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Published volumes
Gender Violence: A Cultural Perspective
Sally Engle Merry

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SHORT LOAN

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Punishment, Safety, and Reform: Interventions in Domestic Violence

Communities have always made efforts to control gender violence, usually through kin groups or community leaders. In recent decades, urbanization, migration, and the shift to cash-based economies have weakened these institutions. Law and government services are now more important. The social movements focused on gender violence developed three approaches, emphasizing punishment, safety, and reform. The first sought to punish the violator, the second to protect the victim, and the third to reform the violator and encourage the victim to recognize the violence as abuse. This chapter discusses these American efforts as well as similar projects in other countries.

The three approaches follow fundamentally different logics. Punishment seeks to deter violent acts through the authority of the law. Safety focuses on the victim, seeking to improve her life by separating her from her batterer. Reform programs endeavor to change batterers and their victims, to reshape the way both men and women understand and enact their gendered identities. They teach new ways of thinking about what it means to be a man or a woman. Women are taught that they have rights and men are told that hitting their partners is a crime.

The US movement initially focused on punishing perpetrators of violence and creating safe spaces for victims. They hoped that more severe punishments would deter violence. At the same time, they started hotlines and women's centers to teach women how to escape violent relationships and formed shelters to give them a place to go. The third approach, developed somewhat later, focused on reform and re-education. At the end of the 1970s, activists began to set up programs to teach angry people to control their violence. These programs were designed to teach batterers to treat their partners more equally and with greater respect. They endeavored to teach batterers to handle differences with their partners through negotiation rather than hitting. Emerge was the first psycho-educational program for men, formed in 1977. At the same time, women's centers started support groups to provide emotional support for women and to teach them that they have rights, including the right not to be hit no matter what they do.

This combination of strategies is a radical departure from past practices. Historically, punishment was the major form of intervention. For example, 150 years ago in the town of Hilo, Hawai'i, the courts simply imposed fines on wife batterers and exhorted husbands and wives to get along. There was no effort to teach the offender to control his violence or to rethink his ideas about masculine privilege. Rather than protecting a woman's safety by requiring him to stay away from her, courts insisted that she return to her violent husband. Women were never encouraged to leave their batterers and those who did were forced to return home or were thrown into prison if they refused. Preservation of the marriage was prized above all else, even when there was violence and fear (Merry 2002).

The present situation in Hilo is dramatically different. If a man hits his wife, she can call the police. They will arrive more or less promptly, and if there is clear evidence of violence, they will arrest him. At a court hearing, he can be required to attend a batterer intervention program for six months and to spend two nights in jail. If he refuses to go, he faces criminal charges. Instead of telling the wife she must strive to get along with him and forcing the couple to stay together, the court now requires the batterer to attend training sessions for violence and sends the victim to a support group that will help her to leave him. Instead of reinforcing male authority within the marriage, these interventions seek to diminish patriarchy. Thus, modern punishment is tied to a variety of social services and reform programs, while in the nineteenth century punishment stood alone. Survivors are now told they have rights, while in the nineteenth century they were only reminded of their responsibility to get along better.

This wide array of approaches to gender violence offers survivors much that punishment alone does not. Many survivors live in continual fear of their batterers and are more interested in the security provided by shelters or civil protective orders than they are in punishing their batterers. Many want their batterers to stop the violence but do not want to leave them. Yet, punishment is still the backstop. Shelters and restraining orders require punishment to keep batterers away, and batterers often refuse to go to therapeutic programs unless they are required to by threat of jail. In modern society, controlling social behavior through a combination of punishment, mechanisms to produce safety and security, and reform through therapy is common. This combination has been used for drug abuse, alcoholism, gambling, and other social problems (Feeley and Simon 1994; O'Malley 1999). A similar conjunction of approaches is becoming dominant in the global movement as well.

These new approaches require close collaboration with the police, courts, and social service agencies. Although the first initiatives against gender violence in Europe and North America were grass-roots, self-help efforts concerned with victim safety, activists soon recognized that they needed the resources of the government for shelters as well as for punishing violators. As the government began to fund NGOs and women's groups, however, changes occurred. Approaches to gender violence shifted from a radical critique of patriarchy, racism, and other forms of inequality to a more therapeutic stance that focused on helping individuals get along in their family and work lives but not on changing society. Gender violence was increasingly viewed as an aspect of family functioning.

This chapter discusses the three strategies and their interconnections. After outlining their general structure and the way they have been implemented in the USA and around the world, it describes how they work in Hilo, a small town in Hawai'i where I studied many dimensions of domestic violence interventions from 1991 to 2000. Although some features of Hawai'i are distinctive, the social programs and legal reforms parallel those of the rest of the USA. I studied family courts, criminal courts, women's support groups, and batterer intervention programs, interviewed participants and staff, prosecutors and judges, and community leaders. I analyzed the race, education, income, and social class of batterers and survivors in these programs.

Punishment

Early in the battered women's movement, activists turned to the law as a strategy for eliminating violence, advocating tougher laws and more active policing, prosecution, and punishment (Schechter 1982). Before this, wife battering was often seen as a social problem for which the law was inadequate and inappropriate. In Europe and North America, the battered women's movement demanded that gender violence be taken more seriously as a crime. Using the notion of the personal as political, feminists struggled to extract this form of violence from its protected space in the family and open it to public scrutiny as a crime warranting the state's intervention (Schneider 1994). They demanded that wife battering be viewed as a serious criminal offense and that the courts take responsibility for punishing violators. In the 1970s some states, such as Hawai'i, passed laws specifically targeting violence against spouses. In the 1980s and 1990s, activists demanded that police routinely arrest offenders instead of just cooling them down and that prosecutors follow through with domestic violence cases instead of dropping them. Since the establishment of mandatory arrest and no-drop prosecution policies, the number of cases of domestic violence in courts has increased dramatically. For example, arrests in California for spousal assault jumped from 757 in 1981 to 60,279 in 1995, a sixtyfold per capita increase (Rosenbaum 1998: 412). After Denver's mandatory arrest policy was implemented in 1984, arrests increased tenfold in ten years (St. Joan 1997: 264). But offenders are rarely sentenced to prison. Instead, they are commonly required to attend some form of treatment, of which the dominant model is the feminist power/control model developed by women who experienced battering in Duluth, Minnesota (Hanna 1998). A 1995 study of 140 domestic violence arrests in 11 jurisdictions found that only 44 made it to conviction, plea, or acquittal and of these, only 16 served any time (Hanna 1998: 1523).

Criminalization was not only a principal demand of the battered women's movement in Europe and North America but also the dominant approach globally. In the USA, UK, and India, early efforts focused on developing new regulations criminalizing domestic violence and encouraging the police, judiciary, and prosecutors to take the crime of rape and assault in intimate relationships more seriously. This approach emphasized mandatory police arrest, no-drop prosecution policies, and statutory requirements for incarceration as well as treatment. Increased legal intervention means more sanctions for batterers as well as the creation of a new legal consciousness for both men and women. Women are encouraged to see themselves as endowed with rights not to be hit while men discover that their violent discipline of their wives is defined as criminal. The encounter with the new, sterner law transforms legal consciousness – the way the individual understands himself/herself with relationship to law – but does so differently for men and women.

But this transformation is diminished by the failure of the legal system to punish. The law promises victims of violence rights, but in practice often fails to arrest, to prosecute, and to punish. Although the contemporary intervention in gender violence represents a repudiation of conceptions of marriage based on coverture and male protection of women, at the same time the law continues to support husbandly and parental authority in other ways. Courts may fail to intervene effectively because they are too slow, judges do not take these problems seriously, or the laws are ineffective or non-existent, as Lazarus-Black shows in Trinidad (2007). Police are often corrupt, unavailable, or uninterested in protecting women from violence, as demonstrated by research in Vanuatu in the South Pacific (Mason 2000: 131–134). Studies from many parts of the world show how these laws are subverted by local court and police officials who fail to take the violence seriously or who favor reconciliation and keeping the family together over protecting the safety of the woman. This ambivalence undermines legal intervention and its capacity to criminalize sexual violence in families.

A case from Papua New Guinea illustrates the difficulties women face with courts that fail to take domestic violence seriously. They commonly seek to reconcile marriages and ignore the violence. In this case, a woman who earned the family income wanted to divorce her husband because of continuous harassment and violence at home and in her workplace (Garap 2000: 165–166). For two years, the court hearings proceeded erratically, with the village court viewing her complaint as a minor family matter. After her brother helped her, the court agreed to the separation if she repaid half of her bride price. During the protracted court proceeding, the husband continued to lock his wife in her office and prevent her from working until she "saw reason." The court awarded custody of the son to the father and gave his twin sister and baby brother to the mother. Since the custody agreement, however, the father has punished the son still living with him severely for minor infractions. Once, after staying with his mother for a week, the son resisted going back with his father and hung onto his mother. "The mother and child were taken to the police station so that the police on duty would assist in getting the son to go with his father. The boy refused and the mother and child were kept at the police station from 4:30–7:30 p.m. It was clear that the police officers concerned were unaware of the Child Rights Convention [the international treaty that articulates the human rights of children]" (Garap 2000: 166). The mother subsequently got a court order prohibiting her husband from verbally or physically abusing her on pain of six months in jail, which seems to have helped.

