to be run on Pizzey's Chiswick Women's Aid model indicated the extent of her influence.¹⁶ It is probable that Pizzey's demands for conditional state funding of refuges contributed to the lack of political will to fund independent feminist refuges.¹⁷

THE DOMESTIC VIOLENT EVENT

Victimhood discourses and the construction of a domestic violent event as a temporary aberration combined to obscure power relations between a perpetrator and a victim. It was widely held that domestic violence was a result of stress and frustration compounded by alcoholism and drugs.¹⁸ Following attention to the quality

¹² 'Husband Bashers Come into Open', *Press*, 6 December 1978, p.6.

¹³ United Nations, Centre for Social Development and Humanitarian Affairs, *Violence Against Women in the Family*, New York: United Nations, 1989, p.14.

¹⁴ 'Violence at Home Dispute', newspaper article, dated around 1982, Private Papers of Doris Church.

¹⁵ Pizzey cit., Pauline Ray, 'When Domestic Tiffs Become Bloody Lacerations', *Listener*, vol.90, no.2032, 9 December 1978, p.19.

¹⁶ Cherry Raymond, Public Affairs Officer for the Mental Health Foundation (MHF), to Allocations Advisory Committee, Organization and Departments – Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

¹⁷ This was discussed in previous chapter; one such condition was the open location of refuges.

¹⁸ Rebecca Pleck, *Domestic Tyranny. The Making of American Social Policy against Family Violence from Colonial Times to the Present*, (2nd ed.), Urbana and Chicago: University of Illinois Press, 2004, pp.194-5; John Church, *Violence Against Wives. Its Causes and Effects. Results of the Christchurch Family Violence Study*, Christchurch: John Church, 1984, p.55. This has been discussed in previous

of marital relations, 'poor communication' was an added cause.¹⁹ The anger-management programmes that emerged in the early 1980s to address male violence, such as a Christchurch initiative run by Ken McMaster, were based on this belief.²⁰

Dominant beliefs around the causes of domestic violence located responsibility for it in individuals, especially women. Research on violence tended to ignore the ongoing nature of domestic violence and isolated it from the institution of marriage or the couple's history. This reinforced the existing construction of violence as a discrete event, an outcome of alcohol or stress. Framing domestic violence within a specific time and space denied it had a history or a future. This veiled the hierarchical gender order that enabled it, and ignored non-measurable effects, such as fear, the loss of control over one's life and the violation of one's civil liberties.²¹ It encouraged a view of men and women as equal combatants, save a woman's physical inferiority, enabling claims that men were as much victims as women, and obscuring the future risk of violence to women victims.

STATE DISCOURSES OF THE FAMILY

The belief in the ideal nuclear family as the basis of social order contested discourses that offered empowering positions for women to resist domestic violence. Changes in family formation, and women's increasing participation in paid employment, had created social anxiety for conservatives who believed social order was dependent on the preservation of the ideal family, headed by a male who kept domestic order. In part, this reflected a generational divide. Social change was interpreted as a 'crisis in family breakdown' and a 'lowering of moral standards', which caused social unrest.²²

chapters including Chapters 2 and 3. For example, one probation officer claimed that alcohol was involved in 90% of reported "domestic disputes", 'Domestic Violence', newspaper article, June 1980, Private Papers of Doris Church; Harry Lapwood, Acting Minister of Police, thought 'domestic disputes' were a symptom of family stress, Lapwood to Mrs Cronin, 21 October 1977, Women - Violence, 1977-1980, ABKH, W4105, 2 30-0-9, pt 1, Archives New Zealand (ANZ), Wellington.

¹⁹ For example psychologist Paul Davidson and the New Zealand Association of Social Workers saw domestic violence as an indication of inefficient, harmful or non-constructive communication, Paul Davidson, *Family Separation. Psychological Perspectives*, Wellington: Butterworths, 1988, p.145; Submission by New Zealand Association of Social Workers to Select Committee on Violent Offending, May 1978, p.7, Committee on Violent Offending, 1977-1979, ABGX, 16127, W3706, box 84, pt 6, ANZ, Wellington.

²⁰ 'Anger Management Courses for Men', *Press*, July 1983, ABKH, W4105, box 3, 30-0-11, pt 1, ANZ, Wellington.

²¹ Dobash and Dobash, p.97.

²² 'NZ Facing a Crisis in Family Breakdown', *Press*, 2 November 1977, p.6.

The Christchurch mayor, Hamish Hay, blamed increasing public violence on mothers in employment.²³ Reflecting levels of anxiety around the family, the Royal Commission on Contraception, Sterilisation and Abortion reporting in 1977, despite having no mandate to canvass the family, felt compelled to make a strong statement in support of the 'traditional family as the central unit around which society is built and as the foundation stone for standards of conduct'.²⁴ In 1978 the Royal Commission on the Courts reported that the status of marriage was under attack.²⁵

All this tempered other discourses that recognized traditional gender constructions as not conducive to social stability. As alternative lifestyles became more viable, conservative discourses battled against them.²⁶ In particular, changes that empowered women engendered fears around marriage and male privilege. Thus the stakes were high in any discourse which altered the balance of gender relations, such as sexual education, abortion and opposition to domestic violence. As vocal opponents of the traditional institution of marriage, refuge groups were easy targets for the transfer of anxiety about social change, hence accusations of their being 'home wreckers' or 'man-hating lesbians'.²⁷ Australian refuge groups shared the same accusations.²⁸ Similarly, pro-abortion factions became associated with women's liberation and the demise of marriage.

The ousting of the Labour Government and the election of the National Party in 1975 boosted conservative discourses of the family.²⁹ The establishment of the Cabinet Committee on Family Affairs in 1975 demonstrated the government's commitment to

²³ Ibid.

²⁴ Royal Commission of Inquiry, *Contraception, Sterilisation and Abortion. Report of the Royal Commission of Inquiry*, Wellington: Government Printer, 1977, pp.306-8.

²⁵ Report of the Royal Commission on the Courts, *Appendices to the Journals of the House of Representatives* (AJHR), 1978, H.2, p.146.

²⁶ Helen May, *Minding Children Managing Men. Conflict and Compromise in the Lives of Postwar Pakeha Women*, Wellington: Bridget Williams Books, 1992, p.209.

²⁷ Names directed at women of the Buller Women's Refuge Collective in the 1980s. Interview with Ann Charlotte, 24 April, 2008.

²⁸ Suellen Murray, *More Than Refuge. Changing Responses to Domestic Violence*, Crawley: University of Western Australia Press, 2002, p.110.

²⁹ Hugh Templeton reports that the essential conservatism of the Robert Muldoon cabinet was reflected not only in their expressions, but also in their clothes. 'Muldoon ministers did not go in for the then fashionable long hair or the coloured shirts worn by the previous Labour cabinet', Hugh Templeton, *All Honourable Men. Inside the Muldoon Cabinet 1975-1984*, Auckland: Auckland University Press, 1995, p.8.

the family as the basic unit of society.³⁰ Supporting family life was the state's weapon against 'mounting violence and lawlessness'.³¹ Although the Committee adopted a broad definition of the family which emphasized function, namely 'a group of people...who live in a close association',³² more conservative discourses of family persisted. Overall, government policies reflected an ambivalent attitude to alternative family forms. This reflected Melanie Nolan's proposition, that the state's capitalist objectives and responsibilities for social stability were an important influence on state policies that affected women.³³

A tougher economic climate from the mid-1970s brought state support to alternative family forms under scrutiny.³⁴ In 1972 there had been 6186 Emergency Domestic Purposes Benefits (DPB).³⁵ By September 1976 there were 13,234 DPBs and 10,713 Emergency DPBs.³⁶ The numbers were alarming. In part this can be explained by the link between the social welfare state and full employment, family discourses that privileged the ideal nuclear family, and the perception that the uptake of the DPB was, at least in part, voluntary.³⁷ A backlash against the DPB followed.³⁸

The government responded by establishing the Domestic Purposes Benefit Review Committee (DPBRC) in 1976, to investigate the increase in DPB numbers and the benefit's impact on marriages and children. George Brocklehurst, who had been Chairman of the Social Security Commission, was a member.³⁹ The DPBRC captured all the anxieties around social change and the fear of what women's independence would mean for marriage, the social order and gender roles, especially that of a husband. It claimed that the solo mother was 'acquiring a certain status', which could

³⁰ Department of Statistics, *Report on Family Statistics in New Zealand*, Wellington: The Department, 1978, p.1.

³¹ Question posed by Michael Connelly, and answered by Lancelot Adams-Schneider for Bert Walker, *New Zealand Parliamentary Debates* (NZPD), 1977, 415, p.4426.

³² Department of Statistics, p.3.

³³ Melanie Nolan, *Breadwinning. New Zealand Women and the State*, Christchurch: Canterbury University Press, 2000, p.301.

³⁴ Margaret McClure, *A Civilised Community. A History of Social Security in New Zealand, 1898-1998*, Auckland: Auckland University Press and Historical Branch, Department of Internal Affairs, 1998, p.204.

³⁵ Report of the Department of Social Security, AJHR, 1972, H.9, p.16.

³⁶ Report of the Domestic Purposes Review Committee, AJHR, 1976, E.28, p.6.

³⁷ This was explained in Chapter 5 and 7.

³⁸ Report of the Domestic Purposes Benefit Review Committee, AJHR, 1976, E.28, p.5.

³⁹ Brocklehurst's conservative views are discussed in Chapter 5, sub-heading: 'Financial Resources: State Welfare'.

threaten ‘our traditional two-parent basic family unit’, expressing the view that children were better placed for preparation for their future lives if they were raised in a married two-parent family.⁴⁰ The DPBRC claimed that the ‘generosity’ of the benefit discouraged adoption, re-entry of solo mothers into paid work, marriage and even re-marriage, and facilitated ‘the break up of a marriage, which might otherwise have been saved’.⁴¹

The Cabinet Committee on Family Affairs’s principle, that a ‘precondition for good family life was that the family be an economically viable unit’, was apparent.⁴² The DPBRC recommended that de facto relationships carry the same financial obligations as legal marriages so as not to disadvantage married men, and advocated training schemes, employer incentives and state involvement in early child-care facilities. While the DPBRC accepted child welfare was paramount and the DPB was necessary for solo mothers with pre-schoolers, it also believed the ready availability of the DPB was probably not in the interests of parents or children because it encouraged welfare dependency and isolated fathers from children.⁴³ The new situation, where married women could forge a new life financially independent from husbands, was a potential threat to the welfare state, and had created a new problem of “fatherless” children and “childless” fathers. Keeping ‘the husband associated with the children’ was important for compliance with maintenance obligations, averting adversary situations in courts and, securing good outcomes for child welfare.⁴⁴ The DPBRC was especially concerned with the DPB’s erosion of male privilege. It recommended that the DPB should only be granted after an interview with a woman’s husband.⁴⁵ It claimed that social policy automatically cast men in ‘the role of villain’ and favoured ‘deserting wives’.⁴⁶ This was a strong statement regarding women who left marriages, signalling the persistence of older discourses that supported male privilege.

⁴⁰ Report of the Domestic Purposes Benefit Review Committee, AJHR, 1976, E.28, pp.5, 11-12, 17, 19, 25.

⁴¹ Ibid., pp.11-12, 17.

⁴² Bert Walker reported in ‘Parental Neglect Blamed for Delinquency’, *Press*, 3 November 1977, p.13.

⁴³ Report of the Domestic Purposes Benefit Review Committee, AJHR, 1976, E.28, pp.24, 27, 44-48.

⁴⁴ Ibid., p.27.

⁴⁵ Ibid., p.48.

⁴⁶ Ibid., p.14.

The DPBRC had a narrow view of what constituted intolerable domestic violence, similar to that operating under domestic laws regarding “cruelty”. It saw the DPB as a solution to marriages in which wives were subjected to ‘years of periodic assaults, drunkenness and periodic desertion’ because ‘a home atmosphere of this kind can be more detrimental to the children of the marriage than a single-parent home’.⁴⁷ The DPBRC was silent on what this meant for the wife’s experience. ‘Short of this extreme marital situation’, the DPB was also a solution to marriages where there was ‘strong emotional stress, so strong that continuation’ of it would be ‘detrimental to all concerned – wife, husband and children’.⁴⁸ But at the other end of the scale, the DPB enabled the ending of marriages for ‘relatively minor causes’.⁴⁹ Reflecting the complexity of the problem, the DPBRC recommended that the DPB be retained, but with some modifications.⁵⁰ The government acted on few recommendations. It rejected making a grant of the DPB subject to interviewing the husband, and recommendations relating to a kind of ‘social contract’, which would have enable the Department of Social Welfare the right of access to beneficiaries.⁵¹ To discourage uptake of the benefit, the government reduced the rate in the first six months unless maintenance had been secured from the children’s father, and all sole parents applying for the DPB were referred for counselling with the Marriage Guidance Council in the hope they would reconcile.⁵²

The DPBRC report’s punitive recommendations were countered by the importance of the DPB for child welfare, the rising importance of the individual, and liberal discourses that supported private freedom. These weakened political will to interfere with family formation.⁵³ Such recommendations violated principles of social justice and civil liberties, which had shaped shifts in welfare. The DPB was a statutory right and cuts to it would punish beneficiaries indiscriminately.⁵⁴ The DPBRC report was also out of keeping with the discursive shift in domestic law from assigning blame to a “no-fault” approach. However, DPB recipients continued to be criticized for some

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid., p.48.

⁵¹ Ibid., pp.28, 48.

⁵² McClure, pp.186-7.

⁵³ The Family Policy Report Group of the Social Development Council, *Families First. Aspects of Family Policy*, Wellington: The Council, 1981, p.7; Department of Statistics, p.12.

⁵⁴ McClure, p.186.

time. Pauline Ray observed that the solo mother, ‘a scarlet woman and slattern around the house’ could not win; she either went off to work and left ‘latchkey children’ or stayed at home and bludged off taxpayers’ money.⁵⁵

There are some indications to how the backlash against the DPB impacted on women leaving violent marriages. Women would have had to steel themselves against social criticism, pending hardship, and pressure to reconcile. John and Doris Church criticized changes to the DPB because their research showed that most ‘battered’ wives left marriages in an extreme state of financial deprivation.⁵⁶ Fran Cammock, in her study of the establishment of the Dunedin Women’s Refuge, observed that there was a decline in both applications and orders for non-molestation after 1976, which suggests that the changes did affect such women.⁵⁷ From a peak of 2774 applications and 234 orders in 1976, these fell to 2116 and 158 in 1979.⁵⁸ Overall, however, DPB rates continued to rise.⁵⁹

Inconsistent practices around the family still characterized state policy.⁶⁰ For example, de facto spouses were not eligible for non-molestation orders, but social security legislation imposed financial obligations of family support on de facto spouses, and stable de facto relationships by the late 1970s were said to be recorded in the Census as married.⁶¹ Despite knowledge that the family home could be a dangerous place, and discursive shifts that privileged family function over its form, the Department of Social Welfare (DSW) continued to construct the problem of child welfare primarily in terms of family formation. It reported 9500 children cared for outside their homes, 100,000 children in solo parent families, including some 70,000 who were in homes where the parent received a benefit.⁶² Yet the Department had also rejected those recommendations of the DPBRC which it saw as violating social justice and civil liberties.⁶³

⁵⁵ Pauline Ray, ‘Mothers Alone’, *Listener*, vol.86, no.1965, 20 August 1977, p.14.

⁵⁶ John and Doris Church, *Listen to Me Please! The Legal Needs of Domestic Violence Victims*, Christchurch: Battered Women’s Support Group, 1981, p.29.

⁵⁷ Fran Cammock, ‘A History of the Establishment of Dunedin Women’s Refuge, 1976-1977’, Hons research exercise, University of Otago, Dunedin, 1994, p.49.

⁵⁸ *Ibid*; Chapter 7, p.7.

⁵⁹ McClure, p.187.

⁶⁰ The Family Policy Report Group of the Social Development Council, p.13.

⁶¹ Mary Batchelor, NZPD, 1977, 411, p.1478; Department of Statistics, p.5.

⁶² Report of the Department of Social Welfare, AJHR, 1979, E.12, p.5.

⁶³ McClure, p.186.

The government administration was prepared to remedy discrimination as it affected individuals, but not as it affected structures. Although it was acknowledged that the family could create social problems, the government also looked to the family for solutions. So while state agencies were responsive to the needs of “battered” women, this did not involve challenging conditions which enabled domestic violence in the first instance. For example, the Christchurch Office of the DSW expressed reservations about the Christchurch Women’s Refuge because it seemed to have a ‘fairly strong anti-male attitude’ not conducive to marriage rehabilitation. It preferred the Society for the Protection of Home and Family, which was more ‘enlightened’, meaning committed to preserving marriages.⁶⁴ Similarly, Medical Director of Plunket David Geddis’s advocacy for children was seen to encroach too far into the domestic sphere, contesting parental rights and the belief that the family was the best environment for children’s development. In the 1980s many felt proposals to deal with child abuse, which Geddis was often behind, ‘had swung too far in the direction of children’s rights and the role of professionals, and isolated children within their family networks’.⁶⁵ Solutions outside the family were also expensive, which reinforced the state’s preference for solutions within families.⁶⁶

Conservative discourses of the family weakened the radical position of some women’s refuges.⁶⁷ From the mid-1970s, non-feminist groups also acknowledged the need for a place for victims of domestic violence to go, but their understanding of domestic violence encouraged helping individual women rather than challenging institutions or structures. Refuges in which conservative discourses gained dominance did not produce a radical critique of the family and focused on providing safety in emergency situations.⁶⁸ The difference between these two perspectives is demonstrated by the Napier Women’s Refuge, which had grown out of an International Women’s Year project. Feminists involved left because they felt women

⁶⁴ Letter R. Wilson to Acting Director General, 6 December 1976, Organization and Departments – Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

⁶⁵ Bronwyn Dalley cited by Linda Bryder, *A Voice for Mothers. The Plunket Society and Infant Welfare, 1907-2000*, Auckland: Auckland University Press, 2003, pp.209-10.

