WIFE BATTERING, INSTITUTIONAL APPROPRIATION, AND

TREATMENT DISCOURSE:

A STRUGGLE FOR DISCURSIVE CONTROL

by

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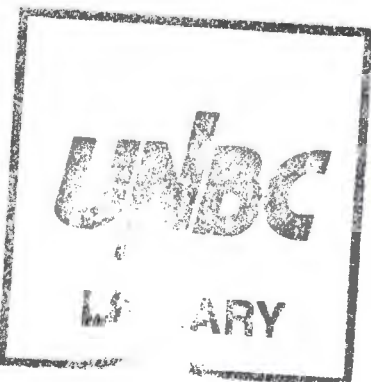THE REQUIREMENTS FOR THE DEGREE OF

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Abstract

This thesis examines the gap between the objectified knowledge created by institutions and the expert knowledge or experience of one woman within institutional systems dealing with wife battering. Examining this gap reveals the patriarchal and hierarchical relations inherent in institutional systems and uncovers the discursive practices which they employ in order to construct ideologies about wife battering. The discourses of Law, Psychology and the helping professions stand in direct opposition to feminist discourses based in concepts of gender inequity and patriarchal domination. All discourses, however, are not created equal. The discursive battlefield is dominated by treatment discourses that insist battering is a sickness not a choice as feminist discourses maintain. This is validated by legal systems that remand or recommend that batterers enter treatment programs for abusing their wives. In order for feminists to compete successfully against dominant discourses they must construct a discourse which validates and encompasses the experiences of all battered women and resist the appropriation of services for battered women by the state.

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Acknowledgments

I would like to thank Melanie for her openness, courage, and for taking the time to speak with me. Her dedication to education and awareness has truly inspired this thesis.

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Dedication

This thesis is dedicated to
my grandmother
Genevieve F. Ginn,
for believing in my abilities,
and
my mother
Victoria H. Ginn,
for teaching me how to use them.

Chapter 1

Melanie[1]

Melanie met Martin in 1992 and, following a whirlwind romance, quit her job to move to his place of residence. Melanie began living with Martin early in 1993 about 50 miles outside of an isolated northern city. The first assault occurred about a month after she began living with him. Martin himself called the police and she left him, determined never to return. One week later Melanie found out that she was pregnant, and Martin persuaded her to give their relationship another try. With charges still pending from the first assault, Martin agreed to voluntarily enter the region's only treatment program, and Melanie refused to testify thinking that treatment would be better for him than jail. Martin entered a sixteen week program, but continued to assault Melanie throughout his treatment and her pregnancy. During the period of their relationship, Melanie left approximately three times, but was persuaded to return. The last assault occurred in August of 1994, after which Melanie contacted the police, gave a statement and soon after moved to a less isolated northern city. Martin was sentenced to six months in jail for two counts of common assault; one month for threatening to assault her, and five for "knocking me out and breaking my nose." He served four months and was released without conditions. In December, approximately one year after the court date, Martin appeared at Melanie's home, requesting to see his son. Martin's assertions that he had changed persuaded Melanie to let him move in with them on the condition that he attend a voluntary group

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[1] Names and identifying factors have been have been changed in order to protect confidentiality and anonymity. All quotations without specific citations are from interview material with Melanie.

for batterers in town. About three weeks into treatment Martin started exhibiting abusive behaviour, so Melanie asked him to leave. Martin moved back to his original residence and he and Melanie are currently in an ongoing custody battle over their son, Nicky.

Melanie agreed to talk to me after being contacted by a previous counsellor and co-worker of hers. She has been active in her new community co-facilitating groups for battered women and volunteering for court accompaniment for battered women. In fact, I had previously heard her speak at an event coordinated to raise awareness about violence against women. Hearing Melanie's, and other battered women's experiences, was one of the initial reasons that I had started my project. As her following statement makes evident, Melanie's commitment to promoting awareness and sharing her experience is clear.

> My first women's studies course...we all got to share our experience. And when we were studying a topic, like violence against women, all the women who had experienced that got to contribute. So, we weren't just reading it out of a textbook, we were learning life experience, and that was great!

Melanie emphasizes the importance of lived experience and education, an emphasis shared by myself and others interested in uncovering the complexity of relations in which women live. Although these relations are created by systems which organize the very social fabric of society, some are not easily or immediately perceived by those living within them.

Building a Conceptual Framework: Standpoint Theory and the Social Organization of Knowledge

> To enlarge our understanding as women of how things come about for us as they do, we need a method beginning from where women are as subjects. As subjects, as knowers, women are located in their actual everyday worlds rather than in an imaginary space constituted by the objectified norms of sociological knowledge built upon the relations of the ruling apparatus and into its practices. (Smith, 1987: 153)

In the past twenty years, many grassroots organizations, diligent scholars and committed individuals have made visible the reality of violence against women (Caesar and Hamberger 1989). Wife assault cuts across all sectors of society. In a typical year in Canada, Johnson (1996) reports, 120 women are killed by their husband, ex-husband, or boyfriend, and almost 450,000 women are slapped, choked, beaten, sexually assaulted or threatened with a gun or knife. In 1993, 90 percent of spousal assaults in Canada reported wives as victims. Since the initial awareness promoted in the 1970s about violence against women, there has been an increased effort to both protect women from violence and to prevent the occurrence of wife battering. In Canada, there are approximately 400 shelters for battered women, 200 crisis centres providing counselling for battered women and 124 treatment programs for men who batter (Johnson 1996). Despite the increase in services for battered women, protection and prevention techniques have been largely co-opted from the women's movement (Walker 1995), and have been absorbed into an institutional framework. With this co-option, some argue, the safety of women has ceased to become a primary concern. This project takes as its starting point the experience and knowledge of women in an examination of current social, legal, and theoretical difficulties facing battered women within this context.

My research, on treatment programs for men who batter, will examine battering from Melanie's standpoint. This standpoint yields information about the social relations that constitute the position of battered women within the feminist movement as well as the multilayered institutional structures of law, psychology and the helping professions. All of these institutions are understood as having certain roles in the formation of

domestic violence as a 'social problem,' manifestations of which can be traced from the locus of women in their everyday worlds.

Institutional Power and Women's Knowledge

Locating women as expert knowers within the contexts of their lived experience is the key to unlocking an understanding that has remained elusive to social scientists. In fact the methods and theories taught to us as the "proper" way to "do" social science has, in Smith's view, done more to obscure our understanding of social relations than it has to reveal them. Feminists have long been searching for an alternative framework from which to view the differentiated social constructions of gender, a framework freed from the lens of masculine theory, thought and practice that is and has been posited as both the masculine and neutral (or universal) viewpoint. Feminist scholars such as Braidotti (1992) have located this difficulty in the access that men have to the "symbolic order," that is, men have easily constructed a link from their subjective positions to a larger conceptual framework which constructs society according to those positions. This places women in a position of defending or relating their experience from a subjectivity which is not seen as having the same access to the symbolic order. As a consequence of this exclusion women are denied access to the same type of validity or opportunity to construct reality that men enjoy as a right of gender. Harding notes that the means that feminists have sometimes employed to confront this exclusion have placed them in a somewhat paradoxical position theoretically:

> From the perspective of feminist theory and research, it is *traditional* thought that is subjective in its distortion by androcentrism -- a claim that feminists are willing to defend on traditional objectivist grounds. The ambivalence also appears when feminists appeal to scientific "facts," while

simultaneously denying the possibility of perceiving any reality "out there".... (Harding 1986: 138)

While it is easy to say that men dominate what is considered to be the objective (neutral and universal) sphere, and the social organization of relations springing from it, defending our position and reinforcing our critiques on a conceptual plane that does not depend on that very construction, as Harding demonstrates, is a tricky task.

In conceptualizing the standpoints of women, Dorothy Smith (1987, 1990) has made us aware of a space outside this masculine construction, a space which we occupy as women[2] because of our exclusion from the construction of the objective viewpoint. The articulation of Smith's methodology depends on a reconceptualization of the world in which we live and the development of alternative "methods of thinking" hinted at by the above quote, which is explained more clearly in what is to follow.

Taking up the position that the social world is and has been constructed by a male subjectivity that excludes women but which defines women's social relations and relationships, relegates women to a space outside of these relations.

> The making and dissemination of the forms of thought we make use of to think about ourselves and our society are part of the relations of ruling and hence originate in positions of power. These positions of power are occupied by men almost exclusively, which means that our forms of thought put together a view of the world from a place women do not occupy. The means women have had available to them to think, image, and make actionable their experience have been made for us and not by us. (Smith, 1987: 19)

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[2] Not only women occupy this space outside the objective sphere, Smith notes that race, class, and other forms of exclusion are factors as well.

The ruling relations and ruling apparatus (part of the complex interactions at play in the creation of objectified knowledge which is used to organize and mediate social relationships) ideologically construct the world we live in, organize our activities and define the basis of knowledge. What does this mean for women? It means that women's experience is not represented in ideological forms of thought which constitute objectified knowledge; as such women's knowledge and experience are excluded and obscured. However, occupying this space outside the ideological organization while participating in these relations accords us a position from which we can examine them, if we can extricate ourselves from "objectivity." This "outsider's view" is essential in locating the rupture between experience and ideology, it produces what Smith terms a condition of "knowing."

> ...ideological practices are at war with a knowledge-or perhaps better, a
> *knowing* -that begins from the site of people's experience. Ideological
> practices ensure that the determinations of the everyday, experienced
> world remain mysterious by preventing us from making them problems for
> inquiry. (Smith, 1990:43)

An order of knowledge has been created that somehow stands outside the experience of the individual but which has been created out of it. Smith notes that "objectified forms of knowledge, integral to the organizations of ruling, claim authority as socially accomplished effects or products, independent of our making" (1990: 61). Women's individual knowledge of their local social relations and experiences as represented in their daily lives are either omitted or transformed by the ruling relations, glossing over women's lived experience and rendering their lives invisible. Smith's example of how mental health institutions organize and mediate the lives of the "mentally ill" is particularly powerful.

> Where the patient is privileged to speak of her experience her statements are treated not as information but as indications of what is wrong with her. Whatever has been happening to and with that individual who becomes defined as mentally ill happens where she lives, in the concrete, actual conditions of her experience and her relations with others--not as these become specialized into the relations and talk of clinical settings, but as they are lived.... The organization of psychiatric care serves to separate an individual from the context in which her actions arise... she is taken from that context...into a process that progressively cleans her up and detaches her from the actualities and particular contexts of her living. (Smith 1990: 91)

Investigating the standpoints of women provides us a way to examine that individual knowing from the place where these individual experiences reside, that is, in women's activities, material relations and interactions with ruling institutions. In treating the woman as the expert knower, we uncover the rift between experience and objectified knowledge. We can challenge facts and assumptions created by ruling apparatuses and peel away the veils that obscure our own understanding of our lives.

The everyday world in which we live can be viewed as a fracture point where we can begin to examine the layers of cultural meaning that have not be created *by* us, but *for* us. In this reconceptualization, the process in question is transformed from one of entering women into the symbolic order to the recognition of the fallacies present in that order. Only then can the implications of these fallacies be examined with respect to women's lives. Smith emphasizes that "...we have assented to this authority and can withdraw our assent. Indeed this is essential to the making of knowledge, culture, and ideology based on the experiences and relevancies of women" (1987: 18). Medicine, law, psychiatry, and education are all institutions that participate in the relations of ruling and have been structured to create norms and models which may not, upon closer examination, suit the knowledge or experience of women's lives. Institutions make assumptions about

the nature of women that have been constructed along certain gendered lines.

> These assumptions and the social organization in which they are grounded are drawn into question when we begin from the experience and actualities of women's situation. For then we locate our enterprises with knowers whose perspective is organized by exactly how they are located outside these structures, by how they are excluded from participation, and by their actual situation and its relation to the ruling apparatus. (Smith, 1987: 65)

Rather than feeling forced to defend our subjectivity in an objective world, we speak from the place where we are and have been situated, a place where our activities and experience can reveal our fractured consciousness, a place where we can construct knowledges that directly subvert the construction of the objective world. This is the place from which my enquiry begins.

Academic Complicity in the Relations of Ruling

Before we, as academic researchers, can begin our enquiry we must first examine our own part in the relations of ruling. In our roles as academic researchers, most have been trained in the objective modes of data gathering, interpretation, and textual analysis that are predominant in all forms of institutionalized education. Traditional social science methodology based in positivist thought has supported, helped to create and disseminate objectified knowledge through the implicit (and explicit) assumptions about how to do "good" research. This complicity has been based in a number of assumptions, some of which are:

> That good research is a product of an objective researcher
>
> That good research is a process which begins with a concept that is both real and open to investigation in the activities and texts of research "subjects"

That social "truths" and generalities can be constructed,
which reveal the nature of social situations.

Smith cautions against interpretation grounded in the notion of scientific objectivity, stating that it is impossible to remain outside the 'confines' of one's own bias.

> To disclose the interests and perspectives of sociological knowers does not as such invalidate a knowledge that is grounded in actualities. Showing that people are interested is insufficient as a reason for saying what they claim to know is biased by their interest and therefore invalid as knowledge. Curiously, objectivity in the social sciences is to be guaranteed by the detachment of the social scientist from particular interests and perspectives; it is not guaranteed by its success in unfolding actual properties of social relation and organization. (1990: 32)

With this in mind, my research is less concerned with unveiling objective and positivist "truths" and more concerned in the grounding of my inquiry within a particular locus. In actuality, the refusal to accept that the very nature of our experience is biased can lead to the presentation of data that are implicitly skewed by 'objectivity'.

> If we begin from the world as we actually experience it, it is at least possible to see that we are indeed located and that what we know of the other is conditional upon that location. There are and must be different experiences of the world and different bases of experience. We must not do away with them by taking advantage of our privileged speaking to construct a sociological version that we impose upon them as their reality. *We may not re write the other's world or impose upon it a conceptual framework that extracts from it what fits with ours. Their reality, their experience, must be an unconditional datum. It is the place from which inquiry begins.* (Smith, 1990: 25, emphasis mine)

For this reason, my enquiry begins with the words of Melanie herself. Her words, and those of women's advocates, guide the theoretical enquiries of the last three chapters, offering us a platform and reference point from which we can investigate institutional

organization. Theorizing from this information may not be wholly free of reconceptualization, but what it does offer is a way to investigate the mechanisms of social organization and provide a general view of how individuals are organized within larger institutional frameworks. Our effectiveness as social investigators depends upon our realization of our placement in the relations of ruling and particularly of ourselves as grounded in a specific subjectivity.[3] To report *on* women with the conceptual tools given us by institutions is to render invisible women's agency and to reconstruct their realities through text. Smith gives an example of how text mediates reality even before it reaches the researcher.

> Living individuals in their actual contexts of action have already been obliterated before their representation reaches the sociologist. Feminism makes us particularly attentive to the mode in which "domestic violence" is presented. The above passage identifies no agents; the presence of women, men and children as subjects in these relations of violence are suppressed; the presence of the oppressed, in riots, civil insurrections, and so forth are obliterated. The other side, the representatives of the state, do not do violence...their forms of physical coercion are not identified. The mode is objectified. Who acts and how disappears. We cannot see what is going on. (1990:55)

In this project, what is obscured is the context of state and institutional relations when dealing with the treatment of violent men. Treatment is posited as the solution to the

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[3] Patrizia Violi, in her discussion of female subjectivity, debates the merits of a subjectivity which is not linked to the symbolic order.
> ...a subject which established its identity through autobiography is not the 'universal subject'... it is a particular rather than a general subject, what one might call an 'exclusive' subject, deeply rooted in the particularity of its own story and in its own unique life experience. (1992: 172)

Rather than avoiding the "exclusive subject," as researchers we must recognize that not only does this subjectivity exist, it must necessarily influence our actions and can also direct our investigation.

"public" problem of domestic abuse, obscuring the unequal power differentials between battered women and their batterers, and the attendant entrenchment of the public private dichotomy in women's lives. The visage of the state as a benevolent protector slips away under scrutiny, revealing hidden agendas.

In this way, individual experience and reality are obscured. Smith points out the danger of a non-critical interpretive method. The "pictures" constructed by the state redirect the gaze of the reader, much like an optical illusion. It is this picture that is constructed as "truth," the "objective" knowledge presented becomes incorporated into the relations of ruling.

> We have learned to discard our experienced worlds as a source of concerns, information and the understandings of the actualities of the social world and to confine and focus our "insights" within the conceptual frameworks and relevancies given in the discipline. Should we think otherwise or experience the world in different ways...we have learned to practise a discipline that disattends them or to find some way of making them over so they will fit. (Smith, 1987: 73)

To begin from women's experiences, as I do, means very little if that experience is entered into the realm of objectified knowledge. It is here, Smith emphasizes, that we must exercise the most care, not only as academics and professionals, but as individuals who interact and are also determined by ruling relations. "Sociology, [and other institutions] provides a mode in which people can relate to themselves and to others in a mode that locates them as subjects outside themselves, in which the coordinates are shifted to a general abstracted frame and relations of actions..." (Smith, 1987: 75). As feminists have been finding out, our disciplines have not until recently, and still may not, allow the personal or the subjective into our work when they are perceived to be outside

of the scope of the discipline.

> The cannons of science as a constitutional practice require the suppression of the personal...Being a professional involves knowing how to do it this way, how to produce work that conforms to these standards... we begin from outside ourselves to locate problematics organized by the sociological, the psychological, the historical discourse. The perspective of men institutionalized as the "field" or "discipline" cannot, it seems, be so directly confronted with a personal source of experience, because to do so is to step outside of the discipline, to cease to do sociology or history.... (Smith 1987: 60)

The researcher in utilizing standpoint methodology must confront the limitations of her own discipline and question the "normal" methods of her discipline or profession in order to analyze the role of ruling relations in women's lives. An inversion of general methods of thinking for the researcher is also required. In investigating the standpoints of women, we must begin with the particular, or local, and then move to an investigation of the extra-local and ideological organizations that determine or organize the local (it is the latter which becomes generalizable). We are not beginning with an abstract concept and then testing to determine a truth, nor are we attempting to make general statements about "women" or "all women." The general hypothesis and validation steps of science are of no use. Smith argues that " [a]s women members of an intelligentsia and therefore trained in the modes of acting, thinking, and the craft of working with words, symbols, and concepts, we have both a special responsibility and special possibility of awareness at this point of rupture" (1987: 49). If we look inward at our lives, we encounter fractures between our lives as academics and our lives as mothers, sisters, and wives. In other words, the demands of our professional lives, which are constructed along supposedly gender neutral lines, may not allow for the feminine constructed role of primary nurturer

and caregiver to a family unit.

Linking the Local and Conceptual Through Discourse Analysis

Our analysis then, must begin at the locus of women's experience, but it cannot end there. Within feminist analysis, there has been an increasing shift toward the presentation of women's voices in text in order to allow women to "speak for themselves." It is important to keep in mind that researching the standpoints of women does not seek to form a homogeneous category of "oppressed women."

> People on the margins experience different social worlds than do those whose lives construct and define the status quo. However this does not mean that people on the margins share a common perspective. What people on the margins do have in common is the way ruling relations organize their exclusion, depriving them of "the means to participate in the construction of forms of thought that are adequate to express their own experience." (Dale Spender 1981, cited by Kirby and McKenna 1989: 95)

We cannot take at face value the representation of women's experience in text alone, but must link these representations to an understanding of how women's experience reveals their interactions with ruling relations. In treating the everyday world as a problematic (to call into question that which we take for granted), we delve more deeply into the conceptual ordering of a society which treated as given certain conceptual categories in which "...[t]he concept becomes a substitute for reality. It becomes a boundary, a terminus through which inquiry cannot pass" (Smith 1990: 43). Traditional social sciences do not begin with a basic questioning of how categories such as capitalism, or the 'social problem' come to be formed in established methods of thinking. Smith provides an excellent metaphor:

We get into this mode very much as the driver of a car gets into the

driving seat. It is true that we do the driving and can choose the direction and the destination, but the way in which the car is put together, how it works, and how and where it will travel structure our relation to the world we will travel in. (1987: 73)

We move through a world that is, for the most part, structured for us, with underlying social relations and organizations that are unseen. The fracture[4] point of experience gives us entry into the complex structuring of relations at an extra-local level. We can begin to link women's experience to these relations.

