

Just “keeping the peace”

A reluctance to respond to male partner sexual violence

MELANIE HEENAN

Just two decades ago in most Australian states and territories, men were able to rape their wives with immunity. Rape in marriage was quite simply not a crime. While state legislatures have enacted laws that now address men’s licence to rape¹ women with whom they share marital or established relationships, our understanding of whether this resulted in effectively changing the social, cultural and legal responses to sexual violence by male intimate partners is surprisingly limited.

Over the past decade, women’s groups around the world have combined to ensure that the issue of male partner violence² receives global attention. There is now little dispute that when studies attend to the context in which women experience violence, the extent to which women are “more likely to be raped, beaten, stalked, or killed by their intimate/romantic partners than by strangers or any other type of assailant” is revealed (Mahoney, Williams and West 2001: 143). In 2002, the World Report on Violence and Health identified intimate partner violence as having a significant impact on public health worldwide (Krug et al. 2002). Studies undertaken here and overseas consistently and reliably point to the relationship between intimate partner violence and its negative effects on women’s physical, reproductive and mental health (Roberts et al. 1998; Coker et al. 2000; Campbell 2002; Taft 2003).

Amnesty International has dedicated the next two years to raising the bar on violence against women as a human rights issue. Violence committed by intimate partners, both sexual and physical, is a key feature of their campaign.³

However, according to Diana Russell, writer and researcher of one of the original landmark studies on rape in marriage in the United States in the late 1970s, there is “little public interest in wife rape today” (1990: xvii). Russell is particularly critical of the cursory consideration that is now given to the issue by feminists

“I didn’t know what rape was, [what] was classed as rape. I just didn’t like the way he was treating me, how he was hitting me and doing what he was doing to me. But I didn’t class it as rape.” (Partner was convicted at trial for rapes and assaults 1998)



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The Australian Centre for the Study of Sexual Assault aims to improve access to current information on sexual assault in order to assist policy makers and other interested in this area to develop evidence-based strategies to prevent, respond to, and ultimately reduce the incidence of sexual assault.

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and others who, in the 1980s, saw abolishing the spousal immunity as key to addressing women's inequality. Kersti Yllö (1999: 225) has also highlighted how at "the community level, as well as in the culture at large, efforts to challenge the taken-for-granted 'right' of husbands to coerce their wives sexually lag at least two decades behind our work on physical violence".

A community attitudes study conducted in Australia in 1995 showed that few respondents spontaneously identified sexual assault or rape as an element of domestic violence. Even when the more obvious forms were nominated, such as physical violence or battering, sexual violence was only identified by 12 per cent of respondents when further pressed about what "other forms" of domestic violence there might be. Ultimately, people surveyed were more inclined to describe domestic violence as being constituted by verbal abuse, mental abuse, and violence against children before they turned their minds to the possibility of sexual assault (OSW 1995: 71).

Most offender programs directed at intervention or prevention in the context of intimate partner violence similarly focus on men who have been physically violent with their partners (Carmody and Carrington 2000; Krug et al. 2002).⁴ In Lesley Laing's detailed overview of both international and Australian approaches to structuring and evaluating perpetrator programs, there is nothing to suggest that any specific attention is devoted to men's sexual behaviour or conduct in the relationship (2002). Nor has its neglect been a subject of concern in evaluations that have seen men taking responsibility for offending behaviour as an important measure of the program's success. The research undertaken in Australia by Kerrie James and colleagues with the aim of "exploring men's experience of their violence towards women", asked perpetrators about the details of their physical and emotional use of violence, but neglected to ask them any questions about their use of sexual violence (2002: 1).⁵

"I was not physically battered because I always submitted. Mostly my husband jumped on me when I was asleep, pinned my arms down and clutched my legs with his so that I could not move. I was threatened and abused for thirteen years and finally left." (Raped and assaulted by de facto cited in Easta 1994: 54)

Despite the relative silence surrounding male partner sexual violence, there were 92 women in Victoria alone who reported an incident of rape to police by their current or former male partners (spouse or de facto) during the year July 2001 to June 2002. Annually, across Australia, thousands of women experience male partner sexual violence. According to a national survey undertaken in 1996, 29,000 women indicated that they had experienced sexual violence at the hands of their current or former partner within the previous 12 months (ABS 1996: 53). Further analysis of the survey revealed that “assault not involving injury and assault *perpetrated by a current partner* were less likely than other types of assault to be reported [to police] and to result in the use of victim services” (Coumarelos and Allen 1999: 1, emphasis added).

