

'Lollies at a Children's Party' and other Myths: Violence, Protection orders and fathers' rights groups

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Mothers in Victoria (other states have similar laws) have only to approach the Clerks in Magistrates Courts... in order to obtain an intervention order against their former partner[s]. Such orders are given out by our Magistrates Court like lollies at a children's party, with no evidence required (Parent Without Rights (PWR) 1995).

Introduction

This article looks critically at the position of the Australian fathers' rights movement on the issue of domestic violence. We aim to articulate some of the more commonly stated myths that are perpetuated by fathers' rights groups and show that they lack any empirical foundation, and yet are in danger of achieving a degree of credibility in the press and in popular discourse. In particular, this discussion will focus on some of the ways in which interventions into what is notionally a 'family law' debate impact upon criminal justice issues or other concerns.

In the last decade there has been an increasing recognition by the Australian legal system,¹ and the broader community (Public Policy Research Centre 1988; Office of the Status of Women 1995), of the phenomenon and incidence of domestic violence. There has also been the development of some degree of legal protection for the targets of such violence (sections 357F – 357I, 562A-562V of the *Crimes Act 1900* (NSW); 68B, 68C, 68F(1)(g), (i), (j), 68J, 68K, 114-114AA and Division 11 of the *Family Law Act 1975* (Cth)). In spite of such gains there is still much to be done before women² are adequately protected from violence on the part of their male intimates (Egger & Stubbs 1993:51). It is also the case that whilst attitudes towards domestic violence by members of the legal profession and of

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1 Karp and Karp (1994:390) note: 'the greater awareness and concern about domestic violence, the emergence of 'domestic torts' imposing new standards of accountability on spouses and the erosion of inter-spousal tort immunity [which] have increased court involvement in protecting and compensating the battered or abused spouse'; cited in *Kennon* (1997) at 84, 291. Other indications of such a change in attitude include the introduction of a system of apprehended violence orders, the establishment of specialised domestic violence units and liaison officers within the police force, police education programs, legislative provisions regarding search and seizure of firearms, the removal of barriers to the criminal prosecution of rape in marriage, changes to the *Family Law Act 1975* to accommodate circumstances of domestic violence in the context of disputes around custody and the use of mediation and conciliation counselling, the Family Court Chief Justice's direction as to the management of cases involving family violence, and a series of government reports which acknowledge and address issues of violence against women.

the broader community have changed, there is still room for improvement in certain crucial respects (Seuffert 1994; Blazejowska 1994).³ Stereotypes, myths and misunderstandings continue to surround the phenomenon of violence between intimates.

In view of how recent these changes are, the fragile status of the changes, and the distance left to travel on this issue, we are disturbed to note the growing public credibility of a social movement whose attitudes towards domestic violence do not withstand rigorous scrutiny. We are referring to the Australian fathers' rights movement. Our concern has arisen out of research we have recently undertaken into Australian father's rights groups (Kaye and Tolmie 1998). This research drew on primary sources: submissions such groups have made to law reform bodies on various family law references; literature generated by the groups; and media coverage of family law issues. Evaluation of these sources demonstrates that the attitudes of many fathers' rights groups feed into retrograde mythologies about violence and problematic stereotypes about women.

Of course not all fathers' rights groups have identical views on violence. The Family Law Injustice Group Helping Together (FLIGHT) have strongly and unequivocally condemned the use of violence against women and children (1994). But many other groups, whilst they might also express condemnation, simultaneously expound contradictory views that undermine that disapproval. These include: denying that the violence exists; recognising the occurrence of violence but denying responsibility for it; and asserting that women are, in fact, just as violent as men. We will examine each of these views in turn.

We want to challenge the views presented by many fathers' rights groups because we are concerned about the extent to which they have the potential to influence public opinion and attitudes towards violence against women and children. We are aware of the fact that public opinions and attitudes exist in a symbiotic relationship with public discourses on violence, particularly within the media and the legal system. It is therefore essential to caution against uncritical reiteration (or indeed, implicit support) by the media and the legal system of any views which do not reflect the truth about violence. As Rosemary Hunter has written; '[m]yths about violence can only be dispelled when more of the reality of violence circulates in public discourse' (Hunter forthcoming).

The Denial of Violence

Fathers' rights groups frequently minimise or deny the existence of the phenomenon of male on female violence. For example, Parent Without Rights implies that the seriousness of such violence is over-inflated:

Magistrates should ignore the hype and hysteria created by very vocal women's groups and sensationalised by the mass media. Intervention orders create more hostility between the parties and do nothing towards the health and well being of the children (1997).

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- 2 We use gender specific language in recognition of the fact that, whilst female on male violence does occur, in the vast majority of instances such violence is a male on female phenomenon, see Thornton (1991). In this article we are considering violence within heterosexual relationships because fathers' rights' groups are not generally concerned with same-sex relationships (other than to regard them with apparent antipathy: Kaye and Tolmie 1998:10-11).
 - 3 The Office of the Status of Women documented significant improvement in community understanding of the phenomenon of domestic violence (1995). They still found that most people who they interviewed believed that people would not interfere if they knew someone was in a violent relationship, and still failed to understand why women find it difficult to leave violent relationships.

