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A Legal and Policy Argument for Bail Denial and Preventative Treatment for Batterers in the United States

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Abstract

Historically, battering has been a culturally and legally acceptable form of social control within the United States. This article provides an examination of how this legacy of social acceptance has influenced the development of laws and social policies related to battering. We provide a critique of our current approach to battering and our historical reliance on private or social helping agencies intended to hide and protect victims. We call for a transformation of our current policies that provides for the removal of the batterer—not the victim and her children—from the family home through a process of bail denial and preventative detention.

Keywords: criminal justice policy, domestic violence, intimate partner violence

Discussion and indeed criticism of social and legal policy is not new in the social sciences. There is an abundance of articles advocating a variety of perspectives on enforcement practices, use of new technologies, political and philosophical arguments, theoretical viewpoints, and counseling or social agency strategies. Few of these articles, however, utilize a historical understanding of battering as an acceptable social practice as the foundation for analyzing current policy and its

progression. This article seeks to fill that gap in the literature and attempts to develop an alternative policy approach, which acknowledges the impact of this history of passive and reactive activities. The goal is to understand how we progressed into this state of inadequate and passive response, while offering potential changes that could move us toward social policy that involves the more assertive, direct, targeted, and proactive use of scarce resources for addressing battering.

The current battering policies emerged from a system that has historically condoned violence against women and protected the rights of the batterer (Pleck, 1987). For that purpose, this article acknowledges that battering is perpetrated by men and women, but emphasizes the overwhelming reality that women are commonly the victims. The current system places responsibility on battered women to take action and assume the associated risks to seek the assistance of a social helping agency to remove herself and her children from the situation (Browne, 1987). The batterer, on the other hand, remains in the family home. We call for a transformation of our approach to battering that provides for bail denial and removal of the batterer from the family home. The proposed approach reduces the undue burden on the victim, holds the batterer accountable for his actions, and provides a more cost effective application of social agency resources.

An Overview of the History of Battering: Social and Legal Positions

Historically, battering has been shrouded in privacy as a legally acceptable form of social control within the family. Since religions or churches originally possessed the power to define, demand, and sanction social control, many religious traditions—including Judeo-Christian tradition—supported the submission of all family members to the control of the male head-of-household. These traditions also prescribed the responsibility of that male head-of-household for maintaining control and discipline of his property (which included ownership of wives and children) by whatever means necessary even through corporal punishment (Belknap, 1992; Davidson, 1977; Dobash & Dobash, 1979; Gordon, 1989; Gosselin, 2005; Pleck, 1983, 1987). The belief that there was a “natural hierarchical relationship” between husband and wife became institutionalized in the practices of both the church and the state (Dobash & Dobash, 1979). Accordingly, battering became a socially and legally acceptable form of social control. Battering received little attention as a social issue or problem until the late 19th century when the first wave of the women’s rights movement questioned the validity of such complete control by husbands and fathers, corporal punishment as a tool of that control, and the significance of alcohol in promoting or escalating such violence against women and children (Dubois, 1978; Gage, 1981; Harper, 1898; Pleck, 1983, 1987).

Under Roman Civil Law, men had full property ownership of their wives, children, and slaves. This ownership power included the right to buy, sell, control, and punish, as well as the right to determine life or death. Any harm committed against a man’s wife, children, or slaves was a crime against him. During this era, women and children had no legal or human rights; consequently, they had no access to

courts to appeal excessive punishment (Gosselin, 2005; Masters, 1964). Early Christianity has been historically rooted in laws that established and maintained patriarchy, including the ownership of women and children, and the male right to control his property through corporal punishment or even death (Gosselin, 2005). Many scholars have noted the specificity of the Christian Bible concerning the subordination of women to men and the need for men to use corporal punishment to demand the submission of wives and children to their wishes (Davidson, 1977; Davis, 1971; Gosselin, 2005; Masters, 1964).