In the research context this means that so far as their everyday worlds are concerned, we rely entirely on what women tell us, what people tell us, about what they do and what happens. But we cannot rely upon them for an understanding of the relations that shape and determine the everyday. (Smith, 1987: 100)

This does not mean that women are incapable of determining or understanding the extra-local, it is to say that a consciousness embedded in the local frame of reference cannot always "see" the discourses that shape the relations in their local contexts, and that much of this shaping occurs far outside the local context.

The actualities of living people become a resource to be made into the image of the concept. The work becomes that of transposing the paramount reality into the conceptual currency in which it is governed. (Smith, 1987: 53)

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[4] My use of terms such as 'fracture' or 'rupture point' make reference to the gap between women's experiential knowledge of their own lives and that knowledge created for them by the relations of ruling. For example, advertising images offered by the media present the social roles of wives and mothers in specific ways which are not how women perceive their roles or live their lives. When women measure their lived experience against such representations they often encounter a gap or rupture point between how their lives are and how they are portrayed. This fracture point provides us an opening from which we can begin investigation. Smith terms this relationship disjuncture.

Smith demonstrates how concepts and ideologies are actual practices. Ideologies are formed and re-formed through this conceptual currency by ruling institutions who then define individuals,[5] situations and actions in social relations. Sally Engle Merry extends this to show how ideology and discourse[6] impact on people's lives.

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[5] Carol Smart writes of the legal system's capacity to define individuals in specific ways through the examples of the construction of categories such as the prostitute and the homosexual. Smith also speaks to the categories of the 'single mother' and notes that these categories obscure much knowledge about the social constructs of individuals.

[6] The differences between ideology and discourse are not well articulated by some scholars and the terms are often used synonymously. The differences between ideology and discourse will be discussed further along in this analysis. For our present purposes, discourse is used to create, maintain, and transform ideology and ideological forms of thought. In this way, both ideology and discourse remain fluid and ever changing.

> Displacing ideology by discourse is, of course, a move undertaken in order
> to replace social contradictions (explained by ideology)....Discourse blurs
> the hierarchies of power: we cannot distinguish the powerful from the
> powerless. (Ebert 1996: 8)

Although I agree that in a postmodern sense, where power is viewed as aleatory, this is extremely likely to happen. However, I maintain that tracing discourses, which construct the ideologies of social groups, can actually highlight social contradictions, rather than displace them. Smith's (1987) notion of discourse is far closer to the one used in this project. She notes that current discourse has evolved from the male-dominated relations of ruling, and states that all discourse is mediated by texts. Having noted this she points out that women have been successful in creating a public discourse "perhaps for the first time in history," but cautions that this discourse is in danger of institutional appropriation.

The court imposes non-legal interpretations on the problems, and the plaintiffs resist these interpretations, demanding help in legal terms. I was drawn to this problem by my concern with the domination inherent in the ability of some to construct authoritative pictures of the way things are, pictures that others accept. These pictures are so powerful in that they suggest what must be done about a situation ....Who constructs authoritative pictures and who goes along with them are central questions, as are sources of authority that render some pictures compelling....Some people resist the pictures painted by others, insisting on their own. (1990:ix)

The pictures Merry discusses suggest a 'formulation of discourse' to paraphrase Smith, created by the relations of ruling. Smith (1987: 216) posits that the central point of women's spoken experience will situate them within communities of oppression that can be "discovered in a discourse that can expand their grasp of their experience and the power of their speech by disclosing the relations organizing their oppression." This reconceptualization or new 'method of thinking' presupposes a

...discovery from within, from differing bases and matrices of consciousness. It aims at the making of a discourse that is always being rediscovered and remade from a standpoint that is beyond, outside, discourse, always pressing on discourse for a means to speak, explore, find, know, map, organize, struggle.

The accounts of Smith and Merry combine to provide us with a formulation of the contentious nature of discourses between individuals and ruling institutions. These contentious relations exist between individuals and institutions such as law, psychiatry, psychology, history, sociology, and feminism.

Research and Standpoint Theory

Those who have undertaken research that explicates how knowledge is socially organized have embraced two research strategies closely linked to the standpoints of

women. The first is institutional ethnography, which is based in interview methods as outlined by Smith. Alison Griffith describes the interviewing technique as follows:

> In our institutional ethnography, in contrast to any other research on the relation between families and schools...we began with mothers and interviewed them about their everyday work of constructing the family-school relation. We explored with mothers how the extensive family work process provides for the child's participation in schooling.... Thus, our research in the schools held to the interests and concerns of the mothers we had interviewed, deliberately structuring our research of schooling to illuminate the social relations that had come into view through our focus on mother's standpoint. (1995: 110)

The second strategy in a social organization of knowledge approach is textual analysis of documents and media forms which mediate the relations of ruling. Gillian Walker, in her examination of the creation of the 'social problem' of domestic violence shows a transition in discourse over a specific period of time. She also demonstrates the increasing relegation of domestic violence problems to the legal and professional systems and their bid, through lack of funding, to silence the voices of grassroots organizations and agencies dealing with violence. The invisibility of battered women in the systems of ruling is also demonstrated.

> Within an analytic framework provided by American sociological studies of 'family violence' these recommendations formed a 'logical' response to a carefully researched and written exploration of the 'problem.'... This would potentially remedy the fragmentary and inadequate nature of existing services that were 'not oriented to the 'violent family'.... (Walker 1995: 67)

The identification of the most likely source of violence within the family is obscured in using the term 'violent family'. Also, an investigation into the configuration of violence as a 'social problem' relegated to certain public sector professionals is not questioned.

This questioning is made possible by standpoint methodology. My interview

context is semi-structured and open-ended to reflect Smith's notion that "... we do not disrupt the processes by the procedures we use, open-ended interviewing should therefore yield stretches of talk that "express" the social organization and relations of the setting" (Smith, 1987: 189). I used a list of questions as a checklist and a guideline as a way to keep conversation flowing. The interview with Melanie was taped on audio and fully transcribed in order to examine closely and identify her experience with respect to participation in the general organization of the institutional relations in the treatment context. The resulting material guides the investigation of ruling institutions and the discourses which sustain them.

After extensive informal conversations with counsellors and women's advocates, I conducted one interview from which to begin analysis. In traditional social science methodology the concern over the singular representation of experience could prove cause for concern. However it is important to note here that contrary to traditional methodology, this interview does not constitute a "sample," rather it will offer an outlook on the world from which I can begin interpretation. As Smith asserts, the popular procedure which "presupposes a method of distilling generalizing concepts from the social organization of the local setting whereupon the latter becomes an instance of the general principles distilled from it" is not the aim of institutional ethnography or the social organization of knowledge. She argues further that

> The relation of the local and particular to generalized social relations is not a conceptual or methodological issue, it is a property of social organization. The particular "case" is not particular in the aspects that are of concern to the inquirer. Indeed, it is not a "case" for it presents itself to us rather as a point of entry, the locus of an experiencing subject or subjects, into a larger social and economic process. The problematic of the

> everyday world arises precisely at the juncture of particular experience,
> with generalizing and abstracted forms of social relations organizing a
> division of labour in society at large. (Smith 1987:157)

The aim of this project is not to prove a previously determined point, but to direct research to a particular investigation of the ruling relations and the particular viewpoint of a woman's place within them. The particular experience of the interview guides my research into an examination of the textually mediated discourses of the legal, and helping professions. These texts, in fact all texts, are part of the social relations which organize how we view the world. Existing analyses on the nature of discourse and the construction of discourses in law, the helping professions, feminism and psychology are examined in reference to the creation of ruling relations and the construction of contentious discourses, that is, discourses that continuously compete to define meaning. Questions of accountability, responsibility and institutional actions/reactions figure prominently in the discursive analysis. This project also closely examines the formulations of discourse theory put forward by Goodrich (1987) and Merry (1990) in order to trace the ideological configurations of discourse. How do women's experiences with treatment programs affect our understandings of ruling relations? Specifically, I seek an understanding by raising several questions: Are women constructing their own 'pictures' (discourses) in relation to those put forward by the ruling apparatus? How do the dichotomies of sickness/healing, criminal/victim, and dominance/oppression play out in the ruling relations? How do the ruling relations shift and reconstruct themselves and discourse in order to accommodate the shifting of other discourses? Can we identify the gaps between popular treatment and legal discourse and Melanie's experiences? I believe that the answers to these questions

can only be answered in a framework that takes at its center point the experiences of women.

<u>Thesis Organization</u>

In the first section, I examined the necessity of understanding violence from the position of women's everyday lives, paying specific attention to the centrality of individual women's experience to understanding domestic violence issues. Melanie's "expert knowledge" is accepted as the link through which the relations of ruling are to be analyzed.

In the second section, I analyze the disjuncture between the ideology represented in legal reform and policy, and the actual practice of legal systems from Melanie's standpoint. This examination concludes that legal systems, and society in general, participate in the construction of battered women as unreliable and difficult witnesses, as complicit in -- if not partially responsible for -- the violence in their lives, and as unworthy of legal protection.

In the third section I investigate the claims made by clinical studies of treatment programs as to the effectiveness of treatment for male batterers, from both Melanie's experience, and that of feminist scholars and women's advocates. It is demonstrated that clinical treatment data are not encouraging as to the effectiveness of programs and that feminists question the institutional, patriarchal and biased nature of these scientific findings.

In the fourth section, using Gusfield's ideas on the formation of social problems, I discuss the institutional domination of ideologies surrounding social problems, their

appropriation and rejection of feminist politicization and gendered analysis of wife abuse, and the trivialization of both women's experience and the consciousness-raising methodology necessary to feminist analysis. Fundamental differences between the interests of the patriarchal state and feminist analysis are highlighted with the conclusion that the state and its institutions are attempting to take ownership of wife abuse as a social problem and to institutionalize the response to wife abuse against the best interests of women.

In the fifth section I investigate and define the discursive playing field, drawing attention to the struggle between feminist discourses around sexual domination and inequality, and the institutional discourses which are seated in a collage of psychological, liberalistic, legal and individualistic attitudes about the nature of wife abuse. I identify discourse as the primary tool through which ideologies about wife battering are formed and transformed. I conclude that the cumulative experiences of women, focused into discourses seated in the recognition of violence as a manifestation of gendered power relations, is pitted against institutional discourses in a battle to define the ideological climate of wife abuse. Until the basis of how society thinks about wife abuse is transformed, legal and psychological remedies will continue to fail.

Chapter 2

The Response of the Legal Professions to Domestic Violence: We've Come a Long Way Baby?

> Unlike other victims of violent crime, battered women are often viewed by the police, the prosecutors, judges, jurors, and probation/parole staff as responsible for the crimes committed against them- responsible either because battered women are believed to "provoke" the perpetrator into violence or because they are believed to have the power to avoid the criminal assault through accommodating the perpetrator's demands. Other victims of violent crime are not seen as culpable for the crimes inflicted on them, but battered women frequently report the criminal justice personnel appear to see them as "unworthy victims" who are clogging up the courts with unimportant family matters. (Hart 1996: 101)

Battered women and their advocates have called upon police, judges, lawyers, and corrections personnel to punish, on behalf of the state, men who use physical violence against their intimate partners. Recent research and government reports all highlight the commitment of legal process to end violence against women in intimate relationships.

The <u>Violence Against Women in Relationships Policy</u>[7] in British Columbia "directs the justice system to emphasize the criminality of violence within relationships and to take the necessary measures to ensure the protection of women and children who may be at risk." At the same time, the Canadian State recognizes that "[a]s a result of a lack of understanding of the dynamics of wife abuse, the criminal justice system response

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[7] Quotations from this policy are taken from the 1996 updates of the 1993 policy document. "Part 1 of the policy...was developed in 1993 following a two-year consultive process to revise and expand the original 1986 Ministry of Attorney General Wife Assault Policy" (British Columbia 1996: 1). Also, quotations are taken from an earlier document, Violence Against Women in Relationships: Implications for Justice Personnel (1993). Sections of the Criminal Code of Canada were amended originally, broadening the definition of assault and sexual assault in 1983 (Johnson 1996).

has often created a secondary victimization of women victims" (1996: 2).   In the following section, the experience of a single woman within the Canadian Justice system will be the lens through which research on the police, courts, and other justice personnel will be examined.

<u>Policing Domestic Violence</u>

Studies of the arrest and prosecution process report varied conclusions regarding the ability of arrest to deter domestic violence;[8] these will be discussed later with respect to arrest and prosecution controls. For women who are battered by their intimate partners, police responses to violence prove to be an ongoing difficulty.

> [That] was the first major assault that the police came for. And that was like, two hours of getting dragged around the house by my ponytail and held up on the wall by my throat and feet off the floor, and he's 6' 5" and 290 [lbs] and he was kneeling on my chest with a piece of wooden doweling in his hand hitting the floor beside my head and it was really ugly. Part way through it he got up and he phoned the police and he said "get over here and get her out of here or I'm going to kill her," and then he beat me until they got there.

The quotation presented above reflects the victim's view of the effectiveness of police in situations of battering. That her abuser had no fear of the police, and in fact contacted them himself, is a clear indication that he did not believe that he would be arrested or

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[8] Although this project is concerned with whether other legal controls are effective in deterring violence, it will not focus on deterrence theories or those of social control in a context which does not deal specifically with violence against women. Peter Manning separates the theoretical role of police from the practical and social one by citing the "marketing" pull of "publicity, political forces, and movements" on policing. He concludes, "How to attack crime, exert social control expediently, avoid scandal, increase public support for police and reduce violence are police problems" (Manning 1996: 94). These political "problems" require careful scrutiny, as they directly affect battered women at the site of police intervention in battering situations.

punished by the police, nor did the impending arrival of the police cease his violent behaviour. Melanie's account of her violent relationship is littered with encounters with the police, which were very rarely, if at all empowering.

> I was still staying at a friend's, I hadn't moved back in with him, and he came there and he started to push me and he was gonna start assaulting me and I told him if he even touched me I was going to the police and the first time he pushed me I phoned the cops. And that time they took him and they just drove him down the block and dropped him off and they didn't press charges. And he still had charges pending from the first one.

Melanie's -- like so many other women's -- experience with the gap between public policy and police practice indicates that the "new" severity with which justice personnel are instructed to deal with domestic violence is not necessarily adhered to. In dropping Martin off down the block, the police obviously believed that they were fulfilling their role as officers of the law, despite exposing Melanie to the possibility of further violent behaviour. In doing so, they not only failed to protect her, but undermined her strategy of resorting to police protection to keep Martin's behaviour in check. It is improbable that had Melanie been attacked by someone unknown to her, the stranger would have been afforded the same courtesy. Klinger's study of policing domestic violence in the United States cites that "prior to the 1970s, many police departments had policies that directed officers to avoid arrest in such cases-commonly called "domestic" or "spousal" violence" (1995: 309). The notion that "domestic" violence was a "family" problem and therefore a "private" problem and not a "real" crime was prevalent (Dobash and Dobash 1979; Buzawa and Buzawa 1996; Hilton 1993). Given the radical change in legislation since then with the implementation of mandatory arrest and other pro-woman policies, how

then, do we explain Melanie's recent experience with the police? Ferraro and Pope cite

the ongoing belief of police in their role as makers of peace, but not necessarily purveyors

of the law, to explain their actions (see also Ferraro 1989; Jafe et al. 1993).

> The primary focus of police intervention into domestic violence is the restoration of a "semblance of order." Such a focus does not usually address the private terror experienced by a woman who is threatened by her partner. If the violence has subsided and is no longer visible to outsiders, including the police, officers perceive the situation "under control." (Ferraro and Pope 1993: 114)

Although Klinger's research finds no significant evidence that arrest is less likely for

spousal assault incidents, Rigakos's research undertaken in Delta, British Columbia, where

there is a mandatory arrest policy, finds that police attitudes towards women in violent

situations are mediated by misogynist beliefs about women and the nature of violent

situations.

> The whole arrest thing is bullshit. You have some real douchebags who keep the house like a pigsty. Then he gets angry...and she's drunk and slaps him. If he fights back she calls the police. Most of these things are started by women anyways, it's just that they're smaller and end up losing the fight. She shows you her wrists are red where the guy grabbed her and expects you to arrest him even though she hit him first. All he was trying to do is keep her from hitting him by grabbing her arms and forcing her onto the bed. (Male Constable cited by Rigakos 1995: 236)

Contrary to public rhetoric, which states that no woman deserves to be battered and that

all women have the right to be protected from violence, the stigmatization of women as

lazy, shrewish, and antagonistic serves to reinforce the notion that women are responsible

for the domestic sphere and the violence that accompanies it when she fails to carry out

her duties. The attitudes of the Constable interviewed above are not only insulting to

women, but can be an obstacle to the effective implementation of mandatory arrest policies. In Arizona, Ferraro (1989b) finds that there is an unequal implementation of the presumptive arrest policy by officers according to their ideas about interpretation of the legal policy and ideological beliefs about the nature of domestic violence. Similarly Stith's (1990) research in the midwestern United States, finds that factors in police officer's lives influence police officers' attitudes and actions such as race and economic status (Ferraro 1989; Ferraro and Pope 1993), visible injuries and the offender's history of violence (Bachman and Coker 1995).

Women can see the police as giving little assistance to them when they do call for intervention from outside authorities, preferring to deal with it themselves since "[P]olice are sometimes said to be reluctant to make decisions regarding culpability and arrest both parties..." (Lyon and Mace 1991). In Melanie's case, police were reluctant to arrest her abuser at the hotel where they were staying even though she had a broken nose and other visible injuries, insisting instead that she and her son leave the premises as the room was in Martin's name.

> ... he knocked me out in a hotel room with Nicky there in the room ... I called the police when I came to and they told me that I had to get out of the hotel room cause it was in his name. And they were just completely obnoxious and I told them to go fuck themselves and I would handle it myself. And then he got rude to them and they took him away on a drunk and disorderly but didn't charge him with assault.

Aside from the fact that police are supposed to arrest when evidence of abuse is presented, Melanie believed that the police themselves were of little use to her, except when directly antagonized by Martin. When he was removed from the hotel premises, it

was not for abusing Melanie. This is reflected by the testimony of other battered women

as given in the Canadian Panel on Violence Against women in 1993, which reported that

"Many women told the panel that police officers know little about the dynamics of

violence against women or take violence against women seriously" (214), and that

> By using their discretional power, police support or deny access to the
> justice system for women according to the narrow criterion of the "good
> witness," that is white, middle class, able, heterosexual, etc....women who
> are assaulted who do not correspond to the ideal are often blamed for their
> own victimization (216).

Melanie "pressed charges"[9] herself the next day after making sure Martin was still in jail

for drunk and disorderly conduct.

Legal agents construct battered women as unreliable, and even hostile to police and

justice enquiry. Melanie's refusal to testify in court against her abuser on a previous

occasion   made   police   doubtful   and   suspicious   of   her.