⁶⁶ *Ibid.*

⁶⁷ This was discussed in the previous chapter.

⁶⁸ Some feminists claimed they were deliberately marginalized. Feminists reported being marginalized in the management of the West Auckland Refuge by conservatives, ‘Letter- Refuge Politics’, *Broadsheet*, no.84, November 1980, p.2.

were bandaged up and encouraged to return to oppressive situations.⁶⁹ Unlike the other refuges at this time, the majority of women returned to their husbands.⁷⁰ Accused of lacking a feminist underpinning, such refuges were seen by some feminists to collude with the existing social structure by making it easier to live within it, and to undermine solidarity among women and the development of a feminist awareness, which was a prerequisite to social change.⁷¹ Non-feminist refuges also threatened feminist refuges by providing an alternative for state funding. Although all women's refuges were eligible for emergency housing allocation, any 'suspect counselling' or too much 'independence' would invalidate applications.⁷² The Mental Health Foundation, so important to making domestic violence a mainstream issue, recognized that marriage posed mental health risks for women, but simultaneously argued that 'marriage as an institution was not to blame', and was reportedly suspicious of feminist women's refuges.⁷³ Sandra Coney claimed that commitment to a 'working' nuclear family underpinned the Foundation's hesitancy in meeting a request for funds from Auckland Halfway House.⁷⁴

CHANGES IN DOMESTIC LAW

Despite widespread demands for state assistance for victims of domestic violence, in the 1970s an emergency maintenance payment to women who had entered a refuge, and in some areas providing houses under the emergency housing scheme, were the only new forms of assistance.⁷⁵ In 1978 the National Government had promised to re-examine non-molestation orders. This was part of the intention to reform domestic law in general in response to liberal discourses gaining currency that favoured less state intervention in people's choices of family formation.

⁶⁹ Mary Hancock, *Battered Women. An Analysis of Women and Domestic Violence, and the Development of Women's Refuges*, Wellington: The Committee on Women, 1979, p.23.

⁷⁰ The one-week stay rule reflected the conservative discursive understanding and put intense pressure on women to find a long-term solution in a very short space of time, *ibid.*, p.25.

⁷¹ Sandra Coney, 'IWY: the Bitter End', *Broadsheet*, no.39, May 1976, p.19; for example, the minor role played by residents led to a split between themselves and workers in both the Napier and Nelson refuges, Hancock, pp.22-23.

⁷² CEO (D) Memorandum for Policy Group- Emergency Housing, Organization and Departments – Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

⁷³ Reported in Sandra Coney, 'Marriage and the Mental Health Stakes', *Broadsheet*, no.61, July 1978, p.8; discussed in previous chapter.

⁷⁴ Sandra Coney, 'Pizzey's Politics Re-examined', *Broadsheet*, no.67, March 1979, p.7.

⁷⁵ Report to the Minister of Social Welfare, 6 May 1981, Organization and Departments – Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

In 1980 parliament passed a ‘family law package’. This consisted of two new acts, the Family Proceedings Act and the Family Courts Act; and two amendments, the Social Security Amendment Act and the Guardianship Amendment Act. The most significant legislation for women’s capacity to resist domestic violence was the Family Proceedings Act, and most of the following discussion refers to this. The package institutionalized current beliefs: ‘the need for alternative methods of dispute resolution, the provisions of a separate court for family proceedings, the concept of no-fault divorce, the need for extended counseling [sic], the encouragement of specialist involvement and representation of children in custody cases and the recognition of the significance of welfare benefits on the break-down of marriage.’⁷⁶

Introduced in 1978, the 1980 Family Proceedings Bill (no. 1) drew more than 800 submissions and the Family Proceedings Bill (no.2), 400, indicating the intense anxiety evoked by questions around the family.⁷⁷ The subsequent 1980 Family Proceedings Act made ‘disharmony’ the sole ground for a separation order and introduced the sole ground of ‘irreconcilable differences’ for the dissolution of marriage, termed the ‘no-fault divorce’.⁷⁸ The ‘no-fault’ divorce had previously been introduced in Australia.⁷⁹ Spousal maintenance was defined as short-term and rehabilitative: ‘there will no longer be any room for the notion of a former husband having to provide a meal ticket for life for his former wife.’⁸⁰ Women’s long-term financial dependence on husbands was now constructed as a threat to social stability because it made it difficult for an ex-husband to form or maintain a new family. Counselling was a prerequisite to a hearing for separation or dissolution of marriage orders. Legal advisers had a duty to promote reconciliation or conciliation and hearings could be adjourned to consider the possibility of either.⁸¹

The notion of marriage as a partnership, the importance of individual happiness, shifts in child welfare discourses, and the fact that many people bypassed matrimonial law

⁷⁶ Julie Leibrich and Suzette Holm, *The Family Court: A Discussion Paper*, Wellington: Department of Justice, 1984, p.1.

⁷⁷ Barry Brill, NZPD, 1980, 432, p.2486.

⁷⁸ B.D. Inglis, *Sim and Inglis Family Court Code*, Wellington: Butterworths, 1983, pp. 57, 70-71.

⁷⁹ W.R. Atkin, ‘New Zealand Family Law – a Dramatic Year of Change’, *Oxford Journal of Legal Studies*, 1982, (2), 1, p.147.

⁸⁰ Jim McLay reported in ‘Wide Law Changes Detailed by Minister’, newspaper article, 17 July 1980, Private Papers of Doris Church.

⁸¹ *New Zealand Statistics*, The Family Proceedings Act 1980, pp.872-8; Atkin, p.150.

by establishing de facto relationships or separating non-officially, had encouraged a more pragmatic response to marriage breakdown. In practice, matrimonial fault had accounted for only 25% of divorce petitions.⁸² It was accepted that government policy could not control social trends and attempts to do so could cause hardship.⁸³ The Department of Justice Parliament acknowledged that views around the family once thought radical were now commonplace and that the law was ill adapted to enforce established values in a free society.⁸⁴ This indicated the power of civil liberties discourses to counter conservative constructions of the family.

Coupled with the establishment of family courts under the 1980 Family Courts Act, the new laws reflected a shift away from legal technicalities and an adversarial approach towards seeking a resolution of disputes.⁸⁵ The primary purpose of the new legislation was to reduce ‘the bickering and backbiting’ observed in the courts and to ease the ‘painful problems associated with marriage breakdown’, a process that had begun with the 1968 Domestic Proceedings Act.⁸⁶ This had implications for individual happiness and child welfare. Facilitating escape from unhappy marriages supported the institution of marriage by removing impediments to re-marriage, thereby discouraging de facto relationships and reducing delays that could incur stress for children.⁸⁷ Since both divorce and separation applications would be heard in the family court, there was no opportunity of harassment associated with cross-filing.⁸⁸

The legislation reflected the current belief that domestic law had both a judicial and social role, which was shaped by discourses equating family outcomes with social ones. This supported a separate jurisdiction for domestic law, the Family Court. To this end the new legislation provided a simpler, cheaper and less painful process.⁸⁹ In the less formal, more sympathetic environment of the Family Court, conciliation was thought more possible, and more likely to produce a better outcome for children

⁸² Atkin, p.147.

⁸³ The Family Policy Report Group of the Social Development Council, p.15.

⁸⁴ Report of the Department of Justice, AJHR, 1977, E.5, p.8.

⁸⁵ David Caygill, NZPD, 1980, 432, p.2498; Atkin, p.149.

⁸⁶ Barry Brill, NZPD, 1980, 432, p.2488; Geoffrey Palmer, NZPD, 1980, 432, p. 2488.

⁸⁷ Department of Justice Discussion Paper Family Proceedings Bill, Domestic and Matrimonial Proceedings, 1977-1979, ABVP, 7410, W4927, box 251, LEG 15-1-3, pt 3, ANZ, Wellington; ‘Wide Law Changes Detailed by Minister’, newspaper article, 17 July 1980, Private Papers of Doris Church.

⁸⁸ Report of the Royal Commission on the Courts, AJHR, 1978, H.2, p.149.

⁸⁹ Geoffrey Palmer, NZPD, 1980, 432, p.2488.

affected by marriage breakdown.⁹⁰ Counselling was integral to this process, and following the Australian model, there was emphasis on it.⁹¹

Despite the Justice Minister David Thomson having said that matters raised in Mary Batchelor's 1978 Domestic Violence Bill would be canvassed in upcoming government legislation, there was no radical new approach to domestic violence.⁹² However, there were some significant changes. For the first time occupation and tenancy orders were made explicitly for domestic violence.⁹³ "Battered" wives who had fled could access urgent occupation orders *ex parte*.⁹⁴ Judicial discretion could annul the requirement for counselling. The Department of Justice did not support compulsory conciliation because it violated civil liberties, a position fortified by the fact that overseas jurisdictions did not compel it, and by local research that had highlighted its negative impact on domestic violence victims.⁹⁵ The National Government's promises in 1976 and 1978 to consider the extension of non-molestation orders went unrealized.⁹⁶ Despite strong support for non-molestation orders for de facto spouses, the Committee hearing submissions determined that this was a policy issue outside its mandate because of the difficulty of defining a de facto relationship and how this might effect other legislation governing marriage, such as property and custody laws.⁹⁷ De facto relationships had been excluded from the 1976 Matrimonial Property Act.⁹⁸ However, non-molestation orders were extended to cover former spouses and those applying for interim exclusive occupation. Importantly, the 1980 Family Proceedings Act restricted spousal immunity from rape so that a man could be convicted of raping his wife if they were living in separated residences: pre-1980, a separation order only restricted immunity.

⁹⁰ Barry Brill, NZPD, 1980, 432, p.2497.

⁹¹ Geoffrey Thompson, NZPD, 1980, 432, p.2492.

⁹² Reported in Angela Lee, 'The Development and Impact of the Domestic Protection Act 1982', MA thesis, Victoria University, Wellington, 1986, p.34.

⁹³ Lee, p.35.

⁹⁴ Ex parte means without notice to the other party, Family Proceedings Bill, Notes for Use in Committee, Domestic and Matrimonial Proceedings, 1980-1981, ABVP, 7410, W4927, box 252, LEG 15-1-3, pt 6, ANZ, Wellington.

⁹⁵ Research done by Battered Women's Support Group and possibly Dick Webb, National Guidance Council Compulsory Conciliation, Administration Domestic Proceedings Act 1968, 1970-1977, AAYE, 7433, W5048, box 74, ADM 24-6-68, pt 1, ANZ, Wellington.

⁹⁶ Minister of Justice, David Thomson, NZPD, 1976, 408, 1976, p.4515; David Thomson, NZPD, 1978, 420, p.2787.

⁹⁷ Barry Brill, NZPD, 1980, 432, p.2495.

⁹⁸ See Chapter 7.

In effect the Family Proceedings Act provided few innovations for meeting the needs of “battered women”. Any assistance it offered was tempered by conservative family discourses and the construction of domestic violence as physical conduct, as reflected in the frequent reference to “battered wives”. This was a popular term, used by the Battered Women’s Support Group (BWSG) and English judges.⁹⁹ The act endorsed the status of marriage in ‘preserving the family as the basic unit of society, together with a paramount concern for the welfare of children affected by marital breakdowns’ - essentially the discursively constructed ideal nuclear family, one informed by gender, class and ethnicity.¹⁰⁰ The exclusion of de facto relationships made this explicit. This meant that any solutions to domestic violence were tied to the maintenance of the nuclear family. Ultimately this sustained a social structure that perpetuated gender relations of subordination and domination rather than negotiation and compromise.¹⁰¹

Although occupation and tenancy orders could still be made, the courts had to consider the need for them as protection of the applicant and children, or in the children’s best interest. *Ex parte* orders could be made only if the other party had used violence and was thought likely to do so again. The difficulties of proving violence persisted. This meant a court’s view of the need for protection might not have coincided with that of a “battered” wife. De facto wives remained reliant on the 1957 Summary Proceedings Act for legal protection.¹⁰² As framed within family law, domestic violence was more about the family than women’s experiences. Groups such as the BWSG were regarded in the same light as religious groups and fathers’ rights groups.¹⁰³ While the sole ground of ‘disharmony’ and ‘irreconcilable differences’ meant an end to male control over the continuation of marriages, the removal of grounds relating to cruelty might mean that victims’ rights would be not only inadequately protected, but might cease to be recognized at all.¹⁰⁴ Current discourses that discouraged assigning blame and equated family outcomes with social ones,

⁹⁹ Judge Inglis makes reference to ‘battered women’ as a term coined by an English journalist and used by the English judiciary, B. Inglis, p.267.

¹⁰⁰ Barry Brill, NZPD, 1980, 432, p.2488.

¹⁰¹ Fran Cammock also made this observation in her thesis, Cammock, p.1.

¹⁰² See Chapter 8.

¹⁰³ Geoffrey Palmer, NZPD, 1980, 432, p.2489.

¹⁰⁴ Submission BWSG to Family Proceedings Bill no. 2, Domestic and Matrimonial Proceedings, 1980-1981, ABVP, 7410, W4927, box 252, LEG 15-1-3, pt 6, ANZ, Wellington.

meant that the “battered” woman’s needs were ignored, or when acknowledged, were subservient to the greater social good. This was indicated by the inclusion of “implied consent” in the non-molestation clause, which meant that a party subject to an order could claim that implied consent had been given for the parties to meet and therefore a breach had not occurred. Implied consent was powerful in undermining the protection conferred by a non-molestation order as can be seen in one police senior sergeant’s belief that ‘the possibility very often’ existed that the party alleged to be “offending” was ‘present on the property with implied consent’.¹⁰⁵

The family law package included two amendments to existing legislation. The Social Security Amendment Act established a ‘liable parent contribution scheme’, negating the need for maintenance hearings when a person was in receipt of a state benefit. While the intention was to make conciliation or reconciliation more possible, it meant that women who left violent marriages and went on the DPB were not forced into legal action, thereby reducing the risk of further violence. The 1980 Guardianship Amendment Act, which explicitly removed any gender presumption in determining which parent would have custody of a child, was more significant for women’s experiences.¹⁰⁶ It created a new offence of deliberate obstruction of access and custody. This indicated the growing recognition of the importance of a father’s role in child development, and that men could be competent primary caretakers.¹⁰⁷ As a result, fathers were encouraged to exercise their right of access.¹⁰⁸ Access orders appeared to increase to one to three days a week, compared to fortnightly access in the 1960s.¹⁰⁹

Although written in gender-neutral terms, the Guardianship Amendment Act was widely thought to counter the popular assumption that the ‘mother principle’ shaped custody decisions, but the 1968 Guardianship Act had already made the best interests

¹⁰⁵ Senior Sergeant in Charge, B. Courtney, to Chief Inspector of Lower Hutt, 2 August 1982, Domestic and Matrimonial Proceedings, 1982-1982, ABVP, 7410, W4927, box 252, LEG 15-1-6, pt 3, ANZ, Wellington.

¹⁰⁶ 1980 Guardianship Amendment Act, section 23(1), cit., B. Inglis, p.238.

¹⁰⁷ Davidson, pp. 96-97.

¹⁰⁸ Submission of NZ Committee for Children on Domestic Violence Bill, Statutes Revision Committee – Domestic Violence, 1981-1982, ABGX, 16127, W3706, box 41, ANZ, Wellington.

¹⁰⁹ Observation made by BWSG, ‘Family Court Accused of Lack of Protection’, *Press*, 5 October 1984, Private Papers of Doris Church.

of the child the sole ground for a custody order.¹¹⁰ The amendment appears a strong concession to fathers' rights and signalled the reassertion of male privilege through fatherhood discourses. There was no evidence to show the "mother principle" dominated in the courts. One investigation by the Human Rights Commission showed that in the Wellington District Court, mothers and fathers were awarded custody in similar numbers.¹¹¹ The Guardianship Amendment Act also provided for the appointment of legal counsel to children and encouraged increasing use of expert witnesses from the psychological and psychiatric professions, a reflection of rising children's rights and the construction of their welfare in psychological terms.

STRENGTHENING DISCOURSES SUPPORTING "BATTERED" WOMEN

Groups supporting "battered" women criticized the Family Proceedings Act's limited extension of non-molestation orders and lack of changes to counselling requirements. Long-time advocate for "battered" wives, John Church, had called the bill a 'legislative disaster of major proportions'.¹¹² Groups supporting victims of domestic violence conducted an intensive campaign for improvements to the law.¹¹³

In late 1980 the Justice Minister Jim McLay announced that new specific legislation around domestic violence would be introduced in early 1981 and would cover people living in 'domestic relationships'.¹¹⁴ In 1978 the Secretary of Justice had already acknowledged the lack of provision for de facto spouses, and said that legal spouses had to be living apart to apply for a non-molestation order was unacceptable.¹¹⁵ This

¹¹⁰ Atkin, p.149.

¹¹¹ 'Fathers Not Discriminated Against', newspaper clipping, 1980, Private Papers of Doris Church; Jim McLay reporting custody statistics in the Wellington District Court in 'Law Change Delay Concerns', *Sunday Times*, 29 June 1980, Private Papers of Doris Church; Warwick Gendall reported that in 1978 the mother succeeded in only 44% of all defended custody cases. In the remainder custody went to the father, both parents or grandparents, Robin Welsh, 'Will the New Family Law Make Divorce Too Easy', *New Zealand Woman's Weekly* (NZWW), 13 October 1980, p.6; Geoffrey Palmer, NZPD, 1980, 432, p.2489.

¹¹² 'Women Worried at Bill's Effects', *Star*, 9 September 1980, p.34.