Batterers often receive relatively light punishment and frequently escape any legal responsibility for their battering. The law criminalizes and disciplines batterers most stringently when they are poor or minorities. Rich white males, or wealthy men of dominant kin groups typically escape penalties. Not surprisingly, the law is most effective when batterers closely resemble the criminal population in terms of race, class, and gender identities. Since people of color and indigenous people are already disproportionately policed and incarcerated, women who call the police for help against men of these groups further criminalize their communities (Davis 2001; Smith 2005). Thus, progressive efforts to protect women from violence succeed in transforming their consciousness of rights but at the same time focus on poor men while batterers with more resources escape. Poor women win greater control over their lives, but at the price of criminalizing the men in their community.

Thus, the law occupies a complex place in its interventions into gender violence, acting in different ways according to particular race/class/gender groupings as well as colonial histories and postcolonial presents. Over time, it has redefined the boundary between acceptable and unacceptable violence and encouraged a flood of pleas for help from battered women, but it has imposed greater supervision over economically powerless groups. The law provides both an emancipatory discourse of rights along with a set of disciplinary processes that demand participation and exposure of feelings for those found guilty of battering. It provides an array of surveillance and control systems for batterers which are part of the non-state forms of capillary power which Foucault argues constitute the dark underside of modernity (1979). These new forms of control, often insufficient to prevent battering, operate on the terrain of gendered, raced, and classed identities.

Safety

Some mechanisms promote victim safety that do not depend on punishing batterers. These mechanisms seek to protect the survivor of violence by separating her from the batterer, providing her with temporary shelter or enjoining him from any contact with her by means of a legal restraining order. Instead of preserving the family by reforming the man or reconciling the marriage, these techniques seek to protect the victim. They encourage the woman to separate from the offender and provide her with support.

Shelters, or refuges as they are called in the UK, were developed by grass-roots organizations in the 1970s (Schechter 1982). Originally conceived as safe houses, they were often simply homes where violated women could take temporary refuge. Over time, the system of shelters expanded dramatically so that it now offers a wide range of services to women who seek protection. Shelters offer assistance with jobs, housing, and legal cases as well as personal and group counseling. Maintaining security is an important concern in shelters, as angry partners have attacked shelters and set them on fire. Some shelters keep their location secret while others rely on the police. However, shelters are expensive and require either a private funder or government support. While there is an extensive network of shelters in most affluent countries, those with fewer resources have few to none. Even China and India, with their growing middle classes, have very few shelters. Tiny Hong Kong, with its greater resources, has four. As budget constraints limit the length of time a woman can stay in a shelter, new problems arise. For example, in Massachusetts, a woman may be moved every two or three months, dragging her children with her to new schools and communities.

A second strategy for improving a woman's safety is the civil protective order, often called a restraining order. This is a civil order that orders the batterer to stay away from his victim for a fixed period of time. Failure to abide by its terms leads, at least theoretically, to a criminal contempt order. Civil protective orders, often referred to as TROs or temporary restraining orders, are court orders which require the person who batters (usually but not always male) to stay away from his victim (usually but not always female) under penalty of criminal prosecution. They can be issued on a temporary, emergency basis without the presence of the complainant and extended for months at a subsequent standard court hearing where the offender is present. Some TROs, called no-contact TROs, prohibit all contact while others permit contact but not violence. The strength of these mechanisms depends on how much the parties believe in their power and on the willingness of the police to come when they are called for violations and to arrest offenders. Prosecutors must also be willing to file contempt charges when TROs are violated. Many advocates see this approach as the most effective use of the criminal justice system for domestic violence (see Fischer and Rose 1995).

In the late 1960s, activists argued for the applicability of protective orders for such situations. In the USA, protective orders were used for domestic abuse situations beginning in the 1970s, about the same time as refuges and shelters were being promoted by the battered women's movement (Schechter 1982). The first domestic violence restraining order was created in Pennsylvania in 1976 and a similar law passed in Massachusetts in 1978 (Ptacek 1999: 48–50). In Hawai'i, a law providing for ex-parte temporary restraining orders for victims of domestic violence was passed in 1979. But it was not until the late 1980s that activists succeeded in persuading courts and police to use these protective orders widely. Requests for civil protective orders for battering grew dramatically in the 1990s. My research documents the explosion of these cases in Hilo in the late 1980s and 1990s, a pattern replicated in other parts of the country during the same time period. For example, the number of restraining orders issued in Massachusetts nearly tripled between 1985 and 1993, then began to level off (Ptacek 1999: 62).

This is the most innovative feature of contemporary American efforts to diminish wife battering. It is fundamentally a spatial mechanism since it simply separates the batterer and the victim. Shelters, which provide places of refuge for battered women, are similarly novel inventions of the battered women's movement of the 1970s, although they build on older patterns of safe houses and helpful neighbors and relatives. Both of these interventions make no effort to reform the batterer but only seek to keep him away from the victim. They do so by designating spaces of safety and excluding perpetrators.

Reform

In the last few decades, therapy and reform have joined punishment and safety as ways to manage gender violence. Batterer intervention programs attempt to change batterers through education and discipline and teach them to control their violence. They are typically closely connected to the criminal justice system. Participation is mandated after conviction for spouse abuse or after receiving a contact TRO. Thus, the legal system is the major gateway into batterer intervention programs. Moreover, such programs represent virtually the only major penalty men receive unless their violence is severe and/or repeated. Feminist activists in the USA began to experiment with retraining batterers in the late 1980s at the same time as more therapeutic approaches were developing for other offenses such as taking drugs (Ptacek 1988; Yllö and Bograd 1988; Pence and Paymar 1993).

By the beginning of the twenty-first century, the legal system in the USA had many therapeutic programs to reform batterers as well as programs for victim protection. Punishment is a distant threat for those who fail to go along. Relatively few domestic violence offenders spend much time in jail. Punishment is largely a means to force offenders to accept treatment and to stay away from their victims. The courts make mandatory referrals to a range of private therapeutic and self-development programs designed to retrain batterers' conceptions of gendered relationships and ability to control their violence. They seek to diminish violence through insight and self-understanding rather than through punishment and deterrence. Reform programs are less common in other parts of the world. There are efforts to develop them in Hong Kong, for example, but I found little work of this kind in my research on India and China (see Merry 2006).

Controlling Gender Violence: A Case Study of Hilo, Hawai'i

The rest of this chapter illustrates these approaches through an ethnographic description of the situation in Hilo, Hawai'i. The TRO process in Hilo exemplifies an effort to increase the safety of the victim. The batterer intervention program attempts to reform perpetrators. Both depend on the threat of punishment. Thus, the Hilo case study shows how processes focusing on safety and reform work in practice and how they are connected to each other.

While no town in the USA is typical, this one is characterized by ethnic diversity, its plantation past, and its contemporary poverty. Hilo is a small town in windward

Hawaiʻi whose domestic violence programs I studied during the 1990s.[1] Between 1850 and 2000, Hilo changed from an industrial sugar plantation society to a post-industrial society based on services, education, and a marginalized poor population. An independent kingdom until a US-backed coup in 1893, Hawaiʻi was annexed to the USA in 1898 and remained a colony until statehood in 1959. In the middle of the nineteenth century, many New England institutions of law, government, and religion were adopted by the Kingdom of Hawaiʻi, while in the last quarter of the nineteenth century, the rapid expansion of sugar plantations fueled the importation of workers from Asia and Europe and the introduction of harsh work discipline backed by innumerable fines and incarceration for refusal to work (Merry 2000). The plantations have disappeared, replaced by extensive unemployment and a new economy of tourism. Native Hawaiians, displaced by US colonialism, are increasingly economically marginalized. In May 2000 the island of Hawaiʻi had a 7.1 percent unemployment rate and increased pressure on homeless shelters and food banks as welfare rolls were cut back (*Hawaii Tribune-Herald*, September 9, 2000: 1, 8). This is a post-plantation version of post-industrial society.