> And I went to the shelter and I dropped Nicky off and someone- child care
> came and I went to the police station and I pressed assault charges. And
> at that time he already had a few charges so they weren't very willing to
> press charges cause they thought I would just back out again...so they said
> that if I wanted to press charges I had to do a videotape an audiotape and
> a written statement and that if I backed out I would be charged...

The failure of the police to support Melanie in the first instance is compounded by their

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[9] Melanie's use of the term "press charges" denotes a plural meaning and context. In the eyes of the legal system, "press charges" is a term which enables specific legal actions by particular officers of legal authority. Melanie's attempt to utilize the law to empower herself is carried out in the "pressing of charges," which takes on a particular personal and social meaning. This term, used in a following passage, is a powerful signifier of empowerment and action. Melanie's decision to "press charges" indicates an autonomous decision making process by which she determines the course of action. This is a focal point in terminating her relationship with Martin.

disbelief that she would carry through in her testimony against Martin. While Melanie had refused once to testify against Martin because of his voluntary entrance in a treatment program, she now felt that she had done all she could. This was a last resort to protect herself and her child from Martin's abuse. After she made her decision to escape the brutal treatment of Martin, the police made it difficult for her to follow through, believing that she would back out of testifying again. This view of the reluctant witness is prevalent among justice personnel, and shapes the attitude that officers have when deciding the evidence in charging abusers.

> In Delta, the masculine occupational culture of the police department has contributed to negative stereotypes of women as liars, manipulators and unreliable witnesses; has fostered erroneous assumptions about the cause of violence in the home; and has pointed the finger at the"system." In addition, these perceptions help foster a selective memory process that magnifies the rare event of a battered woman failing to appear or refusing to testify and comparatively diminishes those cases that result in successful prosecutions. (Rigakos 1995:234)

When women are reluctant to appear in court or to have their abuser arrested, they are interpreted by the police as wasting valuable police time, as not being serious about wanting to end the violence in their relationships, as "stupid" because they do not want their partners to be incarcerated, and as liking the violence because they stay in a violent relationship.

> ... some victims of domestic abuse may be committed to continuing to heal the relationship that is scarred by abusive behaviour. In such cases the law offers little if anything and essentially takes the view that asking for the protection of the law is "blowing hot"; remaining with an abusive individual is "blowing cold"; and the law cannot help those who "blow hot and cold" at the same time. (Alberta Law Reform Institute 1995: 48)

Ferraro and Pope (1993: 96) attribute the "irreconcilable differences" between the police and battered women to a difference between the culture of power represented by police and other legal personnel, and the culture of relationships represented by battered women. They argue that the interests of jurisprudence are founded on a political liberalism which represents "contradictions between the needs of battered women and the orientation of law." They argue that when women contact the police or other legal bodies they attempt to strategize controls, as Melanie did at first in order to attempt to curtail Martin's violent behaviour, that will end violence in their lives without having to sever ties to the batterer. Fear of retaliation and importance of family can go a long way toward keeping women in violent situations.

> The centrality of attachment to others in the lives of those women is accompanied by alternative values and fears. For those immersed in a relational culture, the ability to connect, nurture and maintain intimacy is highly valued. (Ferraro & Pope 1993: 100)

Melanie left Martin three times during their relationship, and went back with promises that "it would never happen again." She explains that she never felt that she was at risk while with him, but only realised how much power he had after she left him for the last time.

> He choked me one time and I had bruises on my neck, fingerprints and that. So I wore a turtleneck, and I was in the bar sitting there one time having a coffee waiting for him to get off work and the barmaid came over and she started rubbing my neck for me, cause they always used to come give me back rubs ... But she did this and I had bruises and I said "Ow, Ow, Ow, don't do that today," and she pulled my turtleneck down and she looked and she said "He did that to you didn't he?" And I said, "Yeah, just drop it it's none of your business," and she said "Why do you stay with him?" And I said "Well Laurie, he does that, but then he comes home." And that was good enough for me. You know? And that's really, really sad to say but that's where I was. So when I left him I started to

realise ...

The importance of maintaining a relationship, even in the face of severe brutality, is linked to the "stand by your man" mentality that reinforces traditional gendered beliefs about women as the backbone of a relationship. Women are supposed to make relationships work, no matter what. This centrality of attachment is bolstered by the familial-based connections of women, the patriarchal ideology which emphasizes romance and relationship in women's lives,[10] and the dynamics of the abusive relationship in which women are socially, economically and physically controlled or limited by their abusers. One of Melanie's primary reasons for staying with Martin was that she hoped he could be a good father to his son. Another reason was that she still loved him despite all that she had been through.

> Because, like I still love him and I still--he tells me that he had a dream--
> that I'm gonna get married and then somehow my marriage is going to end
> and ten years later him and I are going to get back together and its finally

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[10] This ideology is exemplified by a news item presented in Ms. magazine which appeared in the Chicago *Tribune* entitled "Courtship's End: Men and Women are Paying a High Price for their Individualism," which states "that courtship has been severely damaged by feminist ideology goes almost without saying...the reconceptualization of all relations based on power is simply deadly for love." It also states

> [f]or the first time in human history, mature women by the tens of
> thousands live the entire decade of their twenties--their most fertile years--
> neither in the homes of their fathers nor in the homes of their husbands,
> unprotected, lonely, and out of sync with their inborn nature." (1997: 29)

It is clear from this article that woman's nature dictates that her destiny lies in the fulfilment of a heterosexual relationship resulting in a traditional family unit, and that the search for equality is seen as striking a fatal blow to the romantic relationship. Apparently love simply cannot be based on mutual respect and a sharing of power, and an unnatural woman cannot expect to be loved.

going to work, so he is just leaving me alone for ten years right now. [laughs] You, know?

Despite her feelings for Martin, Melanie vows that she will not return to him, yet her ongoing relations with him on behalf of her son, Nicky, still constitute them as having a shared family unit. Martin feels his rights as a father, and his connection to Melanie, will, at some time, make reconciliation possible. This is reflected in what Hanmer (1996) terms the "web of relationships" in which women live. Yet it is abhorrent to police, and society in general, that a woman can love her abuser and that even after years apart she can still love him. An excellent example of this is given in a discussion of orders for protection (OPs):

> For some battered women, fearing both invasion and loss of connection, the OP may be seen as a mechanism with the potential to remove the violence by her partner. She may perceive the OP as a technique for ensuring a violence-free marriage, continuing to live with her violent partner and holding the OP as a "guarantee" of protection should he violate his promises that "It will never happen again." For Judges, however, a woman's failure to separate from the relationship once a OP is granted is a demonstration of a failure to respect the court and instigation to renewed battering. (Ferraro and Pope 1993: 100)

This rationale is lost on the agents of the culture of power who draw the "solution" for violence from "[t]he desirability of order, profit, rational choice and a domestic realm of privacy" (Ferraro and Pope 1993: 103). Without desiring to essentialize women into the category of nurture or to exclude them from the capabilities of rational thought, consideration of the "web of relationships," or "culture of relations" highlights the complexity and intricacy of the connections in the private sphere that women traditionally occupy. Some women accept the authority of police as valid, seek refuge in the legal order, and get the punitive results they seek. But many others, whom society views as

acting in ways contrary to "rational" thought, are treated by the system as undeserving of protection and may be deemed "...irrational and deviant...They live with men who beat them and their children, become angry at police for trying to help them, and retract accusations of violence after arrests have been made" (Ferraro and Pope 1993: 105). This is well demonstrated in Melanie's case. Women viewed as such are just as victimized by the legal system as they are by their abusers, and considered just as deviant.[11] To validate only the experience of women who seek protection from the legal system opens those who do not to stigma and sparks the belief among legal agents that there are "deserving" and "undeserving" victims of abuse. This perspective is echoed by Hatty's (1988) research in Australia in which police officers separated the community into "hopeless families," where violence was chronic and required continual police intervention, and "responsible families," where violence was sporadic or resolved internally within the family.

This is not to say that all members of the police share the above-mentioned attitudes toward women who have been battered, but to point out that the reforms[12] of state policy which reflect a commitment to the plight of battered women may not be as entrenched as we would like to believe. Personal and societal attitudes toward domestic

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[11] Examples of this deviance can be seen in Women, Violence, and Social Change, by Dobash and Dobash. They cite the psycho-pathological constructions of battered women in Great Britain as "prone" and "addicted" to violence through childhood or embryonic experience, and also cite psychologists that conclude that battered women and their children should be locked up and treated. Theories of learned helplessness, masochism, and relationship addiction all implicate women as being responsible for their acceptance of violence.

[12] Such as The Violence Against Women in Relationships Policy.

violence have not completely altered to match those reforms. Hilton's study bases itself

in the hypothesis that "the police are more concerned about doing what the public expect

of them than controlling crime" (1993:38). Therefore, if society believes domestic

violence to be a critical problem deserving of a stringent legal response, then police will

treat it as such. Again, this represents a disjuncture between police practice and public

policy, but not between public opinion and police practice. Hilton notes that the "official"

position on wife assault in Canada is that it is wrong and that intervention is appropriate.

When examining policy, members of the public may be convinced that the problem of

domestic violence is being dealt with adequately. However, public opinion still emphasizes

that stranger violence is considered the more serious problem. Hilton's findings that there

was a low tolerance for violence in public opinion as a whole is considerably weakened

by the same public's response who viewed charging as more appropriate to stranger

assault than to wife assault, and that strangers are more to blame for their violence than

men who abuse women in relationships. Hilton states that

> [c]riminal charges were recommended most for the recidivist stranger
> assaulter. This was also the offender who was seen as most to blame for
> his behaviour, and a post hoc analysis revealed blame ratings to be the
> strongest singular predictor of whether charges were recommended.(1993:
> 55)

If, as Hilton suggests, society believes that stranger assault is in greater need of a legal

response than wife assault, then how can we expect legal institutions to take woman abuse

seriously? How can we condemn the police officer for the systemic belief that wife abuse

is less serious than "real" crimes and thus deserving of attention? How can we stop police

from dropping abusers off around the corner, and considering their job done? These

questions can be carried over into a discussion of other facets of the legal system as well.

The Court and Correctional Systems

In 1993, the Canadian Panel on Violence Against Women reported disturbing claims concerning violence against women and the existing judicial climate towards violence against women.

> ...when responding to a call, police often do not give the woman adequate information on available transition houses, on social and legal services, on the case itself, or even their own name, number, and telephone number (216).

> The importance of the role of Crown attorney was emphasized in supporting women's safety. Many women mentioned that survivors were not made aware of the process of laying charges and testifying in court and commented on the limited involvement of survivors of violence in the process (219).

Police often cite the failure of courts to carry through with the prosecution of domestic violence as a justification for their failure to enforce arrest policies (Jaffe et al. 1993). Individual attitudes held by police cited above can be said to apply to other criminal justice personnel as well.

> Victims of domestic abuse at times encounter persons exercising power in the legal system who hold stereotypical attitudes about race and gender. Police, judges or lawyers who hold such attitudes may be less than helpful to victims of domestic abuse. Encounters with such individuals may also discourage victims of domestic abuse from seeking help from the legal system in the future. (Alberta Law Reform Institute 1995: 47)

While Melanie received what she considered to be a just response from the judge in her case, her encounters with the local police were discouraging indeed, as were encounters with other justice personnel.

Ford's (1991) study determined that prosecution, much like calling the police in Ferraro and Pope's study, is used by victims as a strategy to control violence in their relationships. Policies implemented by the Canadian Government and various states in the US such as "no drop" and mandatory arrest policies are said by Ford to contribute to the disempowerment of women through taking complete control over arrest and prosecution. All that women have left, he argues, is the ability to refuse to testify in court, or the negative power of not reporting the crime in the first place. This resistance undoubtedly has an influence on the construction of battered women as unwilling victims. Melanie's refusal to testify in court after the first charge of violence was greeted with less than enthusiasm by the crown, and exhibited itself in what Ford terms a "negative power resource."

> ... he still had the charges pending and when the court date came around I was supposed to be a witness for the crown against him. And I went in and I talked to the crown and I said "look, if you put me on the stand, I'm going to lie," 'cuz he had already gotten in to a treatment program...

An unenthusiastic crown is not the only impediment to women's empowerment. Melanie's defence lawyer maintained that he would not continue to represent her if she went back to Martin. This is a reflection of both the legal system's failure to support women's decisions or to withdraw them altogether if she doesn't do what is expected of her.

> Even my lawyer says to me, I--uh, you know he's great in court 'cuz he's mean as hell-- But he says to me after court, "you know, if you go back that makes me a failure." It's like, get over yourself buddy, this isn't about you.... even like the lawyer does that. And he's said to women..."if you go back, I won't be your lawyer any more." Like, what's that? You are abusing her too...so it's basically everywhere. I think the whole structure has to change. And I don't know how that's gonna happen, but I'm gonna do my part.

The revictimization of Melanie by her own lawyer indicates that the systemic abuse of battered women can happen from those who "support" her interests as well as from public service agencies. Melanie's lawyer's interests were certainly vested in his professional reputation, regardless of Melanie's decisions.

Ford cites a number of reasons to explain why a battered woman may use prosecution as a bargaining resource, among them are: for protection, to get him "help" (counselling), to get support payments or property from residence, or simply to carry through a threat that she meant "business." Ferraro and Pope cite a 1988 study by Caputo in which eighty-seven percent of women who called police for help did so with the hopes that the relationship would change, not with the intent of ending the relationship. This lends credence to Ford's assertion that the problems that arise between victims and service providers "stem from a narrow definition of 'assistance' denoted in terms of the helper's role rather than the victim's needs" (1991: 331), and begs the question of whether "no drop"[13] policies are primarily to assist victims and to make sure batterers go to trial or to decrease case attrition.

The prosecutor's role in bringing batterers to justice is a crucial part of the legal response to battering.

> He or she interacts directly with police, victims, witnesses, defendants and their attorneys, and judges. In exercising broad discretion at various points, the prosecutor is most influential in shaping the course of events for both victim and defendant. (Ford and Regoli 1993)

Even before a woman comes to trial, she may have faced several obstacles in the legal

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[13] Indicates no dropping of charges after they have been laid.

system. Ford and Regoli discuss how prosecution decisions may be made on the basis of the "worthiness" of further processing, such as, the seriousness of injuries, prior record of the offender, or perceptions of so called negative victim attributes which call into question the woman's status as victim. In regions where there is a choice for the victim, heavy caseloads also lead prosecutors to enquire as to whether victims really want to pursue a case against their abusers. Factors that may wear down a victim's resistance are the length of proceedings and the inconsistency of response within the system.

Also, trial can be both costly and traumatic for women. Ford and Regoli state that "[f]or victims, in particular, extended proceedings may require repeated contacts with their assailant and thus more opportunity for conflict" (1993: 146). Similarly, Goolkasian states "courtroom practices may vary dramatically in these cases, not only from one jurisdiction to another, but even from one judge to another in the same court" (1986: 81). There may be differences in individual attitudes toward domestic violence among judges.

> Even if the woman shows up in my court with visible injuries, I don't really have any way of knowing who's responsible or who I should kick out of the house. Yes, he may have beaten her, but nagging and a sharp tongue can be just as bad. Maybe she used her sharp tongue so often that she provoked him to hit her. (1986:81)

That a woman might be unlucky enough to come before this particular judge, or one like him, is a serious consideration when dealing with the legal system. There is no guarantee that the judge or police involved may be sympathetic to women who testify against their batterers. Public policy cannot change all individual attitudes. It is no wonder then that women don't trust the justice system and are reluctant to testify against their abusers. Melanie's decision to testify resulted in a six month sentence for her abuser, which was

considered quite harsh by Melanie herself, as well as Martin's friends. Although the outcome was one which she could live with, travelling expenses to the region where the offenses were committed proved difficult to manage, and the charges caused Melanie some confusion, as my interchange with her indicates:

> ...when they charged him with assault they did it as a summary conviction rather than an indictable offence ... a summary conviction you can be charged for anything you have done in the past six months, and indictable offence would have been a more serious offence ... they charged him with common assault rather than assault causing bodily harm, and because they only charged him with common assault, only the past six months could be used. But I had already been gone for five months.

> [Myself: So it was prior to the court date?]

> I think prior to the charge but we had separated, like he had been assaulting me for two years and if they had charged him with assault causing bodily harm ... all the ones he had been previously charged for would have been brought in, and because they did it as a summary offence, there was two assaults that they could actually get him on, and one of them wasn't even an assault, he had threatened to assault me.

Women often slip through the cracks of the legal system, and they may not be completely informed about or agree with the implications of their testimony, as indicated by the previously cited report of the Canadian Panel on Violence Against Women. As indicated by the previous comments by police officers and judges, decisions to enforce legal policy are sometimes arbitrarily made. Biases against battered women weigh heavily in the outcome of the prosecution of abusers. Established legal practice itself can disempower women in the courtroom. This is exemplified by Melanie's experience in court, where Martin was allowed to cross-examine her.

> ... he just tried to make it like, you know, aren't you lying, and aren't you really the problem, and don't you think that you need counselling, and

things like that.

That Martin was allowed to cross-examine her not only indicates the lack of understanding on the part of the legal system of the power dynamics inherent in domestic abuse, but also speaks to the legal privileging of the rights of the defendant within that system. These rights were constructed to protect individuals from the power of the state, but not necessarily the victim from the accused.

> The commonly accepted notion of the criminal trial which pitted State against the Accused fuelled the need to safeguard the rights of accused persons at every stage of criminal proceedings...Although it is difficult to identify specific reasons for directly excluding victims there are factors which helped ensure that victims played a minimal part in the criminal process....It was widely believed that the victim's interests were more than adequately being protected by the Police and Prosecution. (The Canadian Criminal Justice Association 1985: 1)

In Melanie's case, it meant that her abuser got to review past cases of his abuse against her in a more direct manner and that he had an opportunity to frame her retaliatory violence as aggressive acts against him. In framing the issue as Melanie's problem or Melanie's violence, she is implicated as having some responsibility for the mental and emotional damage done to her. The suggestion that she was the party in need of counselling is a particularly insulting tactic on the part of Martin to escape responsibility for his actions and to cast doubt on Melanie's testimony against him. This was unsuccessful, yet established legal practice exposed Melanie to more of the very abuse that she had appeared in court to prevent.

> And so he got six months in jail. And when they sentenced him the sheriff went to grab him and he turned around and came at me in the courtroom, and I fainted and my friend was beside me and she kind of moved--picked me up-- and took me out of the courtroom and, uh, like we kind of... stood

in the back corner until they got him out of the courtroom and then I came
out of the courtroom....

The irony of this passage is not lost on Melanie, the system that been so ineffective until court had finally been able to protect her, but not for long. In a continuation of his abusive tactics, Martin also had Melanie paged at the airport from jail immediately following the trial. This constituted a direct violation of one of the many restraining orders she had against him during their relationship.[14]

The perceptions of the limits and severity of legal sanctions are questioned among legal personnel, abusers and victims. Police fail to press charges because of leniency of court decisions; prosecution attorneys drop cases based on the inappropriateness of victims; victims do not report crimes because of their perceptions of police, all with the result that abusers do not take the "system" seriously. Martin "thought he was getting off," attests Melanie, "he was sure...he had a job lined up that he was gonna work that night after court." The perceived severity of legal sanctions, embarrassment at having been hauled into court, or shame in committing the act cannot be relied on to deter wife abuse. Grasmick et al. find that, unlike with littering and drunk driving, the fear of personal shame, embarrassment and legal sanctions for interpersonal violence had not

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[14] Harrell and Smith (1996) make reference to the failure of restraining orders to control abusive partners and the difficulties in the legal administration of protection orders (Alberta Law Reform Institute 1995). In short, these types of orders are often transgressed by abusers under the justification of "working things out," or to have contact with children. Several legal administrations impose fees and long waiting periods for protection orders and they must be renewed frequently. It has also been documented that legal agents often fail to enforce or inconsistently enforce restrictive orders (Rigakos 1995). All of these factors can deter women from seeking legal protection from abuse.

changed or were insignificant in the past decade "in a manner that would substantially reduce prevalence and incidence of this behaviour" (1993: 323). Lyon and Mace note the disgust that some family counsellors and women's advocates hold for the leniency and perceived limits of legal sanctions.