¹¹³ Lee, p.35; Domestic Violence Bill, Report of the Justice Department, 22 March 1982, Statutes Revision Committee – Domestic Violence, 1981-1982, ABGX, 16127, W3706, box 41, ANZ, Wellington. This included the BWSG organizing public meetings to publicize the inadequate protection the new law afforded women, 'Women to Meet', *Press*, 28 September 1981, Private Papers of Doris Church; 'Protest at New Law', *Press*, 2 October 1981, p.4.

¹¹⁴ Jim McLay, NZPD, 1980, 433, p.3820.

¹¹⁵ Letter Secretary for Justice to Caucus Justice Committee, 22 August 1978, Domestic and Matrimonial Proceedings, 1977-1978, ABVP, 7410, W4927, box 251, LEG 15-1-3, pt 2, ANZ, Wellington.

view gained currency from 1980, propelled by the housing crisis, a belief that domestic violence was increasing, and greater publicity around domestic killings.

In Christchurch there was an ‘unprecedented consensus’ about the seriousness of the housing shortage, which was thought to be an outcome of a demographic bulge in the 18-25 year age group living away from home and the increasing numbers of relationship separations.¹¹⁶ There was nationwide evidence that the number of households had increased because of the latter.¹¹⁷ Refuges reported housing as a major problem: women were staying for longer periods and many were returning to violent partners because of a lack of alternatives.¹¹⁸ In 1981, nine of the 12 refuges that had affiliated to the National Council of Independent Women’s Refuges (NCIWR) reported problems with housing availability or high rentals.¹¹⁹ The Wellington Women’s Refuges reported that all three refuges in Wellington were full, women being housed in people’s homes because of demand.¹²⁰ The Salvation Army supported non-molestation orders for de facto spouses because it was concerned at the number of clients returning to abusive homes out of necessity.¹²¹ Local authorities were also placing pressure on central government to provide housing solutions.¹²²

The belief that domestic violence was increasing raised public concern. One magistrate commented that because of it non-molestation orders should be able to be imposed upon de facto husbands, but the courts were more or less powerless to stop de facto husbands seeing their wives.¹²³ This attracted attention in parliament. In 1980 the police acknowledged a growth of violent offending in the home, possibly due to

¹¹⁶ D. Rowlands cit., ‘Cheap Houses State’s Task’, *Press*, 6 May 1982, p.6. Although Rowland’s statement referred to Christchurch, the housing crisis was widespread in urban areas.

¹¹⁷ Home and Family Society (HFS) records, Christchurch branch, Address by city councillor, 5 May 1982, Series B, Minutes of AGMs, MB309, Macmillan Brown Library, Christchurch.

¹¹⁸ The Lower Hutt Family Refuge reported that some women had returned to a violent domestic situation and some 50 women had stayed at refuge for more than three months because of no alternative accommodation, ‘Forced Back to Violent Homes’, *Post*, 3 September 1981, Women – Violence, 1979-1980, AAYK, W3123, box 31, ANZ, Wellington.

¹¹⁹ Analysis of Information, received from refuges on problem areas, NCIWR, 1981, Organization and Departments – Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

¹²⁰ ‘Women’s Aid Centre Needs Cash Support’, *Post*, 2 March 1981, Women – Violence, 1979-1980, AAYK, W3123, box 31, ANZ, Wellington.

¹²¹ Submission by Salvation Army on Domestic Protection Bill, 21 June 1982, Statutes Revision Committee – Domestic Protection, 1982-1982, ABGX, 16127, W3706, box 41, ANZ, Wellington.

¹²² HFS records, Christchurch branch, Address by city councillor, 5 May 1982, Series B, Minutes of AGMs, MB309, Macmillan Brown Library, Christchurch.

¹²³ ‘Restraints Urged’, newspaper article, 21 February 1980, Private Papers of Doris Church.

the introduction of an ‘incident reporting’ system whereby all attended incidents were to be recorded and available for national analysis.¹²⁴ More women used refuges and more refuges were established.¹²⁵ Concerned at the escalation of violence, a group of women formed the Southland Women’s Support Group.¹²⁶ There was a sense of urgency. In 1981 the National Council of Women claimed that the need for women’s refuge centres was increasing all the time.¹²⁷ Judge Holland of the Auckland High Court claimed violence in marriage was becoming more prevalent and of greater concern to the courts.¹²⁸ MP Geoffrey Palmer said that evidence before the Select Committee made it clear that if nothing was done domestic violence would reach epidemic proportions.¹²⁹ In 1982 the Justice Minister announced that ‘there were about 15,000 cases of domestic violence reported to the police every year’ and this was thought to be ‘just the tip of an iceberg’.¹³⁰

Whether violence was actually increasing or whether there was an increase in reporting cannot be definitively ascertained. Media publicity had led many more women to seek assistance from the BWSG.¹³¹ Research suggests that some of the perceived increase may have been real. Kersti Yllo’s United States study suggested that the rapid change towards equality might have brought about a backlash by husbands.¹³² In his study of Australian law, Colin James has argued that separation violence rose as more women exploited legal and social changes to leave abusive

¹²⁴ Ben Couch, Minister for Police, NZPD, 1980, 433, p.3825. The intent to introduce this system was expressed to the Select Committee on Violent Offending, *Parliamentary Select Committee on Violent Offending: the Submissions of the Commissioner of Police, 29 May 1978*, Wellington: Government Printer, 1978, p.24. Note a previous Minister of Police, Mike Connelly, continued to paint a dark picture of stranger violence in an article in which he made no reference to violence in the home, ‘The Violent Society: N.Z. at a Threshold’, *Press*, 2 January 1980, Private Papers of Doris Church.

¹²⁵ ‘Increase in Women Seeking Refuge’, *Press*, 23 July 1982, p.10.

¹²⁶ ‘Refuge Welcomed by Support Group’, newspaper article dated early 1980s, Private Papers of Doris Church.

¹²⁷ ‘Refuge for Women a Great Need’, *Post*, 24 September 1981, Women – Violence, 1979-1981, AAYK, W3123, box 31, ANZ, Wellington.

¹²⁸ ‘Wife Sentenced to 12 Months Jail’, *Press*, 5 November 1982, Private Papers of Doris Church.

¹²⁹ Geoffrey Palmer, NZPD, 1982, 444, p.1133.

¹³⁰ Jim McLay, Minister of Justice, ‘The Capital Letter’, article, July 1982, Private Papers of Doris Church.

¹³¹ Doris Church said that after publicity about the plight of battered women, the number of women seeking refuge increased from three calls a week to thirty, ‘Increase in Women Seeking Refuge’, *Press*, 23 July 1982, p.10.

¹³² Kersti Yllö, ‘Political and Methodological Debates in Wife Abuse Research’, in Kersti Yllö and Michele Bograd, eds, *Feminist Perspectives on Wife Abuse*, Newbury Park, California: Sage Publications Inc., 1990, p.31.

marriages.¹³³ James' assertion is backed up by John Church's 1984 study in which 27% of the separated wives interviewed reported being assaulted after separation, 9% being raped after separation, and 9% declared the post-separation assaults to be the worst they experienced.¹³⁴ The views of one long-time fathers' rights advocate also indicated a link between rates of domestic violence and separations. Vocal father rights activist Barry Wood claimed that some husbands had already flattened homes with bulldozers and had either shot their wives or abducted their children at gunpoint. If there were further legislative changes, he predicted further increases in domestic violence.¹³⁵

The increasing publicity given to domestic killings encouraged further legal reform. The 'many brutal killings' were the main concern of the New Zealand Values Party in its submission on the 1981 Domestic Protection Bill to the Statute Revision Committee.¹³⁶ It is difficult to determine whether domestic killings had in fact increased because justice statistics did not make a distinction between domestic and stranger killings. The killings of Sarah Boyles and her lover John Taylor (1981), Leigh Minnitt (1980), Susan Keenan (1981) and Kay van Olphen (1981) were highly publicized.¹³⁷ The fact they occurred during or soon after separations demonstrated the need for protection in this volatile period. Feminists were quick to protest the legal support of male privilege evident in manslaughter verdicts that recognized a verbal insult (Leigh Minnitt's killing) and finding a separated wife in bed with another man (the killing of Sara Boyles and James Taylor), as provocation. Five women's groups protested against the Boyles's conviction and women's groups pressed for an appeal of the Minnitt case, presenting a petition containing 900 names to the Minister of Justice and holding a memorial for Leigh Minnitt to redress her character as it was

¹³³ Colin James, 'A History of Cruelty in Australian Divorce', Australia and New Zealand Law and History Society Conference, Hobart, December 2006, p.29. Retrieved December 2008 from www.anzlhsejournal.auckland.ac.nz.

¹³⁴ Church, *Violence Against Wives. Its Causes and Effects*, p.62.

¹³⁵ Submission by Barry Woods on Domestic Violence Bill 1981, Statutes Revision Committee – Domestic Violence, 1981-1982, ABGX, 16127, W3706, box 41, ANZ, Wellington; 'Men's Groups Opposed to Domestic Violence Bill', newspaper article dated 1981-1982, Private Papers of Doris Church.

¹³⁶ Submission by NZ Values Party on Domestic Protection Bill, Statutes Revision Committee – Domestic Protection, 1982-1982, ABGX, 16127, W3706, box 41, ANZ, Wellington.

¹³⁷ 'Nine Years Jail for Manslaughter', *Press*, 18 October 1981, 1981, p.6; the killing of Leigh Minnitt is discussed in Chapter 3; of Susan Keenan, see following discussion; the killing of Kay van Olphen is discussed in Chapter 2.

portrayed in the trial.¹³⁸ Kay van Olphen's death highlighted the inadequacy of police action to breaches of non-molestation orders. She was shot to death just 24 hours after her last call to Christchurch police.¹³⁹ Peter Howse murdered his ex-de facto partner Susan Keenan. He previously had been treated leniently by the courts for assaulting a partner.¹⁴⁰ Women's groups had protested and demanded the dismissal of the judge responsible for his comments regarding a de facto wife.¹⁴¹ The media was supportive of feminist protest, so much so that Judge Watts believed there was a press vendetta against him after his controversial comment to Howse that his de facto wife was 'no good' by virtue of her de facto status.¹⁴² In 1981 Howse was jailed for stabbing Keenan in the chest, but was released a year later on a technicality by the Court of Appeal. Three weeks later he stabbed Keenan to death, an event acknowledged in parliament.¹⁴³

These incidents further intensified the political need to address domestic violence.¹⁴⁴ Long after it was originally promised, the National Government introduced the 1981 Domestic Violence Bill. The delay indicated the level of anxiety around altering the balance of power in domestic relationships, The bill aimed to 'mitigate the effects of domestic violence'.¹⁴⁵ Remedies addressed protection and housing issues, which were shaped by discourses of child welfare and social justice. It was accepted that the establishment of women's refuges, the recommendations made by the Select Committee on Violent Offending, submissions to the Family Proceedings Bills and the intensive campaign by 'various battered women's support groups' had made the

¹³⁸ 'Protest About Summing-up', newspaper article, 11 October 1980, Private Papers of Doris Church; 'Minnitt Term Comparable', *Dominion*, 29 August 1980, p.3; the deputation included Marilyn Waring, 'Petition Over Trial of Minnitt', *Dominion*, 20 August 1980, Notable Cases, New Zealand Council for Civil Liberties, Ref. no. 93-122-4/Z, Alexander Turnbull Library (ATL), Wellington.

¹³⁹ John and Doris Church, *The Police and You. A Guide for the Victims of Domestic Crime*, Christchurch: Battered Women's Support Group, 1982, back cover dedication.

¹⁴⁰ Francis O'Flynn, NZPD, 1982, 448, 1982, p.4486.

¹⁴¹ The judge was alleged to have said, 'the only reason I will not send you to jail this time is that the woman assaulted was your de facto wife and by that very fact she is no good and won't be too upset you assaulted her', 'Protesters Call for Judge's Dismissal', *Press*, 20 August 1980, p.3; Christine Dann, *Up From Under. Women and Liberation in New Zealand, 1970-1985*, Wellington: Allen & Unwin, 1985, p.23.

¹⁴² 'Naughty Children Stump Judge', *Dominion*, 21 August 1980, p.1.

¹⁴³ Joanne Black, 'A Living Nightmare', *Listener Archives*, vol.215, no.3575, November 2008, p.1. Retrieved June 2008 from www.listener.co.nz/issue/3575/features/12227/a_living_nightmare.html; Francis O'Flynn, NZPD, 1982, 448, p.4486.

¹⁴⁴ Mark Henaghan and Pauline Tapp, 'Legally Defining the Family', in Mark Henaghan and Bill Atkin, eds, *Family Law Policy in New Zealand*, Auckland: Oxford University Press, 1992, p.33.

¹⁴⁵ David Lange, NZPD, 1981, 442, p.4230; Jim McLay, NZPD, 1981, 442, p.4227.

need apparent.¹⁴⁶ However, by excluding de facto spouses without children from applying for occupation orders, the bill did not provide for full and equal protection, indicating the power of discourses of child welfare for shaping political responses. MP Helen Clark suggested this was a means to exclude many de facto relationships, an exclusion which might contravene the 1977 Human Rights Commission Act.¹⁴⁷ Because of overwhelming support for equal protection and some legal inconsistencies, the bill was redrafted.¹⁴⁸ It was generally accepted that government could not control social trends, that any attempt to do so could bring hardship to individuals and that different family forms did not inevitably lead to social problems.¹⁴⁹

Thirty-one groups, mostly women's ones, made submissions to the Domestic Violence Bill 1981 and 25 to the Domestic Protection Bill 1982.¹⁵⁰ All but two submissions recognized that domestic violence was a serious problem that could and should be alleviated by legislation. Few objected to equal treatment of de facto spouses.¹⁵¹ Political support for the bill was greater than when Mary Batchelor had introduced her private member's bill in 1978; discourses of domestic violence were stronger. Political allies drew on discourses of neo-liberalism, which advocated less government in people's lives (such as in determining family formation); of feminism, which had exposed the situation of "battered" women; and of social justice, which encouraged fairer outcomes for all. Both Batchelor and Geoffrey Palmer observed that it was only when there were more women in parliament that action took place.¹⁵² The contribution to the debate of seven of the eight women MPs (six Labour and one National) indicated their importance to the passage of the bill.¹⁵³ MPs Ruth

¹⁴⁶ Jim McLay, NZPD, 1981, 442, p.4227; see discussion on how domestic violence became a mainstream issue, Chapter 8.

¹⁴⁷ Helen Clark, NZPD, vol. 444, 1982, p.1121-2.

¹⁴⁸ There were only two submissions against equal treatment of de facto spouses including Patricia Bartlett's Society for Community Standards. Even Catholic Social Services supported the extension to de facto spouses, 'Married and De Facto Treated Equally', *Press*, 5 November 1982, p.6; Geoffrey Palmer, NZPD, 1982, 444, p.1133.

¹⁴⁹ The Family Policy Report Group of the Social Development Council, p.15.

¹⁵⁰ Helen Clark, NZPD, 1982, 444, p.1121; Dail Jones, NZPD, 1982, 444, p.4484.

¹⁵¹ Report of the Department of Justice, 22 March 1982, Submissions by Equal Parental Rights Society and Barry Woods, Statutes Revision Committee, 1981-1982, ABGX, 16127, W3706, box 41, ANZ, Wellington; Helen Clark, NZPD, 1982, 448, p.4489.

¹⁵² Mary Batchelor, NZPD, 1982, 444, p.1131; Geoffrey Palmer, NZPD, 1982, 444, p.1132.

¹⁵³ Labour MPs Mary Batchelor, Helen Clark, Margaret Shields, Fran Wilde and Ann Hercus, and National MPs Ruth Richardson and Marilyn Waring spoke in support of the legislation, NZPD, 1981-1982.

Richardson and Fran Wilde have said that there were a lot of issues common to women on both sides of the House.¹⁵⁴ Women MPs were united in support of legislation that mitigated the effects of domestic violence and altered the balance of power between a victim and an offender, however this did not transcend party politics.¹⁵⁵ A number of male MPs were also supportive including Mike Moore, Frank O’Flynn, Jim McLay and Geoffrey Palmer. Moore claimed domestic violence was ‘one of New Zealand’s greatest problems’ and thousands of people were living their lives in daily terror and fear. He was so concerned about two cases in his electorate that he had referred them to the Ministers of Justice and Police.¹⁵⁶ Many supporters were to become leading neo-liberals in the 1980s and held the view that the government should not proscribe how others chose to live their lives, but should intervene when others constrained individual freedoms.

Local research, primarily carried out by John and Doris Church, was central to political responses. Both Mary Batchelor and Ruth Richardson worked closely with the BWSG whose influence was evident in the frequent references to it in parliamentary debates and in public submissions.¹⁵⁷ ‘Impressive’ evidence from the BWSG convinced Richardson that Parliament had a responsibility to remedy the situation.¹⁵⁸ The political activism of the wider refuge movement was also important. Marilyn Waring thought ‘the various forms of publicity about the work done by the crisis and refuge centres finally made the issue too big to allow Parliament to run away from it’.¹⁵⁹ The establishment of the NCIWR had enabled a national gathering of information to inform submissions on the bills. Evidence heard by the Select Committee had constructed domestic violence as a seemingly ever-increasing phenomenon.¹⁶⁰ The direct confrontation with the evidence, especially that given in

¹⁵⁴ Baysting, Campbell and Dagg, pp.82, 135.

¹⁵⁵ Margaret Shields, Ruth Richardson and Ann Hercus engaged in inter-party politics, NZPD, 1982, 444, pp.1123-5.

¹⁵⁶ Press statement, Mike Moore, 24 March 1982, Domestic and Matrimonial Proceedings, 1982-1982, ABVP, 7410, W4927, box 252, LEG 15-1-6, pt 3, ANZ, Wellington.