The sugar plantations of the Hilo region, like factories, provided an intricate and complex system ordering the details of workers' lives. The plantation provided a firm disciplinary order, often relying on violence against workers to propel them to the fields and keep them at work (Beechert 1985; Takaki 1983). Plantations hired camp police who sometimes kicked in the door to get a person to work or flicked a whip over a worker's head. But workers' violence against supervisors received stern punishment, as court records from the nineteenth century indicate (Merry 2000). Violence was linked to social status, with dominant groups using violence against subordinates, especially in reaction to their violence, while ignoring violence within worker communities.

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[1] My ethnography of gender violence in Hilo covers both civil and criminal court proceedings, the violence control program, the probation office and prosecutor's office, church and indigenous Hawaiian alternatives, and general ethnography and history of the town. I worked in Hilo from 1991 to 2000, spending in total about two years doing ethnographic research in Hilo over a ten-year period consisting of field work once or twice a year. Thus, this project has an important longitudinal dimension. My work was supplemented by 26 months of observation in Hilo by several research assistants: Marilyn Brown, Tami Miller, Erin Campbell, Nancy Hayes, Madelaine Adelman, and Linda Andres. The research includes observations of legal processes and programs combined with numerous interviews and discussions with judges, attorneys, prosecutors, facilitators, and staff at the shelter and program and with victims and perpetrators of violence. Because I worked in this town for several years, I can chart significant changes that took place during the 1990s, a period of dramatic change in the legal management of gender violence. In addition, I did historical archival research on Hilo, on Hawaiʻi generally, and on nineteenth-century court cases from Hilo (see Merry 2000). In order to document gender violence interventions in the past, I collected archival data on gender violence cases from Hilo in the nineteenth century in the Hawaiʻi State Archives, framed by a larger sample of nineteenth-century court records from Hilo between 1852 and 1913. A close examination of the kinds of cases that appeared in court, the discourses surrounding them, and the kinds of outcomes that resulted reveals the practice of punishment by fine that was characteristic of the period and the missionary concerns about the family life and sexuality of the native Hawaiian population which shaped this intervention.

In the plantation era, the workplace provided the basic disciplinary mechanism of society through detailed control over tasks backed by an elaborate system of fines and imprisonment. In the current period, however, the workplace no longer provides such discipline (see Simon 1993b). In post-industrial society, workers must learn to manage themselves rather than obeying the order of the assembly line or the plantation work group. They must come to the workplace already skilled in self-management, interpersonal relationships, and non-violent interactions. Those who fail must be retrained, and those who cannot learn are increasingly incarcerated or abandoned as systems of ordering shift from disciplining offenders to minimizing harm to populations (see Feeley and Simon 1992; 1994; Garland 2000).

Producing safety: the TRO process in Hilo

Gender violence incidents arrive in the legal system through two quite different processes: a criminal process of arrest and conviction and a civil process of issuing a temporary restraining order. The first leads to a trial and potential criminal conviction, the second to a family court hearing which could result in the issuance of a TRO. Both are activated largely by the complaint of an injured party, although a police officer may be summoned by a neighbor, relative, or friend. TROs are almost always issued at the request of an individual petitioner. Although the first process is a criminal one and the second a civil one, in practice there are many connections between the two. Criminal cases are often handled through plea bargaining between the prosecutor and defense attorney rather than trial. Defendants typically receive the same sentences as TRO respondents. Moreover, a civil case can be converted into a criminal case if there is a violation of the conditions of the order. Thus, civil cases often become criminal while criminal cases are typically handled through informal negotiation which takes the victim's wishes into account, paralleling civil procedures. A final important connection between these two processes is that it is common for the same couple to become involved in civil and criminal processes simultaneously. Victims and batterers are sometimes confused about the relationships between the two courts and the differences in their procedures.

The civil court process must be initiated by the victim, who goes to the Family Court to secure the order. The Family Court is itself a recent concept, created as a separate judicial entity in Hawai'i in 1989. A person can apply for a TRO against any family member, whether or not he or she is living in the same household.[2] The victim fills out an affidavit which is reviewed and signed by the judge. This initiates a temporary, emergency order requiring the named individual to vacate the premises or to refrain from violence, depending on the kind of order requested. There must be a hearing within 15 days before the Family Court to extend the order.

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[2] The statute for domestic violence is in Chapter 586 of the Civil Family Law. Harm or threat of harm is sufficient grounds for a temporary restraining order. Violation of a protective order is covered under Penal Code 709–906. Violation of the protective order means a mandatory minimum two days in jail for the convicted person.

The number of requests for TROs has increased dramatically since the early 1970s. Between 1971 and 1978, there were seven protective orders, or "peace bonds," issued in Hilo for domestic violence situations. By 1985, however, the year a more stringent spouse abuse law went into effect, there were 250 in one year. In 1990 there were 338, and by 1999 471, from an area of perhaps 70,000 residents. Although there has been a doubling of the population in the last 20 years, TRO petitions have increased far more rapidly.

Observations of the domestic violence calendar during the 1990s indicate that most defendants are men and most victims women.[3] The women who bring these cases to the court are primarily young, in their twenties and thirties, and non-professional workers or non-workers. Their ethnic identities reflect the local population, including white, Portuguese, Filipino, Japanese, Hawaiian, Hawaiian Chinese, and Puerto Rican individuals. Because of the high rate of intermarriage among these groups, the majority have multiple ethnicities. Most are "local," although a significant minority are people from the mainland, many of whom follow alternative lifestyles such as that of the pioneer-survivalist aspiring to live off the land. A few support themselves by cultivating marijuana. Most of the people have low incomes and often are not working.

At the hearing, victims are almost always accompanied by a woman advocate from the women's domestic violence program, Alternatives to Violence (ATV). The man appears alone, although there is always a male advocate from the ATV program present in the waiting area of the court and willing to talk to the men. The Family Court judge reads the written account provided by the victim, asks the accused if he or she acknowledges the charge, and takes testimony if the accused denies all violence. If the accused accepts the charge or the evidence is persuasive, the judge issues a temporary restraining order for a period of months with a series of conditions. If there are no children and a desire by both to separate, the respondent is told to stay away from the petitioner and both are told to have no further contact. This is a no-contact TRO. If they have children but the victim wishes no contact, the judge will arrange visitation or custody for the children and specify no contact between the adults. If they wish to continue the relationship and/or to live together, the judge usually issues a contact TRO but also sends them to ATV, requiring either the accused or both parties to participate in the program. The contact order allows the respondent to be with the petitioner but prohibits him from using violence against her. Observations of 130 cases in the early 1990s indicated that slightly under half (42 percent) of petitioners requested and received contact TRO orders.

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[3] Marilyn Brown and I observed the domestic violence calendar in the Hilo Family Court, which was held once a week, for 19 weeks from July 1991 to August 1992 and tabulated and analyzed these 130 cases. I continued to observe the domestic violence calendar of the Family Court subsequently every year from 1991 to 2000.

At the hearing, the judge points out that any violation of the conditions of the protective order is a misdemeanor, punishable by a jail sentence of up to one year and/or a fine of $2,000. He frequently schedules a review hearing in a month or two to monitor the situation, particularly for the contact restraining orders, and to make sure that the conditions of the TRO are being fulfilled. He also requires the respondent to surrender any guns in his possession to the local police officer for the duration of the TRO.

The Family Court judge's concerns are twofold: first, to stop the violence; and second, to protect the children involved. He endeavors to convey a clear message that violence is against the law and that it is bad for children. Any indication of violence or abuse against children elicits an immediate referral to Children's Protective Services. Protective orders commonly include the requirement to seek treatment as well as the obligation to refrain from violence and, in no-contact orders, to stay away. The judge is much more likely to refer a couple to the batterer intervention program when the woman requests a contact TRO than when she wishes no contact. When a woman requesting a TRO says she wishes to stay with her partner and they have children, the judge usually makes a referral to ATV.[4]

These legal orders are sometimes viewed uneasily by judges. Since they begin as an emergency intervention, they impose restrictions on individuals who are initially absent from the hearing. Because they are civil rather than criminal proceedings, defendants do not have the right to an attorney if they cannot afford one. Yet if a person violates the terms of a TRO, he is guilty of contempt of court and can be prosecuted for a criminal violation and theoretically face a prison sentence. Although in practice this is rare, in theory it remains a possibility. In Hilo, a violation based on a violent incident typically led to a new arrest, while a violation based on the failure to attend ATV typically led to being re-sentenced to the program.

A second difficulty with the TRO in gender violence cases is its limited enforceability. It relies on the respondent's acquiescence or an effective police response. In the hands of a skeptical batterer, it is no more powerful than the policing behind it. With a no-contact TRO, a respondent is in violation if he simply appears at the plaintiff's house or workplace. The police should remove him and charge him with a violation of order. Thus, the efficacy of the order depends on the willingness of the police to appear and take the violator away.