One of the most common ways in which the groups deny the existence of such violence is to assert that when women do speak out about it their allegations are frequently false. The groups allege that women make false accusations of violence in family law proceedings, protection order applications and rape prosecutions.

*'The Ultimate Card in Divorce Battles'*⁴

I'm gonna get the system to help me
Get this weirdo outta sight
The police and lawyers
Can help me win this fight (Displaced Dads 1996)⁵

A common allegation by the groups is that women often manufacture claims of domestic violence or sexual abuse, in respect of themselves or their children, for tactical gain in family law proceedings (Parent Without Rights 1997; Lone Fathers Association 1994 & 1997; The Family Life Movement 1992; Men's Confraternity 1995; Family Law Reform Party 1997). For example, Parent Without Rights states that:

This present Magistrates intervention order system is being used, in a large number of cases, by mothers, in order to take advantage of the system and obtain an extra advantage in custody and access applications to the Family Court (1995).

Dads Against Discrimination, in a newsletter to its members, comments that:

Another area that is blatantly being abused is the Apprehended Violence Order (AVO) issue. I'm sure we all know what they are because most of us have had one served us. As you have found they come with particular ease, and you don't have to be anywhere near her or communicate with her to get one. The so called 'Justice' Magistrate just hands them out to any female at 150 a day for any reason. Their reasoning is when in doubt it's better to be careful. But the justice system does not realise what these little gems of paper can do. They can:

Be used in the Family Court against you,
Prevent you or hinder you in access,
Be used to have the Police legally harass you,
Lose security accreditation at work, and
generally blacken your name in society (1995).

Recent changes to the *Family Law Act 1975* mean that the Family Court must now take into account domestic violence, and any protection orders made, when determining the future residence of, and contact to, the children of a relationship (sections 68F(1)(i), (j), (k)). These changes recognise that being exposed to spousal violence is harmful to children's welfare (see the research referred to in Kaye 1996:285-287). Fathers' rights groups have generally greeted these changes with disapproval. Barry Williams, president of the Lone Fathers' Association, believes that 'the amendments will now allow 'vindictive' women to fake incidents of domestic violence and apply for restraining orders against their partners

4 (Arndt 1995)

5 'Men are all sick bastards'. Interestingly, the language of violence and conflict is often used by the groups (and others) in describing family law disputes. For example, Displaced Dads, in the song 'Men out there' (1996) write that 'the children are her weapons'. In another song, 'Sad Situation' (1996) they say, 'In a sea of illusions two foes go to war.' Lone Fathers Association (Rockhampton 1992) state, '[I]t is not uncommon for...custodial parents to obtain restraining orders in order to make pre-emptive strikes against their unsuspecting ex-spouses.' Ironically, considering the high levels of violence used by men (including killing their wives and children) discussed below, many of the groups refer to 'women getting away with murder' (Lone Fathers Association (ACT 1987); Parents Without Partners (1997)). Men's Confraternity talk of 'the multiple-marriage divorcee specialist [who] conceals her actual worth when making a 'kill' in order to accumulate a growing nest egg.' (1987). Emphases added.

to prevent them getting access to their children' (Matheson 1996). Sue Price, co-founder of the Men's Rights Agency, 'predicts there will be many more cases of fake restraining orders as a result of the new Family Court amendments' (Matheson 1996).

In sketching the following scenario Men's Confraternity also suggest that women commonly make false allegations not just for tactical gain, but for pleasure in the suffering they cause in men:

A nasty 'catch-22' means of gaoling the father is used by women who obtain a restraining order the day before access is due, tip-off the Police the moment the father appears and suggest a scene of massive violence thus drawing the Police Force into the game as useful and effective pawns to provide them with a quite sadistic form of entertainment (1987).

In fact there is no research which supports the allegations fathers' rights groups make about false complaints of domestic violence. Recently the NSW Bureau of Crime Statistics conducted a study on the effectiveness of Apprehended Violence Orders in the domestic context (Trimboli & Bonney 1997). Don Weatherburn, the bureau's director, commenting on the study stated that: '[o]ur distinct impression is the vast majority [of women obtaining orders] were genuine, even where they might have rescinded the order' (Lamont & Jamal 1997). The working group of Commonwealth, State and Territory officials, which recently produced a discussion paper, entitled *Model Domestic Violence Laws*, commented that:

... while it has been said that domestic violence legislation is used as a strategic tool in Family Law Disputes, and this is undoubtedly true in some cases, there does not appear to be firm evidence that misuse of the legislation is rampant. (Domestic Violence Legislation Working Group 1997:1)

They go on to point out that there are serious criminal offences relating to perjury and false allegations which are available to deal with any abuses of the legislation. Interestingly, Sarah Todd draws on her experience as a solicitor for the Domestic Violence Advocacy Service to agree with the proposition that frivolous complaints in Apprehended Violence Order matters in the domestic context are increasing. However she also argues that the majority of frivolous complaints are initiated by men against their female partners (Todd 1994).

In fact research suggests that the main problem in relation to domestic violence might be the low level of reporting, as opposed to the high level of false claims. For example, the Australian Bureau of Statistics found that '[o]ne fifth of women who had ever experienced an incident of physical assault by a man had reported the last incident to the police' (1996:29; the NSW Taskforce on Domestic Violence 1981). In addition they noted that women were more likely to report incidents that were perpetrated by a stranger than by somebody they knew. The NSW Bureau of Crime Statistics and Research found that only about one third of breaches of Apprehended Violence Orders were reported to the police (Trimboli & Bonney 1997).