¹⁵⁷ Interview with Doris Church, 22 March 2008; observation of parliamentary debates on the bill, NZPD, 1982; and observation of a reading of public submissions on the two bills, Statutes Revision Committee – Domestic Violence, 1981-1982, ABGX, 16127, W3706, box 41, ANZ, Wellington.

¹⁵⁸ Ruth Richardson, NZPD, 1982, 444, p.1124.

¹⁵⁹ Marilyn Waring, NZPD, 1982, 444, p.1127.

¹⁶⁰ Geoffrey Palmer, NZPD, 1982, 444, p.1133.

oral form, had an emotional impact on some MPs. Some male MPs confessed to being astonished at what they heard.¹⁶¹

Police statistics made a significant impact on MPs Ruth Richardson, Simon Upton and Geoffrey Palmer.¹⁶² Richardson reported a 450% increase in police-attended domestic disputes from 1980 to 1981.¹⁶³ MP Garry Knapp repeated this.¹⁶⁴ It is unclear where the alarming figure came from, but annual police statistics did record a rise in reported domestic disputes from 15,221 in 1980 to 17,734 in 1981, a 17% increase.¹⁶⁵ It is difficult to assess how this impacted on rates for offences and prosecutions.¹⁶⁶ However, complaints of police inaction and the difficulties police faced in laying charges were acknowledged in the debate.

THE 1982 DOMESTIC PROTECTION ACT

The 1982 Domestic Protection Act came into force in March 1983.¹⁶⁷ This put New Zealand on a par with other jurisdictions such as Australia and Britain.¹⁶⁸ The act had bi-partisan support and brought together most of the civil remedies to domestic violence: non-molestation, occupation and tenancy orders. It gave full and equal protection to de facto spouses and introduced two new remedies, the most significant being the non-violence order, which could be obtained while the parties lived together or apart. The court could, if it was satisfied ‘the respondent had used violence against, or caused bodily harm to, the applicant or a child of the family’ and was likely to do so again, grant a non-violence order to restrain the other party from using violence against the applicant or a child of the family or from threatening to do so. In contrast to a breach of a non-molestation order, a breach of a non-violence order was not an

¹⁶¹ Oliver Riddell, ‘Bill Protects Against Domestic Violence’, *Press*, 21 May 1982, p.12; Simon Upton, NZPD, 1982, 444, p.1130; Jim McLay, article for the *Ensign*, 17 September 1982, Domestic and Matrimonial Proceedings, 1982-1982, ABVP, 7410, W4027, box 252, LEG 15-1-6, pt 3, ANZ, Wellington.

¹⁶² Ruth Richardson, NZPD, 1982, 444, p.1124; Simon Upton, NZPD, 1982, 444, p.1130; Geoffrey Palmer, NZPD, 1982, 444, p.1134.

¹⁶³ Ruth Richardson, NZPD, 1982, 444, p.1124.

¹⁶⁴ Garry Knapp, NZPD, 1982, 448, p.4493.

¹⁶⁵ Report of the New Zealand Police, AJHR, 1980, G.6, p.16; 1981, G.6, p.16.

¹⁶⁶ From 1979-1980, offences for male assaults against a female rose by 4% and prosecution rates by 1%. Offences for common assault rose by 13% with a 10% higher rate of prosecution; Report of the New Zealand Police, AJHR, 1980, G.6, p.17; 1981, G.6, p.17.

¹⁶⁷ The 1982 Domestic Protection Act, title. Retrieved November 2009 from <http://legislation.knowledge-basket.co.nz>.

¹⁶⁸ *Ibid*; See Lee for an extended discussion of developments in legislation governing domestic violence in other jurisdictions, Lee, pp.21-31.

offence, but it empowered police to take a violent partner into custody for a 24-hour period without a charge being laid. The detention period was intended to avert an escalation of violence by giving the violent party time to ‘cool’ down and the woman time to assess her options.¹⁶⁹ The second new remedy was a furniture order, which entitled the non-violent party to exclusive use of the house chattels.¹⁷⁰

The act embodied significant shifts in attitudes to domestic violence, foremost of which was that domestic violence was no longer a private affair, but was of concern to the whole community.¹⁷¹ It also separated out domestic violence from the framework of marriage: ‘the stability of marriage was one thing and the protection of women and children another’.¹⁷² This weakened the power of discourses of the family to shape constructions of domestic violence. As MP Dail Jones indicated, domestic violence was also different from stranger violence because there was usually no escape from violence in the home and the criminal law was inadequate to deal with it.¹⁷³ This new construction of domestic violence recognized that changing practices around domestic law, the absence of matrimonial fault and the emphasis on conciliation, were not appropriate for cases involving domestic violence. By separating out domestic violence from matrimonial law, the act extended legal protection to other domestic relationships. This reflected the government’s acceptance that equal provision did not endanger marriage, but on the contrary, ‘giving remedies to victims of violence and their children’ strengthened family life.¹⁷⁴ The belief that the family was a social rather than a biological unit underpinned this view. From a once non-interventionist stance, the law was now prepared to intervene. Shifting constructions of marriage, which accepted marriage breakdowns, supported this legal shift.¹⁷⁵

¹⁶⁹ Report of the Department of Justice on the Domestic Violence Bill, 22 March 1982, p.8, Statutes Revision Committee – Domestic Violence, 1981-1982, ABGX, 16127, W3706, box 41, ANZ, Wellington.

¹⁷⁰ The 1982 Domestic Protection Act, sections 4-12, 18, 30. Retrieved November 2009 from <http://legislation.knowledge-basket.co.nz>.

¹⁷¹ W.R. Atkin, Diane Sleek and Vivienne Ullrich, ‘Protecting the Victims of Domestic Violence – the Domestic Protection Act 1982’, *Victoria University of Wellington Law Review*, 1984, 4, p.122.

¹⁷² Geoffrey Palmer, NZPD, 1982, 448, p.4839.

¹⁷³ For example, Dail Jones, NZPD, 1982, 444, p.4487.

¹⁷⁴ Geoffrey Palmer, NZPD, 1982, 444, p.1133.

¹⁷⁵ Atkin, Sleek and Ullrich, p.122.

The legislation promised a new era for “battered” women. The BWSG rated it ‘in importance with the introduction of a woman’s right to seek a divorce’.¹⁷⁶ Judge Inglis said, ‘it is statutory notice that certain kinds of domestic conduct are not to be tolerated’.¹⁷⁷ Jim McLay said it ‘states that we reject violence in the home, whatever the victim’s status’.¹⁷⁸ The new law addressed two specific needs of victims that had been identified by refuge groups: housing and protection. Legal remedies provided a safe place to stay and a means of restraining further violence. The non-violence order, a quasi-criminal remedy, was a mix of older and newer beliefs around domestic violence. It was intended to counter problems in criminal law processes resulting from women’s reluctance to support criminal prosecutions and police disinclination to make arrests. It was also a specific remedy to violence occurring while the parties were still living together. It was hoped that by clearly delineating the role of police and the fact a breach of the order was not an offence and therefore was not about obtaining a conviction, police would be more willing to remove the violent party.¹⁷⁹ Conviction rates for male assault on females increased after the introduction of the legislation, which indicated the act had some impact on police and judicial attitudes.¹⁸⁰ However, in practice, the new legislation was limited in mitigating the effects of domestic violence.

Contesting and Contradictory Discourses

Angela Lee’s 1986 study of legal practices showed that, while cases could be brought to court more quickly and most applicants were granted at least an initial interim order, the courts’ tendency to give respondents a second chance did little to mitigate the effects of domestic violence.¹⁸¹ A 1992 study commissioned by the Victims’ Task Force confirmed that victims had not been protected as well as was intended. Furthermore, the authors claimed their study could have masqueraded as a ‘manual

¹⁷⁶ ‘Submissions Begin on Domestic Violence Bill’, *Press*, dated early 1982, Private Papers of Doris Church.

¹⁷⁷ B. Inglis, p.268.

¹⁷⁸ Jim McLay, NZPD, 1982, 1982, 448, p.4838.

¹⁷⁹ Simon Upton, NZPD, 1982, 444, p.1130.

¹⁸⁰ Gary Raumati Hook, ‘The Potential Influence of Legislation on the Criminality of Māori and Pacific Islanders in New Zealand’, *MAI Review*, 3, 2009, Article 1, pp.1-8. Retrieved 20 May 2010, from <http://www.review.mai.ac.nz>.

¹⁸¹ Lee, p.190.

for assailants on how to avoid the consequences of their spousal abuse'.¹⁸²

Throughout the 1980s, women's refuges and support groups continued to identify problems with police practices and court outcomes, especially around protection and, custody and access orders.¹⁸³ Some workers in the area of domestic violence in the 1980s felt that little actually changed over this time.¹⁸⁴ Raewyn Good, a founding member of the Wellington Women's Refuge, said that it was almost unheard of to get convictions for breaches of non-molestation orders.¹⁸⁵

The 1982 Domestic Protection Act dealt with problems arising from domestic violence; it did not announce any structural change. It was not a statement about women's right to live free from domestic violence, but rather embodied specific remedies to the problems of homelessness and the need for protection. This was indicated in the exclusion of parties who were not living together from applying for a non-violence order because the 'problem of homelessness' did not arise and 'a woman in this kind of relationship' was not 'trapped to the same extent' as women who shared homes with their partners.¹⁸⁶ Women in other domestic relationships, such as living with male siblings, were also excluded.¹⁸⁷

Although both feminist and non-feminist discourses of domestic violence were in wide circulation and informed the act, non-feminist discourses were dominant in legal

¹⁸² Busch, Ruth; Robertson, Neville and Lapsley, Hilary, *Protection From Family Violence. A Study of Protection Orders Under the Domestic Protection Act 1982 (Abridged)*, Victims Task Force: Wellington, 1992, pp.iv-vi.

¹⁸³ For example, South Auckland Family Refuge wrote letters to the Ministers of Welfare, Police and Justice protesting its experience of violent husbands gaining access to children, Minister of Social Welfare, Venn Young to Sue Neal, 2 February 1984 and Minister of Police Ben Couch to Sue Neal, 10 February 1984, DSW Correspondence and Information File, NCIWR records, Ref. no.2001-162, 251, ATL, Wellington; 'Family Court Accused of Lack of Protection', *Press*, 5 October 1984, Private Papers of Doris Church; 'Family Court in Strife as Custody Access Decisions are Attacked', *Press*, October 1984, Private Papers of Doris Church; the NCIWR said that the new Family Court did not always consider the welfare and interest of the children in access and custody decisions and 21 refuges said they had cases where fathers with a history of abuse towards the child were still being given access, 'Family Court Criticised', *Press*, 25 August 1982, Private Papers of Doris Church.

¹⁸⁴ Interview with Raewyn Good, 29 April 2008; interview with Doris Church, 22 March 2008; interview with Graham Duncan, 14 May 2008; interview with Ann Charlotte, 24 April 2008; interview with Joan Rotherham, 8 July 2008.

¹⁸⁵ Interview with Raewyn Good, 29 April 2008; justice statistics did not report convictions for breaches of non-molestation orders in this time period.

¹⁸⁶ Report of the Department of Justice on the Domestic Violence Bill, 22 March 1982, p.2, Statutes Revision Committee – Domestic Violence, 1981-1982, ABGX, 16127, W 3706, box 41, ANZ, Wellington.

¹⁸⁷ Some interpreted the act to cover other domestic relationships where the parties lived together, but this was not the judiciary's interpretation of it.

practices. Discourses that constructed violence as a temporary aberration, women as naturally vindictive and dishonest, combined with the discursive construction that a child's interest was best served by two parents to contest those that empowered women. The law was compelled to deal with domestic violence with "due process", which meant the civil liberties of a violent party contested the rights of the victim. The outcome was largely determined by the personal proclivities of male judges who 'naturally had different flashpoints'.¹⁸⁸ This combination tempered opportunities for the protection of women and child victims of domestic violence. The following analysis of counselling provisions, protection orders (non-violence and non-molestation orders) and custody and access processes demonstrates how contesting discourses tempered new opportunities for women victims to resist domestic violence.

Counselling

The 1982 Domestic Protection Act empowered the Court to recommend counselling 'of a specific nature' for either party. This was intended to address personal or alcohol and drug problems.¹⁸⁹ However, because there was no compulsion to attend, the courts were unable to exert effective pressure on an unwilling party.¹⁹⁰ The counselling provision was driven by police evidence that showed most batterings occurred between 10 p.m. and 1 a.m., especially on Thursday, Friday or Saturday nights, what Palmer termed 'weekend violence'.¹⁹¹ The belief alcohol caused domestic violence dominated.¹⁹² Although it was recognized that domestic violence had no class boundaries, older beliefs around class and ethnicity persisted. For example, white middle-class New Zealanders were less likely to be patronizing hotels which police routinely regulated, such as those in South Auckland. This meant that lower socio-economic classes were more likely to be policed under the new

¹⁸⁸ B.D. Inglis (Judge QC), *Practice and Procedure in the Family Court: Paper Presented at the Family Law Seminar, University of Auckland, 26 May 1984*, Auckland: Legal Research Foundation, 1984, p. 2.

¹⁸⁹ The Domestic Protection Act 1982, section 37. Retrieved November 2009 from <http://legislation.knowledge-basket.co.nz>; Jim McLay described the counselling provisions as meeting psychiatric or psychological issues, or drug and alcohol problems, Jim McLay, NZPD, 1981, 442, p.4229.

¹⁹⁰ This was later amended in the Domestic Protection Amendment Act 1986. Retrieved November 2009 from <http://legislation.knowledge-basket.co.nz>.

¹⁹¹ 'Aid for Row Victims Sought', newspaper article, 24 September 1981, Women – Violence, 1979-1980, AAYK, W3123, box 31, ANZ, Wellington; 'Domestic Violence Bill Scrapped', *Press*, 14 May 1982, p.4.

¹⁹² Simon Upton, NZPD, 1982, 444, p.1130; see discussion under subtitle 'The Domestic Violent Event' in this chapter.

legislation. This effect can be seen in Gary Raumati Hook's finding that although the legislation had an effect on all conviction rates for male assault against a female, it had a greater impact on Maori rates.¹⁹³ Hence the legislation encouraged a change in attitudes to domestic violence among representatives of the justice system, from a private affair to one needing intervention, but class discourses embedded in domestic violence discourses disciplined Maori men more than Pakeha men.

In practice, counselling was more likely to be governed by the Family Proceedings Act, which emphasized conciliation as the best means to resolve issues.¹⁹⁴ While the courts acknowledged that conciliation could be inappropriate in cases of domestic violence and there was plenty of information showing it could be 'useless or even positively harmful', judges continued to interpret it as a relationship issue that could be resolved in a joint counselling situation.¹⁹⁵ Judge Inglis said that often in a hearing for a non-molestation order, the matter that is really troubling the parties then surfaces and can be dealt with by counselling.¹⁹⁶ Judge Trapski distinguished between criminal cases and 'curable domestic problems'.¹⁹⁷ Judge Gilbert believed it took 'two to tango'.¹⁹⁸ Principal Family Court Judge Mahony's discussion on domestic violence in the first *Family Law Bulletin* in 1985 focused primarily on counselling as a remedy.¹⁹⁹ Viewing domestic violence as a relationship issue undermined women's protection from future violence and intimidation by violent or abusive partners.

Protection Orders

Non-molestation and non-violence orders were designed to protect women from further violence. The main difference was that a breach of a non-molestation order

¹⁹³ Hook, pp.3-7.

¹⁹⁴ Atkins, Sleek and Ullrich, p.132.

¹⁹⁵ Ibid.

¹⁹⁶ *Ex-parte* meant without notice to the other side and on notice meant the other party had an opportunity to defend the application, Judge Inglis QC, *Practice and Procedure in the Family Court*, p.8.

¹⁹⁷ Judge Trapski, Principal Family Court Judge, submission to Domestic Violence Bill, 23 February 1982, Statutes Revision Committee, 1981-1982, ABGX, 16127, W3706, box 41, ANZ, Wellington. To be fair, Trapski also criticized the 24 hour arrest period as being inadequate in cases of serious assault and wanted a penalty attached to a breach of a non-violence; Report of the Justice Department on Domestic Violence Bill 1981, 22 March 1982, Statutes Revision Committee, 1981-1982, ABGX, 16127, W3706, box 41, ANZ, Wellington.

¹⁹⁸ Judge Gilbert, *Simpson v Simpson 1986*, *Family Reports of New Zealand*, vol. 2, 1986. Retrieved January 2010 from <http://www.brokkersonline.co.nz>.

¹⁹⁹ Principal Family Court Judge Mahony, 'Editorial', *The Family Law Bulletin*, June 1985, vol.1, pt 1, p.2.

invoked criminal justice processes, whereas a breach of a non-violence order did not. It was thought that an order that did not invoke criminal sanctions would do less harm to a relationship, and increase the likelihood that the violent party would continue to financially support the victim.²⁰⁰ Police submissions that justified early release when it enabled reconciliation indicated the discursive imperative towards reconciliation.²⁰¹ A breach of a non-violence order also did not turn ‘the partner into a criminal with a record’, which avoided turning large numbers of men into instant criminals.²⁰² By providing for an order without penalty, the Domestic Protection Act decriminalized domestic violence in some instances. Some refuge groups claimed this reduced the seriousness of domestic violence.²⁰³

Much of the debate around the non-violence order focused on its reduction of a person’s civil rights.²⁰⁴ Civil liberties discourses, which had contributed to the construction of domestic violence as a social problem, had contradictory effects. This is indicated in the Social Credit Party simultaneously endorsing protection for women from domestic violence and expressing concern about the legal impact on men’s civil liberties.²⁰⁵ It was logical that discourses of civil liberties should shape legal processes, because the rule of law and due process upheld the justice system. Rules such as a right to a defence, a right to remain silent, and limits on police detention had been developed to protect individuals from abuses of the law and maintained the law’s institutional power. Compromising civil liberties would undo the law. This meant that the civil liberties of a violent party shaped proceedings and would contest support for the needs of victims.