A third difficulty with the TRO process is that a no-contact order does not fit well with the exigencies of everyday life. A woman may wish to see her partner to exchange children, ask for financial help, or simply because she is lonely and wishes to consider restarting the relationship. If she allows him into her house, she is violating the

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[4] In the sample of 130 cases from the early 1990s, almost half (43 percent) of respondents in all hearings, both initial and review hearings, were referred to ATV. Of newly issued orders, 37 percent (31 of 85) included referrals to ATV and 63 percent did not. But ATV referrals were much more likely with contact TROs. Slightly under half (42 percent) of petitioners requested and received TRO orders allowing them to have continuing contact with the respondent but without violence. Of this group, 61 percent were referred or re-referred to ATV and only 34 percent were not.

TRO and he is risking a criminal penalty. In order to avoid these difficulties, many women request a contact TRO initially or ask to change the no-contact order to a contact one a few months after the incident. Under a contact order, the petitioner and respondent can be together but he is prohibited from using violence against her. There is no spatial segregation. On the other hand, a woman with a contact restraining order is little better off than one without it. A new act of violence simply places the batterer at risk of being arrested for that violence, as he would be in any case. Some judges have expressed discomfort with the contact TRO, arguing that it is too hard to enforce and should be eliminated. The Family Court judge in Hilo tried to persuade petitioners to ask for no-contact TROs. Nevertheless, almost half the TROs issued in Hilo were contact orders.

Finally, if both parties ask for a TRO and a judge issues mutual restraining orders, then any time they are together both are guilty of a legal infraction. Since it is common for an incident of wife battering to include mutual blows, it is not improbable for a judge to issue a restraining order for both parties. Yet the result is an enforcement quagmire, since both are equally, and indistinguishably, guilty at the moment of contact. A related problem is the use of TROs to deal with custody disputes. The party who retains custody of the children with a TRO has an advantage in keeping the children during subsequent divorce proceedings. Consequently, a person contemplating divorce may take out a restraining order on his/her partner in order to be in possession of the children at the time of the divorce decree. Judges are aware of this pre-divorce strategy.

Despite these difficulties, the TRO, particularly its no-contact version, is a mechanism that focuses on the safety of the woman without waiting until the man has been reformed. Because wives with restraining orders are sometimes murdered, such orders are often considered of little value. Yet many of the men I talked to took the order seriously and, although they were angry at being kicked out of their houses, they did stay away. Women felt comforted by the presence of this legal document, even though many were still harassed by their batterers at home and at work. Furthermore, the no-contact TRO shifts the evidentiary burden away from the woman, releasing her from the necessity of testifying against her batterer in his presence. His presence in a proscribed location constitutes adequate evidence of a criminal offense. The skyrocketing use of this mechanism in the 1980s and 1990s indicates its popularity with battered women. It offers what many victims want: separation from their batterer, or even prohibition of violence while they remain together, along with a program of reform. Whether or not this mechanism is always effective, it encapsulates the desire of many battered women who do not want their abusers punished but reformed or gone. Its novelty is that it foregrounds the security of the victim rather than the reform or punishment of the offender. This spatialized form of governance represents a popular new addition to legal relief for battered women.

It is possible to imagine other expansions of this logic of security for the problem of wife battering. Women could subscribe to battering insurance programs which would provide funds for emergency housing and moving costs to relocate to a different area. Violence-free zones could be established from which a person with a history of battering would be excluded. Batterers could be required to wear monitors which would emit a sound when they enter a prohibited zone. Obviously there are difficulties with aspects of these ideas, but they suggest the possibilities of governance based on security and the regulation of space rather than punishment and the regulation of persons.

Reforming perpetrators: the batterer intervention program

In Hilo, as in other American towns, the courts send most convicted batterers who stay with their partners to some form of counseling or retraining to learn how to control their violence. They also send people who have contact TROs issued against them. Here they are taught to overcome their belief in male privilege. Instead of being fined, participants must pay a fee to attend the program. If they fail to attend, they go to jail, at least in theory. Women are encouraged to interpret violence as blameworthy behavior and a violation of their rights (see Merry 1995a; 1995b). Wife beating is viewed as not just another assault but a consequence of flawed gender ideas and an inability to control angry feelings. These interventions seek to redefine the cultural boundary between acceptable and impermissible violence.

In the mid 1980s, a women's center in Hilo developed women's support groups and batterer training programs called Alternatives to Violence (ATV). Supported at first by independent grants, it soon acquired more or less permanent support from the state judiciary. From 1986 to 1996, the ATV program closely followed the feminist approach developed by battered women in Duluth, Minnesota. Discussions in Duluth in the 1980s emphasized that battering needs to be understood in terms of power and control (Pence and Paymar 1993). This model focused on undermining the cultural support for male privilege and violence against women by exploring men's feelings and beliefs and encouraging men to analyze their own behavior during battering events. Violence against women was understood as an aspect of patriarchy. A dominant feature of group discussions was changing beliefs about men's entitlement to make authoritative decisions and back them up with violence.

In the 1990s, this model dominated batterer reform efforts in Hilo as well as in the rest of the United States.[5] The Duluth model came to Hawai'i in 1986. Men convicted of spouse abuse or given a TRO were required to attend the ATV program. ATV offered both violence control training for men and a support group for women.[6] Men were required to attend weekly two-hour group discussions for six months. In groups of 10 to 15 men and two facilitators, participants talk about their use of violence to control their partners. Discussions stress the importance of egalitarian relations between men and women and the value of settling differences by negotiation rather than by force. The men are taught that treating their partners with respect rather than violence will win them a more loving, trusting, and sexually fulfilling relationship and forge warmer relations with their children. Egalitarian gender relations are modeled by the male/female team of facilitators leading the group.

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[5] Batterers' intervention programs following this model were the dominant approach to treating batterers in the United States by the end of the 1990s (Hanna 1998; Healy and Smith 1998).

[6] I observed women's support groups and men's violence control groups in Hilo from 1991 to 2000 and formally interviewed 30 men and women who participated in the program. Marilyn Brown, Tami Miller, and Madelaine Adelman provided valuable assistance with observations and interviewing.

If men fail to attend the program, the staff informs their probation officers: those whose attendance is a stipulation of a criminal spouse abuse conviction face revocation of their probation; those required to attend as a condition of a TRO are guilty of contempt of court – a criminal offense – and their case is sent to the prosecutor. In practice, these men are typically sent back to ATV rather than receiving a jail sentence or other criminal penalty, but the threat of jail time is frequently articulated by judges during court hearings. Thus, attendance at this psycho-educational program is enforced by the threat of prison. The program emphasizes training in self-management of violence but failure to accomplish this task results in the return to a regime of punishment, at least in theory. In practice, they are returned to the program and go to jail only after a new violation.

During the early 1990s, the Hilo program was strongly feminist. Participants were separated on the basis of gender. The men's group provided training in violence control, the women's group offered support and encouragement to assert rights. Because the program viewed gender violence as a prop for patriarchy, it made sense to provide separate treatment for men and women regardless of their own violent behavior. At this time, the program for men consisted of eight months of weekly two-hour meetings of groups of 10 to 15 men led by a pair of facilitators who modeled respectful, egalitarian, and give-and-take interactions between a man and a woman. The time was later reduced to six months. The program for women consists of ten weeks of two-hour meetings of a support group, but women were rarely required to attend under threat of criminal penalties. My research assistants and I observed at least 50 men's sessions and 40 support groups for women over the decade of the 1990s and spent a good deal of time talking to program staff, facilitators, judges, and participants.

Following the Duluth model, group meetings are designed to help men change their beliefs and values about gender relationships. They are encouraged to consider their partners as equals and to make decisions by negotiation. Since the program sees violence as learned behavior, it focuses on the values and beliefs that allow men to accept their own violence. There is an explicit attempt to change these values. In their training sessions, men were encouraged to use "positive self-talk" – to think positive thoughts about themselves – as a technique for diminishing their desire to strike out. They were told the problem was not their anger but their violence, and taught to recognize the bodily signs of anger and to pursue strategies to "cool down." A new vocabulary is central to the teaching mission. Instead of calling the women in their lives "old ladies" or "cunts," they were to refer to them as "partners." "Just a slap" was a case of "physical abuse," and "battering" consisted of physical battering, sexual battering, psychological battering, and destruction of property and pets. The terms "lickins'" or "dirty lickins'" were replaced by "abuse." The unfamiliar term "intimidation" (many asked for a definition of the word) is used to describe what they did when they smashed the windshield on their wife's car to prevent her from driving to town and "male privilege" to describe their assumption that men decide where women go and whether they have a job, take drugs, or buy themselves a new truck. After a few weeks in the program, men began to use these terms in conversation with each other, with me in interviews, and to judges in court. Attorneys and other court officials also noted this new language, although they, along with program staff, were skeptical about how much it signaled a change in behavior.