Research concerning the response of the police to domestic violence complaints suggests that women have traditionally had great difficulty in getting police protection in such circumstances (Stubbs & Powell 1989; Hatty 1989; Busch, Robertson & Lapsley 1992; Dang & Alcorso 1990; Women's Legal Resources Centre 1994; Tolmie 1997). The NSW Bureau of Crime Statistics and Research, for example, found that the police did nothing in response to 70% of the cases where breaches of Apprehended Violence Orders were reported to them (Trimboli & Bonney 1997). This can be contrasted with the over-zealous policing which is often described in the literature generated by fathers' rights groups.

Whilst conducting research on the incidence of domestic violence is difficult the work which has been done on the subject suggests that it may be one of the most prevalent forms of inter-personal violence in contemporary Australian society (Wallace 1986; Graycar & Morgan 1990:277). For example, the Australian Bureau of Statistics (1996) found that 42% of Australian women who had been in a previous relationship had experienced an incident of violence by a previous partner, 3.3% in the previous 12-month period. They found that 8% of Australian women in a current relationship had experienced violence from their partner, 2.6% in the previous 12-month period. This can be contrasted with the fathers' rights literature which minimises the incidence of the phenomenon. In fact the position taken by father's rights groups can also be contrasted with the findings of studies such as that conducted by Leibrich, Paulin and Ransom (1995). They interviewed 2,000 New Zealand men to document men's accounts of their own resort to violence. This report found that 21% of men reported at least one physically abusive act (53% reported a psychologically abusive act) in the past year and 35% at least one such physical act (62% psychological) during their lifetime. Interestingly, they found that:

New Zealand prevalence rates for men who report physical abuse of women are far higher than most existing prevalence rates of women who report being abused by men. Our one year prevalence rate is approximately double those in other research and the lifetime prevalence rate is approximately half as high again as those in other research (Leibrich, Paulin & Ransom 1995:17).

Another common assertion by fathers' rights groups is that mothers falsely allege child sexual abuse. In fact Australian research on child sexual abuse allegations made during Family Court proceedings suggests that in the majority of cases where allegations are made they are not being used as the tool of a vindictive parent (Hume 1995:205-212).

*'Rape is an accusation easily to be made'*⁶

In 1986 it was alleged by Men's Confraternity that women could manipulate the rape-in-marriage legislation for their tactical gain. The rape-in-marriage laws are those relatively recent reforms which removed the immunity against criminal charges of rape that a husband had in respect of his wife.

Men's Confraternity believe that women can use the laws governing separation and divorce to keep all the benefits of marriage, such as the use of the matrimonial home and financial support for themselves and their children, whilst ousting their husbands from all the benefits of matrimony and family. Their argument is that the rape-in-marriage legislation can be used in a similar fashion:

to achieve that same 'ideal marriage' except that the man would be of no economic benefit to the woman in prison. Women would have to plan this scenario more carefully, perhaps even downplaying the situation in the court room so that the man was not gaoled but still suffered a punitive rebuttal for breaking out of the psychological confines of the role model required of him by the woman (1986).

This argument contains a number of problematic assumptions. First, there is no foundation in the idea that women have control over criminal rape proceedings in the manner which Men's Confraternity assumes they have. The slightest familiarity with criminal proceedings would make it clear that the target of an alleged rape is not a party in the case. She is no more than a witness. Indeed this fact has been the subject of much discussion, with the Department for Women commenting that:

6 Hale cited in Naffine (1992:744).

A woman who alleges sexual assault is ... in a particularly vulnerable position in the court room... [T]he court room is a foreign environment; it can be intimidating, indeed frightening. Procedures of the courtroom can be mysterious and the language of its participants incomprehensible. For sexual assault complainants the anxiety is compounded because of the intimate nature of the assault and the evidence to be given (Department for Women 1996:113).

Secondly, there is no evidence that women commonly manufacture false complaints of sexual assault (Naffine 1992:753). For example, studies undertaken in South Australia in 1986 and in Victoria in 1988 estimated the amount of false complaints at 1.4 and 7 per cent of all complaints (Naffine 1992:753). In fact the more serious problem in relation to sexual assault, particularly where the woman is assaulted by a current partner, again appears to be the low level of reporting rather than the high level of false complaint. Naffine and Heath comment that:

It is clear, even on conservative estimates, that well over half of all sexual assaults are never reported to the police. In addition, the reporting rate drops dramatically where the assault is committed by someone known to the survivor (1994:45).

Finally, with the benefit of hindsight, it is obvious that few women have *in fact* used the rape-in-marriage reforms (Naffine and Heath 1994:41). Naffine notes that:

In Victoria, the spousal immunity for rape was abolished in 1985. A study of rape prosecutions for 1989 reveals that only three such incidents were reported to the DPP and in two of the cases the spouses were estranged at the time of the rape (Naffine 1992:747).