²⁰⁰ Jim McLay, NZPD, 1981, 442, p.4227; Dail Jones, NZPD, 1982, 444, p.4485. It was probably for similar reasons that Jim McLay was ambivalent about removing spousal immunity for rape, Jim McLay, ‘Opening Address’, in Hilary Haines and Max Abbott, eds, *Rape in New Zealand. Papers Presented at the Rape Symposium, Wellington, September 1982*, Wellington: Mental Health Foundation, 1983, p.10.

²⁰¹ Domestic Violence Bill, Report of the Department of Justice, 22 March 1982, p.9, Statutes Revision Committee – Domestic Violence, 1981-1982, ABGX, 16127, W3706, box 41, ANZ, Wellington. Based on a woman victim’s perspective, the Department of Justice did not agree, Department of Justice to Statutes Revision Committee, 19 July 1982, p.6, Statutes Revision Committee – Domestic Protection, 1982-1982, ABGX, 16127, W3706, box 41, ANZ, Wellington.

²⁰² Article by Minister of Justice, Jim McLay for *Ensign*, 17 September 1982, Domestic and Matrimonial Proceedings, 1982-1982, ABVP, 7410, W4027, box 252, LEG 15-1-6, pt 3, ANZ, Wellington.

²⁰³ For example, submission by South Auckland Family Refuge, 10 February 1982, Statutes Revision Committee – Domestic Violence, 1981-1982, ABGX, 16127, W3706, box 41, ANZ, Wellington.

²⁰⁴ For example, Dail Jones, NZPD, 1982, 444, p.4485; Helen Clark, NZPD, 1982, 444, p.4489.

²⁰⁵ Garry Knapp, NZPD, 1982, 448, p.4494.

In the case of non-violence orders, concern with civil liberties was heightened because of the perceived ‘draconian’ consequences on the violent party. Judge Inglis argued that it would be difficult to think of any other ‘powers which - in the absence of proof of a criminal offence - could have a greater impact on civil liberties and property rights’.²⁰⁶ Some specific protections were put in place, for example, statutory direction for police enforcement, the right of detainees to make a telephone call, and the right to request to appear before a judge.²⁰⁷ Some comfort was taken in the fact that both British and Australian legislation had authorized detention periods of 24 hours for a breach of an injunction.²⁰⁸ But protection of civil liberties meant the non-violence order could only be an emergency measure. Incidents of past violence were not sufficient to show an applicant needed protection of an order: the Court had to be satisfied that the violent party was likely to be violent again.²⁰⁹ In one judge’s view this meant it had to be ‘more likely than not’.²¹⁰

The non-violence order relied on the construction of domestic violence as a temporary aberration, one that usually involved alcohol or stress.²¹¹ This meant that after a period of detention the violent party was thought unlikely to continue to be violent or make a reprisal against the other party.²¹² This view ignored power relations and obscured the need for future protection of women and children. The understanding that alcoholism was a disease rather than a moral failing also encouraged a more

²⁰⁶ B. Inglis, *Sim and Inglis Family Court Code*, p. 268; Judge Inglis was a particularly influential family court judge. He penned the first family court law guide, had several papers published and a significant number of reported family court judgements were his.

²⁰⁷ Report of the Department of Justice on Domestic Violence Bill, 22 March 1982, p.9, Statutes Revision Committee – Domestic Violence, 1981-1982, ABGX, 16127, W3706, box 41, ANZ, Wellington.

²⁰⁸ *Ibid.*, p.10.

²⁰⁹ The 1982 Domestic Protection Act, section 6. Retrieved November 2009 from <http://legislation.knowledge-basket.co.nz>.

²¹⁰ B. Inglis, *Sim and Inglis Family Court Code*, p. 272.

²¹¹ For example, Hercus interpreted police reports of domestic violence to ‘clearly’ indicate that much of it was ‘alcohol related’, Ann Hercus, NZPD, 1982, 444, p.1126; Jerry Wall interpreted the 24 hour ‘cooling off’ period as a means ‘to deal with the grossly intoxicated person’, Jerry Wall, NZPD, 1981, 442, p.4230; McLay believed that alcohol contributed to much more than 50% of domestic violence incidents, Jim McLay, NZPD, 1981, 442, p.4231; police described ‘domestic disputes’ as mostly provoked by alcohol, couples with a basic inability to calmly settle a disagreement, ‘Police Tread Warily In Domestic Disputes’, *Herald*, 18 October 1982, Domestic and Matrimonial Proceedings, 1982-1982, ABVP, 7410, W4927, box 252, LEG 15-1-6, pt 3, ANZ, Wellington.

²¹² Domestic Violence Bill, Report of the Department of Justice, 22 March 1982, p.9, Statutes Revision Committee – Domestic Violence, 1981-1982, ABGX, 16127, W3706, box 41, ANZ, Wellington.

sympathetic view of the violent party.²¹³ It meant a violent party was ‘not abnormal enough to be considered a psychopath and not responsible enough to be considered a criminal’.²¹⁴

The Domestic Protection Act did encompass non-physical conduct as violence, but it had to present a real risk to personal safety, which was difficult to prove.²¹⁵ However, the general understanding was that violence was physical conduct. The Department of Justice considered that violence meant physical violence in this context.²¹⁶ Judge Inglis referred to the act as the ‘battered wives’ statute’.²¹⁷ Geoffrey Palmer observed that, without a definition, violence would ‘receive its natural meaning...exercise of physical force so as to inflict injury on or damage to persons or property’.²¹⁸ This understanding did not encompass sexual, verbal or psychological violence.²¹⁹ It meant only women who could prove past physical violence that strongly indicated future violence could obtain non-violence orders. This was, however, only the first hurdle. Conservative discourses of marriage and gender reinforced those that compromised women’s safety. Judge Inglis, whose views were widely distributed, simultaneously believed that the new provisions fulfilled a valuable purpose, and that they were frequently used inappropriately.²²⁰ He described a typically inappropriate situation as one where a woman had been beaten up and had left home with the children. This was a ‘crisis’ situation in which the woman needed ‘emergency relief’.²²¹ Inglis claimed that the woman’s affidavit would be ‘designed, understandably, to create an atmosphere of maximum sympathy and urgency’ and that the woman would often ‘be waiting in the wings so that the Judge’ could see the marks of the violence himself.²²² Inglis’s narrative reconstructed proving violence as ‘designing’. That women were

²¹³ McLay makes reference to pending legislation regarding the decriminalization of public drunkenness, Jim McLay, NZPD, 1981, 442, p.4231.

²¹⁴ James Ptacek, ‘Why Do Men Batter their Wives?’, in Kersti Yllö and Michele Bograd, eds, *Feminist Perspectives on Wife Abuse*, Newbury Park, California: Sage Publications Inc., 1990, pp.152-3.

²¹⁵ *Ibid.*

²¹⁶ Report of the Department of Justice on Domestic Violence Bill, 22 March 1982, p.6, Statutes Revision Committee – Domestic Violence, 1981-1982, ABGX, 16127, W3706, box 41, ANZ, Wellington.

²¹⁷ B. Inglis, *Sim and Inglis Family Court Code*, p.267.

²¹⁸ Geoffrey Palmer, NZPD, 1982, 448, p.4492.

²¹⁹ However, the question was addressed in a rape study commissioned by Jim McLay in the same year.

²²⁰ B. Inglis, *Practice and Procedure in the Family Court*, p.3.

²²¹ *Ibid.*, pp.3-4.

²²² *Ibid.*

naturally dishonest was widely held among the legal community.²²³ Inglis considered the other party's view (the husband's) was also important because orders were 'powerful weapons' of 'great tactical potential'.²²⁴ In this instance, civil liberties discourses protected male privilege.²²⁵ Similarly, a police inspector said that there would have to be convincing evidence to detain a man for a 'cooling off' period because such action would tend to favour the woman.²²⁶

The belief that women were naturally dishonest reinforced the older construction of women provoking violence. Inglis claimed that some women deliberately manipulated men into being violent so the women could end the relationship and that some women 'invited' violence through their conduct.²²⁷ Similarly, police had expressed concern around arresting men for breaches of a non-molestation order because women might abuse the 'implied consent' clause. This meant that women had no real right to negotiate with their husbands, because if a woman continued a discussion once a man had said enough, she could be accused of 'nagging'.²²⁸ The excuses for male violence offered up by these various constructions supported giving men second chances, an effect observed in Lee's study of the 1982 Domestic Protection Act.²²⁹ It took nine breaches of a non-molestation order in one case before a judge decided that 'the time had come for a deterrent sentence' for a man who had threatened to do grievous harm to his divorced wife.²³⁰

A greater acceptance of marriage breakdown had enabled an acceptance of legal remedies to domestic violence. However, the continuation of separation orders in the 1980 Family Proceedings Act limited this. The first 1978 Family Proceedings Bill had not included separation orders because they were thought unnecessary given the new

²²³ Judith Moore claimed that Inglis' views received considerable attention and appeared to have struck a chord with fellow judges and legal associates who shared his views that women were dishonest. Judith Mary Moore, 'Is a Non-Molestation Order Enough? – Women's Experiences of the Family Court', MA thesis, Victoria University, Wellington, 1989, p.11.

²²⁴ B. Inglis, *Practice and Procedure in the Family Court*, pp. 3-4.

²²⁵ Ibid.

²²⁶ 'Arrests Not Automatic', *Press*, 25 March 1982, Private Papers of Doris Church.

²²⁷ B. Inglis, *Practice and Procedure in the Family Court*, p.4.

²²⁸ R. Emerson and Russell P. Dobash cit., in David Adams, 'Treatment Models of Men Who Batter: A Profeminist Analysis', in Kersti Yllö and Michel Bograd, eds, *Feminist Perspectives on Wife Abuse*, Newbury Park, California: Sage Publications Inc., 1990, pp.186-7.

²²⁹ Lee, p.190.

²³⁰ McQuillan was sentenced to a two and a half year jail term, 'Judge Jails Man for Pestering Ex-wife', *Star*, 7 December 1982, Private Papers of Doris Church.

approach to marriage breakdown, but it was conceded that there might have been instances where an individual party needed one.²³¹ However, this maintained the legal impulse to preserve marriage, which meant ‘efforts to persuade’ a wife to return could be interpreted under the law as reasonable and not molestation.²³²

The belief that child welfare was best served by two parents who were able to communicate about questions of upbringing contested women’s applications for non-molestation orders.²³³ Granting a non-molestation order meant a woman could evade reconciliation or conciliation, so the need for protection had to be weighed against the order’s impact on conciliation and the interests of the children. Inglis said he seldom granted non-molestation orders *ex parte* for this reason.²³⁴ Concerns with conciliation also meant it could be difficult to maintain a non-molestation order.²³⁵ Worse still, an application for a non-molestation order could put women’s safety at further risk. It was possible that an application on the grounds that a father was ‘besetting’ the children could be interpreted as the woman creating ‘unreasonable difficulties over access or the upbringing of the children’, which indicated the need for an adjustment of custody or access orders rather than a non-molestation order.²³⁶

Fatherhood Discourses

Discourses of child welfare obstructed women and children’s protection most obviously in legislation governing custody and access. While the new law recognized that joint counselling could be inappropriate in cases of domestic violence, custody and access applications continued to be heard under the child-focused 1968 Guardianship Act, which did not. This act relied on a construction of domestic violence as a relationship issue and temporary aberration. The emphasis on ‘no-fault’ meant domestic violence was irrelevant to reaching agreement around child arrangements.²³⁷ Judge Inglis believed that spousal conduct in a difficult matrimonial

²³¹ Report of the Department of Justice on Family Proceedings Bill, 1 May 1979, p.8, Domestic and Matrimonial Proceedings, 1977-1979, ABVP, 7410, W4927, box 251, LEG 15-1-3, pt 3, ANZ, Wellington.

²³² *Beswick v Beswick* 1984, *New Zealand Family Law Reports* 3, 289, p.6. Retrieved 22 February 2010, from <http://www.lexisnexis.com.ezproxy.massey.ac.nz/nz/legal/frame...>

²³³ B. Inglis, *Sims and Inglis Family Court Code*, p. 279.

²³⁴ *Ibid*; B. Inglis, *Practice and Procedure in the Family Court*, pp.3-4, 8.

²³⁵ Lee, p.61.

²³⁶ B. Inglis, *Sims and Inglis Family Court Code*, p. 279.

²³⁷ Davidson, p. 128.

situation did not indicate how a parent would act in the future.²³⁸ The ‘no-fault’ concept discouraged the recognition of domestic violence for fear of re-igniting it.²³⁹ A focus on matrimonial fault was thought to distract attention from the welfare of the child.²⁴⁰ This discursive effect is indicated in a 1982 Family Court Practice Notice, which discouraged the making of affidavits for applications for custody or access, and directed that if such applications did proceed to a hearing (that is, conciliation was not reached), they should focus on how the present and future needs of children should be best met.²⁴¹ This meant a woman’s experience of domestic violence and the impact this might have had on her parenting ability, her well-being and safety, which might have influenced the success of her application for custody, would not be acknowledged. This resulted in court decisions that further disadvantaged abused women.²⁴²

Shifting views of fatherhood reinforced discursive constructions that undermined a woman’s need of protection. In the 1970s the question of men’s roles had followed the questioning of women’s roles in the 1960s, although to a lesser degree. Non-feminist voices demanded greater father involvement with children based on equal rights and the belief that two parents were best for child welfare. Several groups, mostly but not exclusively male, formed to fight for fathers’ rights, including the Equal Parental Rights Society and the Family Law Reform Association. The latter campaigned for law reform to prevent men losing homes, income and children.²⁴³ Defenders of fathers’ rights often drew on older constructions of women as vindictive, malicious or mentally unsound. *Truth* ran several articles claiming to show women using custody and access vindictively.²⁴⁴ The Equal Parental Rights Society claimed that women’s refuges broke the law by ‘secreting children away from their fathers for long periods’. The group disputed that most residents of women’s refuges had been physically abused, and claimed they were emotionally disturbed and evading marital

²³⁸ B. Inglis, *Sims and Inglis Family Court Code*, p.238.

²³⁹ Although an observation made of the Australian courts, it was equally applicable to those in New Zealand, James, p.29.

²⁴⁰ B. Inglis, *Practice and Procedure in the Family Court*, p. 19.

²⁴¹ Related in B. Inglis, *Sims and Inglis Family Court Code*, p. 236.

²⁴² James, p.29.

²⁴³ The Family Law Reform Association, *The Case for Family Law Reform in New Zealand*, Auckland: Family Law Reform Association, 1975, pp.1-2.

²⁴⁴ For example, ‘Let Him Pay’, *Truth*, 9 January 1973, p.9; ‘Kids Pawns in Custody War Games’, *Truth*, 2 September 1975, p.4.

responsibilities.²⁴⁵ The Law Society advised legislators to take great care with *ex parte* orders to avoid abuse by ‘malicious’ or ‘unstable’ wives.²⁴⁶ These gender constructions were powerful enough to deny empirical realities. Although the Law Society claimed that non-molestation orders were sometimes obtained too readily on the word of the wife,²⁴⁷ justice statistics indicate that it was usually difficult to obtain a non-molestation order.²⁴⁸ Civil liberties discourses reinforced those of fatherhood. MP Derek Quigley criticized provision in Mary Batchelor’s bill for excluding access, although conceding its limited circumstances, because it was a denial of a basic right.²⁴⁹

As Lynne Segal has observed, it seemed no coincidence that the emphasis on fatherhood occurred at the same time as men’s control over women and children declined.²⁵⁰ As women’s capacity to leave oppressive marriages increased, access and custody became ‘the new battlegrounds’ in family law.²⁵¹ In part, fathers’ rights groups were a reaction to women’s growing independence and the loss of male privilege.²⁵² This concern was often a subtext of discourses that defended the more traditional family. Several fathers’ rights groups made submissions to the DPBRC in which they expressed concern over the increasing numbers of solo mothers and DPB beneficiaries.²⁵³ In an article on custody, David Young perceived a ‘misogynous taint’ in the psychologist Craig Jackson’s campaign for father custody.²⁵⁴

²⁴⁵ Debbie Barber, ‘Refuges Break Law: Fathers’, *Evening Post*, 29 April 1981, Organization and Departments – Women Refuge, 1976-1981, AAYE, 7433, W5048, box 177, O&D 144-0, pt 1, ANZ, Wellington.

²⁴⁶ Department of Justice to Caucus Justice Committee, Domestic Violence, 14 August 1978, Domestic and Matrimonial Proceedings, 1977-1978, ABVP, 7410, W4927, box 251, LEG 15-1-3, pt 2, ANZ, Wellington.

²⁴⁷ *ibid.*

²⁴⁸ For example, in 1975, 9% of non-molestation orders were successful, and in 1977, 11%, as discussed in Chapter 8.

²⁴⁹ Derek Quigley, NZPD, 1978, 420, p.2790.

²⁵⁰ Lynne Segal, ‘The Good Father: Reconstructing Fatherhood’, in Bonnie J. Fox, ed., *Family Patterns, Gender Relations*, Ontario: Oxford University Press, 1993, p.268.

²⁵¹ Geoffrey Palmer, NZPD, 1980, 432, p.2489; debate around fathers’ rights in access and custody disputes was canvassed in David Young, ‘At Emotional Risk’, *Listener*, vol.86, no.1970, 24 September 1977, pp.14-15.

²⁵² A report prepared for the DSW identified a male fear of solo mothers because of the ideas of independence they might give their wives, C.R. Wylie, *Factors Affecting the Participation in the Workforce of Female Heads of One Parent Families. A Report Prepared for the DSW*, Wellington: Department of Social Welfare, 1980, p.25.