Medieval men were firmly advised by the church to maintain absolute and complete control of their wives and children. A failure to do so would result in societal chaos for which they would be damned and punished themselves (Dutton, 1998; Masters, 1964; Pushkareva, 1997). During Medieval times, the only provisions in the law addressing battering were warnings to men not to beat wives, children, and slaves to the point of causing blindness or deafness because this would create a permanent devaluation of their property (Masters, 1964). Women and children, just like slaves, had no outlet for confronting or contesting their abuse during this era. Although available to men in some areas of the world, divorce for women has been virtually unheard of in history. Men were generally required either to keep an unwanted wife as a servant and remarry someone else or kill her before remarrying (King, 2007; Lefkowitz & Fant, 1992; Pagelow, 1984; Pushkareva, 1997). Divorce for women did not become an issue, even if the reason was severe cruelty, until the late 19th century, when the first wave of the women's movement broached the issue with little success (Pleck, 1983). The French Civil Code of the late 1700s declared women to be legal minors for their entire lives and placed them under the complete control of their male guardian (i.e., father or husband). This law specified that men were responsible for administering corporal punishment of their wives. A wide array of punishments were available to husbands, including the use of punching, kicking the body, and permanent disfigurement, such as breaking his wife's nose so there would be observable injuries to increase her shame (Dobash & Dobash, 1978; Gosselin, 2005).

In 1768, Sir William Blackstone codified the British Common Law. In this work, Blackstone specified that man and woman become one entity by marriage and the woman's legal existence as a person ceases. Though Blackstone did not attempt to criminalize battering, he created the first codified effort to regulate the severity of battering allowed. Blackstone created the common law terminology of the "rule of thumb," stating that a husband had the legal right and responsibility to control and punish his wife; however, this should be done with a stick no thicker than his thumb (Dutton, 1998; Gosselin, 2005; Pagelow, 1984; Ulrich, 1991). Prior to 1768, the common laws in effect during the medieval period remained in force in most of the Western world, including the American Colonies. There were a few isolated efforts in the American Colonies to outlaw or regulate the battering of wives and children. For example, during the late 1600s, battering was outlawed by civil law in Massachusetts which allowed a severely battered woman to leave her husband (legal separation, not divorce) and expect him to pay maintenance to her for the children. This law did not require any legal action be taken against the batterer

and was only available to women who could legally prove that the battering went far beyond the level necessary for control and punishment. As women of the time were property, with no money or access to the courts to file such an action, this law did little to influence the use of battering as a legally sanctioned form of social control over women (Gosselin, 2005; Pagelow, 1984; Pleck, 1983).

Though there was some early opposition to battering by Colonial American ministers, it was not sufficient to thwart the establishment of the British Common Law. Laws concerning battering in the United States developed from the foundation of battering being a legal and acceptable form of social control. In some instances, battering was considered a required form of social control to maintain male control over all of his property and thus maintain male privilege and power. After the American Revolutionary War, Americans sought to move away from the rather stringent requirements of the British Common Law and created criminal codes that better suited and represented this new democracy (Pleck, 1983).

During the late 19th and early 20th centuries, some legal actions were taken to address the most extreme forms of battering. As battering was socially and legally acceptable, most of the new laws were simply intended to regulate the level of violence used and the severity of injury allowed. Examples of such laws range from the common law "rule of thumb" to the more modern "stitch rules" that advise the abuser of the amount of acceptable violence in such altercations, and "curtain rules" reinforce assertions about the private nature of battering (Tong, 1984). Most scholars note that during the 18th and 19th centuries in America, even in jurisdictions in which restrictions on severity or injuries existed, laws were rarely enforced. Battering was simply not considered a major issue to be addressed by the courts (Belknap, 1992; Davidson, 1977; Dobash & Dobash, 1979; Pagelow, 1984; Pleck, 1989).

By the late 1800s, battering was one of the central issues of the first wave of the Women's Rights Movement in the United States (Pleck, 1983). This coincided with the Temperance Movement's concern with battering as well. As Pleck (1983) noted, battering was utilized politically in two ways during this era. First, by conservatives like Lucy Stone in the Women's movement, who joined forces with members of the Temperance movement to identify the linkages between alcohol abuse, battering, and child abuse and develop a strategy by which the wives of drunkards could divorce their abusive husbands. The second approach was taken by more liberal feminists such as Susan B. Anthony and Elizabeth Cady Stanton, who felt that men would never address battering or other violence against women and children because it supported their maintenance of power and privilege. These feminists took direct aim at the need for women to have suffrage, representation in government, property rights, and divorce rights to be able to force legal change and enforcement.