Yet we know so little about why this may be, and even less about how women, particularly in an Australian context, manage or understand their experience of male partner sexual violence. Nor do we know whether the emotional, familial, and health effects of intimate partner rape are similar for women who have experienced other forms of domestic abuse. So why have we been so slow, or *reluctant*, to consider the problem of rape by male partners? Is it that we presume law reform has adequately dealt with the issue? Is it that communities continue to set a contemporary place for honouring the sanctity of “family” that includes maintaining a version of the public/private divide? Or is it that, as service providers, researchers, police and law reformers, we have inadvertently created a hierarchy of abuses that ultimately serves to validate or legitimise only particular forms of male partner violence against women?

“The physical abuse was horrible, but that was something I could get over. It was like a sore that heals. When he forced me to have sex with him, that was more than just physical. It went all the way down to my soul. He abused every part of me – my soul, my feelings, my mind ... and I don’t think there is anything worse than that.” (Raped by male partner, cited in Finkelhor and Yllö 1985: 135)

This first *ACSSA Issues Paper* examines some of these concerns through identifying and discussing five key areas:

- the historical and contemporary legal treatment of male partner sexual violence;
- current gaps in researching the incidence and prevalence of male partner sexual violence;
- the difficulties women face in recognising or naming their experience of sexual violence by a male partner as rape;
- the impact and consequences of sexual violence on women’s physical health and emotional wellbeing; and
- the reluctance of support services to respond to the specific issue of sexual violence by male intimates.

The paper deals with the issue of sexual violence *by men against their female partners*. While there is some research to suggest that women’s violence can and does extend to their partners, this has been heavily critiqued and remains the subject of considerable debate.⁶ Moreover, the extent to which women are *sexually* violent towards men is almost negligible (Campbell and Soeken 1999; Beckerman 2002).⁷ The proportion of male victims of sexual assault, 18 years and over, published in the most recent Australian Crime and Safety Survey, is so small that prevalence estimates were considered too unreliable for general use (ABS 2003: 14). At the state level, a recent eight-year study of rapes reported to police in Victoria indicated that 23.2 per cent

(or 932) of women had been raped by a former or current partner or boyfriend compared with just 12 or 2.7 per cent of men (VLCR 2003: 69).

The paper will also restrict itself to the particular experience of sexual violence perpetrated by cohabiting male partners or where there has been an established relationship over a period of time. While studies have increasingly pointed to higher rates of sexual victimisation among young women (ABS 1999, 2002; Coumarelos and Allen 1999), particularly by their boyfriends, partners, friends and recent acquaintances⁸, there is also considerable evidence to suggest that women entering their thirties are at significant risk of violence perpetrated by the male partners with whom they live.

Figures from the Victorian state-wide Women's Domestic Violence Crisis Service (WDVCS) indicate that more than half of the 1683 women who required safe accommodation and support from their service during 2001-2002 were aged 30 years and over (2003a: 18). Seventy per cent (or 1050) of the total number of women seeking assistance were also living with their partner prior to contacting the service (2003a: 19). Hegarty's research with Taft (2001: 434) found that women who disclosed intimate partner violence to their general practitioners were almost twice as likely to be middle aged and to have experienced combined forms such as physical, sexual and emotional abuse. In the United States, Jones et al. (1999: 298) also found that women aged in their forties had the highest lifetime prevalence rates of intimate partner violence.