²⁵³ Submission by Family Law Reform Association, Christchurch branch, to DPB Review Committee, October 1976, AADK, ACC, W3513, bundle 4, ANZ, Wellington.

²⁵⁴ David Young, p.14.

Changing fatherhood discourses, institutionally supported, offered solutions to social problems that confronted the state. The DPBRC had expressed concern about the new problem of “fatherless” children and “childless” fathers and the difficulty of keeping fathers engaged with their children after separation. The Social Development Council’s discussion of a new masculinity demonstrated how these changing discourses served social stability. Through ‘housework and caring’ a man could ‘spend more time with his children, build up better relationships with them, and become more accepted by his children as an integral part of their lives’.²⁵⁵ It would improve marital relationships and diminish the importance of the role of ‘successful provider’, which would reduce pressure on men.²⁵⁶ Rising unemployment and the loss of men’s exclusive preserve as the breadwinner reinforced this view. Most importantly, this version of fatherhood gave ‘a man a place where he belongs, interests in the present, and hopes and plans for the future’ and it provoked ‘him to use his energies by giving him a motive and harnesses them to socially useful goals’.²⁵⁷ As traditional gender constructions were recognized as isolating men from families, and as more men were set adrift through marriage breakdown, the new fatherhood could re-attach men to the social body.

Fathers, it was claimed, were an important influence on whether or not a child became delinquent and they protected children from over-protective mothers who hindered child development.²⁵⁸ Daughters needed fathers to gain a realistic impression of male behaviours so they ‘were less likely to form either an idealized image of men or an equally unreal negative image which would leave them to reject men’, even if fathers were sexist role models. Boys needed fathers because without them they might ‘develop problematic behaviour’ such as ‘aggression, violence, and hostility towards women’.²⁵⁹ Fathers were therefore, crucial to maintaining a social order that privileged the heterosexual family unit.

²⁵⁵ Social Development Council, *Housework and Caring Work: Can Men Do Better?* Wellington: Social Development Council, 1977, p.3.

²⁵⁶ Ibid, p.4.

²⁵⁷ Ibid; these views were shared by the psychologist Paul Davidson, see Davidson, pp.98-99.

²⁵⁸ Social Development Council, p.23.

²⁵⁹ Ibid, p.22.

Fatherhood discourses were a powerful import in domestic law cases. Although the law had made it easier for wives to leave oppressive marriages, it could equally discipline “disobedient” wives and preserve ideal families and male power through law governing custody and access. In *Feasey v Feasey* 1984, a wife’s application for a separation order was declined because the court did not find sufficient evidence ‘to excuse the wife from her duty of cohabitation and to justify the disruption of the children’s home and security’. If the wife left the marriage anyway, that would have a bearing on custody outcomes.²⁶⁰ Although there were no recorded allegations of domestic violence in that case, the judgment implied that leaving a marriage without “reasonable” justification in the court’s eyes could still affect a case for custody. The threat of losing custody was a means for the courts to keep relationships together.²⁶¹

Decisions over custody and access were extremely important to women’s capacity to forge independent lives free from domestic violence. In John Church’s 1984 study, of 59 cases involving “battered” separated mothers, 23 husbands formally applied for custody. Of these, three cases were dropped before they got to court, in eight cases custody went to the mother, in six cases, to the father, and six cases were undecided at the time.²⁶² The pattern of abusive men applying for custody as a means to continue harassment of women persisted and went largely unrecognized.²⁶³

The dominant view was that a violent spouse was not necessarily a violent parent.²⁶⁴ The courts were not concerned with how one party had performed as a spouse, but on the party’s likely performance as a parent.²⁶⁵ Thus the courts trivialized violence against a mother. Although custody was child-focused, fatherhood discourses successfully contested psychological research that claimed the non-custodial parent had much to offer the child through access visits, as long as the contact did not give rise to continuing conflict, or become a battleground for pursuing matrimonial

²⁶⁰ *Feasey v Feasey* – (1984) 3 NZFLR 97, p.1. Retrieved November 2009 from www.lexisnexis.com.ezproxy.massey.ac.nz/nz/legal/frame...

²⁶¹ Mark Henaghan, ‘Legally Rearranging Families’, in Mark Henaghan and Bill Atkins, eds, *Family Law Policy in New Zealand*, Auckland: Oxford University Press, 1992, p.152.

²⁶² Church, *Violence Against Wives: Its Causes and Effects*, p.64.

²⁶³ See Chapter 5 for discussion on custody under subheading ‘Custody’.

²⁶⁴ For example, Anne Caseley, counselling co-ordinator for the Christchurch Family Court, reported in, ‘Crisis Court for Marriage Failures’, newspaper article, 31 October 1984, Private Papers of Doris Church.

²⁶⁵ B. Inglis, *Sims and Inglis Family Court Code*, p.238.

disputes.²⁶⁶ Non-consideration of a husband's violence against a wife meant that the courts often failed to protect women and children. In 1984 it appears that there were no cases where the court had refused a violent partner regular and extended access with children of the relationship.²⁶⁷ Furthermore, a failure to consider the effects of men's violence against wives on children's welfare undermined the success of mothers' applications for custody if they were unable to care for children in the first few weeks of separation. If the husband picked up the reins and coped for a while he had a good chance of permanent custody.²⁶⁸ Women who fled violent homes without their children risked losing everything.

Even in the case of violence against children, discursive constructions that directed the court's focus to the future combined with the understanding of domestic violence as a temporary aberration arising from a stressful situation meant that past violence against children was often ignored. The BWSG claimed that the courts almost always granted access to fathers who had been violent to wives or children during the marriage.²⁶⁹ This cannot be definitively ascertained. Securing a child's access to a father served social stability by tempering a woman's independence and tying men into the social order. This discursive construction is indicated in Judge Inglis's view of access: 'a matter of a guardian's duty and responsibility' and 'a means of providing checks and balances to ensure the child's welfare in a situation where' the custodial parent 'can mistakenly assume that custody involves sole and absolute control'.²⁷⁰ Legal discourses compelled parents to co-operate. Separated parents had to 'keep their lines of communication open', not just because this was better for the children, but because their legal obligations and responsibilities as joint guardians required them to do so.²⁷¹ However, although in this way fatherhood and child welfare discourses disciplined both women and men, in cases involving domestic violence, they often benefited the violent party.

²⁶⁶ Paul Davidson, 'Custody and Access – A Brief Overview of Psychological Research on Custody and Access in the Separating Family', *New Zealand Law Journal*, February 1984, p.62.

²⁶⁷ The BWSG made this claim and the Christchurch Family Court Counselling Co-ordinator concurred, 'Crisis Court for Marriage Failures', newspaper article, 31 October 1984, Private Papers of Doris Church.

²⁶⁸ 'How to Break Up Without Cracking Up', NZWW, 23 February 1981, p.20, Private Papers of Doris Church.

²⁶⁹ 'Battered Wives Tell Tales of Terror', *Waikato Times*, 11 May 1981, Private Papers of Doris Church.

²⁷⁰ B. Inglis, *Sims and Inglis Family Court Code*, p.223.

²⁷¹ *Ibid.*

The response of one unnamed Family Court judge to claims that the courts were putting people in danger, shows how changing discourses continued to obscure domestic violence. He said that no judge would permit access if there was a danger of violence against a child being repeated, but that the court would ask if the violence was proved, if it was likely to continue once the parties were living apart, and if it was so damaging to the child as to consider depriving a child of his father. While domestic violence was a very important factor, there were many factors to be considered.²⁷² Of interest, because it demonstrates the persistence of older constructions of morality that disciplined men and women, a father could be denied access because he was a homosexual.²⁷³ In regard to access arrangements around holidays, Christchurch Police Chief Superintendent Mr Jamieson said that there was a requirement for fairness on both sides; it was hard to ‘cut a man off’ from his children at Christmas, regardless of past violence.²⁷⁴ This position totally privileged fathers’ rights above any consideration of mothers’ and children’s safety.

John Church’s 1984 study of the causes and effects of domestic violence demonstrated what privileging fathers’ access to children meant for women’s safety. In 55 case studies in which “battered” women had interim custody, access to the children still had to be negotiated. Most of the women reported pressure from their own lawyers, the children’s lawyers, judges and court counsellors. In 13 cases, women were threatened with losing custody if they did not comply with access orders. In 23 cases, the children as well as the wife had been assaulted during the marriage. In 12 of these, the children had to see their father on a regular basis. There were nine cases where the husband had sexually molested the children. In four of these, the children had to see their father on an unsupervised basis.²⁷⁵ Where supervision was ordered, this often fell away after a few months.²⁷⁶

²⁷² ‘Family Court Judge Slams Violence Claim’, *Dunedin Weekender*, 9 December 1984, Private Papers of Doris Church.

²⁷³ Edward Clark, ‘The Construction of Homosexuality in New Zealand Judicial Writing’, *Victoria University Wellington Law Review*, 37, 2006, pp.207-8.

²⁷⁴ ‘Family Violence Up in City’, *Star*, 16 January 1984, Private Papers of Doris Church.

²⁷⁵ The remaining cases no longer saw their father. It is not clear if this was the result of a court order or otherwise, Church, *Violence Against Wives. Its Causes and Effects*, pp.65-7.

²⁷⁶ ‘More Care Needed for Sake of Children’, *Press*, 30 October 1984, Private Papers of Doris Church; Prophetically, Doris Church said in 1985 there probably would not be any changes until someone was killed, reported in Jacqueline Steincamp, ‘Standing Up to the Bullies’, *More*, dated 1985, Private Papers of Doris Church; On 5 February 1994, Alan Bristol, a violent husband, killed himself and his three children. His violence had not been seen as legally relevant to assessing his parental abilities and

SUPPORT AND FUNDING OF REFUGES

Despite the proliferation of community-supported refuges, anti-refuge feelings persisted, especially in non-urban areas such as the West Coast. Ann Charlotte, a founding member of the Buller Women's Refuge (BWR) in 1982, recalls that the mayor took a strong stand against the refuge, as did men on county or borough councils. The mayor, Pat O'Dea, had a reputation for a dislike of environmentalists and alternative lifestyles known as "hippies". Charlotte was also part of the group of friends who tried unsuccessfully to protect Owen Wilkes's eco-friendly home from being bulldozed on the orders of the Buller District Council. Feeling against refuges was tied to opposition to any alternative way of life. Ann Charlotte claims that the local police force were not supportive either. Charlotte says that at an attempted training session with police by refuge workers, police made sexual and violent innuendoes, which prompted the refuge workers and a woman victim to walk out.²⁷⁷ So hostile was the climate that, despite advertizing, it took many years for the refuge to attract more than a few Coast women. Until that time, refuges in the North Island constantly sent women there, often women seeking refuge from gangs.²⁷⁸ In 1984 West Coast feminists, including Charlotte, called off a planned protest at convicted wife killer David Minnitt's appointment to Westport Hospital because of risk to their safety.²⁷⁹ The reaction to this refuge stands in sharp contrast to that of the Wellington Women's Refuge, where the police were described as supportive of the facility.²⁸⁰

The 1979 Report of the Select Committee on Violence had recommended state funding for refuges. An increasing number of women being supported by refuges, and a lack of housing to accommodate them added pressure to state agencies to respond. The state was reliant on a strong voluntary sector to meet these needs.²⁸¹ Police

a hearing for a non-molestation order was deferred pending a custody hearing. Following an inquiry, the Minister of Justice announced that new domestic protection legislation would be forthcoming, Ruth Busch and Neville Robertson, 'I Didn't Know Just How Far You Could Fight: Contextualising the Bristol Inquiry', pp.1-16. Retrieved February 2009 from www.waikato.ac.nz/law/wlr/1994/article3-busche.html. The 1995 Domestic Violence Act followed.

²⁷⁷ Interview with Ann Charlotte, 24 April 2008.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Interview with Raewyn Good, 29 April 2008.

²⁸¹ In 1975 the New Zealand Council of Social Service was established to promote maximum participation of voluntary agencies to meet local needs, Report of the Department of Social Welfare, AJHR, 1976, E.12, pp.5-6; the DSW was obliged to promote and encourage development of effective social welfare services and could only do this through co-operation with outside agencies, Report of the Department of Social Welfare, AJHR, 1978, E.12, p.5.

officers too said they would feel much happier enforcing laws relating to domestic violence if there was a family refuge operating in their jurisdiction.²⁸² In the early 1980s, the DSW district offices were asked to contact voluntary organizations, which might be interested in participating in the emergency housing scheme.²⁸³

There was also significant popular support for refuges. The Wellington Women's Refuge ran for six years without any state funding or paid staff. In a liberal urban environment support was good.²⁸⁴ In 1981, representatives of the three Wellington refuges, the J. McKenzie Trust and the International Year of the Child Telethon Trust, met with the Minister of Social Welfare, George Gair, to seek financial assistance. Gair replied that any assistance would have to be on a nationwide basis and suggested that research should be undertaken to demonstrate the merit of programmes for which funding was sought. The J. McKenzie Trust funded the research and a report was produced in 1983.²⁸⁵ Over this time, refuges continued to be established so that by 1983 there were 30 independent refuges.²⁸⁶ In February 1983 the DSW granted financial assistance to the National Collective of Independent Women's Refuges (NCIWR) to assist in the establishment costs of five new refuges.²⁸⁷ Sometime after the 1983 report, Bob Jones was also involved in brokering a deal with the DSW. The Minister of Social Welfare Venn Young agreed to take a case to Cabinet and the NCIWR subsequently received funding for half a salary for the first six months.²⁸⁸ In July Young announced conditional financial assistance to women's and family refuges. The NCIWR was to receive \$190,000 on the basis it offered satisfactory counselling to the entire family and that a representative of the DSW would be invited to join the national executive.²⁸⁹ Young said the aim of any programme was to facilitate reconciliation between family members as well as to offer support for wives.

²⁸² Margaret Shields, NZPD, 1982, 444, p.1123.

²⁸³ 'Women Receive Three Refuges', *Dominion*, 14 October 1981, Women – Violence, AAYK, W3123, box 31, ANZ, Wellington.

²⁸⁴ Interview with Raewyn Good, 29 April 2008.

²⁸⁵ Synergy Applied Research Ltd, *A Socio-Economic Assessment of New Zealand Women's Refuges*, Blenheim: The National Collective of Independent Women's Refuges, 1983, p.2.

²⁸⁶ Re: Directory of Groups and Individuals in Area of Violence Against Women and Girls, Resource 1983, Core Group and Training Co-ordination File, NCIWR Records, Ref. no. 2001-162-092, ATL, Wellington.

²⁸⁷ Minister of Social Welfare, Venn Young, to Rosemary Ash, NCIWR, 1 February 1983, DSW Correspondence and Information File, NCIWR Records, Ref. no. 2001-162-251, ATL, Wellington.

²⁸⁸ Interview with Raewyn Good, 29 April 2008.

²⁸⁹ News Release, Minister of Social Welfare, 29 July 1983, DSW Correspondence and Information File, NCIWR Records, Ref. no. 2001-162-251, ATL, Wellington.

The government did not support funding where there was no commitment to family reconciliation.²⁹⁰ However, the NCIWR was careful to avoid total dependence on state funding. Raewyn Good had seen the effect of this on the Australian movement firsthand, which had lacked links to the local community in terms of support, donations and services, was completely controlled by public servants and was vulnerable to budget cuts.²⁹¹

CONCLUSION

By the late 1970s domestic violence was articulated and documented, and had drawn mainstream attention. Changing beliefs around child welfare, marriage and women's rights enabled politicians to hear women's claims and take them seriously. Feminist discourses of domestic violence gained institutional power.²⁹² There was public pressure for parliament to respond. The inadequacy of criminal law provisions in curbing domestic violence, the housing crisis, the increasing visibility of domestic violence and the belief that it was an increasing phenomenon, motivated parliament to respond. However, the discursive field of domestic violence was highly contested.

The 1982 Domestic Protection Act signalled that domestic violence was a serious problem requiring intervention. Domestic violence was no longer a private affair, and all individuals deserved protection from it. This was a major step in the history of women's capacity to resist men's violence against them as wives or partners. However, the 1982 act's structure and implementation demonstrated the persistence and pervasiveness of an older gender order, which privileged male authority and counteracted women's new powers to resist domestic violence. Changing discursive constructions often in practice conceded a return to an earlier conservative order. The 1982 act was not a declaration of a woman's right not to be beaten or abused and it did not challenge the structural imbalance in marriages or relationships. While shifts in attitudes to marriage and a child's welfare had made legal remedies to domestic violence more acceptable, various discourses undid the potential of these remedies to

²⁹⁰ 'Opposition Opposes Funds for Refuge Separatists', *Press*, 27 September 1985, Private Papers of Doris Church.

²⁹¹ Interview with Raewyn Good, 29 April 2008.

²⁹² Oliver Riddell accused male MPs of having little excuse to claim astonishment on hearing evidence before the Select Committee on Violence because there had been ample and public evidence for many years, Riddell, p.12.

mitigate the effects of domestic violence. Older gender constructions that viewed women as naturally dishonest and provoking violence weakened women's claims of violence against them. Civil liberties discourses protected violent men. The belief that child welfare was best served by two parents discouraged granting non-molestation orders to women victims of domestic violence, thereby undermining the safety of women victims. The dominant understanding of domestic violence as a temporary aberration arising from a stressful situation obscured the future risk of violence to women victims. That violence was largely understood to be physical conduct meant that psychological, sexual and verbal violence, and strategies designed to maintain control over a partner, could be minimized and interpreted as part of an unhappy and conflict-filled marriage or relationship.²⁹³ This view ignored the power relationship between males and females. Custody and access applications continued to be heard under the 1968 Guardianship Act, which did not recognize domestic violence as a special circumstance. In this discursive field, the belief that a violent husband or father could simultaneously be a good parent put women at future risk of violence. Family discourses that privileged the ideal nuclear family could adversely effect women's applications for custody.