By the late 1800s and early 1900s, battering of wives and children began to be considered unacceptable; nevertheless, few legal sanctions existed to stop battering. Some states created laws that noted women's right to equal protection under the law, but most states refused to enforce such laws or recognize their application to battering (Belknap, 1992; Davidson, 1977; Gordon, 1989; Pleck, 1983). By the end of World War I, battering was firmly hidden behind closed doors and protected

by references to privacy and the sanctity of the family. Most scholars indicate that this state of affairs continued unabated for the next 50 years (Belknap, 1992; Davidson, 1977; Dobash & Dobash, 1979; Gordon, 1989; Gosselin, 2005; Pleck, 1983). Accordingly, battering came to be draped in the shawl of family privacy that continues to plague its termination today (Miller & Peterson, 2007). Laws concerning battering have developed from a foundation of acceptability and regulation rather than one of social disapproval and criminalization. This drastically influenced the development of both modern laws that criminalize battering and social resources for battered women in need of protection. During the second wave of the Women's Rights Movement in the United States (1960s and 1970s), activists pushed for the reduction in barriers that prevented women from exercising their human and civil rights in American society. One of those barriers involved the government-sanctioned power of men to exercise coercive control of all family members. As a result of this effort, laws emerged that moderately criminalized battering. For example, police began to respond to domestic disputes and attempted to diffuse these situations. Some jurisdictions made battering an ordinance violation or misdemeanor crime so that fines could be levied against abusers. This slow roundabout progression toward criminalization reflects historical views of battering as acceptable, necessary, and benign, and our unwillingness to interfere with male control and privacy of the home. This may well explain why most of our social efforts to address battering, assist victims, and prevent the injuries and deaths associated with battering have primarily been done in the form of women's social helping agencies rather than state law and law enforcement agencies.

Difficulties With the Current Approach

The progression toward criminalization of battering required the slow but steady discrediting of long-held social and cultural beliefs, as well as the legal and religious foundations on which such beliefs flourished. This focus resulted in laws that regulated battering with restrictions on the level of violence and severity of injuries. In the interim, battering was primarily seen as an extreme but acceptable form of social control that continued to be the right of male heads-of-household who were trusted to act without direct oversight. At this point, battering became a family or "private" matter with few social implications.

During this interim period, only the most extreme forms and instances of battering were brought to public attention and this was generally done by feminists (considered radicals), which may well have reduced the impact of the information on the general public and policy makers (men) as well (Houston, 2014). Sensing little interest by men, religious leaders, or government officials for addressing the aftermath of men who chose not to exercise restraint in their use of power in the family, feminists felt obligated to join other interested social groups in an effort to provide some help to victims and increase the availability of information and education to the general public (Martin, 1981; Tong, 1984). Feminists, as part of their commitment to blend knowledge, research, politics, and praxis, began the development of social charitable organizations designed to assist battered women in the most egregious cases, at

a time when women were property or might as well have been property because they had no access to the law or its protection. These were the seeds that grew into the network of social helping agencies that are still attempting to assist battered women today. These social charitable organizations have continued to grow over time along with the movement to criminalize battering. This progression notwithstanding, battering remained a social ill best left in the realm of women's assistance agencies rather than to law enforcement, correctional, and treatment authorities.

By the 1950s and 1960s, the second wave of the Women's Movement had long since discovered the failure of this passive, social help focused approach. Feminists, and other groups, began again to force battering onto the public agenda. They managed to elevate battering to a social issue with broad ranging constitutional, legal, and health/medical implications. As a result of better record keeping, organizational activism, and the removal of barriers for women attempting to exercise their human and civil rights, information about the numbers of women reporting battering, women and children utilizing the assistance of social helping agencies, and the number of domestic homicides involving battering became publicly available. For the first time in our history, battering became a publicly identifiable and tangible problem requiring a social and legal response (Houston, 2014; Pleck, 1987).