'No questions are asked as to who initiated the argument or what it was over'⁷

Another way in which some fathers' rights groups have minimised the significance of domestic violence is in their advocacy of private dispute resolution as the best way of resolving family disputes (Kaye and Tolmie 1998). Private dispute resolution (in section 14E of the *Family Law Act 1975* it is called 'primary dispute resolution) involves the parties negotiating the resolution of their own disputes using non-coercive techniques such as counselling or mediation. Private dispute resolution can be contrasted with the resolution of family disputes by means of a court order, or the administrative application of predetermined legal formulas.

The advocacy of private dispute resolution by fathers' rights groups sometimes extends to suggesting compulsory counselling or mediation where domestic violence has been alleged. For example, the Family Law Reform Party asserts that:

State laws on domestic violence should be amended to require where domestic violence is alleged to have occurred that both parties attend counselling immediately (Family Law Reform Party 1994).

Men's Confraternity suggest that a night court should be established and that both parties should be taken there for compulsory counselling and determination of fault if a domestic violence complaint is made (1995). The implication from these suggestions is that domestic violence is a negotiable inter-personal issue. It follows in turn that either the violence allegations are false (in accordance with the views we have outlined above)⁸ or that violence is just a form of family dysfunction, or a relationship problem, for which both parties are responsible.

7 (Men's Confraternity 1986).

By way of contrast, it is widely acknowledged by those with expertise in this area that mediation and/or counselling is not usually suitable for the resolution of disputes where one of the parties has been the target of violence by the other party (Alexander 1992:271; Astor 1994:3; Kaganas & Piper 1994:265). Other commentators suggest that mediation and/or counselling may sometimes be appropriate to deal with negotiations about property or children despite the presence of violence, but only on the condition that certain strict safeguards, designed to protect the target from further abuse and to equalise her negotiating power, are fulfilled (Astor 1991; Gribben 1994).

This view appears to be recognised in the formal rules of practice in the Family Law system. For example, the Chief Justice of the Family Court has issued a direction on the management of cases involving family violence (1993). This states that mediation, and in some cases conciliation,⁹ will normally be regarded as inappropriate for those who are in fear of family violence. Order 25A, Rule 5, of the *Family Law Rules* lists the risk of family violence as one of the factors an approved mediator must take into account in deciding whether or not a dispute may be mediated.¹⁰ In spite of this, however, the Australian Law Reform Commission has received submissions which:

referred to pressure from court counsellors to have joint counselling sessions despite being told of these fears [of violence]. They also noted a lack of appropriate safeguards for safety in these circumstances (Australian Law Reform Commission 1994:200).

A survey of the practices and policies of private mediation agencies in Australia on the issue of domestic violence also found that:

...there was clear feedback to indicate that some mediators may not fully appreciate the direct impact which a history of abuse may have on mediation. It appeared that some women had attempted mediation amid an atmosphere of fear and intimidation which significantly affected the mediation experience (Keys Young 1996:ii).

These submissions raise the possibility that the informal practices of the legal system (particularly those of private agencies within the system) might be aligned with the views expressed by some fathers' rights groups.

*'...lollies at a children's party'*¹¹

Some fathers' rights groups acknowledge that genuine cases of violence and abuse exist, but for them preventing false complaints is more important than the protection of the victim in genuine cases. This has the effect of minimising the significance of violence as a social phenomenon and decreasing protection for the targets of violence. For example, some have suggested that Apprehended Violence Orders should only be granted if the offence of assault has been established in a criminal court (Lone Fathers Association -Sydney 1992). The Gippsland Child Support Action Group has submitted that *ex parte* protection orders should be abolished (1994). Most extreme of all is Men's Confraternity who suggest that restrain-

8 The Family Law Reform Party comments that: In many cases where no physical abuse has taken place the Laws on allegations of Domestic Violence are misused for the purpose of affecting [sic] separation, thus forcing such issues as Custody, Access, Child Sex Abuse and finally Property Settlement. All cases of alleged physical abuse should require both parties to attend Mediation & Counselling as soon as possible to settle disputes and possibly save the marriage or relationship (1997).

9 Provision can be made for alternative conciliation procedures, such as interviewing people separately, and at different times, or conducting proceedings over the telephone.

10 See also Regulation 62 of the *Family Law Regulations* which provides that before a mediator provides mediation under the Act they must consider whether the ability of any party to negotiate freely in the dispute is affected by a history of family violence or the likely safety of the parties.

11 (Parents Without Rights 1995).

ing orders should be backed up by 'physical, photographic and medical evidence immediately after the alleged event and further corroborated by witnesses to the event' (1995). They suggest that if a domestic violence complaint is made and no internal or external evidence of physical violence can be found on medical examination, then the complainant should be automatically charged with making a false complaint.

It is commonly suggested by fathers' rights groups that Apprehended Violence Orders are granted without proof (for example: DADS 1995). Such a suggestion is founded on a misunderstanding of the nature of such orders. Apprehended Violence Orders are protective rather than punitive. They go to future behaviour rather than past. Thus an Apprehended Violence Order is intended to protect a person who holds a fear that another person will commit a violence offence against them, or engage in behaviour which amounts to harassment, molestation, intimidation or stalking. In order to obtain an order preventing violence in New South Wales it is necessary for the person seeking the order to prove on the balance of probabilities (in other words that it is more probable than not) both that they actually fear personal violence and that there are 'reasonable grounds' for such a fear (section 562B, the Crimes Act 1900 (NSW)).¹² If the order is sought to prevent harassment, molestation, intimidation or stalking the conduct complained of must be 'sufficient to warrant the making of the order' (section 562B, the Crimes Act 1900 (NSW)). Because these orders are designed to regulate future behaviour, and so long as they are complied with do not result in any sort of criminal conviction, they require the lower civil standard of proof. Breach of a protection order, however, is a criminal offence. Thus to establish a breach, a 'knowing' breach of the order must be proved beyond reasonable doubt, which is the more onerous criminal standard (section 562I(1), the Crimes Act 1900 (NSW)).