> That's demoralizing for victims, and for us, too. It teaches the guys that they can beat the charges, and that spreads fast.... [When no longer referred for alternative interventions] they learn that you can beat your wife for $100.00--they just have to do it more than once. (1991: 177)

One of the professionals in this study remarked that abusers know that jail time is unlikely because of the cost and overcrowding of institutions. The position of some battered women in the institutional system is poignantly summed up by Melanie:

> ... they don't get sentenced harsh ... so if it's acceptable in the justice system, how are you going to say, "No, you can't do it, you know, why can't you do it? ... you beat the hell out of your wife an average of--I think it's like thirty-five times that you are assaulted before you go to the police for the first time.... [T]hen when you do go to the police, they don't take it seriously or they think its a private family issue or they think that, "Oh well, she must have provoked it." So you don't get support in the police system and then you don't get support in the court system cause he doesn't get a harsh sentence, and then some of the counselling programs you go to tell you it's your fault. That's gotta change...

Even the relatively harsh sentence Martin received for his abuse was a shock to Melanie. She considered it to be an anomalous occurrence considering the stories she had read in media coverage of wife battering.

> ... on the same page you have a guy--there's this one I read--...there was an article and then an article right underneath it and this guy got eight and a half years for drug possession, and this other guy got a suspended sentence for killing his wife. Like where's the rationale in that? I mean there-- you read the paper--and it's like one year suspended sentence, one year suspended sentence, you know, probation or a fine or--but who the

> hell goes to jail for--you know Martin got six months and everybody was like, "Holy fuck, that's a big sentence. First offence he got six months." ...and that was a huge sentence, and I'm sure that that was because the judge was having a bad day....

Her belief in the ambivalence of the court system is well founded. The justice system sends mixed messages to women by implementing policies that are meant to empower them, while at the same time maintaining an intrasystem ideology that clings to the notion that wife battering is not a real crime. Despite all the public attention given to wife battering, public opinion still does not appear to accept that wife abuse is as serious as stranger violence nor do all agents of the law. This contradicts a public policy dedicated to stopping wife abuse in the interests of the "public good."

> Crown counsel does not act on behalf of any specific victim, but rather represent, on behalf of society, a wider public interest....Crown counsel must recognize and indicate to the victim that despite her reluctance, society has an interest in prosecuting offenders who perpetrate violent crimes within their relationships. (British Columbia 1996: 11)[15]

The recognition of wife abuse as against state interest and the interests of society does not entirely ring true, considering the actions of specific legal agents. A recent *Globe and Mail* article, "Officials Deny Special Treatment for Chrétien's Son," discusses the release of Michel Chrétien, incarcerated for abusing his ex-girlfriend and her son. He had breached the conditions for his original release that required that he not contact his ex-girlfriend or her son. In response to the charges of special privilege, Staff Sgt. Hal Zorn of Regina stated that release is common procedure for "anyone who's arrested for a

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[15]Legislative changes in the Criminal Code in 1983 empowered officers to lay charges against someone they suspected of committing an assault under probable cause even if there were no witnesses to the assault.

violent crime, like an assault, if it is not considered that he be a danger to the public, and that is usually the case for common assault" (May 23, 1997: A9). By the very definition of public interest presented in the Violence Against Women in Relationships Act, an assaultive man is a direct danger to the public because he is a direct danger to his victim. Here, it is conveniently forgotten that women are a part of "the public." In defining her as such, she should be protected. Conveniently, in this case, a danger to one woman is not a danger to "the public." Women like Melanie cease to become the public, despite alarming numbers of women killed or injured by their partners. This contradiction clearly personifies the gap between the *policy* of the state and the *practice* of the state's agents. Battered women beware.

If women are not part of the public, then where do they fit? Schneider describes the private realm that has hidden domestic violence

> The concept of privacy encourages, reinforces, and supports violence against women. Privacy says that violence against women is immune from sanction, that it is permitted, acceptable and part of the basic fabric of American family life. Privacy says that what goes on in the violent relationship should not be the subject of state or community intervention. Privacy says that it is an individual and not a systemic problem. Privacy operates as a mask for inequality, protecting male violence against women. (Schneider 1994: 43)

Thankfully, due to the work of diligent women, the boundaries between public and private in domestic violence issues have been questioned; now policy reflects a rejection of the traditional dichotomy. But to what extent? The attitudes maintained by legal agents' victim-blaming statements lag far behind legal policy. The characterization of the nagging, provoking wife and girlfriend and unreliable, deviant and hostile witness remain in the minds of our police, judges, lawyers, and public.

In light of increasing fiscal pressure on corrections systems, can the state be expected to carry through on its mandate to prosecute all reported domestic abuse cases? The attitudes of some legal agents make this unlikely. Also, the wishes of battered women are considered to be contradictory. Women call the police for assistance and yet not all women want their abusers to go to jail. The difference between policy and practice of the legal system seems to reflect the systemic difficulty of dealing with these problems. All battered women, however, want to be free of the violence in their lives. If the statistics on the number of offenders are true, then the jails would be full within months if all offenders were brought to trial. Sentences appear very light in wife abuse cases, and there is an increasing relegation of protective and preventative controls to social service and helping professions. In fact, the business of treating male batterers has bloomed and the legal system provides many of these groups' clients. The following chapter debates the effectiveness of treatment programs for men who batter.

Chapter 3

Separating "Good" Men From "Bad" Behaviour: The Treatment Fallacy

I am in constant reminder of the two people I cannot be with as I am carrying a pocket picture book to look at in my endless pacing of the house, and outside. Understand I realise how unwillingness to open up to you has caused this untimely parting of my soul mate and I cannot blame you for any actions taken against me to protect yourself against my temper. I only hope someday you realize underneath all my bullshit facade I will never and cannot wish you and our son any harm. All my actions and reactions were made in childlike mentality reverberating back to my adolescence or upbringing... On this particular subject I have already read about in the Hand Psychology Handbook.... These and a lot of very important subjects are what I am now spending my days, early morning exercises, chakra meditation, and reading Hand Psychology. Many of my actions, anger, doubt and especially selfishness, denial and greediness, importance of self, have become painstakingly clear in my attitudes towards you. Your acceptance of my selfish actions is one of the main reasons I simply can't control my sobbing, wailing, and crying since we've been apart...I now have to face my past in order for these psychotic behaviour patterns to stop and be non-existent in me. With my deepest regrets and on my own doing I will face these alone.... I don't expect anything from contempt for the way I have treated you... [I] realise the irreparable damage done to this woman... that I can not again hold, love or raise our son with, but will be forever in love with. (Letter from Martin to Melanie)

Caesar and Hamberger indicate that "specialized counselling programs...have evolved for batterers [as a] response to a complex interaction between battered women, their advocates, the criminal justice system, law enforcement agencies, legislative bodies, and mental health professionals" (1989: xxx). Adams (1988) identifies five models of treatment intervention for violent behaviour:

The insight model, representing the traditional model of understanding violence, which emphasizes the intrapsychic problems of batterers, such as poor impulse control, fear of abandonment, fear of intimacy, and impaired ego functioning as a result of early trauma;

The ventilation model, where violence is considered a repression of

feelings and faulty communication between individuals;

The interaction model, based on the combined communication deficits of couples and their tendency to coerce each other;

The cognitive-behavioral and psychoeducational models which emphasize that violence is a learned behaviour, and that as such, violence can be unlearned and that alternative behaviours can be learned instead. These models tend to focus on skill deficits;

The profeminist model which sees violence as a controlling behaviour that creates and maintains an imbalance of power between the battering man and the battered woman.

Through the awareness promoted by battered women, feminist scholars and other activists, both the interaction and ventilation models have been widely rejected because of their view that the problem lies in the relationship and that both members of a couple are responsible for the violent behaviour. The insight model has been widely criticized for its emphasis on factors other than violent behaviour, but has nevertheless been incorporated into the dominant ideology about violence in relationships, and thus into treatment models. According to Adams, the most common forms of treatment are cognitive-behavioral/ psychoeducational and profeminist models. It should be noted here that the models presented above are cleanly categorized for explanatory purposes. In practice a combination of the most common forms of treatment is likely. It is a given, therefore, for treatment programs to vary widely within a town or city, and to differ between provinces or states.[16] The programs most likely to be attended by wife batterers

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[16] It is important to make this distinction at this point. In my attempts to research treatment programs and to judge their effectiveness, I have been constantly reminded by clinicians and therapists that comparisons from one treatment program to another are virtually impossible (in the sense of a statistical evaluation, this is noted by Tolman and

are a "grab bag" (Dufresne 1995) of anger management training, skill deficit training, stress management, and sex role re-education. Martin attended and completed at least one such program. As Adams notes, the amount of sex-role re-education occurs on a continuum. "At one end of the continuum, some programs explicitly define battering as controlling behaviour, while others avoid discussion of sexism altogether" (1988: 190). As previously mentioned, the insight method is also represented liberally in program models where recognition of early trauma (abuse or witnessing of abuse) and the lack of self-esteem of batterers are incorporated into program process as contributing factors even if they are not the focus of intervention. According to Melanie, the programs that Martin attended were focused mostly on anger management techniques, skill and coping techniques, and sex-role re-education and were ten to sixteen weeks in duration.

As noted above, the heterogeneity and relative newness of batterer treatment approaches increases the difficulty of speaking in general terms about treatment programs, however, there are some common features in specialized treatment programs for abusive men. These programs are commonly peer group meetings that are aimed at the recognition of the batterer's responsibility for violence and that emphasize the batterer's need to change his behaviour, not the victim's need to change hers (Pence 1989; Pence and

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Bennett 1990). I had also been reminded that in interviewing women about their experiences with treatment programs, I must necessarily take the heterogeneity of programs into account. For example, an interview conducted with one woman who had experience with a partner in a treatment program in Ontario could not be compared with the experience of a woman in Saskatchewan. Although I acknowledge the relative heterogeneity of
batterer programs, I nonetheless must state that there are a great many similarities in treatment philosophy.

Paymar 1993; Adams 1989; Martin 1985; and Caesar and Hamberger 1989). The length

of treatment (Edelson and Syers 1990) ranges anywhere from ten to thirty-six weeks

(Hamberger and Hastings 1993). Participants in programs can be mandated by the court

or can volunteer,[17] as Martin did, for treatment. There are a number of different ways

a batterer can be mandated to treatment: He can be mandated as a part of pretrial

diversion or deferred prosecution "whereby the wife assaulter can have his arrest record

cleared or the charge reduced upon successful treatment";[18] he can be mandated by a

"direct court order to participate in counselling as a sentence imposed following a

conviction..."; or treatment can be required as a part of a probation or parole agreement

(Hamberger and Hastings 1993: 190). There are conflicting views concerning the possible

differences of court-mandated versus voluntary treatment with regards to success rates,

completion, and motivation for change. Tolman and Bennett conclude

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[17] The use of voluntary to indicate motivation of clients can be misleading. Often, 'voluntary' clients enter programs to save relationships after their partners have issued an ultimatum, or do so in order to demonstrate in an upcoming trial that they are motivated to change. Batterers are extremely resistant to change and enter treatment grudgingly (Tolman and Bennett 1990).

[18] Diversion is not recommended for wife assault in British Columbia. This is made plain in The Policy on the Criminal Justice System Response to Violence Against Women in Relationships which states, "[i]n cases of violence against women in relationships, diversion is not generally appropriate, given the possibility of further assaults on the victim" (1996: 18) In Violence Against Women in Relationships: Implications for Justice Personnel, it is also stated that "Diversion is contrary to the policy's stand that violence is a criminal offence that should not be minimized" (1993: 3). Both policies give "exceptional" circumstances in cases where the offender agrees to attend a treatment program, the offence is not of a serious nature, or the victim has been consulted and referred to victim services where diversion and support services have been explained. The ambiguity of these special considerations undermine the stance taken on diversion in the above policy, considering the justice system's lack of effective response and stigmatization of wife abuse.

> Although some differences emerge, when demographically matched, court-ordered and voluntary men seem more similar than different. There is no evidence that would support separate groups or other differential treatment for court and non-court-mandated men. (1990: 101)

Often mandated and voluntary abusers are treated together and so for the purposes of this study, the two will be conflated unless specifically categorized for explanatory purposes.

The critical question for women with respect to treatment programs for men who batter is: Do they work? Indeed there has been a seemingly unending supply of effort, time and funding to answer this question. Hamberger and Hastings, in their 1993 examination of twenty-three programs for men who batter, find that research is inconsistent scientifically because of non-standardized treatment approaches, faulty studies and inconsistent reporting. In fact, they divert our attention away from this primary question to a secondary question.

> As noted above, we need to move beyond the crude question of whether "treatment works," and ask what treatment works best for what clients and under what conditions. Few (or no) agencies have a sufficient variety of treatments, adequately large client samples, or assortment of conditions to tease out these issues. It becomes important that all treatment agencies specify what they are doing with sufficient clarity that cross-study comparisons (meta-analysis) can be done. (1993:222)

The re-definition of this question transforms the framework in which battering is conceptualized from one of "battering men" to specific types of battering men, and to the most appropriate treatment response for these typologies of battering men. The search for factors which will enable clinicians to improve intervention for specific men has proven

elusive (Hamberger and Hastings 1993; Tolman and Bennett 1990; Dufresne 1995).[19] At the same time the re-definition of the question implicitly accepts that treatment is and can be effective in ceasing the violent behaviour of batterers. Turning briefly from this conversation, an examination of particular studies of treatment programs may shed some light on the initially posed question.

Even by the standards of traditional clinical research, programs have not been proven effective. Tolman and Bennett, in their review of quantitative research on men who batter, assert that "[r]esearch on outcome[s] of intervention with men who batter helps us determine whether woman abuse can be prevented through such intervention," however they find that "[t]he pattern of outcome results does not clearly support psychological intervention as the primary active ingredient in changing men's abusive behaviour" (1990: 103, 111). They identify problems such as high attrition rates, reliance on batterer self-reports for cessation statistics, and misguided criteria for success. High attrition rates for mandated and non-mandated programs are a problem for treatment practitioners (Dufresne 1995). Saunders and Parker not only attest that men who batter are extremely reluctant to enter treatment, but that as many as three-fourths drop out of

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[19] The search for typologies of men who batter must be distinguished here from the identification of factors, such as use of alcohol and other narcotics, which have been found to contribute to the success of treatment intervention. Other factors contributing to completing treatment have been identified, such as age, employment status, and number of offenses, however these may be an effect of treatment formulation (being tailored to a specific class) or types of batterers mandated into treatment programs. Tolman and Bennett assert that "The heterogeneity of behavioural and psychological characteristics suggest that no one pathology can be linked to battering" and that "[i]t remains to be seen whether certain personality profiles...can utilize the type of treatment resources generally available to batterers"(1990: 101). The search to treat the specific typologies of batterers continues despite this contrary evidence.

treatment. They also dispel some commonly held beliefs about the attrition rate of mandated batterers.

> A common assumption among policy-makers and practitioners is that legal sanctions will increase treatment compliance.... The available empirical evidence, however does not support this assumption. (1989: 21)

This is a disturbing factor, since dropouts are said by Hamberger and Hastings (1990) to have higher rates of recidivism. The fact that batterers tend to minimize their reports of, downplay, and justify their battering behaviour (Tolman and Bennett: 1990) in the first place does not place much validity in their self-reports of cessation of violence. Police reports are only marginally more reliable as they can only gauge the number of reported acts of renewed violence (Dutton 1988). For example Martin had not only abused Melanie during the course of treatment, but repeatedly after treatment; this violence was not always reported, and would therefore be absent in follow-ups by treatment groups. Finally, the criteria used to determine success is a disturbing problem among treatment practitioners

> ...some studies consider reduction of violent behaviour a success while others set complete cessation of violence as the criteria for success. Viewing reduction as success is questionable; reduction of violence may not end the terror that battered women face.... (1990: 103)

Since women are more likely to remain with batterers who enter treatment programs (Adams 1989; Gondolf and Fisher 1991; Dutton 1988) it seems essential to determine how treatment programs might affect the lives of battered women.

Harrell (1991), in her study of three treatment programs in Baltimore, finds that the treatment programs

> failed to meet the expectations of the victims, the courts, and the treatment

providers in stopping or reducing violence, improving victim safety, and reducing the need for justice system intervention. Indeed, many of the smaller, and not significant, differences suggested higher rates of problems among treated offenders than among others. (cited by Dufresne 1995: n.p.)

Harrell's work, because of her controversial findings, is often dismissed as not making intuitive sense by other researchers and needing further study or replication before validation. Dufresne discusses the findings of an Ontario study in which Burns, Meredith and Paquette found that attrition rates were far higher than previously reported; of the two-thirds of men who complete treatment and who remain physically nonviolent after a brief follow-up period, only about one in three are psychologically nonviolent; and that longer treatment periods did not reduce violence. They concluded that treatment programs had a "viable but limited" role to play in dealing with abuse and that

> ...the existing data on the effectiveness of these programs do not appear to justify their use to the exclusion of other types of intervention. Perhaps the most worrisome example of this is the use of treatment as a diversion from prosecution. Given poor completion rates for the treatments themselves, and the limited success of these treatments among those men who do complete them, it seems ill advised to place so much reliance on these interventions. (Dufresne 1995: n.p.)

In the face of some of the clinical studies on the efficacy of treatment programs, it seems that the initial question of whether treatment programs work is not so "crude" after all. In fact, the balance of women's lives may be at stake. Reliance solely on clinical data may obscure other ways of finding an answer to this question.

Battered Women, Advocacy and Women's Knowledge

In a discussion of political and methodological debates in wife abuse research, Yllö reviews the problems with "scientific" studies of wife abuse.

...the quantitative approach that is at the core of the positivist paradigm

carries the greatest prestige and respect in the area of family violence, as in all of social science. A great deal of this status can be traced to the privileged position of science and masculinity in our culture. (1988: 40)

This paradigm is so strong that decontextualized studies of treatment programs are taken at face value; studies that do not make intuitive sense to researchers (in other words, studies that are not in accordance with the expected positive outcome of treatment programs) are rejected in favour of "further research," as are many of the programs discussed by Tolman and Bennett. Critiques of this research by women's advocates and battered women are shrugged-off as "unscientific" and subjective.

> The challenges offered by feminist researchers , shelter workers, and battered women, themselves, are defined as subjective. Their way of "knowing" about the topic has not been gleaned through scientific method, which, supposedly, enables an "objective" analysis. Rather, their understanding is grounded in body and feeling as well as mind. The fusion of thought and feeling is regarded as diminishing rather than enhancing knowledge. (Yllö 1988: 41).

According to Yllö, the fact that most researchers and clinicians are men, and most advocates and victims women, only serves to deepen this division and to accentuate status differences. Dutton's quotation below casts doubt upon whether the true point of psychological intervention is to guarantee the safety of women, which may require ideological change, or to make batterers feel comfortable.