The men attending this program are largely poor, unemployed, and relatively uneducated. Program intake forms for 1,574 people served between 1990 and 1998, of whom two-thirds were men, provide demographic data on who is referred. About three-quarters of the men (77 percent) and women (70 percent) earned under $11,000. Men and women in the violence control program and women's support groups frequently talked about poverty, welfare, and survival by fishing, hunting, and odd construction jobs. ATV clients are also substantially less educated than town residents, with the men even less educated than the women. Half are high school graduates (46 percent) and one-quarter started college (25 percent), but only 3 percent have a college degree. While 29 percent of Hilo's population has an associate's, bachelor's, or higher degree, only 5 percent of the ATV population does.[7] Thus, the men sent to the violence control program as well as the women they batter are significantly poorer and less educated than the town overall. Those who attended the feminist programs for men and women were largely people living on the fringes of the town's economy. Many are on welfare or living with partners who are; many camp in forests or beaches; many are embittered by a colonial past and present poverty.

Many suffer from emotional scars of childhood physical and sexual abuse. Most (three-quarters) had some experience with violence in their homes, either witnessing it or experiencing abuse as children, or both. Those with histories of abuse were significantly more likely to have had previous abusive relationships than those without. The experience of being abused as a child or seeing violence in the family normalizes the violence, so that those with these experiences are less likely to leave batterers and more likely to assault others. Based on the stories they tell about their lives, it appears that many are afflicted with unmanageable rage, have recurring difficulties with alcohol and drugs, and face educational deficits. These are not the only people who batter, but they are the ones who end up in batterer intervention programs.

ATV attempts to teach men that violence breaks social connections rather than strengthening them. The legal system is a central actor in reconstituting connection and violence in its threat that if the violence recurs, the man will go to jail, which is the ultimate separation. One exercise, repeated in various forms throughout the training session, is to ask a man to describe a violent experience and break it down into the feelings, the actions, the underlying beliefs, and the consequences to him, to his partner, and to their children of his actions. The man presents the situation and the group collectively analyzes it. The conclusion drawn from the exercise is that the violence won power and control in the short run at the price of fear and suspicion from partners and children in the long run. Many of the men discuss how they use violence to hang on to their women. They prevent them from leaving by puncturing their tires, opposing their getting a job or visiting friends, and beating them if they go out without permission. Many constantly feared that their partners would abandon them for other men. Jealousy and suspicion foment violence and isolation of the woman. Thus, the men use violence to maintain their connections with women. ATV reverses the link, arguing that violence breaks the connection and that only by living without violence will the men be able to hold on to the women they desire. This discussion takes place in a therapeutic group situation in which each man is surrounded by other men in like circumstances, thus demonstrating the kinds of community that are possible without violence.

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[7] Comparing the ATV population to the census designation of educational levels of people 25 years of age and above reveals that the ATV population lacks both extremes: while 11 percent of the general population has less than an eighth grade education, only 1 percent of the ATV population falls into this category.

On the other hand, women in the support group are encouraged to break their connections with violent men in order to protect themselves. But this is not always possible or even what women desire, at least at the early stages of violence. For many women, the violent partner is someone who occasionally offers love and sexual pleasure and on whom they depend for economic support for themselves and their children. Men are typically penitent after incidents of violence and promise not to do it again, begging forgiveness. Women want to believe these promises. The women want connection, but without the violence. As one woman put it, "There is an emotional side to this situation that the courts don't understand." One woman talking in the support group bewailed the "hormones" which pulled her back to her abusive man, and regretted that there was no way she could see him just for her sexual needs.

The pressure to separate from the man in order to receive the protection of the legal system poses financial difficulties as well. Since they are typically poor, young, relatively uneducated, and caring for small children, these women are often dependent on their husbands as well as on welfare for support. One woman who is local, Hawaiian, in her forties, with teenaged children, complained in the women's support group:

> I didn't ask for a no-contact TRO, my dumb lawyer did. I'm angry at him. Now I can't ask for money for bills. Now I got to go to the kids for money, and they ask him. The kids are getting in the middle. He comes by everyday, but he is not supposed to. This is an order that lasts until November [meeting is in July]. There is no chance of my marriage getting back together now since I can't see him until then. He's living with another girl now, I've lost him. Jane [pseudonym for one of the women advocates at ATV] forgot about that appointment in court, so I had to handle it the best I could alone. I said in court I wanted contact, but the judge told me to be quiet. I didn't know what else to do. I don't know if he's coming to ATV because I can't talk to him. So I can't keep him.

This statement encapsulates the dilemma for women: protection requires ending a relationship that may involve some caring and financial support as well as violence. Moreover, it involves turning to a possibly alien system outside the boundaries of the social relationships she has constructed for herself. On the other hand, the legal system recognizes that violent men very often hit their wives again and that returning women to the same situation poses a very substantial risk of further violence.

There is a further twist to the connection/violence relationship. Women who are violent, or even who remain in violent homes, risk having their children removed by the child protective services. This is a constant source of discussion among the women in the support group. One woman, for example, stabbed her husband as he attacked her and is contemplating pleading guilty. Other women warned her to be careful, telling her about others who were railroaded into pleading guilty to such charges in the past who then lost their children. Thus, acknowledging the violence by asking the legal system for help or by fighting back risks another loss of connection, that with their children. Maintaining the connection with children may require not complaining about violence to oneself.

Thus, the courts and ATV convey messages about violence and connection which are quite different for men and for women. Men are told that violence earns them separation. They are encouraged to maintain connection through negotiation and compromise rather than asserting power and control over their partners. The women are encouraged in the support group to form connections with women in similar circumstances and to see that it is possible to separate from violent men. One of the new connections proffered is with the legal system. The law expects women to leave the violent partner in order to earn its full support. If a woman repeatedly calls the police and presses charges, then withdraws and refuses to prosecute, the courts and police become frustrated and ignore her complaints. In other words, if the woman is to mobilize the help offered by the legal system, she must be willing to go through with the process of penalizing the husband, of sending him to jail or to ATV, and consequently with severing her relationship with him. She is offered, instead of subordination to patriarchal authority in a violent relationship, the promise of liberal legalism: a self protected by legal rights, able to make autonomous decisions, as long as she is willing to sever the relationship with the man or, at the least, risk making him very angry by filing charges against him or testifying against him. Not only is this a difficult decision, but it is also a dangerous one. Men are most likely to be violent to women after the women have left them. The men rely on the old strategy of achieving connection through violence, putting the woman in considerable danger which the law can do little to mitigate. Indeed, the staff of the violence control program told me that after a highly publicized event of male violence occurs, women quietly slip back to the violent men they may have left out of fear that something like that will happen to them. There are frequent stories about rejected men hanging around the shelter, setting it on fire, going to their partner's houses, and other forms of harassment.

Women are encouraged to reconstitute themselves not as selves defined by relationships but as selves connected to the law, with rights defined by the legal system.

As women activate the legal system for help, they are expected to press forward with prosecution in a way that they often hesitate to do out of fear or conflicting concerns. The result is a withdrawal from the process, a failure to prosecute criminal cases, a request for contact rather than no-contact restraining orders, a reluctance to insist that the man attend the violence control program, which frustrates the best-intentioned legal personnel. Women enter the court as reluctant plaintiffs, welcoming the redefinition of violence as a crime and their right not to experience it, yet often afraid or unwilling to make the break with the men which is the main solution the legal system can provide.

This reluctance increases the possibility that these problems will be reframed as "garbage" cases. They have all the hallmarks of cases which are typically defined as garbage by the courts: difficulty in determining what happened, victims who refuse to prosecute, mutual battles with no unambiguously innocent victim or guilty villain, and a tendency to be ongoing, repeated, messy, and resistant to simple solutions (Merry 1990; Yngvesson 1988; 1993). The struggle to keep such cases defined as crimes rather than "garbage" by the court is a continuing challenge for feminist activists. But the larger struggle is to move toward a broader understanding of violence against women which takes into account their class subordination as well as their gender subordination. Women need not simply a choice-making self but also the means to make choices.

Performing masculinity

Instead of changing behavior through deterrence, these new mechanisms seek to reshape the habits of everyday life, to encourage offenders to think through the consequences of their actions and choose to change. Feminist batterer intervention programs teach new models of masculinity in which sexual prowess and violence against women are displaced as the indicia of manhood with self-control of feelings, respect, and gender equality. Batterers are presented with new images of masculinity that celebrate negotiation and gender equality rather than physical domination and sexual control over women. Women are offered a new sense of self as endowed with rights not to be hit while men are encouraged to abandon a highly muscled and sexualized version of masculinity founded on the control of their women partners' activities and sexual lives. This self-regulatory discipline is supplemented by new security mechanisms such as temporary restraining orders which bypass the problem of reforming offenders altogether by requiring them to stay away. Courts no longer insist on the indissoluble family.