Although the new legislation improved the lives of some individual women, the interplay of discourses around counselling, protection orders, and custody and access, maintained the conservative gender order in many instances. As this was a condition that facilitated domestic violence in the first instance, women and children were left vulnerable. While women had greater freedom and legal support to leave oppressive relationships, this did not mean they could escape violent or abusive men altogether. It might seem that the state's interest in protecting women and children went only so far as it served the interests of social stability.

CONCLUSION

²⁹³ Peter G. Jaffe, Nancy K.D. Lemon and Samantha E. Poisson, *Child Custody & Domestic Violence. A Call for Safety and Accountability*, Thousand Oaks, California: Sage Publications, 2003, pp.42-43, 48.

This thesis has examined the material and discursive practices that facilitated the construction of domestic violence as a social problem in the 1970s, how these practices shaped state policies, and what impact these policies had on women's capacity to resist a husband's or partner's violence. The study focused primarily on New Zealand from 1960 until 1984, a period of significant change in attitudes to men's violence against wives and partners, which from a private matter became one of public concern.

This thesis began with the historical origins of marriage because men's violence against wives was located in the "family"; a social unit based on marriage, gender difference (men as husbands were providers and protectors of wives, who were primary care givers of children and homemakers), and a hierarchical gender order (men as heads of families held disciplinary rights over wives, and parents over children). The family was simultaneously the foundation of social order and a private grouping: it was expected to function as a financially independent unit, and the domestic sphere was mostly exempt from state interference. Attitudes to men's violence against wives and partners changed in the context of an interplay of discourses, especially those pertaining to the family and gender. The changes especially reflected a shift in the relationship between the family and the social order.

The study analyzed the construction of men's violence against wives as a social problem in late nineteenth century England and New Zealand, because legal remedies to men's violence established in that time remained largely unchanged by 1960, and principles embodied in the ideal nuclear family continued to shape state policy. The thesis has analyzed the discursive field of state practices around law, social welfare, and employment and housing policy from 1960 in New Zealand, showing how any protection against men's violence towards wives and partners was only as good as women's alternatives to legal or de facto marriage, and access to such alternatives shared a relationship with attitudes to that violence. The study then analyzed changes that underwrote the construction of men's violence against wives and partners as "domestic violence", a distinctive and socially problematic form of violence. These culminated in the 1982 Domestic Protection Act, which separated domestic violence out from marriage, signalling that it was now no longer a private matter, and that the state was more inclined to intervene. This act promised reforms to empower women

to resist that violence. However, counter discourses contested new opportunities for women, and in practice changing discourses were often permeated by established beliefs that had protected male power. But despite this, the state was more inclined to intervene in domestic relations, which significantly enhanced women's capacity to resist domestic violence.

In the 1960s men's violence against wives and partners was interpreted through the marriage contract. The naming of men's violence against wives in legal discourses as "cruelty" excluded de facto wives, and also married wives who did not meet expectations of a "good" wife. It was difficult for wives to claim "cruelty" or "assault" because of enduring beliefs around the preservation of the family.

Discretionary powers of the police and the judiciary made decision-making subject to opaque cultural discourses. Women variously experienced the legal system depending on how they and their husbands were socially positioned, and on the personal belief system of an individual agent of the state.

Although the law provided legal remedies to "cruelty" and "assault", it was difficult for women to use them because social structures or material relations of power were disadvantageous to women. In the 1960s state agencies regulating the law, social welfare, employment and housing policy were tied to the maintenance of the nuclear family. This institutionalized gender inequality, along with conditions which enabled men's violence against wives and partners. Women's financial dependence on men obstructed their ability to escape violent relationships. Legal practices powerfully prescribed women's behaviour because it was difficult to forge a financial independent life without state sanction.

At the same time, rapid social change occurring in the 1960s provided new possibilities for women, which in turn challenged the dominance of the nuclear family and facilitated a shift in attitudes to men's violence against wives and partners. In particular, socio-economic changes improved women's status and contested older constructions of femininity. Family sizes and practices changed, and expectations of companionship and equality in marriage gained greater currency. The move to understanding human behaviour as socially created rather than rooted in biology invited scrutiny of women's lives as a group rather than as individuals. The discursive

effect was to legitimize greater expectations in women's lives and to alter ways of understanding around the role of the state, child welfare, victimhood, personal responsibility and social justice. Changes in sexual norms and expectations of marriage were indicated in higher numbers of marriage breakdown, de facto marriages and solo mothers. This had major implications for a social order founded on married financially independent families. It forced the state to reappraise its treatment of marriage breakdown and alternative family forms. Legal constraints against leaving marriage were lessened. Women's capacity to leave violent relationships improved further with the 1968 Domestic Proceedings Act and reform of matrimonial property law. In 1973 the Domestic Purposes Benefit became a statutory right, the most significant reform for women's capacity to resist a husband's or partner's violence. It also weakened the court's power to prescribe women's lives. Wives did not need court approval to access state assistance to leave violent marriages.

The numbers of women applying for, and being granted separation and non-molestation orders rose appreciably over the 1970s. However, contesting discourses tempered opportunities in practice and the courts did not keep pace with women's increasing demands for such remedies. Because the marriage contract continued as the primary framework for interpreting men's violence against wives, de facto wives were still excluded from domestic law remedies. The privileging of men's property rights over women's rights to safety persisted. The new non-molestation order was dependent on a state of separation. The construction of a domestic assault as a temporary aberration and the imperative to reconciliation obscured men's violations of the order.

This thesis has provided evidence that the emergence of a strong, autonomous women's movement, both international and local, was crucial to the development of a feminist analysis of men's violence against wives or partners and the construction of domestic violence as a mainstream social problem. Feminists announced domestic violence as a social problem of major proportions in which men were primarily the perpetrators and women and children, the victims. Interpreted through a framework of male domination, a feminist analysis offered new discursive positions to women and contested conservative discourses that viewed women as "asking for it" or "deserving" it. The establishment of women's refuges gave women an alternative to

staying in violent marriages. Refuges symbolized that domestic violence was a problem. Women who identified with feminist positions helped circulate feminist discourses. Refuges enabled women's stories of domestic violence to be heard, which was essential to the development of feminist knowledge. However, feminist discourses that blamed a patriarchal order and problematized the family, thus contesting discourses that privileged the ideal nuclear family, were perceived as threatening the social order. As such, they were resisted fiercely.

In the late 1970s changing discourses of victimhood, public violence, child welfare, gender, and the role of the state facilitated the institutionalization of feminist discourses that characterized domestic violence as a social problem. The increasing role of the state had exposed the incidence of men's violence against wives and partners in the family backgrounds of criminals, social welfare beneficiaries, and those in need of housing. The state's reliance on the voluntary sector to supply social services conferred some legitimacy on women's refuges. Crime in general was perceived to be increasing and separation violence arguably increased as more women chose to leave violent relationships. The realization that domestic violence affected all classes, the emergence of non-radical feminist protest and service groups, and international influences were important drivers for the mainstreaming of domestic violence as a social problem.

Despite strong pressure for the government to respond to the problem, the discursive field of domestic violence was highly contested. Gender discourses that judged women according to their "femininity" and privileged male power, and family discourses privileging the nuclear family persisted. Multiple emergent non-feminist discourses simultaneously undermined and strengthened feminist discourses that argued domestic violence was a social problem. Importantly, the state was prepared to remedy discrimination as it affected individuals, but not as it affected structures. While it was acknowledged that the family could create social problems, the state also looked to it for solutions. This meant that, while state agencies were responsive to the needs of "battered" women, the state did not address the conditions facilitating domestic violence in the first instance, essentially the construction of women's role and women's financial dependence on men.

In the years following the Second World War, discursive and material shifts had gradually undermined or modified principles that constituted the ideal nuclear family: stability, particular gender roles, male privilege, financial independence and privacy. Contestation realized a greater toleration for marriage breakdown and alternative family forms, an expansion of women's role, equality of men and women before the law, state assumption of financial responsibility for separated mothers and a greater inclination by the state to regulate domestic relations. These shifts were important precursors of the 1982 Domestic Protection Act, legislation that shifted domestic violence into the public domain.

The new legislation offered specific remedies to meet women's housing and protection needs. However, the opportunity to radically improve women's capacity to live free from domestic violence was tempered in practice. While feminist discourses were partially institutionalized, for the state domestic violence had emerged as a social problem primarily because of its effect on social stability: marriage breakdown, rising rates of DPB beneficiaries, "fatherless" children and "childless" fathers, and its impact on children as future parents, workers and citizens. Women's experiences were not central to the state's construction of domestic violence as a social problem.

The construction of a domestic assault as a temporary aberration, explicitly expressed in the non-violence order, persisted to obscure the effects of domination and women's claims of fear in the future. The understanding that domestic assaults were caused by alcohol, drugs or stress and relationship dynamics went unchallenged, which obscured offenders' responsibilities for violence and weakened women's claims for protection. Civil liberties discourses had supported women's claims to social and legal remedies, however, the protection of civil rights enshrined in legal discourses, which were designed to uphold the legitimacy of the law and to protect citizens from arbitrary state power, had the contradictory effect of protecting violent husbands or partners. The omission of legal "cruelty", which encompassed both physical and psychological violence, and the use of the term "battered" wives to define victims meant that in the main domestic violence referred to physical conduct. In any case, it was difficult to prove psychological, emotional or sexual violence. With the demise of legal cruelty, discourses of domestic violence often took their meaning of violence from the discursive field of criminal law.

Throughout the period under study child welfare discourses had contradictory effects on women's lives. Changing beliefs had improved the status of all motherhood, supporting women's access to social welfare and encouraging the state to intervene in domestic relations. The increased toleration of marriage breakdown and the recognition that a child's welfare was not served well by growing up in a violent home meant that women could gain legal and social support to escape violent marriages. However, in the discursive field of domestic law the belief that a child's welfare was best served by two parents, changing discourses of fatherhood, and the separating out of violence against the mother from violence against the child compromised women's safety and capacity to live free from violence. These understandings undermined women's access to non-molestation orders, because the order could interfere with reconciliation or conciliation, which was deemed in the interests of the child. It also undermined the effectiveness of a non-molestation order, because a man could "reasonably" claim that his violation of the order was an attempt to reconcile or make arrangements around children.

The belief that child welfare was best served by two parents was especially powerful in legal practices around custody, which were governed by the 1968 Guardianship Act that did not make domestic violence a special condition. Reinforced by fatherhood discourses that placed greater importance on a father's role in socializing a child, and the particular construction of a domestic assault, legal practices often protected abusive husbands and fathers and exposed women and children to further risk of violence. Conservative beliefs that held women were naturally dishonest and provoked violence persisted, weakening women's claims. Women applicants remained subject to the individual belief systems of various judicial officers.

This thesis has shown the significance of the discourses activated for women's capacity to resist domestic violence. The ways in which men's violence against wives and partners is linguistically framed sets parameters for various courses, and determines what sanctions should be leveled, and against whom they should be

leveled.¹ In late nineteenth century New Zealand, “wife-beating” framed the problem as a breach of the marriage contract. In New Zealand in the mid-1970s, feminists interpreted men’s violence against wives and partners, named “domestic violence”, through a framework of male domination. The state problematized domestic violence because of its effect on the social order. Each of these discursive constructions had particular possibilities for women victims of husbands’ and partners’ violence.

The significance of the inter-textuality of discourses and material relations of power has also been demonstrated. In late nineteenth century New Zealand, new opportunities for women to resist husbands’ violence were counteracted by conservative discourses of gender that positioned men in the civic sphere and women in the domestic sphere, and family discourses that privileged a family form based on marriage, gender difference, male power, financial independence and privacy. The state’s institutionalization of gender inequality and the ideal nuclear family in law, and social welfare, employment, and housing policy, made it difficult for married women to forge independent economic lives outside marriage. Shifts in gender and family discourses were central to the naming of domestic violence as a social problem in the 1970s. Feminist constructions of domestic violence were partially institutionalized because they resonated with changing constructions of child welfare, marriage, victimhood, citizenship and social development. In a new environment, the balance of gender relations had shifted, and women were more able to leave violent relationships. This in turn influenced attitudes to men’s violence against wives and partners. Whereas in late nineteenth century New Zealand the state had prescribed private living arrangements, it had also protected the privacy of the domestic sphere, which had obscured men’s violence against wives. By 1982 the state no longer prescribed private living arrangements, but was more inclined to regulate them when violence occurred.

The instability and unpredictability of discourses in practice has also been canvassed, and the persistence of established beliefs around the family and gender, which necessitates an analysis of their material effects. Although discourses that promised to

¹ Laurie Naranch, ‘Naming and Framing the Issues: Demanding Full Citizenship by Women’, in Cynthia R. Daniels, ed., *Feminists Negotiate and the State. The Politics of Domestic Violence*, Lanham, Maryland: University Press of America, 1997, p.25.

protect women may sound favourable to women's interests, these did not always translate into the protection of women in practice. Analyzing discourses at the level of language only can distort women's actual experiences. Identifying discourses that shaped women's lived experiences of violence by a husband or partner provides understanding of past and present attitudes towards men's violence against wives and partners. This discursive study has demonstrated why the 1982 Domestic Protection Act, which promised great changes, was tempered in practice.

This thesis is concerned with a particular time period and tells part of the on-going story of the history of men's violence against wives and partners in New Zealand. It has focused on the development of "domestic violence" as a mainstream social issue and the introduction of the 1982 Domestic Protection Act. Although the thesis is underpinned by a legislative trajectory which appears linear and progressive, the discourses which swirl around legislative measures are constantly evolving, sometimes in regressive and internally contradictory ways. Another significant milestone for women's capacity to resist men's violence against them as wives and partners was the 1995 Domestic Violence Act which adopted a feminist definition of domestic violence. This deserves a study of its own because, as this thesis has demonstrated, multiple discourses vie for dominance in defining domestic violence, at any given time there is always a gap between rhetoric and practice. A discursive analysis is able to explain this gap, and the question of how a feminist definition of domestic violence enshrined in law was applied in practice warrants further research.

Women's capacity to resist domestic violence has also been explored on many levels in a particular time period. The history of men's violence against wives and partners is linked to the history of the family, gender, single mothers, employment, social welfare and much more. More importantly, the thesis has shown the significance of family and gender discourses, and the need to analyze the operation of these discourses within historical, social and cultural contexts as a means to understand the construction of men's violence against wives and partners. This conclusion reinforces the approach used by Suellen Murray and Anastasia Powell in their study of domestic violence in contemporary Australia.²

² Suellen Murray and Anastasia Powell, 'What's the Problem? Australian Public Policy Constructions of Domestic and Family Violence', *Violence Against Women*, vol.15, no.5, May 2009.

The thesis has a contemporary application. Domestic violence continues to have a serious impact on the lives of women. In early 2011 Principal Family Court Judge Peter Boshier stated it remains ‘a significant problem’.³ New Zealand research indicates that up to one in three women can experience abuse by a partner during their lifetime.⁴ Women continue to be the primary victims of serious domestic violence. From 2002 to 2006 there were 74 couple-related homicide events with 77 adult victims and 79 perpetrators. Seventy of the perpetrators were male and nine were female. The victims of the male perpetrators included sixty women, who were their partners or ex-partners, and 10 men, who perpetrators perceived as their ex-partners’ new partners. Only two of the female perpetrators acted alone.⁵ The first annual report of the Family Violence Death Review Committee reported in March 2010 that on average 14 women, 6 men and 10 children are killed as a result of family violence each year; in 2008 police recorded more than 80,000 family violence events; in 1995 family violence in New Zealand had an estimated cost of between \$1.2 and \$5.8 billion per annum; and that Maori women and children were the most vulnerable to severe physical abuse.⁶

Understanding historical dominant and contesting discourses, and the inter-play and unpredictability of discourses in practice, remains important because older discourses continue to undermine the legal and social gains women have made in resisting a husband’s or partner’s violence. Suellen Murray’s and Anastasia Powell’s recent study of Australian state policy around domestic violence has shown that the most enduring challenge to feminist definitions of domestic violence are family discourses

³ Principal Family Court Judge Peter Boshier, ‘What’s Gender got to do with it in New Zealand Family Law?’, 2 June 2011, p.13. Retrieved May 2011 from www.justice.govt.nz/courts/family-court/publications/speeches-papers...

⁴ A 2004 study showed that among women interviewed who had ever had male partners, 33% in Auckland and 39% in Waikato, had experienced at least one act of physical or sexual violence from a partner in their lifetime, Janet L. Fanslow and Elizabeth Robinson, ‘Violence against Women in New Zealand : Prevalence and Health Consequences - Summary’, *New Zealand Medical Association*, 117 (1206), 2004. Retrieved May 2011 from <http://www.nzfvc.org.nz/PublicationDetails.aspx?publication=13108>.

⁵ Jennifer Martin and Rhonda Pritchard, ‘Learning from Tragedy: Homicide within Families in New Zealand, 2002-2006’, p.8. Retrieved May 2011 from <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/research/learning-from-tragedy/index.html>.