Violent Men are victims

An uneasy fit with their minimisation or denial of male violence is the fact that most fathers' rights groups at some point strategically acknowledge the existence of the phenomenon. But they rarely do so in order to take responsibility for it, or acknowledge the impact it has on its targets. In fact the violence is generally blamed on factors outside the men who perpetrate it, such as the custodial parent, the Family Court (The Australian Family Law Action Group 1992) and the *Family Law Act* (Women who want to be Women 1992). It is linked to the use of Apprehended Violence Orders (the Family Law Reform Party 1994), the fact that sole custody is invariably vested in women (Parent Without Rights 1992), the adversarial system (The Family Life Movement 1992), the cost of child support (the Family Law Reform and Assistance Association 1994), and the denial of access to men (Parents Without Partners 1997; the Family Life Movement 1992). This point is graphically illustrated by DADS' claim that it is the Family Court and/or the Child Support Agency who appear to be perpetrating murders and not the men who might be involved in those systems.¹³ In fact the men who actually do the physical acts of killing are not even mentioned:

12 For similar provisions in other jurisdictions see: *Domestic Violence Act* 1994 (SA) and *Restraining Order Act* 1991 (WA). For a contrast see: *Crimes (Family Violence) Act* 1987 (Vic), *Domestic Violence (Family Protection) Act* 1989 (Qld) and the proposed *Model Domestic Violence Laws* (1997). These provisions, rather than concentrating on 'reasonable fear' as the basis for making an order, make the orders dependant on finding that a specific act of violence has already occurred.

13 It is interesting to note that Hore, Gibson and Bordow (1996) found that very few of the families who had domestic homicides investigated by the coroner in Victoria between 1987 to 1990 had been Family Court clients.

I don't know the numbers but I would expect that the weapons the shooters want to keep have killed less people this century than the Family Court and Child Support Agency have killed so far this year (DADS 1996).

Similarly, the response of the President of the Lone Fathers' Association to a recent case decided by the Family Court, which has been interpreted by some groups as adverse to fathers' interests (*B and B: Family Law Reform Act*) (1997) FLC 92-755), was that the decision would lead to violence and that judges 'are going to have blood on their hands' (Williams cited in *SMH* 11 July 1997. See also 'Landmark custodial ruling sparks violence warning' *The Examiner* (Launceston) 10 July 1997, 5; 'Lone dad violence warnings', *Herald Sun* (Melb) 11 July 1997, 8).

In an ironic twist male violence is used by these groups to demonstrate how victimised men are by the Family Law system. The groups appear to believe that violence is something caused in men, like stress or illness, as opposed to a decision certain men make to react in a particular way to their circumstances. The violence is therefore seen as evidence of the suffering of the perpetrator, as opposed to behaviour for which they can be held accountable. For example, Parent Without Rights state that:

If our pleas had been heeded, regarding the problems with the denial of access orders; there may have been a few more children, and their fathers still alive today... One point which the government must give urgent attention to is that of the custodial parent (95% being mothers) using the children as a weapon against the other parent, as is happening with thousands of cases at present. Fathers, who, in these situations have no weapon can easily be pushed emotionally over the edge. This, regrettably, has occurred in the past, far too frequently, and consequently, has led to tragedies, such as bitterness, violence and a large number of murder-suicides (1995).

The Lone Fathers Association (WA) say that domestic violence, child abduction, and 'even murder-suicide';

will continue to be the remedies and escape routes for distraught people who have been betrayed by their partner's false and neglected promises in marriage and by the gender-biases prevalent in our society and in the Family Court (1994).

That the phenomenon of men murdering their families is transparent evidence of the victimisation of men is presumably why Men's Confraternity make the following comment:

Also men are responsible for deaths of whole families – yet women receive favourable treatment regarding custody and access in the Family Court (1995).

Sometimes the violence is also acknowledged in order to pressure for law reform. In making a submission to the Australian Law Reform Commission, Men's Confraternity comment that;

a quite seething rage is developing in our State [WA], among the male populace, the consequences, we believe will become obvious, in the future. Your commission have a chance to [re]dress the balance of justice, all over Australia. The murders of Family Court judges over your side of the country, will happen here unless you do (1987).

A few groups and/or individuals use the violence in an attempt to bully the Family Court or reform bodies. For example, Taylor describes one response to the family court bombings as follows:

It is not surprising that a man in the audience told a meeting of FLAG (Family Law Action Group): 'You will get more response from the politicians about changing the (Family Law) Act if a few more get killed (Taylor 1992:29).

The Lone Fathers Association (WA) comments that: 'The Family Law Court has demonstrated its lack of respect and contempt towards the community and its rulings, has encouraged the violence never before known in Australian history' (1994).