The major focus of the batterer intervention program is the reconstruction of masculinity and the critique of male privilege. In many cultural contexts, battering behavior lies at the heart of masculinity since masculine identities are defined in relation to women, particularly in the extent and nature of control which their gender allows them to exercise over women. Batterer intervention programs are engaged in contesting the degree and kind of power that men are entitled to hold over women. That this is central to men's identities is underscored by the humiliation and shame they report when their wives fail to obey them or fight back in any kind of public setting, including the legal system. When women do this, they spoil the performance of masculinity. At the same time, men sometimes report shame at their own battering behavior and acknowledge the loss of relationships with their partners and children.

The group provides a tense and fraught setting for these men's performances of masculinity since the audience includes their peers, a group of other men also accused of battering, and a male and a female facilitator, who stand in for the law. The men are required to attend, under penalty of criminal sanctions, because the court has declared their actions illegal. In order to complete the program, they are required to participate and to take oral tests on each segment of the class. Thus, they remain under the authority of the program and its facilitators during the six- to eight-month program. Under these circumstances, men appear to redefine their masculinity, at least in the way they talk about it. At the same time, they also exhibit a substantial resistance to change through argument and humor. Many fail to return and face criminal sanctions. There are also variations in masculinity performances based on race, class, or indigenous identity which emerge in particular as men seek to justify or deny their violence in group discussions. The program emphasizes self-management of anger, non-violent strategies for dealing with conflict, and rethinking relations to women.

What is at stake in these classes is the definition of masculinity. The facilitators present a new image of masculinity while the participants endeavor to adapt these new ideas to their own visions or to resist them. The program asserts that violence is learned behavior rather than psychopathology, thus focusing on the social and cultural determinants of the behavior rather than the pathology of the individual (see Ptacek 1988). The curriculum does not differentiate among kinds of masculinity but presents a theory of power and control strategies, male privilege, violence as learned behavior, and techniques for changing beliefs about violence and about the way men should treat women. Although it was designed for a very different part of the country, it was not significantly changed to adapt to the local social, class, or cultural situation of this town in Hawai'i. By and large, the curriculum refuses to see male battering as a phenomenon of particular racial, class, or religious groups but locates it within an analysis of gender inequality and power.

Nor is a non-essentialized analysis of gender applied to battered women. Radical feminism in the 1970s and 1980s emphasized the similarity in women's vulnerability to violence as a strategic move to forestall identifying the problem as only characteristic of a particular category of women. Whether gender violence should be interpreted primarily through the lens of gender, and thus as a problem for all women, or through a far more differentiated prism that joins gender with the ways structures such as class, racism, citizenship, or nationality structure gender positions and performances, is a major debate in the field. From a political, activist perspective, seeing all women as vulnerable to violence is enormously powerful and has motivated the considerable advances in the movement. Moreover, it underscores the way that women do experience violence in similar ways. However, defining the problem as one faced by "women" in a generic sense tends to ignore the other positions that render women vulnerable to violence and limit their capacities for exit. In particular, this approach has obscured the particular situation of battered black women who face double marginalization on the basis of race as well as gender (Crenshaw 1994; Connell 1995; hooks 1997). Such women may have difficulty turning to predominantly white women's shelters and face discrimination in court, for example. As Sarah Hautzinger's (2007) ethnography of a poor Afro-Brazilian community in Brazil indicates, violence in intimate relationships is inseparable from the violence of poverty and overwork, insufficient food, heavy-handed policing, and the impacts of racism.

The same dilemma about whether to acknowledge difference or not confronts work with male batterers. ATV offers a uniform image of desirable masculine behavior: negotiated decisions between partners, respect, equality, respectful language, and equality in major decisions. Men are taught to recognize the physical signals of anger in their bodies, to use cool-downs, to walk away from fights, and to practice "positive self-talk," meaning self-affirmation, willingness to accept criticism, and acceptance of not being in control all the time. Rather than probing into past injuries or experience with violence, the focus of this program is talking about better strategies for handling violence and treating women now. Little attention was given to men's childhood experiences with violence or the situations they grew up in, following the feminist position that battering is a product of the gender constructs rather than individual psychopathology.

Although the program is explicitly directed toward changing beliefs, it does not frame its project as re-educating men about masculinity. There is little discussion about the ways masculinity is defined in different ethnic/class groupings or between locals and mainlanders. The program is inspired by a radical feminist commitment to an understanding of battering as a social and cultural phenomenon related to patriarchy rather than the ethnic, racial, and class contexts of this violence (see Rodriquez 1988). Yet the group is highly culturally diverse and largely working class and poor, with many on welfare. Despite continuous efforts to have local people and non-whites as group leaders, most of the male and female facilitators during the 1990s were white, originally from the mainland although usually long resident in Hawaiʻi. Most speak a mainland dialect rather than the local pidgin common among participants. Looking at the way men in a batterer treatment program talk about their violence and justify or deny it provides a window into their continual construction and reconstruction of masculine selves performed for the audiences in the room and outside. Many of these examples are from the early 1990s, when the idea that gender violence was an offense was still quite new to the participants.

References to masculinity are a common aspect of group discussions, and play strongly in the excuses and justifications that men offer for their violence. For example, a male facilitator suggested that the purpose of battering is to intimidate and punish, and a local part-Hawaiian man who works as a carpenter replied, "What do you do when you got no control? You gotta have control over your wife. Look, we gotta all pay taxes to the government. The wife and kids they gotta pay you too, gotta have respect, right?" (November 14, 1991). Here the inescapable duty of paying taxes is equated to the duty of the wife to her husband. This man says that the cause of battering is weakness. Later he observes that, for him, male privilege is based on the Bible: "Woman made as a helper. She help you. God created man first and woman after. It's God's will. This is why we screwed up today – women are the king. When you go against God's will it gets screwed up" (November 14, 1991).

There are several recurring modes of justification for the violence which the men present to the group. First, they deny that their violence was extreme, excessive, or repeated: "I only did it once, just a little. This is the first time I hit her." These statements do not attempt to justify the violence nor do they display pride in the violence as a form of discipline and control. Instead, they serve to distance the speaker from the realm of "extreme" batterers. Some men differentiate themselves from the other men on the basis of their lesser violence. One man told me that he was not like most of the other men: for example, another participant tied his wife to a chair and beat her for several hours: "Now, *he* was violent." Another man said that he did not really belong here and should be in a different group without so many extreme people. He was angry that the police treated him just like every other person, putting him in handcuffs and having the lights going near his house. He was just sleeping on the couch, he maintained, and his wife called the cops. He never intended to hurt his wife, and now she is scared of him and he can hardly see his kids. Despite his denial of his violence, this man started the program three times because his partners kept filing TROs against him.

Some men assert that violence is natural to men, even a source of pride and respect, and that women like it. The men talked about being a tough guy and having to keep the toughness up, not backing down, not being different from others (August 1994). Some men describe their past battering in these terms. For example, one man, a Native Hawaiian in his twenties, speaking the local pidgin, said that in the past his idea was: "Be an asshole, be a jerk, bully – one of those macho guys, nobody can push you, act on impulse, be cruel – like I was to my nieces and nephews, make them afraid of me, my look. I don't want to do that anymore" (January 13, 1992; based on my notes, not tape recordings). Another man said, "Most men, when they're young, learn to be macho. Go into the service, learn to kill. It is hard to learn different" (January 13, 1992). These comments suggest the existence of constructions of masculinity which underlie their violence, although they may also feel shame and regret at the extent or nature of particular incidents. They also express some satisfaction at the effects of new techniques they are learning. For example, a Native Hawaiian man said that he was having better communication with his partner: "After she asking me things come better. I feel proud like that" (November 21, 1991). Another man said, "Do you let your old lady go anywhere she wants? If so, you will be shamed" (July 20, 1992).

One man claimed that "Men in certain countries think they have the right to batter women, that they are their property. There is a shred of this among all men" (July 8, 1992). A man described his violence this way: "She seemed too scared to leave – I go to her mother's house, go to her father's house – I am a hunter, I got guns" (January 16, 1992). Another man said, "She asked for it. She likes it. I need to prove I am a man" (January 7, 1992). A young man said that his partner liked it when he gets angry and she asks for it. "I need to prove I am a man. Maybe she try to make me mad so she can tell you guys [directed to the facilitators]" (January 7, 1992). He said his partner got mad because he was looking at girls, and she just slammed the door. If she hadn't slammed the door, he said, he wouldn't have hit her but he did it to show her who was boss (January 7, 1992). One young man told a group that he thought women found macho men attractive (November 12, 1991). On the other hand, going to the program undermines this masculinity: "They say you are pussy-whipped" (January 17, 1992). When told that the purpose of the program is to change beliefs, one man said, "We'll come home and say 'yes, dear.' And our wives will come here and say, What did you do to my husband?" (January 17, 1992).