⁶ Family Violence Death Review Committee, ‘First Annual Report to the Minister of Health October 2008 to September 2009’, p.3. Retrieved August 2011 from http://www.fvdr.health.govt.nz/moh.nsf/indexcm/fvdr-resources-publications?Open&m_id=3.1.

which promote family harmony and family preservation.⁷ U.S.A. defence attorney Allan Dershowitz claims that the protections currently available for women victims of domestic violence need defending against ‘the abuse excuse’, the conservative backlash against concessions that have been made to women.⁸

Although contemporary dominant discourses of domestic violence construct it as a gendered issue,⁹ contesting discourses continue to argue it is a gender-neutral phenomenon. A gender-neutral approach does not recognize that ‘domestic violence occurs within the wider context of social disadvantage and inequality experienced by women relative to men, which, for some women, means that their vulnerability is heightened’.¹⁰ In a 2005 study David Fergusson and associates claimed that women are at least as equal to men in perpetrating domestic violence.¹¹ Their claims were widely endorsed by the media. In part, the debate is an effect of different understandings of what constitutes domestic violence - definitions matter. It is also a question of how domestic violence is measured. The Conflict Tactics Scale, employed by the Fergusson study to measure the incidence of domestic violence does not measure control, coercion, or the motives for conflict tactics. It also omits sexual assault and violence by ex-spouses or partners and does not determine who initiated the violence. While women and men may have equal capacity to be violent, and there are men who may need protection from violent women, claiming men’s violence is the same as women’s violence obscures any differences in that violence, structural differences that affect the victim, and the fact that women and children are primarily the victims of serious violence.¹² From 2006 to 2010 in New Zealand, around 93% of

⁷ Murray and Powell, p.541.

⁸ Allan Dershowitz is a controversial character. I do not agree with all his views. Allan Dershowitz cit., in Evan Stark, *Coercive Control. How Men Entrap Women in Personal Life*, Oxford: Oxford University Press, 2007, p.9.

⁹ For example, Principle Family Court Judge Peter Boshier claims it is a gendered phenomenon, Peter Boshier, ‘What’s Gender got to do with it in New Zealand Family Law?’, 2 June 2011, pp8-10. Retrieved May 2011 from www.justice.govt.nz/courts/family-court/publications/speeches-papers...

¹⁰ Murray and Powell, p.539.

¹¹ David Fergusson, L. John Horwood and Elizabeth M. Ridder, ‘Partner Violence and Mental Health Outcomes in a New Zealand Birth Cohort’, *Journal of Marriage and Family*, 2005, 67 (5), p.1113.

¹² Vivienne Ullrich acknowledges that some women are violent. ‘Nevertheless, there is overwhelming evidence that there are more men than women who are seriously violent to their partners’, Vivienne Ullrich, ‘Keynote Address: Gender and Family Law in the Last 59 years’, in Stuart Birks, ed., *Proceedings of Social Policy Forum 2002. The Child and the Family Court: Seeking the Best Interests of the Child*, Palmerston North: Centre for Public Policy Evaluation, College of Business, Massey University, 2003, p.18.

applicants for protection orders were female and 92 % of respondents were male.¹³ Ignoring gender risks losing understanding the causes of that violence and being able to work with the underlying harms.¹⁴ It undermines the protection of women from a husband's or partner's violence.

A failure to acknowledge the significance of gender and to distinguish between the meanings of violence continues to invite an interpretation of domestic violence as a relationship issue. Felicity Goodyear-Smith promotes an interactional model over the power and control interpretation of domestic violence. She claims there are abusive relationships rather than abusive individuals, with certain behaviours in one partner provoking a violent reaction in the other.¹⁵ Economist Stuart Birks has argued for 'mutual responsibility for domestic violence by men in the context of more complex family interactions'.¹⁶ The discursive effect of these understandings is that the needs of women victims will be ignored.

The persistence of conservative discourses, sometimes operating through changing discourses such as those of child welfare and fatherhood, indicate the need for continuing engagement with all discourses that shape legal and social responses to domestic violence. This effect can be seen in the mobilization of fatherhood discourses in cases involving domestic violence. It is claimed that 'fathers' rights groups currently enjoy unprecedented visibility in the United States and other areas such as Canada, Australia, and the United Kingdom'.¹⁷ This also applies to New Zealand. While fatherhood discourses that valued and value fatherhood promised, and promise, a better deal for men, women and children through fathers' greater participation in domestic relations, in practice, in the field of domestic violence, anti-feminist fatherhood discourses can undermine the protection of women and children

¹³ Peter Boshier, (Principal Family Court Judge), 'What's Gender got to do with it in New Zealand Family Law?', 2 June 2011, p.10. Retrieved May 2011 from www.justice.govt.nz/courts/family-court/publications/speeches-papers...

¹⁴ *ibid.*, p.8.

¹⁵ Felicity Goodyear-Smith, 'Carrots or Sticks', in Stuart Birks, ed., *Inclusion or Exclusion: Family Strategy and Policy*, Palmerston North: Centre for Public Policy Evaluation, College of Business, Massey University, 2000, pp.28-29.

¹⁶ Stuart Birks, 'Fathers – Prejudice and Policy', in Stuart Birks and Paul Callister, eds, *Perspectives on Fathering*, Palmerston North: Centre for Public Policy Evaluation, College of Business, Massey University, 1999, p.126.

¹⁷ Leora N. Rosen, Molly Dragiewicz and Jennifer C. Gibbs, 'Father's Rights Groups: Demographic Correlates and Impact on Custody Policy', *Violence Against Women*, vol.15, no.5, May 2009, p.513.

as demonstrated in this thesis. Evan Stark, an international expert on interpersonal violence, claims men's and father's rights groups are moving aggressively to undo the protections won by women victims of domestic violence.¹⁸

In present times, discourses of human rights are shaping the discursive field of domestic violence. Karen Morgaine has explored how these discourses can support a more holistic approach to domestic violence and increase coalition building and community engagement.¹⁹ However, Morgaine also raises some concerns how discourses of human rights might translate in practice because of 'the power of the state and the power of White privilege to determine the course of the mainstream movement'.²⁰ This attests to the ongoing need to engage with discourses of domestic violence to determine how they impact on women's capacity to resist a husband's or partner's violence because discourses are unpredictable in practice.

In regards to child welfare, psychiatrist Karen Zelas has claimed that 'the psychological effects of family disruption, removal of a parent and splitting of families through taking sides for and against a complaint' may be greater than 'the potential psychological effects of suffering the type of abuse alleged'.²¹ This construction privileges the preservation of the ideal nuclear family over safety of individuals within it. In contrast, remedies to protect victims of abuse can work for the abuser in practice. "Parental alienation", the deliberate attempt by one parent to prevent a relationship between the child and the other parent, promises to protect parent/child relationships. It is a common tactic of separated parties who are abusive to the other party. However, some New Zealand judicial officers have interpreted a child's desire not to spend time with one parent as parental alienation rather than a child's independent wish to not spend time with an abusive parent, and have penalized the abused parent.²²

¹⁸ Stark, p.9.

¹⁹ Karen Morgaine, 'How Would that Help our Work? The Intersection of Domestic Violence and Human Rights in the United States', *Violence Against Women*, vol.17, no.1, January 2011, p.6.

²⁰ *Ibid.*, p.25.

²¹ Karen Zelas, 'Editorial', *Butterworth's Family Law Journal*, 1998, 2 (11), p.275.

²² Telephone conversation with Gail Rowland, South Canterbury Advocate for Children and Young People Witnessing Family Violence, 3 March 2011.

The historical record of women's experiences contained in this thesis has a contemporary significance when the past is evoked to support contemporary arguments that undermine women's capacity to resist men's violence against wives and partners. Felicity Goodyear-Smith has claimed that 'rather than our institutions sanctioning male violence against women, there are strong social taboos against men hitting women. Traditionally men have been socialised to protect rather than assault their wives.'²³ At a social policy forum Warwick Pudney suggested that in order for men's complaints of women's violence to be believed more easily, there has to be a reduction of 'the historical and sexist inclination to rescue women'.²⁴ In contrast this thesis has provided historical evidence that in many cases, discursive practices have supported men's privileged positions within their families, and have condoned their use of violence against wives and partners. This is the benefit of using discourses as a tool to explore social practices and access historical experience.

Women's access to the law and financial power remains a contemporary issue for women to effectively resist a husband's or partner's violence. As this thesis has shown, financial power has an impact on women's access to the law and their capacity to forge independent lives. The Ministry of Women's Affairs reported in 2011 that 'overall, women are still paid less than men, and are still responsible for the majority of unpaid work in the community, particularly unpaid caring for children, the elderly and the disabled'.²⁵ Because, as the Ministry of Women's Affairs has stated, women have lower earnings than men, are out of the workforce for longer and tend to take responsibility for children when relationships break up, women are more affected by social assistance policies.²⁶ State policies that ignore structural differences can have discriminating effects and negatively impact on women's capacity to resist domestic violence. Early in 2011 the Minister of Justice Simon Power announced that legal aid in the Family Court would become harder to obtain and more expensive. Mediation and counselling services might also be reviewed. Some Family Court

²³ Goodyear-Smith, p.28.

²⁴ Warwick Pudney, 'Listening to Fathers' Pressure Groups' in Stuart Birks, ed., *Proceedings of Social Policy Forum 2002. The Child and the Family Court: Seeking the Best Interests of the Child*, Palmerston North: Centre for Public Policy Evaluation, College of Business, Massey University, 2003, p.66.

²⁵ Ministry of Women's Affairs, 'Women in the Economy', 24 March 2011. Retrieved October 2011 from <http://www.mwa.govt.nz/news-and-pubs/publications/women-in-the-economy#women-and-income-support>.

²⁶ Ministry of Women's Affairs, 'Women in the Economy'.

lawyers fear changes may mean vulnerable parties are left without court protection.²⁷ Women's access to the Domestic Purposes Benefit, a major support for women escaping violent relationships, is not guaranteed. This form of social assistance is continually criticized and blamed for a variety of social woes such as the development of an underclass.²⁸ The present National Government is promising changes to the domestic purposes benefit. The impact of these changes is not ascertainable at this time.

Men's violence against wives and partners was, and is, a significant issue for many women in New Zealand. This thesis has used discourse analysis to explore part of the story of the history of men's violence against wives and partners in New Zealand. Using a discursive approach enabled identification of structural issues that obstructed women's capacity to resist men's violence against wives and partners. The discursive field of men's violence against wives and partners is in constant flux. Multiple discourses, sometimes competing and sometimes convergent, shape its meaning. Constant engagement with discourses that construct the meaning of domestic violence is necessary to protect remedies to it that women have gained. State policies simultaneously empower and disempower women. Protection for women from violence has real meaning only within a context of access to financial and social power. Engagement with past attitudes to men's violence against wives and partners can contribute to contemporary efforts to support women victims of a husband's or partner's violence.

²⁷ Derek Cheng, 'Family Court Shake-up Frightening'. Retrieved June 2011 from http://www.nzherald.co.nz/derek-cheng/news/article.cfm?a_id=207&objectid=10720504.

²⁸ Muriel Newman, 'The Underclass' in New Zealand Centre for Political Research. Retrieved October 2011 from <http://www.nzcpr.com/article8.htm>.

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APPENDIX 1

A Timeline of New Zealand Legislation Pertaining to this Thesis

1857 Divorce and Matrimonial Causes Act:

- allowed a husband to petition for divorce in the case of a wife's adultery, and a wife to petition for divorce where a husband had committed aggravated adultery, that is adultery coupled with cruelty, incest or another exacerbating factor.

1860 Married Women's Property Protection Act:

- provided for property protection orders for deserted married women and prevented husbands from returning and appropriating a wife's earnings.

1867 under the Offences Against the Person Act:

- made any person who assaulted a female or male child aged under 14 years where such an assault could not sufficiently be punished under provisions for common assault or battery, liable to imprisonment not exceeding six months.

1870 Married Women's Property Protection Act:

- extended property protection orders for deserted married women to wives subject to cruelty, where the husband was living in open adultery, was guilty of habitual drunkenness, or failed to maintain.

1877 Destitute Persons Act:

- provided for a wife who was compelled to leave her home under 'reasonable apprehension of danger to her person' to be deemed to have been deserted without reasonable cause. Such a wife was legally entitled to maintenance.

1884 Married Women's Property Act:

- enabled married women to have, hold and dispose of separate property.

1896 Married Persons' Summary Separation Act:

- enabled any married woman whose husband had been convicted of aggravated assault, desertion, persistent cruelty or willful neglect, to live separately from him, have guardianship of the children and improved access to maintenance

1898 Divorce Act:

- extended the grounds for divorce to include a man's habitual drunkenness coupled with a failure to maintain his wife or persistent cruelty towards her, or a woman's habitual drunkenness coupled with a failure to attend to her domestic duties.

1910 Destitute Persons Act:

- allowed wives to petition for separation, maintenance, and guardianship orders where a husband had failed to provide adequate maintenance, or had been guilty of persistent cruelty to her or to her children, or that he was an habitual inebriate, or that he had, within six months of her making the complaint, been convicted summarily or otherwise of any assault or other offence of violence against her or any of her children, and had been sentenced for that offence to imprisonment or

to a fine exceeding £5. While a separation order was in force, a husband was guilty of an offence and liable to imprisonment or a fine if he trespassed by entering or remaining upon any land, house, shop or other building which is in the occupation of the wife or in which the wife dwells or is present; or attempted or threatened to commit any such trespass; or molested his wife by watching or besetting her dwellinghouse or place of business, employment or residence, or by following or waylaying her in any road, street, or other public place.

1908 Infants Act:

- empowered the court to decide custody on the basis of infant welfare and parental conduct.

1920 Divorce and Matrimonial Causes Act:

- reduced the period of confinement in relation to divorce for reasons of insanity and introduced three new grounds. It re-introduced failure to comply with a decree for restitution of conjugal rights. It added the grounds of seven or more years' imprisonment for wounding the petitioner or child of the petitioner and three years' separation under a judicial separation or a court order provided that one party was innocent of any matrimonial offence.

1926 Guardianship of Infants Act:

- made an infant's welfare the paramount consideration. Wives and husbands held equal guardianship rights.

1952 Married Women's Property Act:

- the courts could make ownership orders only on the basis of established legal rights, general principles of the law of property and contracts. The courts did recognize that when the parties by their joint efforts saved money to buy a house then it belonged to them jointly. Non-pecuniary contributions were not recognized. The courts could make distinction between property or ownership rights, and the right to occupy a home despite a lack of ownership rights.

1953 Divorce and Matrimonial Causes Amendment Act:

- made divorce easier by reducing duration of confinement for reason of insanity and provided for divorce when the parties had been living apart for seven years.

1957 Summary Proceedings Act:

- allowed for de facto wives to apply for a bond to keep the peace.

1961 Crimes Act:

- depending on its characteristics, a violent act could incur charges under Part VIII, 'Crimes against the Person'. These included murder, manslaughter, threat to kill, aggravated assault, wounding with intent, male assault on a female and common assault. Assault was defined as applying force to a person, or threatening force, and 'injure' meant causing actual bodily harm.

1962 Criminal Justice Act:

- provided for periodic detention, a requirement to work for the community under supervision, to be imposed only when the offence was punishable by imprisonment.

1963 Criminal Injuries Compensation Act:

- provided compensation for financial losses suffered in consequence of criminal injuries.

1963 Matrimonial Proceedings Act:

- contained new provisions relating to ownership and possession of the matrimonial home and furniture. When making a decree of divorce, or at a later date, the court could direct the sale of the home and distribute the proceeds in such proportions as it saw fit, and make tenancy and furniture orders. It made an important reference to the children: 'the Court may if it thinks fit, instead of directing division of the proceeds between the parties of the marriage, direct the whole or any part of the proceeds be paid or applied for the benefit of the children of the marriage'.

1963 Matrimonial Property Act:

- widened court powers to settle property disputes and make orders which might be 'just', and to extinguish established legal rights, even in favour of a spouse who lacked any such interest.

1968 Domestic Proceedings Act:

- relaxed legal constraints for separation by making serious disharmony a ground for a separation order and emphasized reconciliation. The non-molestation clause attached previously to separation orders was removed. The act introduced a separate non-molestation order for husbands and wives requiring protection from a separated spouse.

1968 Matrimonial Property Amendment Act:

- reversed the Court of Appeal's view that a wife had to establish that she had done more than merely be a good wife and housekeep to make a claim on matrimonial property. An order could be made even where there had been no financial contributions to the property.

1968 Guardianship Act:

- clarified the difference between custody and guardianship. Custody was the day-to-day care and possession of the children. Guardianship was the general right to control the child's upbringing in areas such as education and health. The act gave the mother equal status with the father as guardian of the children of the marriage.

1968 Matrimonial Proceedings Amendment Act:

- shortened the waiting time for a divorce on certain grounds from three to two years.

1969 Status of Children Act:

- removed all legal distinction between legitimate and illegitimate children.

1975 Domestic Actions Act:

- emphasized the court's interest in preserving marriages. Removed the right to sue for compensation for adultery or for harbouring (giving shelter to a spouse in flight). It maintained the right to sue for enticement of a spouse.

1976 Matrimonial Property Act:

- removed judicial discretion for direction proceeds of matrimonial property and gave wives equal entitlement.

1980 Family Proceedings Act:

- made 'disharmony' the sole ground for a separation order. Made counselling a prerequisite to a hearing for separation or dissolution of marriage orders. Legal advisers had a duty to promote reconciliation or conciliation. Hearings could be adjourned to consider the possibility of either. Re-defined maintenance as short-term and rehabilitative. Extended rape law so that a husband could be convicted of raping his wife if they lived in separate residences.

1980 Family Courts Act:

- established Family Courts.

1980 Social Security Amendment Act:

- established a liable parent contribution scheme, negating the need for maintenance hearings when a person was in receipt of a state benefit.

1980 Guardianship Act:

- removed any gender presumption in determining which parent would have custody of a child. Created a new offence of deliberate obstruction of access and custody.

1982 Domestic Protection Act:

- brought together most of the civil remedies to domestic violence: non-molestation, occupation and tenancy orders. It gave full and equal protection to de facto spouses and introduced two new remedies: the non-violence order, which could be obtained while the parties lived together or apart; and the furniture order, which entitled the non-violent party to exclusive use of the house chattels. In contrast to a breach of a non-molestation order, a breach of a non-violence order was not an offence, but it empowered police to take a violent partner into custody for a 24-hour period without a charge being laid. The act empowered the court to recommend counselling for either party.