Our response to battering during the 1970s and early 1980s centered upon that old victim-blaming question of "why doesn't she leave?" rather than the far more important questions of "why does he batter?" and "how can we prevent it?" (Browne, 1987). The basic policy response has been to recommend that the battered woman take action and assume the associated risks to obtain the assistance of a social helping agency to remove herself and her children from the situation. Then the criminal justice system may or may not step in and act on the victim's behalf to stop the violence. This has forced social helping agencies to focus their scarce resources on providing temporary safety and protection of victims as well as the financial, counseling, educational, and job assistance that they were originally intended to provide. Browne and Williams (1989) contend that the number of domestic homicides involving battering decline when social helping agencies are completely successful at providing safety, protection, food, shelter, legal advocacy, counseling, educational opportunities, job assistance, and a multitude of other essential services to battering victims and their children. Unfortunately, social helping agencies are not funded, equipped, or trained to provide all of these services; they were created to assist victims and their children in reducing the level of disruption in their lives with counseling, financial planning, and job assistance programming. These agencies were not created to provide tactical safety to crime victims nor do they have the resources to adequately pursue such a goal, much less achieve it (Martin, 1981). Requiring social helping agencies to function in this manner has spread their resources dangerously thin; their inability to serve a sufficient client base results in larger numbers of people that may remain at risk for victimization.

This approach seems to have grown naturally out of the slow process of change that has taken place on this issue in the United States. It represents our failure to reevaluate policy direction as we have learned more about battering and its effects. A good example of this problem is that we now know that about 50% of women

who are killed each year by their batterer are killed while trying to leave or shortly thereafter (Browne, 1987; Mahoney, 1991). Social helping agencies have tried to respond to this problem, but domestic violence policy has not evolved to address this critical stage. Battered victims are still required to take the risk of action to leave even though we know that is when they are most likely to be killed. Efforts today, just as in the past, remain focused on temporary safety assistance rather than directly addressing battering as illegal assaultive behavior against which all people in the United States are guaranteed protection under the law. It speaks to the rather slow process in the United States of accepting women not only as citizens with rights but also as equal citizens with full access to the opportunities necessary to exercise those rights. Sometimes, as in the past, this progression is impeded when it interferes or competes with the inherent hegemonic masculinity of the legal system (Belknap, 2015; Connell & Messerschmidt, 2005; Houston, 2014; Pleck, 1987).

Today, battering is criminalized in the United States. Battering or domestic assault statutes exist in every state and battering is coded as either a misdemeanor simple assault or a felony assault (Zamora, 2005). Many areas have laws requiring that police officers actively arrest someone on a domestic violence call, although the efficacy of such policies has not been confirmed (Goodman & Epstein, 2008; Iyengar, 2009). Most states make provisions for fast track protection orders for battered women, despite the problems associated with the enforcement of these orders (Zamora, 2005).

Researchers consistently agree that statistics addressing battering are limited, given that most victims do not report their victimizations to police or researchers. Recent figures approximate that as many as five million women are battered each year in the United States (National Center for Injury Prevention and Control, 2003; Tjaden & Theonnes, 2000). Moreover, child abuse is markedly more prevalent in homes in which battering occurs; according to the National Domestic Violence Coalition (2015), children are abused in battering homes at a higher rate than those in non-violent homes. The National Center for Injury Prevention and Control (2003) and the American Medical Association (1991) report that hundreds of thousands of doctor, hospital, and emergency facility visits each year are related to battering. In addition, approximately 2,000 women are killed by their intimate partners each year (Rand & Rennison, 2004).

Our progress in this area has been slow and less than adequate. Part of the problem is that we continue to lay the burden and most of the punishment for battering on victims and their children, rather than squarely and clearly on the batterer. For example, we still require the victim to seek outside assistance for safety, which increases her risk of being killed and increases the disruption of her life and her children's lives. The victim's relocation may also increase risk to the lives of others such as shelter workers, crisis center workers, social workers, friends, and family who may try to help or provide shelter. Clergy, counselors, and even neighbors that try to be good civic members by calling the police and providing information are putting themselves at risk of retaliation from the accused batterer. There is an apparent satisfaction with this roundabout, passive, and reactive approach to battering that forces the victim and her children to ultimately assume the risk and

disruption in their lives to survive and obtain protection under the law. With the current approach, we avoid proactively addressing battering where the problem really lies, which is in the batterer and his behavior.