> Accordingly, we favour anger-management techniques that can be adapted to a variety of social milieus rather than attempts to generate ideological change that may be incompatible with the client's background and needs. It is important for therapists, if they have strong personal feelings about social change, to separate their roles as therapists and change agents. *Otherwise, they may not be acting in the best interests of their clients.* (Dutton 1988: 158, emphasis mine)

The critique of therapists committed to social change that Dutton provides above serves

to highlight the imposed division between what therapists are supposed to do as professionals, and what they might do outside of the professional, and scientific sphere. That social change may be the key to ceasing battering behaviour, as feminists attest, is clearly not part of the clinical ideology. You cannot want social change and stop battering behaviour at the same time, Dutton seems to say. Mainstream commitments to social justice such as legal reform and more client services are acceptable and objective, subjective feminist movements toward social transformation are not. The experiential knowledge of battered women and the work done "in the trenches" is appreciated, but not valued or validated by state agencies (Yllö 1988: 43).

Melanie's experience with a partner in treatment reflects and reinforces the differences between clinical accounts of treatment programs and women's experiences with them. Melanie refused to testify against her husband the first time he was charged because he had voluntarily entered the region's only program. He spent sixteen weeks in the program, which he completed "successfully" in the eyes of his counsellors.

> Most times I'd pick him up 'cuz we only had one vehicle and we lived an hour out of town. So I'd pick him up and on the way home we would talk about how group went and he was always really angry... like he shouldn't have been there because the stories that he heard in there were just horrible.... He wasn't like *that*, and you know, yes he needed some help but he wasn't like *that*, - and - but I was just happy that he was going to the group thing. And he continued assaulting me through my pregnancy and through group, although it was less so while he was in group, but it was still pretty bad. And the last group was at the beginning of December and our son was born ...before group ended actually, the end of October he had assaulted me and I started bleeding and I was in the hospital in early labour.

Martin's voluntary enrolment in a treatment program was a conscious decision to avoid legal sanctions and to keep his abused partner. His minimization of his violence and his

conviction that he wasn't like the other men in treatment no doubt contributed to this rationalization. Contrary to popular clinical belief, Martin's participation in treatment did not even halt his behaviour while he was enrolled. In fact, the failure of treatment to stop Martin's violent behaviour had potentially fatal consequences for Melanie and her child.

> I think this one's very important....I was about seven months pregnant and he had given me a fat lip and bloody nose... So I just got in the car and he got in the car and I just drove straight to the counsellor's office because there was no communicating at this point between us and so we had to be done, and I had had enough. And I walked into the counsellors office and we sat down, and she had both of us in there.... I said "I've had enough," like "I've had it," "Look at this! I'm, you know-- I'm sitting here big and pregnant and I've got a fat lip again and I don't want to be here any more,"...I wanted him to leave me alone. And she told me that when I said things like that he felt threatened and that's why he reacted the way he did. So it was my fault like, 'cuz I wanted to leave, that was why he hit me.

This victim-blaming statement on the part of Martin's counsellor exemplifies the critique of women's advocates that the safety of women is not always the paramount concern of some treatment providers. Not only is this an indicator of the failure of treatment to stop violent behaviour, it also signals the refusal to hold Martin responsible and to notify the police of his violent behaviour. Melanie's direct appeals to Martin's counsellors to remedy his violence were turned against her. Could Melanie's safety be bargained for productive treatment results? Is treatment not supposed to ensure the safety of the victim first and foremost? Not only was Melanie's safety secondary to treatment initiatives, but she was now responsible for Martin's violent behaviour, while Martin received all of the support a "client" could possibly have.

> ... I feel that they supported him in feeling alright about feeling abusive.

> I don't think they supported him in changing...it was more of, uh, an anger management and how to stop the violence not looking at the root cause of it.... when you want to hit her take a time out, but then it became my responsibility, like why didn't you tell me to go take a time out, rather than him taking the responsibility of taking a time out.

Again, Martin's violent behaviour becomes Melanie's responsibility. Melanie believes that the "root cause" of Martin's violent behaviour stems from a patriarchal society which values and reinforces men's power over women. This system, to use Melanie's words, "is in every part of our society, it's enforced by media, uh, through everything...." Her belief in the gendered nature of violence is manifested in her discussion of the bonding process of batterers in group therapy.

> ...I don't think that they even think about that, you know, he's already got enough control obviously, he doesn't go out and punch other people out he just punches me out. So he's pretty selective in his choosing I'd say that takes control.... I felt like it was more of a bragging session where all these guys could go in and say "oh, I punched mine this week and this is why," and

> [Myself: Did you get that sense from him, that that's what it was?]

> Yeah. Yeah, I really did.... I mean the stories...he would tell me stories about other men in the group and...

> [Myself: And how he wasn't that bad, I remember you said that.]

> Yeah, yeah he wasn't like *them*. But he was terrible.

Treatment group provided Martin with an opportunity to further downplay his violent actions to himself, and Melanie, by comparing them to the actions of other men. The estimation that he wasn't that bad in comparison is a clear bid to evade responsibility for his own behaviour. Melanie also recognizes the power stratification between herself and Martin (and his counsellors' participation in it) and notes that he must be placed in a

"non-power position" in order for him to really understand how violence has affected her life. Living in constant fear of his abusive behaviour, both mentally and physically, she expresses her disgust with Martin's counsellors.

> ... he didn't have to hear how it affected me, just what he had done. And you know...they were definitely not effective counsellors, they were his support system. I mean they said that they were his support system. How could you be supportive of someone that's abusive? I mean you can't support them, you know, he's gotta be thrown out on his own.... I think that he's got to be confronted on it, and I think that he's gotta hear the effects of that on the woman. And not just the fact that my nose was busted...I mean I spent ten days in a transition house and didn't step outside those doors for ten days [pause] and fear, constantly...[A]t night Nicky would be sleeping and I would be watching out the window 'cuz he's driving around the transition house. They had great security...but I had visions of him coming and just blasting through there with a gun and getting me anyway, 'cuz I mean if he wanted to he could. You know those locked doors aren't going to stop him.

Melanie lived in constant fear of Martin, even after leaving the community in which they lived. Martin's incarceration provided the emotional security from which Melanie could build a new life without fear. Her new life, however, was not a guarantee that Martin would not return. After Martin's release from jail, Melanie relented to his requests to see their son, believing that she would be depriving Nicky of his father if she did not allow it. His protests that he had finally changed and his agreement to enter a treatment program in the town that Melanie had moved to, persuaded her to allow Martin to move in with them. Despite his statement that he was a changed person, Martin's presence was marked by the shadow of his returning violent behaviour, held over Melanie in implied threats.

> Yeah, I mean especially- he had already been through a sixteen week program, so by the time he comes here...he knows all the lingo and he knows what he's supposed to say to make them happy and he can do that.

And I think that it also made him able to be abusive in a more subtle way, because he knows what he can't do, but he also knows other ways to do it that aren't as easily recognisable.

[Myself: What kind of ways are those?]

Well, like, okay. The last time, instead of hitting me, he would say, "I can't do anything right, and I'm trying I just can't do anything right and you attack me all over the place and you give me so much negative energy that it just makes me feel like going back to the way I was," right. So it would become my responsibility for his feelings. And he learned that at counselling, you know, he didn't come up with that on his own, that was - you know - he learned that there. I really think that the counselling programs are really dangerous that way because they do give false hopes and because they [men] can just be better manipulators. You know, they know the lingo, they know the boundaries, they know forms of abuse they'd never done before 'cause they teach them all of them.

The threat that Martin could "go back to the way he was," in response to Melanie's "negative energy" implies that Melanie herself would be inviting physical attack if Martin *chose* not to continue his changed behaviour. The threat of physical danger paired with the manipulative tactics which Melanie felt were sponsored by treatment represented a less overt but equally dangerous situation to Melanie. The rigid boundaries imposed by legal sanctions on the definition of abuse as largely physical damage, and the emphasis on reducing physical abuse, pave the way for abusers to hone their non-physical abusive tactics without fear of re-incarceration. Gondolf and Fisher (1991) call this the creation of "nonviolent terrorists." This is amply demonstrated in the opening text of this section. Martin clearly knows his way around the psychological discourse in which phrases like "childlike mentality reverberating back to my youth and adolescence," and "psychotic behaviour patterns," acknowledge the validity of early trauma to treatment practice. He also appeals to Melanie's feelings of love and the importance of family relationships by

evoking images of raising their son together. His reference to his "bullshit facade" signals his helplessness in the relationship. His objectification of Melanie as "this woman" attempts to wax poetic, yet, at the same time it exposes his inability to understand the impact of his violence on her. Melanie's account clearly describes how men can and do use these types of language to manipulate their partners and to psychologically abuse them. By the time Martin got to the second treatment program, he had mastered all of the language and was able to provide the appropriate responses to his counsellors, and to Melanie. She notes that abusive behaviour can manifest itself in more subtle, and damaging ways.

> [imagining what Martin might think] "Yeah, and now I can do all these other things that I never thought of." You know, and a lot of them are more subtle than the ways that they would use before that. And then as a woman, "Oh, he's not punching me any more so he's better." Even though he's still totally abusive he's just not doing it the same way any more, so you don't recognize it the same.
>
> [Myself: And the law looks at that differently too.]
>
> Well, yeah, you can't charge someone for being mentally abusive, you know, and it's worse I think.

Because there is little or no physical damage, women may be more inclined to stay with their partners, who can learn to abuse in different ways. Burns, Meredith and Paquette (in Dufresne 1995) echo this concern. They are disturbed by the number of women remaining in violent relationships that appear only marginally improved. Melanie's voice joins those of other battered women and women's advocates in disputing the effectiveness of treatment programs for men who batter.

Battered women and their advocates are placed in direct opposition to an

authoritative hierarchy of knowledge which maintains that treatment programs provide safety for battered women. When compared to this authority, Melanie's voice becomes lost in the face of the certainty of treatment professionals that programs are effective. Her resounding "no," in answer to the question of whether treatment programs work, should be the first voice heard. Instead it is totally obscured, or potentially heard only in response to a questionnaire, as are other women's voices. These women become statistics in effectiveness studies, reduced to a percentage (even if a large one) of recidivism. Melanie herself has been a battered woman and women's advocate, victim and activist, and client and agent. Her perspective, and those of other battered women and their advocates, in the cause against battering should form the basis for enquiry into the controversial topic of treatment programs for batterers.

In a package released by Montreal Men against Sexism, Dufresne (1995) identifies several problems with the implementation and philosophy of treatment programs for men who batter. Through an examination of the proceedings of a 1991 conference, The Evaluation of Treatment Programs for Male Batterers, he draws upon discussions between treatment practitioners and women's advocates and activists (as well as other supporting data) to show perceived problems with treatment models. Highlights of this discussion, especially in light of the testimony of battered women such as Melanie, serve to underscore the gravity of continuing programs which contribute to the further oppression and victimization of women.

One of the largest problems, contends Dufresne, is the acceptance of a psychologizing approach, without locating any particular pathology. He believes that to

accept this approach denies the enormity of violence against women as a gender problem and a social problem.

> One of the requirements of any competency assessment has to be a consensus on the dynamics of conjugal violence. The existence of any valid therapy requires a consensus on a pathology and a typology of affected subjects. Yet, after twenty years of research and ceaseless efforts to arrive at these, these pursuits are at a dead-end in the very words of these specialists. The hypothesis that wife battering is some kind of disease amenable to therapy simply doesn't hold water in the face of the available data. (1995: 3)

Studies of treatment programs have not proven them effective. Furthermore, treatment programs, like the ones discussed by Adams, use models which blame victims and minimize the impact of violence on victims.

Barbara Pressman goes one step further to point out that violence cannot be contained solely in the context of a mental health problem for men, that it must be the social context which informs our understanding.

> ...the rate of abuse of women in the home is so pervasive (encompassing all economic, cultural and religious groups) and so extensive... that one cannot explain behaviour of such epidemic proportions as an intrapsychic phenomenon or relationships and interactional patterns gone awry.... It is the described societal context that must inform our treatment of abusing men. (in Dufresne 1995: 3)

Bograd (1988), shares Pressman's views, citing the long-held belief of feminists that woman abuse is neither a rare nor deviant phenomenon, but a factor which emerges directly from the development of the public/private division within the isolated nuclear family and an attendant male dominance over women. She asserts,

> The focus on psychopathology suggests that wife abuse results from abnormal behaviour. However, the widespread prevalence of wife abuse suggests that it may be more a function of the normal psychological and behavioral patterns of most men than of the aberrant actions of very few

husbands.... Most importantly, through a focus on mental illness alone, most psychological theories ignore the question of power. (1988: 16)

This perspective re-frames the issue of violence. It rejects the concept of male violence as a manifestation of men's uncontrollable actions, skill deficits, and anger management problems. Instead, it replaces this concept with a view of male violence as an issue of power differentials between men and women that are upheld by the male-centered socio-legal and psychological norms present in contemporary society. When examined in this light, the violent behaviour of men becomes a choice, not a dysfunction. To solidify this point, Dufresne uses the following quote from sociologist and criminologist Ann Jones.

> It's vital to understand that battering is *not* a series of isolated blow-ups. It is a *process of deliberate intimidation intended to coerce the victim to do the will of the victimizer*. The batterer is not just losing his temper, not just suffering from stress, not just manifesting "insecurity" or a spontaneous reaction "provoked" by something the victim did or (as psychologists put it) "a deficit of interpersonal skills" or an inhibition in anger control mechanisms." These are *excuses* for violence, popular even among therapists who work with batterers; yet we all know aggrieved, insecure, stressed-out people with meagre interpersonal skills who lose their temper *without* becoming violent.... But in fact that violence *is* himself, perfectly *in* control and *exercising* control. (cited by Dufresne 1995: 7)

As well as highlighting the possibility of conscious choice on the part of batterers, Jones asks us to examine the sources of excuses that batterers consciously use to justify their behaviour (see Adams 1988). The opening quotation to this section provides insight into the excellent manipulative skills available to Martin and to his ability to say and do the correct things when he feels it is to his best advantage. This suggests that men can learn new abusive skills from treatment. Tolman, responding to a conference participant's

comment states,

> Men often misuse the pro-feminist aspects of the program as well. They adopt a very sensitive stance, but then they take the language of equality and turn that back on their partners, saying "Now you are not treating me equally; you are psychologically maltreating me." Our sensitivity to psychological maltreatment can backfire. They can say... "She's just as abusive as I am." That is the pro-feminist sensitivity - the idea of psychological maltreatment, in part, comes out of a pro-feminist framework - but yet it can be misused by men. (Dufresne 1995: 24)

Are therapists inadvertently complicit in the maintenance of violent behaviour through their treatment approaches? Dufresne briefly discusses Dankwort's study of treatment program therapists and their attitudes and methods of therapy in which he finds that "[g]enerally, respondents explained the etiology of wife abuse in terms of intrapersonal, interpersonal and social structural factors, while overlooking the utility of using force," and that "this effectively removed agency from men's violent behaviour" (Dufresne 1995: 24). Also, therapists themselves, as Jones adroitly points out, attribute men's violent behaviour to skill deficiencies, stress, and anger management problems. Dankwort also notes counsellors' beliefs that social and legal sanctions are incompatible with treatment through their attempt to "reconcile the antithetical nature of the social control demanded by victims' advocates, on the one hand, and the compassion counsellors were eager to provide on the other..." (Dufresne 1995: 29) Dufresne concludes

> Whether these problems are due to an "anything goes" level of theoretical improvisation or, more likely, to a visceral hostility to the feminist analysis of male power, they translate into the demonstrated ineffectiveness of programs and counsellors, at a time where these should be rejecting societies "explanations" for batterer's violence and keeping them from male bonding and from using therapy as a reinforcement for their misogynist attitudes and controlling strategies. (1995: 28)

This does not provide an encouraging picture for women who have partners in treatment.

Batterers and batterers' programs are not accountable for their conduct, pro-feminist material is sometimes appropriated and turned against women, and this justified under the rhetoric of protecting women from abuse. Feminist calls for social transformation have been ignored in favour of the definition of the problem as one that can be solved by existing mainstream theories and practices.

In May 1991, two staff members of the Family Violence Program in Ontario were fired for refusing to re-start a batterers' program after it had been halted for review (for undisclosed reasons) in 1989, on the grounds that it was dangerous to women (May 23, 1991, The Spectator cited in Dufresne 1995: n.p.). They were eventually fired for their non-compliance. When the executive director of family services was asked to comment on the program he replied, "It's a relatively new field and in one way it's a *very exciting thing* because there are so many different opinions and approaches" (May 31,1991, The Spectator cited in Dufresne 1995: n.p., emphasis mine). The lightness of this response mocks the number of women that are repeatedly victimized in their homes while their partners practice their anger management skills and learn new and exciting ways to terrorize without having to batter. Tom Caplan, a therapist for an abuser program in Montreal, states

> If one man in the group changes his attitude, realizes that it is not
> appropriate to batter or to show power and control, and begins to advocate
> on behalf of women, it's worth it. (cited in Dufresne 1995: n.p.)

What of the women whose partners are sent home to repeatedly abuse them? This "give-it-a-further-try optimism" (Dufresne 1995) is particularly destructive when paired with a legal system fraught with misogyny in an institutional framework whose "...social system

...uses therapy to factually diminish men's responsibility and to keep women in marriages and in the home..." (Dufresne 1995: 33). Treatment programs are part of male-centered hegemonic power relations that maintain control of women by men in the patriarchal capitalist state. In a feminist framework, they are not part of the solution, ergo, they are part of the problem.

Chapter 4

From Social Change to Services and Agents to Clients: The Institutional Appropriation of Battered Women

> The ability to coopt opposition is one of the great strengths of the patriarchal system; it is what has allowed it to perpetuate itself throughout history. Institutions are its main tools of control. We can improve the functioning of institutions, but we cannot change their primary function unless society itself is transformed. For the time being, institutions exist to serve and promote the interests of the State. (Lacombe 1990, translated by Dufresne 1995: n.p.)

What are the interests of the state? A key component in answering this fundamental question is the comprehension of how state systems create and maintain control over "social problems." Gusfield reveals the complexity of state creation and maintenance of social problems.

> The idea of "social problems"... is a part of how we think and how we interpret the world around us, that we perceive many conditions as not only deplorable but as *capable of being relieved by and requiring public action*, most often by the state. The concept of "social problem' is a category of thought, a way of seeing certain conditions as providing a claim to change through public actions. (1989: 431)

Gusfield notes that all human problems are not public ones; unrequited love, disappointed friendships and frustrated ambitions have not been constructed as problems requiring public policy or requiring change through public action. Previous to feminist demands that wife abuse required public recognition and action, domestic violence was considered a private problem restricted within the confines of the family (Barnsley 1985; Walker 1990). Movements toward women's rights, prisoners' rights, and children's rights have pinpointed similar "new" problems as responsibilities of the "welfare state." Gusfield's conceptualization of the welfare state is the "long run drift in modern societies toward a

greater commitment to use public facilities to directly enhance the welfare of citizens"
(1989: 432). This description directly asserts a social responsibility for resolving social
problems and places this resolution within a context of a benevolent state. These
configurations are not without their price. Once the state is involved in the solution of
social problems, movements have limited control over their definitions, as demonstrated
below.

The Upkeep and Maintenance of Social Problems

The state's recognition of the social problem signals a transformation of
meanings and problems, and initiates a process whereby the state "takes control" of the
social problem through its relations of ruling. Gusfield writes

> ...the occupations that serve "social problems"--what I call the "troubled
> person professions"; and institutions that inform...are significant parts of
> the process by which publics experience social problems, interpret and
> imbue them with meaning, and create and administer social policies. (1989:
> 432)

Thus begins the commodification of the solution of social problems in the construction
and expansion of facilities and professions to deal with them, creating separate
organizations which owe their existence and continuing survival to such problems.
Gusfield uses one aphorism taken from a description of missionaries in Hawaii to explain
the profit of the state in the social problem market: "They came to do good. They stayed
and did well."