Men often present themselves as entitled to power because of their economic roles: "Women should stay home and take care of the house. Men are the breadwinners" (January 7, 1992). Men talk a lot about the importance of having women at home when they come home from work, expecting them to have a dinner cooked and feeling frustrated and neglected if they don't, especially if they saw their mothers doing this for their fathers (July 26, 1993). Yet the intake information from the program reveals that many of the women are supporting themselves by working or welfare and the men do not have significantly greater income. The men are often dependent on women for support. These images of legitimate violence reflect cultural ideals rather than practices.

For many men, violence is a justified reaction to women's provocation and resistance to their control. A woman's failure to obey insults and humiliates the man so that he must assert his authority over her. Violent behavior is redefined as a reaction and is therefore justified. Men did not talk about their violence as discipline, but often described it as a reaction to women's misbehavior. A middle-class white man said, "When I don't get angry like my father did, I feel I'm not doing right" (July 8, 1992). Another said he beat his wife to show her he was angry and that "I'm the man"; she had no right to get mad but he did: "I never do nothing wrong" (January 7, 1992). One group produced the following list of reasons for violence:

she always picks on me
she hit me first
she's always flying off the handle
drugs/booze
she doesn't trust me
mouthing off
nagging
yelling
being made an ass in front of friends
treated my kids differently than hers
she complained

The language of masculinity was used to justify violence in these situations. "If women want equal rights as men, they have to take it like men" (July 8, 1992). "Women are violent, women provoke fights, it takes two to have a fight" (July 8, 1992). One man (married three times) said: "Men want their house in order, and see her as a fixture there. And if she makes trouble, she disturbs it. This is natural, that's the way things are" (July 8, 1992). A relatively educated white man presents a similar perspective: "Men are emotionally dependent on women, but they don't like to admit it. I get upset when she is moody and pregnant." He notes that when her attention shifts to the unborn child it is hard for emotionally dependent men (July 8, 1992).

Some of the group participants deny responsibility for their actions, claiming that "it just came over me. I can't control my feelings, it just comes on me, don't know why. I do impulse things, snap fast" (January 14, 1992). Another man said, "Before we learn this we never know nothing where all these things come from – actions, feelings – we just act, hit first" (January 23, 1992). Some naturalize violence, drawing connections between physiological states (high blood pressure) and violence as a release of that pressure. One 50-year-old man with a local accent said:

> I lived a violent life. It is a natural thing for me. I just go into a situation and it happens. My philosophy is, you mess with me, I warn you. Next time, I just do it. She knew this in Honolulu. I was as surprised as she was that I kicked her. [The woman he kicked in the head died 10 hours later of a blood clot in the brain.]

One of the other men in the group objects to this account, saying:

> In every person I ever hit, I choose where I hit 'em. I do little punches. People pick their shots.

The other man continues:

> But it just happened. Neither of us realized how serious it was. The lawyer said I had a good chance to get off. My son says, "I want to be just like you when I grow up, only thing is, *I don't want to kill my wife. I sure miss my mom.*"

Violence against women is also linked to images of masculinity and power which are rooted in distinctive ethnic and class cultures. An older man links his violence to sexual attractiveness and his proudly asserted identity as a Native Hawaiian man (July 21, 1992). He has eight children aged 10 to 22 years. The *haole* (white) wife is his second wife. The family lives on ancestral Hawaiian lands on a beach in a makeshift shelter. A significant number of families live this way on land which is designated as Hawaiian Homelands. After commenting that a slap is "Hawaiian love" (a common phrase), he said:

> Who's not afraid of one Hawaiian who act like an asshole? I'm born here, raised here, on my own land. I'm kama'aina.[8]

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[8] This term means native, person born in Hawai'i.

The female facilitator queries, "What about her rights?" He replies,

> She doesn't have any. She's a haole, I took her away from a haole husband, so she likes me better. That's why they call us Hawaiians. We don't steal wives, they come to us. Don't even have to play slack key.[9]

The facilitators constantly battle the resistant talk, trying to tame and control it while the men assert their own images of masculinity.

Laughter and resistance

In the conversation about masculinity, some men resist the model presented by program staff, instead making jokes and saying things they know will be provocative to the facilitators, delighting and amusing the group. There is a good deal of joking and laughter in most group meetings. The joking among the men refers obliquely to another cultural world in which this behavior is acceptable, or at least is a way men bond together against women. The undercurrent of humor implies a different set of cultural assumptions about masculinity, not accepted in this sphere but still resonant in others. Sometimes one person becomes the center of these joking resistances, saying things the program leaders disapprove of but eliciting laughter from the group.

Laughter often follows remarks about domineering masculinity addressed to the female facilitator. For example, when a female facilitator asks what kind of tactic it is when a man asks his partner to do something, a participant replies "male privilege." When she asks what he could have done better, he replies, "Slap her face" and laughs (November 5, 1991). Later in the session, when he is reporting what happened to him that week, a young man says, "I slapped my old lady and punch her face," and laughs. When the discussion turns to the way some men use the Bible to justify male privilege, one man says that God made man and man was there first; it was woman who made the first mistake. The group agrees and laughs at this (November 5, 1991). A Portuguese man says he was drinking tequila and his wife didn't want him to drive, but he insisted and was weaving a little bit, at which all laughed (July 21, 1992). The female facilitator says, "This is dangerous, laughing minimizes it." He replies: "The next day she said cars were getting off the road around me. I was just driving with my head out the window. I don't remember much. I had experience driving cane trucks in the past, so I had experience. Now I see I should have let her drive." When the female facilitator uses the term "lickins" they laugh. The male facilitator talked about a man who was now comfortable hanging the laundry outside to dry, and the men laughed a lot at the image (August 1994). One man was quite vocal about his beliefs that men are men because they have "the balls" and that women were made to obey their men. "I have my opinion," he says, "you have yours, for one year I have been hearing yours and you can't make me believe yours." The female facilitator agrees that she can't make anyone believe something else, but that she wants him to be honest about why he believes what he does. The other guys laugh a lot at his comments (August 23, 1994). He keeps bringing up the fact that his partner kicked him in the balls: "what was I gonna do, just stand there?" Yet this man also admitted raping her, breaking her bones, and using degrading verbal abuse to her (August 25, 1994).

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[9] This refers to a style of music played on the guitar that is unique to Hawai'i.

But, some of those who stay to the end of the group talk about change, again in terms of masculinity. One Hawaiian man, who lives in a camp on the beach, and claims to be very tough, says, "I let this fucker live because of this class." He had a very violent past, but now thinks that the tough thing to do is to walk away from fights. "Before, I slap anyone who come in my face. Now I walk away, got the knowledge to walk away when I feel the tensions. I like that part." Another commented, "I never thought about all of this before – I never took it down. I just did things. And it is a matter of beliefs" (January 14, 1992).

Masculinity is far more complicated than the vision which the program is trying to teach. In the face of its essentialized, uniform image, these men act out a subversive counterpoint of other ideas of masculinity, ideas which require obedience and respect from women, and tolerate violence or yelling when these are not forthcoming. At the same time, they endeavor to locate themselves within a legitimate masculine space within the program by presenting themselves as engaging in only minor violence, a necessary response to a woman's lack of obedience or respect. They claim to do this only rarely and when the woman makes it necessary. When such an image jars too sharply with other facts known to the group, the men say they don't understand their feelings and can't control them.

Excessive violence is a matter of cultural meaning and interpretation, of course. In bars or beach parties, some violence against partners is culturally approved, but not in court or the ATV program. Thus, the men must navigate a world in which they simultaneously seek to justify violence in terms of their partner's behavior and deny that they are often or excessively violent. Oddly, they both claim their violence was justified and that it is only an occasional and chance event and not really a basic characteristic of their personalities. Some present themselves as unable to stop themselves.

The stories they tell about their violence are clearly performative events, directed to the audience of the facilitators running a court-mandated program and to the other men in the program. The group leaders provide a distinctive image of masculinity based on ideas of gender equality and respect, yet the participants counter with their own, subversive, notions that women respect men who assert control over them through violence, that the violence is simply their response to women's provocations, and that they are in any case powerless to control their rage. There is a class dimension to this change: the image of masculinity being advocated is more characteristic of the educated middle class in this town than the working class and the poor. Humor and silence represent two potent modes of resistance to this reconstruction of masculinity, building on the history of class and ethnic resistance to *haole* authority and control. Despite the obvious resistance of the participants, however, for some the discussions in this program provide an appealing vision of negotiated gender equality.[10]

Changing Forms of Control

By the end of the twentieth century, the feminist batterer intervention programs which labeled batterers as criminals and confronted them with their violence were being displaced by more therapeutic programs which focused on improving self-esteem, understanding feelings, and making choices. This transformation was fostered by the closer connections between violence programs and the state. These changes in modes of managing gender violence are characteristic of more general changes taking place in the transition from an industrial to a post-industrial society. In the last few decades, new forms of regulation based on self-management have widely displaced older systems of discipline based on punishment. While courts in the nineteenth century punished offenders by imposing fines, those of the late twentieth serve as conduits for a wide array of therapeutic interventions, all of which strive in various ways to induce the defendant to participate in transforming himself and promise him greater autonomy and control over his or her life (see Rose 1999).