Domestic Violence and the Criminal Justice Response: An Alternative Approach

To address these deficiencies, judges should be permitted to deny bail to defendants arrested of domestic battery. During the period of detention, the batterer would be transported to a treatment facility and required to undergo an evaluation to assess his violent behavior. The batterer would remain in that facility until deemed safe to return to society. A batterer treatment-based policy, such as that proposed here, has the potential to significantly reduce the amount of male-perpetrated domestic battery (see for example, Sonkin, Martin, & Walker, 1985). The placement of the abuser in a long-term care facility presents a number of potential advantages over our current system of handling domestic battery. First, the potential for victimization is eliminated. One of the most dangerous events for victims of domestic battery is the termination of their relationship with the batterer. More than 5% of domestic battery victims are killed as a result of a “separation attack” (Browne, 1987; Mahoney, 1991). The hiatus provided by denying the batterer bail gives the victim an opportunity to take steps toward a permanent separation from the batterer and ensures her safety—and that of her children—during this very critical separation stage.

In addition to ensuring the victim’s safety and that of the public, the detention period also provides an important opportunity for intervention. During this time period, the batterer will be provided with counseling sessions and a treatment program that centers upon him understanding the underlying motivations for his commission of violence against family members. The dual goals of the program are (a) to help him to understand that his behavior will no longer be tolerated and (b) to empower him to change his behavior.

Another important advantage of the proposed approach is that the level of family disruption is minimized. Rather than being required to seek protection and shelter from an ill-equipped shelter, the victim and her children would remain in the home without changing employers or schools. It is also less costly to relocate the batterer rather than all of the other family members. Moreover, it eliminates the possibility that the victim’s attempt to seek assistance will result in violence escalation. With the abuser removed from the household, both the victim and her children can obtain assistance and counseling from social resource agencies. During this important transitional period, the victim and her children can begin a counseling program designed to offset some of the debilitating effects of intimate partner violence.

Dobash, Dobash, and Cavanagh (1984) warn that the ability of social service and medical agencies to effectively provide safe and protective services is hindered by organizational limitations. Ogle and Jacobs (2003) further postulate that our current approach to battering, which forces victims to take responsibility for the

cessation of violence, actually reinforces the efforts of the batterer and may escalate the level of violence, particularly if the assistance provided by social resource agencies is failure prone. Our proposal would reallocate social service funding so that we could focus our attention on improving the victim's access to "material resources" and concomitantly reduce her vulnerability to the batterer (Coker, 1990). Considered another way, as social service agencies would no longer be responsible for providing the victim and her children with housing and protection, resources could be centered on tasks that are congruent with the intended mission and capabilities of the social services: employment assistance, adjustment, financial stabilization, treatment, and counseling.

Ideally, the proposed system of bail denial would be part of a larger coordinated community response to domestic battery, such as that implemented in Duluth, Minnesota, which would assign an advocate to the battered woman's case at the police report stage (Pence, 1999). Although the model's batterer intervention program has been criticized, the victim advocacy component is an obvious step in the right direction (Dutton & Corvo, 2007; Gondolf, 2007). The advocate would work with the victim to assess her needs and those of her children. Upon assessment, the advocate would provide the victim with both direct access to material resources such as food or clothing, as well as indirect access to other services such as child care, job training, and transportation (Coker, 1990).

Legal Justification for Denying Bail to Batterers

Although there is some variation in the manner in which the U.S. courts interpret the Eighth Amendment protections against excessive bail, some legal scholars believe it implies a right to bail (Verilli, 1982). In fact, most states provide a right to bail in all non-capital cases (Harvard Law Review, 1966). Historically, bail has been denied in capital cases under the rationale that a defendant would prefer the loss of any amount of money to showing up at his or her own hanging (Verilli, 1982). Because battering is not classified as a capital offense, we must examine alternative legal strategies for denying bail to batterers.