The troubled person professions rely on what I call institutional complicity to
maintain their hold over the ownership of social problems. State agencies validate each
others ideologies if they can see advantages for their own. For example, the adoption of

treatment into the legal sphere alleviates certain correctional stresses, as well as delegating the messy problem of what to do with batterers. This ownership of this social problem depends on the ideologies of sickness and healing, without which it would collapse.

> The development of professions dedicated to benevolence, the so-called "helping" professions, depend on and accentuate the definition of problem populations as "sick," as objects of medical and quasi-medical attention. The "troubled persons" industries, as I like to call them, consist of the professions that bestow benevolence on people defined as in need. Such occupations include counsellors, social workers, clinical psychologists, foundation administrators, operators of asylum-like centers, alcohol rehabilitation specialists, researchers, and the many jobs where the task is to bring people who are seen as trouble to themselves or to others into the stream of "adjusted citizens." (ibid.: 433)

The further elaboration of institutional ownership is hidden under the designation of a problem to the realm of treatment. If the problem is one of individual sickness and treatment then it can be solved by social, and already existing (institutional) means. If however, the problem is one of contested meanings or is posited outside institutional control, than no existing remedy may suffice. To own a social problem is, in Gusfield's view, the ability to not only define the problem, but to solve it using public facilities. In order for this to be effective, there must be a consensus of meaning rather than a conflict over meanings of a social problem.

In Gusfield's view, the ability to define the framework within which social problems are examined and addressed is the ability to claim that a societal consensus of meaning exists, negating the possibility of politicization around the social problem. For politicization to occur around an issue, Gusfield maintains, there must be a conflict over meaning. Gusfield uses the example of child abuse to explain this view. Initially, the acceptance and consensus of meaning of the deplorable nature of child abuse and its

attendant identification of poor parenting as the difficulty, framed the consensual meaning of child abuse. When however, issues around poverty and its linkage to child neglect formed a different framework from which to view some child abuse, the simplicity of the institutional definition of child abuse became a politicized, and contested view. An alternative framework posited different causes, and therefore different remedies for child abuse. In order for institutions to preserve their expanded network of controls in dealing with social problems, they must necessarily maintain an ideology which is in accordance with the institutional treatability of social problems. Gusfield cautions us that we must always be aware of what "institutional arrangements hide from us," and that "... we need to take care not to separate the study of meanings from the study of their historical and institutional settings" (1989: 439).

Wife Abuse as a Social Problem

Gusfield's explanation of institutional appropriation of social problems is played out in contemporary debates regarding institutional responses to wife abuse. As demonstrated in the two previous chapters, the responses of both criminal justice systems and psychological professions have been widely criticized and proven ineffective when compared to the individual experiences of Melanie and the knowledge of feminist activists and advocates that work on the "front lines" of domestic violence. Before an investigation of this debate is undertaken, it is important to first reiterate the feminist critique of the objectivity and neutrality of the state and its various agencies. MacKinnon articulates a fundamental critique of the state and its institutions as inherently representing the interests of a dominant male perspective.

> The parallel between representation and construction should be sustained: men *create* the world from their own point of view, which then *becomes* the truth to be described. This is a closed system, not anyone's confusion. *Power to create the world from one's point of view is power in its male form.* The male epistemological stance, which corresponds to the world it creates, is objectivity: the ostensibly noninvolved stance, the view from a distance and from no particular perspective, apparently transparent to its reality. (1982: 537)

Institutions are supposedly non-objective and non-neutral and, to further MacKinnon's argument, convey an underlying male perspective masquerading as the objective position. Hence, any solutions proposed to social problems will necessarily stem from this "objective" position. Feminist critiques, before they are uttered, are placed in a subjective and conflicting position to the dominant ideology represented in the objective world. The early formulation of domestic violence as a private problem within the patriarchal family unit was disputed by feminists who sought to make the "reality" of women known in the public world. The feminist slogan to politicize the personal opened the cupboard door and pulled forth the "dirty laundry" of patriarchal relations represented by the everyday terrorization of women in their homes. For feminists, there was no doubt that the social problem of wife battering was a result of a gender inequality which pervaded all facets of society. How then, did institutions react to this?

Institutions have addressed the problem of wife abuse through its appropriation as a social problem, however they have rejected the very basis of feminist argument; gender inequality. At the same time that legal institutions and the helping professions were reformulated to attack the problem of wife abuse, they rejected the gendered analysis which had given birth to the movement and reconceptualized solution within institutional boundaries. The stigmatization of battered women as unworthy of legal protection and

unqualified to participate in the conceptualization of treatment is made clear by Melanie's

marginalization in both processes. The attendant dismissal of activist and feminist voices

by institutions maintains the patriarchal nature of the state its institutions.

Barnsley describes her experience as an activist working within an institutional

framework:

> Institutions... do not deem women's experiences of wife battering to be
> worthy of analysis on their own terms, nor do they accord status to those
> who do, i.e. feminists and activists. What follows from this approach is a
> definition of the issue as family violence, subsuming women's interests
> into a more general frame worthy of "public" interest; a definition that
> obscures who is doing what to whom; that reframes political issues as
> social problems, thus minimizing inherent structural challenges; that fits
> more closely the institutions and the state's existing problem-solving
> apparatus; and that ultimately makes women's situation invisible. This
> approach effectively serves to protect the status quo, the existing political
> system, and its structures and institutions. Institutions can do all this
> without appearing to be acting out of self-interest which, of course is what
> they are doing. Rather they give the appearance of being fair and
> responsive upholders of the greater good. (1985: 73)

It is most convenient for institutions to accept wife battering as a psychological difficulty

rather than a systemic one, easier to accept "violent couples" (Dutton 1988) and "violent

families" (Walker 1990) rather than focusing on the abuse of power of men over women,

and far easier to maintain their own systemic controls backed by the same gendered power

base that feminists confront, than to disband themselves and destroy their own power

bases. It is far easier, and more beneficial for institutions to absorb feminist ideology and

to pay lipservice to it, than to attempt real change. Institutions have a vested interest in

maintaining their own hierarchies and the status quo, just as Martin had a vested interest

in maintaining his control and power over Melanie. To set up treatment as a remedy and

to assert that it can "fix" Martin through therapeutic means is to outwardly address the

problem without questioning Martin's *choice* to batter. The institutional absorbtion of feminist ideology is readily apparent in a discussion of the "shelter" or "transition house" movement.

The absorption of previously offered services based on advocacy reveals itself in the move to "professionalize" shelter and social services, which form the core of consciousness-raising and activism among battered women, reducing them solely to clients (insert victims); to control and continually cut the funding for shelter services and other services for women, while favouring new programs for families and men who batter (who may treat women's interests as secondary to the interests of "the family"); and to uphold the patriarchal social structure of the family and create a notion of familial equality which re-writes women's realities.

Quinby shares her experience with working in a second stage transition house in Vancouver. She, like so many other women drawn into the shelter movement, believes that shelters and transition houses provide an opportunity for women to share their experiences, and to fight the patriarchal relations which support, if not encourage battering.

> I am concerned about the hierarchal structure of some houses and other services that have been created for battered women. I am disturbed by the trend towards counselling and away from advocacy. I am concerned about the rush to standardize and codify our work. I believe that these trends will ultimately destroy the services, and battered women will end up filed under some psychological sickness in the big book. The opportunity to give women real change in the patriarchy will be lost in a mire of diagnoses, pills, and court orders. I believe that many of the solutions that are popular today are proposed without a clear understanding of the real problem. (1995: 264)

The fear that battered women will be victimized by newly professionalised shelters and

transition houses is well founded as transition house workers and battered women have witnessed the revictimization of women through the social service network (Freeman 1995; Barnsley 1985; Stipe 1996). Preference for inexperienced workers with credentials over previously battered women and experienced workers within the shelter movement creates an unwanted division between potential activists and privileges institutional aptitude over experience. A degree or professional training *is no substitute* for the experience, support, and consciousness-raising which battered women can offer each other. The institutional method of providing services *for* battered women is placed in direct opposition to the movement's philosophy of working with women to end their oppression and removes agency from battered women's lives.

> How can we really help a woman feel she is a competent person who can make sound decisions? By not controlling her with demeaning rules.... By not suggesting she is co-dependant, or has some flaw that attracts violence. By not requiring her to attend group or counselling. And most assuredly we will not ask her to sign an agreement to "work on herself, " an appalling insult to her injuries....We must celebrate her strengths, support her, and treat her with respect. (Quinby 1995: 269)

There are feminists and activists working within institutional settings, but they are limited by a framework which disempowers women (Barnsley 1985). Walker points out that "the contradiction embodied in this process of professionalization lies in the fact that its very success eliminates the possibility of a more radical critique" (1990: 213). As women get more "professional" help, their opportunities for a collective recognition of and action against patriarchal institutions are lost or absorbed by institutions, who then can appear as though the problem of battered women is solved by treating the symptoms and not the cause. Forde, a director of Kaushee's place, the transition house for Whitehorse, writes

of the Yukon Government's decision to eliminate core funding for the house, and its plans

for Health and Social Services to take over the running of the house.

> There have been no guarantees as to the ultimate fate of the service, the
> workers, or the many women and children who currently live there.... We
> don't know the final outcome yet, but I think the attitude of our
> government, and the difficult climate they help create for women
> concerned about men's violence, is made clear by their latest tactics.
> (1995: 101)

She attributes this takeover partly to anti-feminist sentiments toward the house, and to

the continuing trend in the Women's Directorate to attribute wife battering as a

communication problem between the sexes. To attribute battering solely to dysfunctional

relationships ignores the power imbalance based on traditional gender roles between

individuals and the use of violence to maintain that power. Lacombe speaks of the same

difficulties in Quebec, following a 1985 decision by the government to fund only the

accommodation function of shelters, while incorporating all other programs into its own

general-purpose community centres. She writes

> In our view, feminist intervention and the global approach are
> irreconcilable with the functioning and overall objectives of the
> institutional health and social services network.... In an institution, the
> woman is and always will remain a "client", which creates a very specific
> relationship: that of "helper" to "helped"... (cited by Dufresne 1995: n.p.)

Institutional services may address women's basic needs, but cannot provide the same

experiential support which Melanie found so useful. In the same document, Dufresne cites

a newspaper article that estimates that Quebec spent $620, 000 on the twenty community

programs for men who batter compared to $405, 000 the year before. The same article

also states that " [t]he 40 shelters who deal specifically with battered women and children,

operate on a budget of $182, 000 a year" (Dufresne 1995: n.p.). Often, social service agencies will attest to treating "the whole family," rather than "breaking up the family" suggesting that "individuals are in service to a system, in this case the family, rather than that social systems exist to nurture growth and expression of the human beings in them" (Carlin in Dufresne 1995: n.p.). This summation also suggests that women who wish to stop the violence in their lives are responsible for ruining the inviolate "family." The interest of the institutional network in the uninterrupted function of the nuclear family is certainly vested. The family is the seat of patriarchal power that is cemented by ruling institutions.

> ...social institutions, like the courts, work against women in order to uphold men's privilege. Without understanding of the link between wife assault and women's oppression in the family, we can easily recreate oppressive family structures in transition houses and other women's services and programs, send women unprepared into court and other systems that are biased against them, and overlook one of the key forces that perpetuates male violence. (Prieur 1995: 248)

Prieur's attempt to locate the disappearing feminist analysis of the link between wife assault and the patriarchal family is reinforced by Quinby's analysis of child custody decisions and the "Father Is Magic Syndrome," which asserts that a father's abuse of his wife has little bearing on his rights to have custody, a situation with which Melanie is quite familiar.

> Well, I've seen worse fathers...worse cases get visitation and access and what have you...I've seen fathers that are sexually assaulting their daughters have access. So, I don't doubt that if he is persistent he will get some kind of access.

Also, courts and family services have used the potential for a woman to enter another abusive relationship (because of her learned helplessness) as grounds to apprehend her

children (Mahoney 1994), and have returned custody of children to abusive fathers, clearly

divorcing his abusive behaviour towards his partner from his abilities to parent (Freeman

1995). These decisions privilege the status of the father within the family and further

blame the victim for the abusive situation she seeks to be free of. Far from freeing women

from abusive situations, institutions are a part of the conceptual process of enforcing male

privilege and power over women.

Treatment programs, legal practices, funding cuts, and social service networks are

part of the institutionalization of patriarchy. Institutions are muting, and attempting to

silence altogether the voices of feminists, advocates and battered women who fight for the

basic recognition of the culpability and complicity of the state and its institutions in

maintaining the abuse of women.

> As wife assault goes mainstream, I see it being redefined in individualistic
> terms only. We're losing the politics of it all -- any sense that when we
> talk about wife assault, we're talking about a form of personal *and social*
> control of women in the family that is supported by society's institutions.
> We're seeing a corresponding increase in programs and funding for
> individual solutions, such as counselling and treatment, at the expense of
> education and advocacy. (Prieur 1995: 257)

So what are the interests of the state? Through an analysis of Gusfield's processes of

the construction of social problems to an analysis of the shelter movement, the answer

seems clear -- to maintain the status quo. This means maintaining the oppression of

women through the repression and dismissal of their individual experiences that run

contrary to created institutional knowledge, undermining action against patriarchal beliefs

and values, and controlling the framework through which the problem of wife abuse is

analyzed. Institutions also dominate the discursive arena in which these discussions take

place. This last criterion brings us to the subject of the next section: How institutions control and maintain power and dominant ideology is a critical mechanism by which power relations shift or are maintained. The preceding sections provided a locus from which larger social relations can be organized, framing them within the standpoint of Melanie. The next section steps back from her direct account, and discusses the discursive climate which informs and organizes her local context.

Chapter 5

Law and the Helping Professions: An Analysis of the Discursive Regime of Institutions

> The emergence of dominant constructions of identity within specific locations in time and space suggests a point of intersection between structures of domination, symbolic orders, and legitimation. This point of intersection defines a relation of asymmetry in the production of dominant discourses on social identity formations. The notion of "discursive hegemony" points to the privileged position held by dominant social groups with respect to discourse. It also presupposes that societies are containers of a "plurality of discourses and discursive sites." Discursive hegemony does not, therefore, produce automata, willing citizenry absorbing pronouncements of identity as these are excluded from a discursively privileged leadership. Identity is always a point of both selection and contestation and it is through structures of domination and control that dominant discourses on identity emerge. (Jabri 1996: 133)

The partial fusion of the discourses of legal systems and the helping professions results in a discursive hegemony. This can be understood best by examining the process of the intermingling of legal with other social discourses to determine how discourses conceptualized outside traditional legal boundaries affect the conventional legal discourse based on concepts of reason, truth and justice. The arena of law is a terrain of ever-shifting, and often conflicting discourses, influenced by a number of factors that may be perceived as lying outside its traditional boundaries. These boundaries are located in the basic philosophy of law, a philosophy centred around the concepts of justice, reason, and punitive logic. This philosophy is demonstrated by Samuel Pilsbury in his article "Emotional Justice: Moralizing the Passions of Criminal Punishment,"

> Like most fields of thought, the law has developed its own vocabulary for expressing concepts and promoting values. The language of law is the language of rationality, of the cool and the deliberative. While this insistence upon rationalistic expression has general merit in the elucidation

of general issues, in some cases it obscures more than it reveals...where,
as in criminal punishment the influence of emotions is too fundamental to
ignore or entirely condemn, the law's vocabulary requires expansion to
permit emotive discourse. (1989: 710)

This statement is an example of current liberal legal philosophy. Although Pilsbury admits

that emotive discourse can be constructively employed in the legal arena in certain

instances[20] and with great caution, he defines law as reflecting an Aristotelian emphasis

on reason and logic, and a Kantian emphasis on the moral being. This world is one in

which "punishment signifies our condemnation over that freely made, but morally wrong

choice" (1989: 661).   Phrases such as "language of law" and "law has developed

its own vocabulary" bestow upon law "its" own particular identity as an autonomous

being, as an individual with agency and as an institution which stands outside of, or in

an authoritative relationship to, the rest of society. It also obscures the various agents of

the legal system. This is a persuasive picture, and while "law" does seem to possess some

of these characteristics, it is important to remember that as an institution, the legal system

is intrinsically linked to the social strata, that it cannot operate in a vacuum, and that it

is not monolithic although it sometimes appears to be. With this in mind, John Brigham's

admonishment that "...we must move from law and society to the perspective of law in

society" (1987:304) is particularly insightful. Society (all members) does in fact, create

and maintain law. Jerome Bruner, in "Psychology, Morality, and the Law," draws on

Robert Cover's work to situate legal mechanisms within culture.

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[20] Pilsbury discusses the issue of capital punishment as evoking a strong emotional
response from society.

> We inhabit a <u>nomos</u>- a normative universe. We constantly create and maintain a world of right and wrong, of lawful and unlawful, of valid and void. The student of law may come to identify the normative world with the professional paraphernalia of social control...No set of legal institutions exists apart from the narratives that locate it and give it meaning...law becomes not only a system of rules to be observed, but a world in which we live. (1992: 109)

Bruner argues that:

> ...the formal conduct of law is judged against the background of narrative possibility...how it is seen determines the form of interpretive commitment we adopt toward it. In this respect, law can never be regarded as a fixed set of rules (as legal positivists had urged) but as a way of acting within the <u>nomos</u> (1992: 110).

In the same way as society creates and maintains law, individuals interpret and react to it in different ways, whether they be plaintiffs or lawyers, judges or jurors. Following Bruner and Cover, if law is created and maintained by society and is therefore not fixed but fluid and subject to change and interpretation, then as societal norms change, so must law.

As an institution law is an inevitable part of the ruling relations posited by Dorothy Smith -- in that they are a party to the creation of objectification of knowledge -- which as its end result may bear little resemblance to individual conceptions of justice or law. This objectification parallels Cover's assertion that "norms are universal and <u>enforced</u> by institutions" that in Bruner's terms "discourse becomes objective" (cited by Bruner 1992: 111). This "objective discourse" of law is presented in part as a universal and obscuring construction within a society that contributes to its construction; but is not wholly owned or operated by it. Much like the anecdotal runaway train, or the monster built by Frankenstein, law is the force created but not entirely controlled. Smith (1990)

argues that

> Objectified forms of knowledge, integral to the organization of ruling, claim authority as socially accomplished effects or products, independent of their making. Because they are in fact forms of social organization, though we can explore them as matters within our reach, as aspects of our ordinary competence, as social relations in which we participate, though they do not begin and end with our participation.(61)

This suggests that there is an aspect of law beyond that in which we participate; this clearly denotes that law is not only seen as something we do, something that we take part in, but as an entity that has some form of shadowy existence that is perceived to be outside individual boundaries. However, law as objectified knowledge is no less subject to change with a shift in social discourse.

Discourse

Discourse itself is a difficult concept to grasp, partly because of its slippery usage and multiplicity of meanings. Peter Goodrich explains that the term has some "fashionable if diffuse currency," and further states that discourse

> ...can be applied to any sequence of utterances at the level of the sentence or above...In potential it thus ranges in scope from the seemingly universal problems of the structural features of culture, communication and ideology as the intrinsic problems of the theory of discourse, right the way down to the minute questions of the syntactic and semantic analysis of the specific, historical singular, text or utterance, studied in discourse analysis. (1987: 125)

His first definition is relevant to this project insofar as discourse is defined in conversational terms, as speech that may influence or inform a subject matter, however, studying discourse at the level of syntactic utterance is not within the scope of this discussion. Goodrich's second definition, concerning the structural features of culture is

much closer to the meaning of discourse discussed here.