These attitudes towards violence cannot be dismissed as being those of a vocal and extremist minority. McMurray and Blackmore, interviewing non-custodial fathers post separation, found that such attitudes were not uncommon. They comment that the;

most alarming issue related to the men's coping strategies concerned their attitude towards violence against women ... [34 per cent] ... spoke sympathetically of custody related murder/suicides (McMurray & Blackmore 1993:154).

Elsewhere we have raised the possibility that fathers' rights groups feel threatened by the social infrastructures that give women the possibility of financial independence from men (Kaye and Tolmie 1998). Such financial independence provides women with the freedom to choose what kind of relationship they want to have with the father of their children. This, in turn, threatens the private power and control that men have traditionally exercised over women and children within the family unit, and as part of their 'traditional role'. We would argue that conceptualising the male gender role in the family in terms of authority over, and control of, the family lends itself to creating the very conditions in which domestic violence can flourish.

Scholarship on the phenomenon of domestic violence suggests that discrete acts of physical violence are only one of a number of techniques used by a perpetrator to maintain power and control over his partner. It is said that domestic violence is in essence about power and control (Astor 1991:12). As the Women's Coalition Against Family Violence have written; 'the men who killed...women and children... were acting consistent with the belief that they were entitled to own and violate these women and children' (1994:60). Similarly, the NSW Child Protection Council's Child Death Review Committee notes that: 'Domestic violence is particularly common in 'retaliating' filicide, where men kill their children to 'get back' at their female partners' (1995:60). This is also illustrated by the assertion of the Lone Fathers Association (Rockhampton) that the fact that a man 'owns the relationship' with his children is a justification for violence and possibly the murder of those children and/or his ex-partner:

The people who resort to violence are reacting to the reality of their children being kidnapped (however officially so) their possessions being unfairly divided and their voices being unheard by the functionaries of the family court system. This is not a time to tell these people that 'you do not own your children, they are not material possessions'. These people own the relationship with their children and they act on the consideration of life with or without their relationship with their children (1992).

It is certainly the case that most fathers' rights groups tend to focus on the issues that confront men around the time of spousal separation. There are interesting linkages between this phenomenon and the fact that the most dangerous time for a woman in a violent relationship is the time during or immediately after leaving the perpetrator (Wallace 1986:98-100; Mahoney 1991). Presumably this is because separation poses the ultimate threat to the perpetrator's attempts to exercise control over his partner and/or their children.

Women are as Violent as Men

'[M]en and women are equally capable of being aggressors and have an equal

*chance of being victims'*¹⁴

Some fathers' rights groups go further than denying or minimising the existence of male spousal violence. These groups argue that women are in fact as violent or abusive as men. The fact that this is not documented in existing statistical information or reflected in service provider practices is not taken as evidence that there is no empirical support for this view, but is instead taken to be evidence of a bias against men. For example, Men's Confraternity comments that women are the 'main protagonists in family violence' (1995). The Men's Rights Agency says that there is no acknowledgment of the fact that women are perpetrators of domestic violence and no provisions protecting men and children from their violence (1997). DADS comments that:

A MAN threatens his ex- SHE gets an AVO against him.

A WOMAN threatens her ex- NOTHING HAPPENS!

A WOMAN threatens her ex's new partner (ANOTHER WOMAN!) - NOTHING HAPPENS!!

WHATEVER HAPPEN[ED] TO EQUAL RIGHTS!!!! (DADs 1997)

DADS suggests that men are too afraid to speak out about this abuse:

When DADS asked around to some of the men who have experienced violence, 9 out of 10 were too scared to come forward because of repercussion from the children's mother. It is unbelievable what power a ex partner has over a NCP for a large slice of his life. (DADS 1995)

The WA *Domestic Violence Taskforce Report* noted that 'women [in violent relationships sometimes] left the relationship... for fear of maiming or killing the abusive partner' (Men's Confraternity 1986). Men's Confraternity comment that this 'shows that the 'victims' had considered using violence themselves to achieve their objectives' (1986). Given the inability of the police to provide 24 hour a day protection to women in violent relationships, the failure of other social institutions to provide adequate protection, and the escalating nature of such violence, it is credible that women in extremely abusive relationships might see a day when they and/or their children are facing death or serious injury unless they either leave or use physical force to protect themselves (Sheehy, Stubbs and Tolmie 1992; Tolmie 1997). Men's Confraternity do not draw a distinction between these acts of self-defence and the acts of aggression on the part of the perpetrator.

The studies (Straus, Gelles & Steinmetz 1980; Straus & Gelles 1986) that some of the groups (Lone Fathers Association 1997; Men's Confraternity 1995) tend to rely on, if any, in making the assertion that women are as violent towards men in the domestic context are those which are based on a system of measuring domestic violence which is called the 'conflict tactics scales' (CTS). The CTS system measures discrete acts of violence and ignores the motivations for these acts. For example, from CTS measurements it is unknown whether an act was done in an attempt to coerce compliance, to induce fear, or in self-defence. Additionally, the CTS does not connect injury with the violence that caused it. Thus, an act of violence which hospitalised the target is counted equally with one which caused no physical injury. The results are, therefore, extremely problematic (Kelly 1996:43).¹⁵ Many criticisms made of the CTS have now been accepted by its creator (Dobash & Dobash 1992:271-284; Dobash & Dobash 1988).

14 (Men's Confraternity 1995).