The Defendant's Perceived Dangerousness

At the federal level, bail has been categorically denied in crimes of violence (Bail Reform Act, 1984). The underlying rationale governing preventative detention in these kinds of cases is the perceived or presumed dangerousness of the defendant and the associated danger that would be posed to other persons or the community at large if the defendant were released prior to trial (Verilli, 1982). Similarly, under federal law, bail denial may be used to prevent the defendant from interfering with the witnesses or tampering with the evidence, two potential problems that emerge in domestic battery cases (*U.S. v. Salerno, 1987*).

Bail decisions at the state level are different than those made at the federal level. In most states, the defendant's right to bail is expressly provided in the state constitution. Thus, denial of bail—or preventative detention of batterers—is permissible only by constitutional amendment (Harvard Law Review, 1966; *Ex parte Ball,*

1920). Some states have adopted preventative detention proposals by amending their state constitutions. For example, in Nebraska, Texas, and Michigan, the right to bail may be denied for defendants who have committed specific types of crime. In these states, magistrates do not make assessments about individual defendants' propensities for dangerousness, instead certain defendants are denied their right to bail based upon the type of crime they have committed (Verilli, 1982). In Wisconsin, on the other hand, not only can defendants be categorically denied bail based upon the crime they have allegedly committed but also assessments about defendants' dangerousness are left to the discretion of the magistrate.

Arguably few crimes are more violent than domestic battery. Battering is rarely an isolated event, and many batterers subject their victims to repeated victimizations, even after there has been an intervention by the police (Bybee & Sullivan, 2005; Cole, Logan, & Shannon, 2008; Fleury-Steiner, Bybee, Sullivan, Belknap, & Melton, 2006; Gover, Welton-Mitchell, Belknap, & DePrince, 2013). In order for bail denial to be an option in cases involving domestic battering, states would have to reclassify battering as a crime of violence by amending their current criminal statutes. Many states have already defined domestic battering as a separate and distinct type of battering. Within this classification scheme, the most severe forms of battering are punishable as a felony. In Arkansas, for example, first and second degree wife battering and aggravated assault on a wife are classified in the state statutes as felonies, whereas all other degrees are misdemeanors (Shad, 1990). Similarly, Public Act 91-445 was passed to amend the Illinois Criminal Codes to create a new offense category of aggravated domestic battery. Any person who, in the commission of a domestic battery, "intentionally or knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated domestic battery" and will be charged with a Class 2 felony. The statutory amendments further stipulate that any defendant who has a previous conviction of aggravated domestic battery "may remain in custody if a continuance is filed in a bail denial hearing" (Fike, 1999: 521). A state-level statutory reclassification—similar to those outlined here—would provide a legal avenue for bail denial. State legislators would have to identify the crime of battering as a crime of violence.

Preventative Detention via High Bail

The statutory provisions for legally denying bail to certain defendants notwithstanding, sometimes judges accomplish preventative detention by setting an exorbitant amount for bail. In *Stack v. Boyle*, the Supreme Court justices stipulated that bail could not be set "higher than an amount reasonably calculated to fulfill (the) purpose" of assuring the defendant's presence at trial. Furthermore, although the Eighth Amendment prohibits "excessive bail," courts have been fairly consistent in confirming that bail in an amount greater than the defendant can provide is not necessarily excessive (Harmsworth, 1996; Harvard Law Review, 1966; Metzmeier, 1996). In some jurisdictions, judges establish going rates for bail amounts in particular kinds of offenses. In Omaha, Nebraska, for example, judges set a \$50,000 arrest bond in all domestic violence cases. As a result, many defendants

are detained prior to trial. Though preventative detention for pecuniary reasons is not consistent with most constitutional interpretations of bail, it is a practice that has emerged in many different jurisdictions and presents a second method by which bail denial could be implemented in cases of domestic battering (Harmsworth, 1996; Metzmeier, 1996).

Right to Bail Exemptions in Domestic Violence Cases

Another legal strategy to accomplish bail denial requires a statutory specification exempting certain defendants' rights to bail. Some jurisdictions have adopted these kinds of provisions for denying bail in certain domestic violence cases (Dutson, 1994). For example, the Utah Legislature has adopted the "Cohabitant Abuse Procedures Act," which specifies,

. . . because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender . . . bail may be denied if there is substantial evidence to support the charge . . .