> The most immediate and obvious difficulties to be raised by the term discourse itself are not only those of the multiplicity of differing levels of usage, but more ambitiously, are those of attempting to formulate and substantiate the complex relationship of structural features, or regularities, of systems of communication as discursive formations, to their agency or manifestation in empirical practice. (1987: 125)

Theoretical attempts to study discursive formations link actual utterances with the creation of bodies of knowledge which inform and influence the epistemology of cultural structures. For example, political lobbying and adoption of certain forms of rhetoric, such as rights rhetoric used by gay rights movements (Brigham 1987), have been influenced by and do influence law to varying degrees, causing an epistemological or ideological shift in legal vantage. Goodrich further asserts that although law cannot solely be analyzed in terms of discourse, it can neither be left to the auspices of the "formalistic, and indeed naturalistic, legal philosophies," which have "consistently endeavoured to define law in terms of a common or single essence, or content of the legal sphere" (1987: 158). This latter view in Goodrich's estimation is particularly dangerous as it denies that "...law is a social practice formally tied to particular institutions, or apparatuses and primarily, though by no means exclusively, defined by its use of particular types of discourse"(1987: 159). Law as social practice is closer to the types of inconsistency which Melanie experienced when dealing with individual agents.

Carol Smart, in Law, Crime and Sexuality, speaks of discourse in a similar fashion, drawing on the connection of discourse to the formation of the subject and to the narratives which contribute to the discursive formation of the subject. By discursive

formation, Smart means that levels of ideology or rhetoric, which influence an individual

are also employed by and individual to place her/him within the contexts of culture and

society. This theory of discourse, like those of Bruner, Cover and Smith, places the

subject in society, at the centre of discursive analysis.

> This emphasis shifts attention away from the idea of pre-given entities (for example, the criminal, the prostitute, the homosexual) towards an understanding of how such subjects come into being at certain moments. This entails a significant shift in perception away from the idea that people exist in an a priori state, waiting for institutions to act on them, towards thinking about subjects who are continually being constituted and who constitute themselves through language/discourse.(1995: 8)

However, Smart's view of law as discourse differs from Goodrich's in one essential way.

She encourages us to view law almost solely as discourse, as an extremely powerful

discourse, instead of an institution.

> Thus we can shift our understanding of law(s) away from the concept of it being an institution, towards the idea of law as a discourse which is, in turn, a significantly powerful discourse because of its situation in the hierarchy of knowledges and its power to subjugate other discourses (namely, law's version of rape versus women's versions of rape). (1995: 8)

Her notion of what constitutes an institution is slightly problematic, since one can pose

the question: What is an institution if not an extremely powerful body of objectified

knowledge that holds authority over others? Smart also tends to underestimate the power

of contradictory discourses to influence law.

The interaction between power and discourse is taken up by Sally Engle Merry,

in Getting Justice, Getting Even: Legal Consciousness in Working-Class America. Merry

offers extensive insights into the mechanisms of discourse. In her discussion of the New

England lower court system, she draws from Foucault to state:

> Distinct ways of talking and of interpreting events constitute discourses. I am using <u>discourse</u> in the sense which Foucault uses the term, rather than the quite different usage of sociolinguists...In his view, discourses are means of exercising power in subtle, disguised ways...Modern discourses or languages such as psychiatry, penology, criticism, and history, are invisible but are also a language of control. (1990: 110)

She further describes the foundations of discourse as having "a more or less coherent set of categories and theories of action: a vocabulary for naming events and persons and a theory for explaining actions and relationships (1990: 110). Merry's concept of discourse parallels Smith's notion of objectified knowledge as a part of the production of culture, as something underlying, but rarely questioned in society. "Each discourse consists of an explicit repertoire of justifications and explanations and an implicit, embedded theory about why people act the way they do" (1990: 110). Merry's definition frames legal discourse in the context of culture and dislodges it from the somewhat lofty heights in which some legal theorists would have us believe it exists. Law then, is considered by some to be a domain that carries at its center a philosophical discourse of reason and justice. This discourse has been shaped and is continually being reshaped by society as it constantly redefines the <u>nomos,</u> or normative universe, in which we live. In the following sections, various factors will be described which have informed shifts in legal discourse to some extent.

John Brigham's "Right, Rage and Remedy: Forms of Law in Political Discourse" discusses how law informs political action, and in turn, how political action influences law. Brigham examines the movements of alternative dispute resolution, gay rights, and

feminist anti-pornography in order to determine how ideas about law influence social relations.

> These three categories are not exhaustive, but they capture a broad range of significant political action and legal signification. Movement discourse...may draw on ideas about law so settled and so distinctive that in themselves they define a given movement's "practices." These practices are constituted by and in turn constitute, different and identifiable interpretive communities. (1987:307)

Brigham proceeds to describe how political movements organize themselves around law and may employ legal terms, as the gay rights movement did when adopting "rights" rhetoric. Groups may adopt a pseudo-legal platform in order to politicize them. Brigham describes this as "acting politically in a legal order"(1987: 316). We can chart for ourselves the political discourses raging across the field of law; whether they be centered around the abortion issue, human rights law, or alternative sentencing they all employ their own languages and constructions of reality, and their own view of what law should be and is, and what law can do.

Brigham's political discourses of "rights," "rage" and "remedy" figure prominently as he describes how "...the material consequences of law's authority...calls people together in time and place...provides the focus for their political activity" (1992: 315). It also determines, in most cases the discourses which are adopted to combat the legal system, in order to achieve a strategic political goal. It would be sheer folly to assume that these discourses do not affect the legal system and that individuals are not affected by socio-legal change. This adoption of established discourse is disputed as characterizing a reformist rather than transformative agenda, however, the fact remains that it does influence legal discourse.

In continuing the discussion of how other discourses shift those of law, N. Zoe Hilton, warns of the dangers of adoption of discourses, even if the discourses seem to be about empowerment and egalitarian relations. She uses the example of mediation as an alternative to traditional legal process.

> The mediation movement has reached a peak in popularity, and a trend towards diverting family law cases into informal dispute resolution is more apparent. In this way, battered women may now find themselves negotiating with their abuser behind the closed doors of the mediation room...Mediation promotes assumptions of equality and gender neutrality with obvious appeal to a broadly feminist perspective. (1991: 30)

Hilton examines the concept of the "new egalitarian family" that has grown out of a feminist-friendly discourse that promotes egalitarian power relationships within marriages. This discourse has been adopted by mediation, regardless of the reality of inequality between abusers and their spouses. She draws from M. Shaffer to state:

> The discourse of neutrality and mutual agreement, therefore, is a "suspect concept...masking societal norms and values" and making the institution of mediation sound benevolent, when in fact it is of dubious value for women and especially dangerous for battered women. (1992: 36)

Feminist discourse then can be co-opted to promote a process that is not necessarily beneficial to women. Other discourses come into play when considering the issue of mediation. Mediation is rendered far more acceptable through the intertwined factors of cost and 1990s humanitarian discourse.

> Mediators, feminists and politicians all anticipate the expansion of mediation because of the calls for a reorganization of the whole court structure in Ontario and the present overcrowding and underfunding of the court system. (1992: 32)

Thus the cost initiatives and shift in discourse from punitive controls, which would cause further strain on the judiciary system, intertwine with a feminist discourse to produce an

alternative mechanism, which may be detrimental to the interests of the women involved in family law cases. In part, Hilton traces this crisis back to an attempt on the behalf of the battered women's movement to secure recognition of the problem of spousal abuse. "As compliments to the courts, administrative legal procedures such as mediation can serve to relieve the formal justice system of the very strain which has been imposed by the battered women's movement" (1992: 32). This is no criticism of the attempts to validate women's experience or to empower individuals, but it serves as a warning that any discourse, even a feminist one, can be appropriated and used in a way that may not be originally intended. It can be and is used in a way that produces contradictory, if not negative results. Once unleashed, discourse cannot be controlled, nor can its outcome be predicted.[21] For example, the adoption of an egalitarian discourse in mediation, as Hilton describes, can ignore the power imbalance between battered women and their abusers. This can have a devastating impact on women in custody settlements and property disputes.

The discourses of what Martha Fineman calls the "helping professions" have been key influences in changing legal discourse. By "helping professions" Fineman refers " principally to social workers, others trained in mental health and/or the behavioral sciences, and mediators" (1988: 728) Fineman contends that the discourses of the helping professions have been absorbed law to the extent that they have now an almost exclusive

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[21] It is interesting to note that this argument parallels that of Carol Smart with respect to legal reforms, which employ discourses in order to produce change. See Law, Crime and Sexuality. The appropriation of discourse is also discussed in Jo-Anne Fiske's "The Womb is to the Nation as the Heart is to the Body: Ethnopolitical discourses of the Canadian Indigenous Women's Movement."

position of determining child custody placements. She terms this to be a result of a "competition between the legal and helping professions over the custody decision-making process" (1988: 731). She also contends that

> The professional language of the social workers and mediators has progressed to become the public, then the political, then the dominant rhetoric. It now defines the terms of contemporary discussions about custody and effectively excludes or minimizes contrary ideologies and concepts. (1988: 730)

This progression of discourse into the everyday language of society is an extension of the process that Merry calls "naming." Naming is the process by which ruling institutions gain power and authority. As earlier noted, one process of discourse is having a vocabulary for naming or providing the framework for, persons and events and a way in which to explain the world. Merry expands this concept:

> The naming of an action or event within a particular discourse, thus interpreting the event's meaning and assessing the motives behind it, is therefore an act of power. Each naming points to a solution. If the family problem is interpreted as caused by a mean and vengeful father, the solution is different than if it is caused by a father afflicted with the disease of alcoholism. (1990: 111)

In Fineman's case the language of the profession of social work has permeated the socio-legal realm (and vice versa) and therefore determines the framework for the discussion of child custody. Therefore, the dominant language of child custody will be in the social rather than purely legal realm. A certain authority comes with the acceptance of language, authority that is valued as power within society, and is validated as such. Dorothy Smith says of authority in public discourse:

> Authority in the public discourse is not defined by position in a determinant system of positions, as it is in organizational hierarchies. It appears instead as the difference between the credibility granted to some

sources and the treatment of others as mere opinion or as lacking
credibility in some way. Authority bleeds from the institutional relations
of ruling to the relations of authority at the surface of media.(1990: 101)

Fineman states that the transformation of child custody discourse has been demonstrated

by contrasting, "the competing discourses of the adversarial model, populated by judges

and attorneys, and the therapeutic model, populated by social workers and mediators"

(1988: 731). Fineman asseverates that the discourse of social work, which redefines the

spousal relationship instead of terminating it as legal discourse did, has the primary result

of awarding joint custody, which ultimately disadvantages custodial mothers (who assume

primary child care responsibilities without full custody). Fineman also contends that the

voices of these custodial mothers are not heard because they lack a recognized discourse

and also because their concerns cannot be expressed through any validated discourse.

The helping professions' ability to suggest and obtain such a radical
change in substantive policy derives in part from their ability to present the
debate over divorce and custody as one involving the treatment of an
emotional crisis rather than the solution to a legal problem...In this sense,
the helping professions ignored the fact of, and the justifications for, the
differing legal consequences that flowed from the labels of "custodial
parent" and "noncustodial parent." (1988: 733)

Because of this shift, the discourse of social work is considered credible (it has been

backed up by institutional authority) in Smith's terms, and any discourse put forward by

custodial mothers is considered lacking in credibility (it has no institutional authority to

back it). When the legal system validates the discourse of social work and delegates this

kind of authority, its discourse is modified. Here, the helping professions have gained

greater control over the shaping of the normative universe, which is entrenched by the

infusion of "therapeutic" discourse into culture and society.

This shift in legal discourse towards "treatment" or "remedy," as Bruner puts it, is traced by Merry in her examination of the New England Lower court system. She identifies three discourses present in her analysis: legal discourse, moral discourse, and a therapeutic or treatment discourse. The treatment discourse is of particular interest, since it reflects the current trend in law to frame issues in such a way as to delegate them to the helping professions and alternative sentencing mechanisms.

> This is a discourse drawn from the helping professions, one which talks of behaviour as environmentally caused, rather than based on individual fault. Crowding, stress, or low levels of tolerance for frustration- rather than inborn evil, lack of consideration, or lack of respect- are blamed for offensive behaviour. Offensive behaviour is socially caused, not the result of individual will... (Merry 1990: 114)

A language of disfunction dominates this discourse. Merry also considers alcoholism, mental illness, and emotional immaturity signifiers of this discourse. She notes that this discourse withholds justice and in the Foucaultian tradition denies "the person described full personhood and full responsibility" (1990: 114). Thus we have the discursive formation of a subject -- characterized by the "sickness" of an individual -- which suggests that the method of social control be shifted from punishment to treatment. Merry notes that this discourse is widely used by, and known to, the general public and that it is often employed in cases of a domestic nature.

> Blame is mitigated. Of her husband's violence, a woman may say: "But he works hard and gets tense and frustrated." Or, when her husband drinks too much, a woman may say: "He had a hard childhood and had to move around a lot." (Merry 1990: 115)

Martin appeals to this discourse when he mitigates blame for his violence by referencing early childhood problems, and inability to control his anger, and Melanie, through her

initial acceptance of a treatment program as a remedy, references it as well.

One of the primary questions pertaining to the absorption of treatment discourse into legal theory is whether the helping professions can accomplish their goals of "healing" and "treatment." We might take some caution from the example of mediation. The authority delegated by the court to the helping professions has resulted in alternative sentencing measures such as mediation is reflected in court-directed treatment programs (CDTPs). Hilton, Fineman, and Merry all have reservations with respect to mediation for various reasons. Hilton notes that the assumption of the "new egalitarian family" will ultimately undermine the intent of mediation; Fineman considers the shift of child custody discourse away from the legal to ultimately disadvantage custodial mothers; and Merry notes that mediation may not be taken seriously by all parties involved because of its nonpunitive nature.

Violent men may be directed to treatment programs by the court instead of serving time in jail. Women have been noted as saying: "I don't want him to go to jail, I just want him to get help," or "I love him, I just want him to stop abusing me." These appeals to the court, based on the discourse of treatment, are linked to other discourses and considerations, such as:

> cost, in terms of the overcrowding of jails and the expense of keeping prisoners;

> the discourse of feminism, an appeal to stop the abuse of women and curtail repeat offenses;[22]

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[22] Caesar and Hamberger (1989) discuss the development of treatment programs as evolving around feminist demands that women's safety be a primary concern. Feminists recognized that shelters were only part of the solution and that simply removing the

> the discourse of the helping professions, a therapeutic discourse that labels the problem one of relationships, anger management and societal stress which can be "cured"; and
>
> the derivative discourse of 90s liberal humanism, a mix of various discourses, which stresses that no one "learns" anything in jail, and that rehabilitation is a key factor in improving society as a whole.[23]

Liberal legalism (MacKinnon 1983) and therapeutic discourse combine with concepts of a "benevolent" state bent on diverting the costs of the increasing caseload of domestic violence and the already overburdened justice system. Gusfield (1989) addresses this briefly in a discussion of the decriminalization of public drunkenness. The pressure of these discourses combine to create a climate where domestic violence is situated in the more "appropriate"[24] domain of the helping professions, who are concerned with feelings, emotions, and interpersonal dynamics (Merry, 1990). To this we can also add individual pathologies, skill deficits, and trauma. Institutionally, this creates and reinforces the validity of the helping professions, entrenches their control as ruling institutions, and partly removes the onus from the legal institution to solve these social problems. Tamar

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woman from a violent situation would not alleviate the broader problem.

[23] See Chatterjee (1993) who describes nationalist discourse as a derivative discourse. When constructing a counter discourse, aspects of the original discourse play out within it. Brigham demonstrates this with the "rights" discourse, which is derived from traditional liberal legal notions of human rights. Fiske (1996) builds on Chatterjee's nationalist derivative discourse to demonstrate how the nationalist discourses of First Nations organizations are derived from traditional, and gendered, Colonial discourses of national collectivity.

[24] Note here that Merry considers the language of "appropriate" and "inappropriate" to indicate a discursive shift from the legal to non legal.

Pitch describes the administration of an "institutional residue,"[25] to describe psychiatric custodial institution's control of a "heterogeneous population whose problems overflowed the scientific and professional boundaries of other institutions (like medicine and criminal justice)..." (1995: 114). This, in part, helps us to understand the delegation of battering to the control of the helping professions which are viewed, because of the popular acceptance of treatment and neo-liberal discourse, as more adequately equipped to deal with batterers. I coin the use of a parallel term "discursive residue" to describe a discourse which appears to span several institutions, but has no definitive seat in any one institution such as the aforementioned liberal humanist discourse. This massive discursive "grey area" is composed of, and exists in itself as, a complex derivative discourse where subtle and often contradictory discourses play with and against each other within a societal consciousness.

This partial delegation of authority poses many problems in cases of male violence against their partners. The "treatment" or "healing" discourse is only partly adopted by the court, creating paradoxical situations and clashes in philosophy, whilst signalling to society that treatment programs are effective and have been validated by the state as an means of eradicating violence. Farida Shaheed, in her discussion of women living under Muslim laws indicates that the entire structure of social relations does not, and most likely will not, change just because one facet of social relations does. Contrary social relations, like discourses can exist in the same systems.

...Changes in social relations do not displace all existing structures. Only

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[25] Pitch takes this term from De Leonardis.

those in direct contradiction with changed material conditions will be dismantled or modified. The introduction of a capitalist system of production ...did not eradicate the existing structures of patriarchy in these societies. (1994: 999)

So too with discourse, if legal discourse accepts that of the helping professions, it does not necessarily mean that the so-called reason-centered core of legal philosophy will change. This allows two discourses to exist in contention with another. The validation of treatment discourse and the attendant dejudicialization (Dufresne 1995) of battering stands at odds with the "get tough on domestic violence" stance taken by legal policy. If, under legal process, the batterer acknowledges that he has made a freely chosen, but morally wrong choice (Pilsbury: 1989), the discourse of the healing professions contradicts this through the acceptance of diversion of blame to social stress and other factors. At the same time that the offender is accepting responsibility, he is allowed to sidestep accountability in the admission of his "sickness." In accepting that the offender is a victim of social stresses, coping deficits and societal defects and that the abused is a victim of this victim, issues of accountability and responsibility on the batterer's part are glossed over or completely sidestepped. This discourse is absorbed into society even when cases are not brought to court. Who then is responsible? This accountability paradox leaves room for the shifting of blame onto the unapprehendable shoulders of society (or onto the shoulders of women). In demanding an accountability on the part of the offender, the criterion of the legal institution is met, yet the "sick" we are told, are not accountable.

We are then left with the question as to whether the therapeutic discourse serves to empower and protect women. The supposed focus of treatment programs for men who batter is on the protection and further prevention of violence against women. With the

strength of treatment discourse so entrenched in society that acts of violence against women are viewed as springing from a sickness, how can a woman argue that a violent man be put in jail for his "crimes?" Would she dare contest his placement in a program, especially when his "wellness" is at stake? Can either incarceration or treatment, as they exist currently, really help to end wife battering?

As has been demonstrated, the power dynamics between men who batter and their partners are radically skewed in favour of the batterer and can influence decisions and behaviour in myriad ways. Melanie, and other women like her, have argued that the reality of abuse is that men who batter are always sorry for their violence after the fact, and that many would enter treatment programs as a way of evading jail or other punitive measures. Can the coercive power of the court "force" men to rehabilitate? Can men rehabilitate when larger institutional ideologies (actual practices) cannot hold them responsible for their choices to batter? Women know that the institutions have not transformed their victim-blaming ideologies.