Post-industrial society relies on an extensive apparatus of traditional forms of incarceration and punishment as well, but prison is largely reserved for offenses which threaten strangers (see Ewick 1997). For men who batter women, the prison is held at a distance, replaced by psychotherapeutic encouragement to learn about one's feelings and to take control over one's life, with the reward of having better love and better sex in intimate relationships.

The new disciplinary techniques work on persons rather than actions, seeking to reform them through rehabilitation and repentance. Disciplinary systems incorporate a broad range of therapeutic and group discussion techniques ranging from batterer intervention programs to alcoholics-anonymous-style self-help meetings (see Rose 1989; Valverde 1998). Some are designed to reform by forcing the body to follow an orderly sequence of activities in work and everyday life while others reform through introspection and insight, requiring consent from the subject of transformation. As Simon points out, prison reform models from the early nineteenth century already incorporated these two approaches to discipline: one was based on habituation of the body and coordination with the machinery of production while the other developed skills of self-management and self-control and promoted autonomy and integrity (Simon 1993b: 29). These two forms continued to provide alternative models of discipline throughout the nineteenth and early twentieth centuries, but the latter came to predominate. In the late twentieth century, the criminal justice system in the USA has increasingly turned to introspective forms of discipline and self-management (Simon 1993b).

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[10] For a careful and thoughtful analysis of Hawaiian masculinity, see Tengan (2008).

Conclusions

Although Hilo is one small town, its changing practices of managing wife battering parallel those of big cities and exemplify shifting forms of governance in contemporary industrialized cities in the USA. In Hilo, as in many larger cities, responsibility for control of violence against women has shifted from kin and neighbors to the state. It is the law rather than the family to which these battered women turn. Such a decision is not easy and is often discouraged by kin and friends. Yet the skyrocketing number of complaints shows that the turn to the law is happening in many parts of the United States. It took a protracted struggle led by a powerful social movement to increase the severity of punishments and to develop and implement civil protective orders. Many judges still question their validity as a legal procedure and police are often lax in enforcing them. Overworked prosecutors ignore TRO violations. Yet the trilogy of punishment, safety, and reform mechanisms provide survivors of violence more opportunities for support from the state.

In Hilo, as well as in large industrial cities, governance of everyday behavior by the law is shaped by inequalities linked to class and ethnicity. Those who end up with TROs or in batterer treatment programs are typically the poorest and least educated segments of the male population, disproportionately members of colonized and disadvantaged communities. These mechanisms increase the safety of women but also increase control over the poor. Protecting women from battering enhances discipline over men who are already the target of state systems of control. Wealthier men in Hilo also beat their wives (although this is hard to find out in any systematic way), but they very rarely appear in criminal court or batterer intervention programs and only slightly more often in Family Court. It is largely poor men who are sanctioned by the law. Privileged batterers usually escape.

The mechanisms of punishment, safety, and reform are interlocking. Each operates only in conjunction with the others and can be understood only within the matrix created by the whole system. None could function as well on its own. Men would not attend ATV unless required to; two days in jail have little impact on helping men to rethink masculinity; requiring a batterer to stay away from one victim leaves him/her free to hit the next one. Spatial separation without criminal penalties for violating it has little effect. The modes of intervention are not simply shifting from punishment to safety to therapy, but there is a pattern of growth and layering. The new is added to the old which then redefines the meanings and operation of both. Punishment forms the bedrock for the newer technologies of reform and safety. This is not an evolutionary relationship but an intersecting one.

And to some extent, this pattern is global. The invention of the TRO for gender violence was quickly followed by its rapid spread through the USA and globally. It is the cornerstone of the 2006 law to control domestic violence in India discussed in Chapter 2. There is now a global diffusion of batterer intervention programs, no-drop policies, and restraining orders. These new technologies of controlling gender violence circulate transnationally within cities large and small. They have recently been joined by a newer approach: the identification of gender violence as a human rights violation. The next chapter shows how this happened and its implications for understanding and preventing gender violence.

Questions for Further Discussion

1. Compare the following three interventions in domestic violence: punishment, safety, and reform. What are the goals of each strategy? How are they different, and how are they connected? Which groups are most affected by these interventions? Do they address interpersonal or structural violence (see Chapter 1)? Explain.
2. Play the role of a court judge, one who batters, and one who has been battered. How do these actors conceptualize violence? How does each player view the role of the law in the management of domestic violence? Do women and others who have been battered gain or lose control of their lives by turning to the law? Explain.
3. How is masculinity performed in the Hilo example, and how is it related to gender violence? Is its performance unchanging over time and across race, ethnicity, class, and age? Explain.

Video Suggestions

Macho, by Lucinda Broadbent (Scotland/Nicaragua, 2000), 26 minutes

Filmed in the context of political scandal in Nicaragua – when in 1998 Sandinista revolutionary hero and President Daniel Ortega was charged for the rape and battery of his stepdaughter, Soilamerica Narvaez – *Macho* gives voice not only to the victims of gender violence. Through the internationally acclaimed organization, Men against Violence, we meet male victimizers who unlearn the rules of male chauvinism (machismo) in support groups and through local activism. From the streets of Managua to workshops in San Francisco, California, men challenge the sentiment that sexual, physical, and mental abuse is part of the repertoire of male power.

Sentenced to Marriage, by Anat Zuria (Israel, 2004), 65 minutes

Divorce in Israel is granted not according to secular law, but by religious courts. This film gains rare access to the divorce hearings of three women who have been denied divorce by rabbinical courts for as many as five years despite their many attempts to end their marriages sooner. While in legal limbo, women are forbidden contact with other men, but husbands are allowed to live with other women, withhold child support, and begin new families. Out of desperation, some of these independent, well-educated, working women buy a divorce from their husbands for large sums. The law, for them, becomes an instrument of their disempowerment.

Sisters in Law, by Kim Longinotto, co-directed by Florence Ayisi
(Cameroon/UK, 2005), 104 minutes

In the town of Kumba, Cameroon, domestic violence is common. There has not been a conviction for spousal abuse for 17 years. But two women – State Prosecutor Vera Ngassa and Court President Beatrice Ntuba – encourage survivors of domestic violence to fight the pattern of abuse, despite pressure from their families and communities to remain silent. With compassion and wit, these two lively progressives impart wisdom, justice, and stiff sentences to those convicted of perpetrating all forms of violence in the home, including rape, spousal abuse, and child abuse.

4

Gender Violence as a Human Rights Violation

Defining gender violence as a violation of human rights is a relatively new approach to the problem. In the late 1980s and early 1990s, the global feminist social movement worked to introduce this idea to the human rights community and, by the early years of the twenty-first century, succeeded in establishing the right to protection from gender violence as a core dimension of women's human rights. This is another example of the process described in Chapter 2, in which a social movement defines a problem and generates support from legal institutions and states. After describing how gender violence became a human rights violation articulated in formal documents of international law, this chapter discusses one of the most important new issues in the gender violence and human rights field, that of the trafficking of sex workers.

In the early 1990s, a transnational movement coalesced around the idea that violence against women was a human rights violation. It built on the work of activists around the world who set up shelters, counseling centers, and batterer treatment programs, often borrowing from each other and adapting ideas from one context to another. Anti-rape movements began in Hong Kong and Fiji in the late 1980s and early 1990s, for example, and concern about rape in police custody galvanized activists in India in the mid 1980s. American activists developed anti-rape movements at the same time. The defense of women who killed their batterers also became a rallying cry in the USA and in other parts of the world. In the late 1980s and early 1990s, feminist movements in Europe, the United States, Australia (Silard 1994), Argentina (Oller 1994), Brazil (Thomas 1994), India (Bush 1992), the Virgin Islands (Morrow 1994), and many other parts of the world developed strategies to protect women from violence in the home through shelters, support groups for victims, and criminalization of battering. The need for intervention was widely recognized in the nations of the global south as well as the north (e.g. Ofei-Aboagye 1994).

During this period, strategies, programs, and information circulated globally. One of the most widespread approaches was embodied in the "power and control