Similarly, Nevada law has adopted a provision that mandates a "cooling off" period before which a defendant may be admitted to bail. More specifically, NRS 33.018 requires that any defendant

arrested for a battery upon his spouse, former spouse, a person to whom he is related by blood, a person with whom he is or was actually residing, or with whom he has a child in common, his minor child or a minor child of that person must not be admitted to bail sooner than twelve hours after his arrest.

Though the aforementioned applications of bail denial in specific situations of domestic battery cases provide a much more direct application to the proposal, it is important to note that there is one Australian example of a jurisdiction which has completely eliminated the right to bail for some persons charged with domestic violence offenses. In New South Wales, the presumption in favor of bail has been removed in domestic violence cases "involving violence or intimidation" in which "the accused has a history of violence" (Schurr, 1994). The parliament adopted these changes as part of a larger package of domestic violence legislation. This example is consistent with the growing global recognition of violence against women. Thus, whether offered for a specific subset of cases or applied consistently across all types of domestic battering, the legal convention of bail exemption is yet another strategy to accomplish bail denial.

To summarize, there are a number of legal strategies that could provide for bail denial in cases involving domestic battering. The very cyclical nature of domestic battering warrants consideration of the defendant's propensity to subject his victim to additional attacks. As such, it is not surprising that judges in some jurisdictions consider this perceived dangerousness in setting bail amounts in domestic battering cases or that legislators have been compelled to adopt reforms that

provide exceptions to the constitutional right to bail in certain cases involving domestic abuse. If state legislators promulgated reforms that reclassified the crime of domestic battering as a crime of violence, the convention of bail denial could be made available in a wider number of jurisdictions.

Conclusion

Few other areas in criminal justice policy have undergone more reform than that which addresses intimate partner violence. Battering persisted unabated throughout the history of the United States; criminal justice actors were reluctant to intervene in matters involving family violence. In the past two decades, however, great strides have been made to hold batterers accountable for their behavior. State legislators have adopted some fairly aggressive policies related to the crime of battering; none of these policies, however, are sufficiently sympathetic to the victim and her children's needs. Although our laws no longer support battering, our current policies place an undue burden on the victim and her children. Under the current approach, batterers are permitted to stay in the family home, whereas victims and their children are forced to relocate to a shelter. We must abandon our current practices and provide victims a safe haven in their homes. Bail denial—even temporarily—can give the victim the necessary time to plan for her independence from the batterer.

This proposal is not without potential criticisms. Implementation of our proposed strategy alone would not correct all of the existing problems with battering policies. For example, contemporary battering policies do not provide much consideration for the victim's wishes or her individual situation. Instead, a one-size-fits-all remedy—namely, presumptive or mandatory arrest, often followed by an aggressive no-drop prosecution policy—is applied in each case, regardless of whether that strategy will benefit the victim or produce more harm for her and her children. The belief is that the best approach to battering is one that centers upon the victim and her needs; one that is shaped by contextual influences, including her decision to maintain or end her relationship with the batterer.

It is critical that policy recognizes the wide variation in battered women's experiences. Battering policies must address this variation and the many ways in which the intersectionality of sex, class, race, ethnicity, and immigration status shape women's experiences (Crenshaw, 1991a, 1991b). As Coker (1990) posits, many domestic violence laws ignore the connection between women's economic subordination and their vulnerability to battering. Strategies that do not actively address the victim's economic dependence on the batterer serve to further marginalize poor battered women. Under this proposed plan, social service agencies would no longer be required to provide food, shelter, and protection to victims of domestic violence and their children. Thus, there would be funding available to provide the victim with financial assistance, counseling, and educational and job assistance.

It is also important to note that many existing policies were adopted without consideration of the collective experiences of battered women of color (Crenshaw, 1991b). Too often, policies that are adopted to protect battered women protect

some—but not all—women. The policies that we adopt to protect victims should not operate in such a manner as to harm less-privileged groups of women. Many reforms in this area have the potential to be applied in a racially discriminatory or ethnically biased fashion. Advocates of battered victims must work to ensure that bail denial, like so many of the reforms of the past, is not discriminatorily applied in communities of color.

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