The danger lies in accepting dominant discourse at face value, as both Hilton and Fineman warn, and accepting institutions which use this dominant discourse to maintain a patriarchal ideology. The mechanisms of ruling institutions and objectified knowledges are inherent in discourses which attempt to "serve society," Smith asserts, and may not in actuality serve individual women. As Sabini and Silver say of social psychology:

> We had the view that the moral dimension in social psychology was submerged: not in the way that a sunken treasure chest is submerged- for all intents and purposes nonexistent- but the way that the supports of the Golden Gate Bridge are submerged- out of sight, but supporting the structure that everyone admires. (1992: 80)

We must critically examine the intentions and underlying assumptions made in the acceptance of treatment programs and the legal system's adoption of "healing" discourse as well as make room for the individual voices of women, who are ending up revictimized by the very institutions that purport to help them.

The Battle Over Discourse: The Feminist Challenge

As Jabri points out in the opening quotation, individual identities are not made up of persons "brainwashed" by dominant discourse, but are formed out of complex interactions with discourses, ideologies, institutions and experience. It is also important to note here that institutional relations have the greatest control over the dissemination of information and maintenance of ideology in the discursive arena. Individual discourses are difficult to locate within this monopoly. Hirsch gives an example of feminist loss on the discursive battleground

> ...as the movement itself gained political legitimacy and adopted
> bureaucratic organization, activists' early hard-edged discourse linking
> domestic violence to systemic gender inequality became muffled by talk
> of serving individual clients and seeking mediated or therapeutic help.
> (1994: 7)

That social movements maintain any discourse against a dominant ideology of treatment is admirable, that an individual alone can hope to do such, seems impossible. It becomes crucial then, for the consciousness raising and activism of battered women and advocates to continue despite threatened institutional appropriation.

> The achievements of women's movements, while significant, are
> increasingly threatened by the discourses of the helping professions, despite
> the growing numbers of feminist professionals. The patriarchal constraints
> of the disciplines within which they operate have proven difficult to shed.
> Professional intervention is threatening to undermine the significant
> revelations brought about by that unique feminist methodology called

consciousness-raising. (Romany 1994: 286)

What ensues is a struggle to control ideology through discursive practice; a struggle that pits the "liberal state" entrenched in patriarchal relations, with the authority and power to validate the discourses of both liberal legalism and psychological discourses, against a feminist movement whose discourses must necessarily rest in a resistance of dominant ideology that stresses the male dominated relations of ruling. Feminist discourse must be made up of the experiences of battered women and advocates. The prize of this battle is the right to define women's lives and experiences. Efforts by feminists within institutions are curtailed by larger institutional structures which sabotage transformative agendas. As individuals, we are all "born to discursive and institutional continuities which define and bind particular societies...." but we also have a responsibility to transform the "social systems which are in existence through a community of practice" (Jabri 1996: 134); not only a community of practice, but a community of complicity.

Chapter 6

Feminism and Discursive Power

> Criminalization is a significant step in the politicization of violence against women, yet it must be exorcized of the imperial intervention of the helping professions. First, the criminal justice system, by relying on the alleged ungendered discourse of the helping professions, undercuts the criminalization agenda and obscures its social control functions. Second, the helping profession's discourse impacts on the legal system to privilege the dysfunctional over the gender dimensions of violence. This blurs the boundaries between the legal, the therapeutic, and the political which must be maintained to address the problem of domestic violence. Third, the mediation of women's experience through the discourse of the helping professions dispossesses women of the definitional control essential to the politicization of violence. We increasingly witness the devastating consequences of professional discourse's trespasses: the relegation of legal guarantees of women's dignity, bodily integrity, and self-determination to the alleys while the rehabilitation of the family unit or the victims of "psychological dysfunction" travel the main roads. (Romany 1995: 287).

The Myth of Mutual Violence and the De-Gendering of Violence

Miller (1994) discusses the rejection of feminist ideologies about violence by clinicians on the basis of two presumptions. The first is based on the "fact" that women are as violent or more violent than their male partners, and that for a patriarchal theory to hold all men would be batterers. The second is based on the premise that lesbian relationships are violent also, which would exclude any analysis of intimate relationships based on gender inequality. Both these theories attack feminist analysis on the basis of their "unidimensional representations" of violent behaviour. Miller critiques both of these "hasty" assumptions:

> Dutton begins by identifying what he sees as an ideological transgression characteristic of feminist analysis because of their devotion to viewing patriarchy as the cause of "wife assault." Dutton identifies this (misguided) focus as the problem of "ecological fallacy"... In fact, much of the recent compelling scholarship on domestic violence steers clear of blaming

> patriarchy as the sole or direct causal factor while maintaining that gender remains a crucial key explanatory variable. Rather, patriarchy provides a historical and contemporary foundation to assist in explaining the pervasive and enduring quality of (white, middle and upper class, heterosexual) male privilege and power that has created and defined our systems... (1994: 184)

Miller's attempt to keep gender at the forefront of analysis and her insistence on the patriarchal underpinnings of society is both commendable and necessary when faced with such clinical and individualistic explanations of wife abuse. She further contends that Dutton has conveniently sidestepped the activist movement and insists that he has ignored the feminist recognition that battered women are not unidimensional. Battering experiences are similar, she contends, but not battered women. This strengthens the movement rather than detracts from it. Dutton's "ahistorical and superficial critique of feminist analysis is precisely why feminist analyses are crucial: Human behaviour is anchored by sociocultural beliefs shaped by gender politics" (1994: 195). Dutton also relies on essentialist ideas about women to form his own basis, which constitutes more justification than explanation, of wife abuse.

> Overall, Dutton dismisses "gender politics," finding no relationship to intimate violence. He sees the powerlessness of men (e.g., their inability to have "power advantage" women have in women's ability to "introspect, analyze, and describe feelings and processes,"... (Miller 1994: 186)

If these are not notions integral to "gender politics," then what are?

Clinicians then fall back on data that "prove" that women are more violent than men. McNeely, in a commentary about whether or not domestic violence is a human or gender issue, states

> Contrary to popular conception, many studies reported during the last 15 years have trumpeted the pervasiveness of both male and female domestic violence.... This fact tends to startle people, since they believe that female

assaultive behaviour is only in response to male behaviour....

He affirms Straus's view that "[t]he old cartoons of the wife chasing the husband with a rolling pin or throwing pots and pans are closer to reality than most -- and especially those with feminist sympathies -- realize" (1990: 129-130). As Dobash and Dobash (1988; 1992), Bograd (1990) and Renzetti (1994) point out, statistics that target women as equally or more violent than men are the result of a "neutral" Conflict and Tactics Scales (CTS) which treat acts of violence as equal; a tendency to ignore retaliatory or self-defending violent acts; and a denial of the fact that women are more likely to be killed or injured by men than the other way around. Studies that show that lesbians "do it too," are as guilty of not considering other mitigating factors, such as learned inequitable sex role stereotyping as the marginalization of lesbians within a patriarchal system (Miller 1994).

At the same time that some fields are opening up to analyses of gender and wife abuse and are seriously attempting to pay it more than lipservice, feminist discourses on equality are being used against them. Stell, who discusses the societal legitimation of women who use terminal force against their abusers, places the blame for their abuse on sexist women who accept the male role of protector. The following quote indicates that in Stell's estimation, it is women who, more or less, deserve what they get.

> But sexist stereotypes about women and violence will survive such palliatives [referring to increased shelters and arrest policies]. Most women (and feminists, ironically) continue to believe that their physical safety should rest in the hands of men primarily and that it is unfeminine to take seriously the practical implications of assuming the responsibility for protecting themselves... there can be no equality in a relationship in which one party depends for her physical safety on the other. (1991: 257)

This misogynist belief that women are in some way responsible for abuse because of *their* sexist attitudes about male protection is infuriating. Most women want protection *from* their abusers, not *of* their abusers. Stell's and McNeely's condescending attitudes toward feminist philosophy are, if not typical, at least frequent markers of mainstream attitudes towards feminism. Both Walker (1990) and Barnsley (1985) have noted comments about not letting "the feminists" get their own way when working within institutions. Barnsley notes

> Feminism is being challenged again. Of course, it has always been a challenge to be a feminist. There have always been demands for feminists to justify our politics, to re-define what feminism means -- a fact we can easily forget in the face of whatever demand that is. Each set of challenges and attacks from inside and outside the movement has made us vulnerable and defensive as feminists, afraid the movement may break apart all together. (Barnsley 1995: 215)

As well as constant attacks on feminist ideology from outside the movement, feminist ideology is questioned from within as well. Until this point, I have discussed feminism as a seamless, and unified whole: it is not. Until now, I have been primarily speaking of a general feminist belief which stems from a fundamental analysis of gender inequality and analysis of women's oppression.

Smith says that general feminist politics "spanning the left-to-right spectrum...boil down to an attempt to understand the system of inequality in a society whereby males dominate females" (1990: 257). What is not constant are the approaches or priorities of specific feminist agendas. It would be misguiding to fail to problematize a unified feminist stance, especially when considering the formulation of feminist discourses to combat mainstream attitudes about violence. It is absolutely necessary to discuss trends in feminist thought,

and how the contested nature of feminist politics can have both positive and disastrous effects for this formulation.

<u>Feminist Practice and Theory: Critiques From Within "The" Movement</u>

Miller criticizes Dutton's perception of feminist theory as "lumping together and castigating all feminist research as if there is only one kind of feminism (ignoring the different philosophies and goals of liberal, socialist, Marxist, radical, and postmodern feminisms)" (1994: 184). While this is a correct statement to one extent, it also serves to distance "good" feminist research from "bad" feminist research, and de-emphasizes the common concern of sexual inequality that is shared by feminisms. This project has largely concentrated on feminist activists and researchers who have worked around or in the feminist consciousness-raising and shelter movements, and would find a common theme in a definition articulated by Barnsley.

> We suggest that feminism (that of being a feminist) means starting with women's experience, putting women first, making connections between our experiences as women, and analysing how women live in society. It means that women are oppressed socially and economically and that all of us as women are affected by women's oppression. (Of course it also means a commitment to working in whatever ways we can to end women's oppression). (1985: 8)

The articulation of these ideals has been criticized in two distinct ways. The first critique is levelled at the transition house movement itself, and deals with the exclusion of marginalized women by the predominantly white-and-middle-class initiated political movement. The second criticism is that feminism itself has been absorbed into institutional settings, and that certain types of feminist research no longer seek social change or unity of any sort, subverting the ultimate goal of transformative politics.

The first criticism is characterized by Lawrence as suffering from

> the tension between claiming an authoritative voice based on the notion of indisputable experience, and in recognizing the manner in which discourse shapes experience into a number of interpretations. The authoritative voice must inevitably claim a "universal" experience for abused women, with all the risks inherent in essentializing a narrow range of experiences as "the battered woman's experience".... (1996: 37)

Lawrence cites the domination of the white, middle-class woman as the predominant experience posited by "experts" on battered women; excluding the experiences of poor and working-class women, aboriginal women and women of color. These experiences, she notes, are sometimes absent from representations of battered women as are women's difficulties with drug and alcohol abuse, low self-esteem and women's difficulties with often illegal trades. She also states that, often, the dissident voices of women whose experiences do not lead them to the same conclusions of the movement are "lost" in the face of feminist discourses on violence. The inaccessibility and biases entrenched in the movement prove to exclude them from the ideals stated above.

> One tangible result of feminism's failure to address the issues of more marginalized women was that I had not been able, during my time in the movement to address any aspect of working-class patriarchal biases - that smart women were to be cut down to size, that women who drank were worthless, and that angry women deserved whatever they got. In a sense, I had been unable to access feminism where I lived; it had remained largely unreal to me. (Lawrence 1996: 6)

Failure to deal with the racism, ethnocentrism and elitism within shelters, and within the feminist movement itself, inhibits the growth of feminist theorizing and undercuts the ideology of ending women's oppression. Barnsley identifies this as the most urgent challenge facing the movement, she proclaims that "[f]eminism will be meaningless unless we practice what it means.... This means confronting the reality of racism and

discrimination that women experience in this movement, as well as outside it" (1995: 217). Lawrence notes that the problem itself does not "originate within feminism; rather, it represents a feminism which has not sufficiently divested itself of the colonizing habits of the dominant society" (1996: 37). She ultimately concludes that there are advantages to presenting a unified experience, but that it must be theorized from a larger breadth of experience, even if that means walking the fine line of relativity.

The second critique of feminism originates within a current trend of theoretical analyses that locates women's experience in such a singular context that it renders impossible any theorizing of unified experience. Ebert identifies this trend as ludic (playful or to play) postmodernism. The core of ludic postmodernism is constructed around notions of difference, which disable feminist discourses of unity against oppression and instigate a "war on totality."

> In feminism the war on totality, as both these essays demonstrate, has meant especially a war on those feminist theorists who have attempted to articulate the systematicity of patriarchal oppression and gender exploitation.... Such attacks on such committed feminists as MacKinnon, who has long been on the frontiers of critique and intervention in the systematic exploitation of women's sexuality and labor, should be a serious warning to us to rethink the political consequences of feminist involvement in ludic (post)modernism...it excludes and occludes the critiques of global or structural relations of power by calling them "totalizing." (Ebert 1995: 352)

Ludic postmodernism does more that remind us of the race, class and other differences which divide women, it destroys any critique of a common oppression of women by positing that each woman has a different, separate, and distinct multiplicity of oppression that act differently on her than any other woman. While this is true to a certain extent, the isolation and extremity of "difference" rhetoric invalidates systemic critiques of gender

inequality and makes union on the basis of oppression and transformative politics impossible. Ludic postmodernism threatens to divide activist practice from academic theory,[26] depoliticizing theory and emphasizing the aleatory nature of power.

> Theory as play and theory as explanatory critique are not, as they are treated in the contemporary academy, simply two different choices. They are contesting modes of understanding social and political arrangements and how gender, sexuality, race, and class are situated within such arrangements. (Ebert 1996: 14)

Ludic postmodernism obscures the material practices and relations of power in society, to favour of a conceptual blurring of boundaries and transgression of dichotomies. For instance, this project is seated in the concept that the traditional public/private dichotomy is alive and well maintained in the ruling relations and institutions of society, which relegate men to the former and women to the latter. This results in the construction of wife abuse as less serious and more in need of the helping professions, and stranger abuse as more serious and in need of swift punitive justice. Ludic postmodernists would have us disregard these oppositional categories as simplistic and totalizing, and have us transgress these boundaries. The difficulty here is that while the ludic postmodernists are busy transgressing these in favour of individual analysis of resistance, millions of women are suffering from the institutional enforcement of the public/private dichotomy. In short,

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[26] This is not to designate all feminists in academia as supportive of postmodern politics, but serves to point out that ludic postmodern thought, emerging as it does out of a postmodern literary and text based analysis, is common in universities and has "bled" into the institutional practice of women's and gender studies as they are taught. Feminism has undoubtably benefited from the development of postmodern thought. It has opened up traditional and unquestioned truths and categories to feminist scrutiny, but the extremity of postmodern analysis would ultimately immobilize any communally instigated action.

to further Smith's analogy, ludic postmodernists would have us remove the engine from the car and then insist that the engine *is* the car, ignoring the rest of the structural relations under which it operates. They would also insist that the car is so different from any other car, that it is impossible to compare them. They might in fact, play with the car forever, but refuse to understand how it actually works.

In a ludic postmodern analysis, Melanie's story would have been taken up as interesting text and as an individual site of resistance. The multiplicity of her oppression would have been studied, and she would have been heralded as an excellent example of a discursive site of singular resistance. Unfortunately, no attempt would have been made to link her with the potentially transformative voices of other women, nor would a theory have been based on sexual degradation and inequality at a systemic level. Everyone is oppressed in a number of different ways, to a number of different levels: differently. The goal of transformative feminist politics is emancipation based on the resistance of material oppression. There is no goal of ludic postmodernism: How could there be? Ask Melanie whether she would rather be an example of resistance, or an agent of change. You will receive an answer which locates her in a struggle against systemic sexual inequality and patriarchy.

Ebert locates the need for continuing transformative practices in what she terms resistance (post)modernism. Resistance postmodernism locates gendered oppression, and relocates patriarchy as

> fragmented and divided...able to represent itself as seeming unity that is coherent, inviolable and always the same, in other words, continuous; but this is an ideological effect--which is not to say that this highly differentiated and contradictory structure is not hegemonic... (Ebert 1995:

354)

This representation of patriarchy contests the ludic critique of a simple and total patriarchy, and displays it as "different reconfigurations of an ongoing structure of oppression" (Ebert 1995: 354). Here we are given a picture of patriarchy that can act in different ways, oppress in different ways, but that fundamentally disempowers women. No matter where women are located, they all are oppressed by this force. This enables political resistance by women who do not have to gloss over their differences to unite against oppression. Ebert uses the example of the linking of rape to a capitalist patriarchal system to elaborate difference between ludic and resistance postmodernism.

> Capitalism has always privileged experience because the logic of experience (local and individualistic) distracts critical inquiry and transformative action away from the *system* of capital. Rape is assigned to rape crisis centers and individual counselling, on the one hand, and the court of law, on the other; rape becomes a matter between two persons and not the historically inevitable practices of power in a system that is founded upon the exploitation of the many for the benefit of the few. (Ebert 1996: 20)

Like the individualistic and obscuring discourses of psychology in cases of wife abuse, individual investigations of oppression without linking them to systemic oppression, can lead us away from large-scale understandings of oppression and exploitation of women. Ebert locates the politics (or lack thereof) of ludic theory in the entrenchment of the upper and middle class individualistic and entrepreneurial interest in the culture of commodification in which we live. Ludic politics need not have a point, nor any transformative qualities at all, in order to be successful in this culture. Ebert revitalizes a postmodern critique grounded in women's relations, built from women's experiences, and equipped to theorize from experience, no matter how different.

Conclusions

  The key then, becomes the ability to discursively define the relationships surrounding wife abuse, paving the way for a shift in ideological categories that shape how we view batterers and battered women. To reiterate Merry, discourse comprises justifications and explanations, theories for why people do the things they do. For battered women and their advocates, the challenge is to formulate and validate discourses based in a gendered analysis of violence that defines batterers as having the choice to batter and to control their female partners. How "we" as a society view situations of wife abuse, based on shifts in ideology brought about by discursive struggle, will determine how "we" as a society solve these situations. This validation of discourse will only be possible if women have an avenue through which to share experiences (no matter how diverse) that directly combat popular discourses on violence. The historical venues for consciousness-raising, shelters, transition houses, and women's centers, must remain in the control of women and combat institutional absorption at all costs. If treatment programs are to continue, they must closely work with and be accountable to battered women (Hart 1992), center around a gendered understanding of violence; and women's safety must be protected at all costs (Hart 1988). Most importantly, discourses preaching mutual accountability and mutual violence must be challenged.

  While it is clear that many advances have been made since the women's movement sought to gain public attention for wife abuse, we have still farther to go. Control over the prevention and protection of women from abuse is largely held by institutions that have, at their centers, a vested interest in maintaining the male-dominated status quo.

Feminists continue to challenge these institutions with discourses based on the gender inequality between men and women and the patriarchal underpinnings of society. This challenge takes place against a continually shifting social consciousness, where the biggest piece of the discursive "pie" wins. In order for feminists to compete in the discursive arena, we must face the challenges from within, as well as outside the women's movement. The discursive arena is a complex mixture of contentious discourses, or a discursive residue, which has been heavily influenced by treatment discourses and ideologies. The most effective tool we as feminists have are methodologies, theories and practices that are based in women's experience. If legal controls are to succeed, there must be a significant shift in ideology, based on the societal acceptance that wife abuse is as crucial, if not more crucial, than stranger abuse. If treatment models are to be effective, the helping or troubled person professions must recognize a feminist discourse which starts with women and is accountable to battered women and their advocates.

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