Other evidence suggests that research with mid-age women, who are reflecting on lifetime experiences, including any experiences of violence, allows for a deeper understanding about the nature of long-term or repeat victimisation that occurs in the context of women's established relationships with men. The rates of multiple assaults reported by women in a US survey prompted the researchers to conclude that "much of the violence perpetrated against women by intimates is chronic in nature" (Tjaden and Thoennes 2000: 39). Their findings indicated that just over half of the women raped by an intimate partner, and just on two-thirds of women physically assaulted by an intimate, spoke of multiple occasions on which they were victimised by the same partner.

In Australia, 50.2 per cent of women surveyed in 1996 (or an estimated 173,200) who had experienced violence by their current partner during the entire relationship said there had been more than one incident (ABS 1996: 54). In 2002, the National Crime Victim Survey showed that of the 28,000 women who reported experiencing a sexual assault in the past year, a third (33.9 per cent) had been victimised on two or more occasions, which represented almost 63 per cent of the total number of sexual assault incidents analysed by the survey (ABS 2003: 29).

Reports from Australian women and research findings overall suggest few inroads have been made in preventing male partner rape. The unspoken response to sexual violence in the home has much in common with a whispering campaign – known about by many, but with few willing to address it openly. It is important to place these impressions and the "silent knowing" in the context of a systematic examination of the issue and a broad assessment of Australia's efforts to protect women from what they say is a debilitating and soul destroying assault.

"See this asshole just doesn't think he's done anything wrong. I believe that. He just thinks in his eyes I was his partner, with his two kids – 'I can do whatever I want to you – even though when he was doing it I was bawling my eyes out and he was just getting off on it. Makes me sick.
(Raped and assaulted by de facto partner, who was found not guilty at a trial in Victoria in 2002)

First, the legal response is examined as a point to begin this review, acknowledging that women campaigners two decades ago first turned to lawmakers for protection. The task for reformers was specific. Instead of creating new laws on sexual assault, the goal was to advocate for removing common law that protected men from crimes based on not what they did, but to whom they did it. One by one, states removed a husband's immunity from being prosecuted for rape in marriage, providing to married women the same legal status afforded to independent citizens.

However, the personal stories and the studies of legal practice that follow show the law's continuing reluctance to protect women. We find evidence of the gap between legislation and outcomes. We see that decades after the parliaments took action, the influence and authority of the abolished laws on rape continue to dominate.

The law and legal treatment

Judith's story

For 43 years Judith Arnott and her two children "lived in fear every day" of her husband's brutality. On 31 May 1996, she left him. During the marriage she had her nose broken several times, lost her sense of smell and was subjected to constant beatings, verbal abuse and threats to her life. Her sons were also physically abused and shot at. For most of the time, Judith thought "everybody lived the way we did". She heard differently from a domestic violence outreach worker who ultimately supported Judith through a court case that resulted in her husband being charged and convicted of several counts of physical assault. He served 15 months in prison.

For Judith the convictions for the physical assaults were significant – not only as a symbol of justice for herself and children, but as a call to other women, that they will survive, and that they will be believed. However, it was also a time of revelation. After the court case, Judith was exposed to more information about the law. And what she learned was that it was also a crime for a husband to rape his wife.

Judith made a police statement in 2001 detailing many episodes of rape and sexual assault that spanned her marriage. The police told her she should have disclosed the rapes earlier, preferably at the time of making her original statement in relation to the physical assaults that she and her sons endured. But like many women, Judith didn't identify her experience as rape:

"I didn't know that [rape in marriage was illegal]. I thought that if they were married to you they could do what they liked."

Judith's husband was interviewed in relation to the specific occasions where Judith could particularise an incident, nominate a date and year, or remember other details such as what she was wearing, or what else had happened on that day. Soon after, the police notified Judith that, given the historical nature of the offences, no charges would be laid. The Office of Public Prosecutions concurred after reviewing the decision, suggesting that a conviction would be unlikely, given the case depended entirely on Judith's "unsupported" testimony. Moreover, Judith learned that many of incidents she nominated occurred when husbands were immune from prosecution for raping their wives.⁹