15 Because women are more likely to use violence in self-defence and cause no injury. By contrast men are likely to use violence in aggression and injure their partners. These differences become invisible under CTS.

It is worth noting that the argument for gender symmetry in domestic violence is completely contradicted by the concrete information we have regarding spousal homicide in New South Wales. Alison Wallace found that these killings occurred 'almost exclusively against a background of severe marital discord' (1986:102). She found a high incidence of past physical violence (exclusively male on female) *officially* recorded in cases involving a spousal killing: 40% of the wife killings and 70% of the husband killings. Of course, given the low levels of reporting in cases of domestic violence (noted above) the actual incidence of this violence is likely to have been much higher. Significantly Wallace found that women were three times more likely to be killed by than to kill their partners and that there was no real *differences* between the women who killed and the women who were killed by their partners:

In terms of the issues over which conflict occurred, and the form of mistreatment, physical and mental, that women as both victims and offenders had endured, their experiences were very similar. The difference between the two appeared to be that whereas in the husband killings the women took action into their own hands and retaliated, in the wife-killings, the women did not (1986:103).

Looking at the precipitating factors for the killings, she found that:

Violence or fear of future violence was both the background and the cause of the use of force by women on their husbands. They killed their husbands after they or another family member had been attacked. Wife-killings on the other hand, rarely, if ever, occurred in response to violence by the wife on the husband (1986:97).

By contrast the major precipitating factors for husbands killing their wives were separation or threat of separation, and sexual jealousy.

If there was in fact gender symmetry in respect of domestic violence one would expect to find that many of the women in Wallace's study who killed their partners had done so against a background of documented violence by them against their husbands, which had finally escalated until it was fatal. In fact such women do not exist in this study.

'Men's ongoing need for sexual release will require servicing'¹⁶

Some groups use even more questionable methods of demonstrating that women are as violent or abusive as men. For example, Men's Confraternity make a number of submissions which appear to reduce to the notion that men have an entitlement to sex and that therefore women (at least when in a marriage relationship) who insist on having their bodily integrity are abusive. This group submits that women abuse men verbally and psychologically¹⁷ in the course of abusing them by denying them their sexual needs:

Women, although physically weaker, adopt formidable psychological tactics to put a man off the thought of asking that his needs [for sperm release] be serviced (1986).

This submission appears to give some credence to the recently abolished legal fiction that a wife has given advance and irrevocable consent to sexual intercourse with her husband (O'Donovan 1993; Freeman 1991; Boyle 1981). Men's Confraternity states that:

16 (Men's Confraternity 1986).

17 Men's Confraternity (1995) provide a list of psychological, physical, economic, social and institutional violence perpetrated against men. This list includes 'withholding', 'shunning', 'tampering with car brakes', 'credit excess', 'misuse of family budget funds', 'mind poisoning of friends, neighbours, children and relatives to induce them to shun, avoid and deny men an open social relationship', and 'religion' (the example provided is 'admission of women priests against the Bible's teachings').

Violence occurs in marital relationships because men have no contract that they can enforce by law, whereas women have. A woman can force a man to pay her but she cannot be forced to give him what he has paid for. Even business people become violent under these conditions (1986).

A table attached to their submission demonstrates that the 'obligations' that the man cannot enforce at law are: 'Sexual satisfaction', 'Belief that wife will enjoy and desire sex' and 'Domestic back-up' (Men's Confraternity 1986).

At another point Men's Confraternity submit that:

Sexual assault is actually qualified here [by the WA Domestic Violence Taskforce] as sex against a person's will. No reason was sought as to why it was against the person's will. The reasons could range from a lack of desire to engage in particular sexual acts to refusal of sex as a psychological tool for the purposes of obtaining mental, physical and/ or material gain by refusal (1986).

This group appears to believe that women only have the right to refuse consent to sex for 'good reasons'. If a woman's reasons for refusing are not good enough then her refusal appears to be viewed by this group as abusive. Presumably, although this is never directly spelled out, if her reasons for refusing are not good enough (as determined by him?) the man can go ahead with sex. In such circumstances the implication seems to be that this would be sex not sexual assault.

This view of sexual relations arguably finds some parallel in the law on sexual assault. Naffine argues that the criminal law on sexual assault is not based on the notion of genuine mutuality in sexual relations between men and women. A woman's consent to sex according to the law does not mean her free agreement as a consequence of a negotiation on equal terms. Thus Naffine comments that:

In the law of rape, 'consenting' sex is consistent with the application of a good deal of pressure on the part of the one who seeks sex to bring the other party around to their way of seeing things. This is a sexuality of strong seducers and of the ultimately willing seduced (1994:26-7).

'Verbal and Psychological domestic violence is never reported on - women may be the biggest perpetrators of this form of violence'¹⁸

Another questionable means of demonstrating that women are as violent as men is the suggestion made by the Lone Fathers Association that 'provocation' to domestic violence is in itself domestic violence (1987). Men's Confraternity imply that victims of domestic violence may in fact cause it (1986). This group also seems to suggest that some women enjoy being the targets of violence when they question the WA Domestic Violence Taskforce survey on domestic violence by asking why:

The study never sought to establish what percentage of masochistic people existed amongst their sample. The presence of masochistic people in the sample would tend to be supported by the report's own findings in that respondents preferred a situation of continued domestic violence to being independently financially responsible (1986).

These statements are reminiscent of a batterer's attempts to blame his victim for his violence (for example, 'She wasn't listening to me.' 'She went too far this time.' 'She wouldn't stop nagging' etc).¹⁹ Research indicates that on occasion those in the system – the

18 (Men's Confraternity 1995).

19 Hatty (1985:321-333) describes misogynist ideologies in which women are blamed for their victimisation and men are absolved of responsibility for their violence.

police, lawyers, counsellors and judges – collude with the batterer by accepting such justifications rather than identifying them as constituents of the exercise of power and control (Busch 1994:104; Busch, Robertson and Lapsley (1992); Seuffert 1994:79; Seuffert 1996:10). It is not difficult to find, within the community mythology that surrounds domestic violence, similar attitudes of blame towards the target of abuse (Blazejowska 1994:41).

The Power of Discredited Mythology

Given the shaky nature of many of the claims made by groups about violence, why do such claims still carry prima facie credibility?²⁰ Arguably this is because the opinions expressed by fathers' rights groups derive legitimacy from (as well as serving to reinforce) what Hillary Astor has described as, 'social attitudes that support silence about, and denial of, violence' (Astor 1995), and what others have called the 'cultural facilitation of violence' (Seuffert 1996:9). Such attitudes include the conceptualisation of such violence as 'marital discord' or 'a domestic,' and thus the responsibility of both parties to the relationship. They include the idea that the target is equally responsible for the violence because of 'provoking' it. A myth supporting the perception that women lie about violence is the idea that it cannot have been as bad as the target alleges it was or she would have left. We refer to this as a 'myth' because it is based on the misconception that leaving is generally an effective strategy in terminating such violence (Wallace 1986; Mahoney 1991). In relation to sexual assault, Nina Puren has said that:

The notion that ... women lie about sexual encounters is one of the oldest patriarchal stories: one can chart its genealogy from the work of Ovid to the pages of contemporary Mills and Boon (Puren 1997:137-8).

Even though these myths have generally been discredited, the length of time for which they were thought to be true, and were supported by the legal and medical establishments (Edwards 1981; Robertson 1997), mean that they are not going to disappear overnight. Until quite recently the law overtly supported the attitudes towards violence which are articulated by fathers' rights groups. For example, until the end of the nineteenth century the law sanctioned violence by a husband against his wife:

The husband also... might give his wife moderate correction. For, as he is to answer for her misbehaviour, the law thought it reasonable to entrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices or children (Blackstone 1884:444).

Until recently it was rare to find criminal assault being prosecuted when it occurred within the domestic context (Women's Policy Coordination Unit 1985). Women who physically defended themselves from male violence have rarely succeeded in alleging self-defence if they were being threatened by their domestic partner (Stubbs & Tolmie 1994:192). It was also common to find judges directing juries that rape is 'easy to allege and difficult to deny' (Rosemeyer [1985] VR 945; *Kelleher v R* (1974) see also Fisse 1990:177-178). Today one would hope not to find these attitudes overtly supported by legal authority. However, the extent to which they survive implicitly - embedded in judicial and jury assessments of fact situations, assessments of the credibility of witnesses, exercises of common sense, and procedural practices - is not clear.

20 This is evidenced by the instances where the undocumented claims made by fathers' rights groups about violence are uncritically repeated in the media. See eg 'Home alone dads' *The Daily Telegraph* (Syd) 11 July 1997:11.

There have been a number of instances where the media has been active in challenging the kinds of retrograde attitudes towards male violence that we have outlined in this article ('Women tell judge (Bollen): No way!' *The Sydney Morning Herald* 22 January 1993:6; 'Judges' comments have 'gone far enough' *TSun Herald* 16 May 1993:19). Unfortunately there have also been a number of instances recently where the media has supported these views by uncritical coverage of the position taken by fathers' rights groups. Newspaper articles have referred to domestic violence restraining orders as 'the latest scam used to prevent fathers having access to their children' (Arndt 1996a), as 'tools' used by women in divorce proceedings, (Arndt 1995) and to domestic violence as 'a powerful new weapon' (Arndt 1996b; see also Dillon 1997:29). Conceptualisations of violent men as victims also have a degree of mainstream credibility, as evidenced by their uncritical reiteration in media accounts (for example: *A Current Affair* 11 July 1997). For example, the Women's Coalition Against Family Violence have noted that the media reports of such killings often collude in the idea of the killer as victim (1994:130-133; McNeill 1992).

Conclusion

We have outlined the views expressed by a number of Fathers' Rights groups on the issue of violence against women and children. These are: the suggestion that this violence either does not exist, or is exaggerated by the false claims of many women who are seeking a tactical advantage in their family law disputes; the recognition that more extreme forms of such violence do exist and the suggestion that it is evidence of the extent to which men are suffering under the current family law regime; and finally the argument that women are as violent as men, either in the same way men are or in unique ways which are specific to the female gender role.

Though these views can be easily discredited they cannot be simply dismissed. They are held by groups that are vocal and are extremely determined to promote them. They are achieving a measure of uncritical reiteration in the media. And the ideas they contain reflect and draw legitimacy from ostensibly discredited but nonetheless very deeply entrenched myths in the community and in the legal system about women and violence against women.

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