Criminalising violence against women: solution or dead end?

Laureen Snider argues that criminalising sexual and domestic assault in Canada has delivered real symbolic benefits to some women but has tightened the noose of coercive control for marginalised groups.

Criminalisation has increasingly become the preferred remedy of the neo-liberal state when faced with social conflicts, deviance, and disorder. Thus, when national and international feminist movements first forced governments to acknowledge the extent and severity of rape and domestic assault against women, passing more punitive criminal laws was seen as the 'obvious' solution. By 1990 a number of countries, particularly English-language common law democracies such as the US, Canada, Australia, and New Zealand, had adopted mandatory minimum sentences, mandatory response, arrest, and charging provisions to combat wife battering, as it was then called. Some—not all—feminist groups backed these criminalising initiatives, seeing them as the only way to end decades of misogyny and force police, judges, and courts to take domestic assault seriously. Rape laws were similarly 'rethought'. Canada's response was typical: following parliamentary hearings where law enforcement agencies pushed punishment agendas, new sexual assault laws came into force on 1 January 1983 (Snider, 1985). Rape was renamed 'sexual assault', a feminist-supported change to emphasize its violent rather than sexual component, and classified into three categories, from Simple (Type I) to Aggrevated (Type III). To lessen the trauma of the courtroom process for victims, laws barring defence attorneys from questioning victims on their sexual history, mode of dress or mental state were passed. To increase chances of conviction, mitigating defences for the accused were weakened or repealed. Longer maximum plus new minimum sentences facilitated long periods of incarceration, particularly for Type III sexual assault (Roberts, 1991).

Thirty years on, the results are mixed. On the positive side, common sense beliefs about the culpability of victims of sexual and domestic assault have changed. Victims themselves have been empowered: they are less likely to see themselves as causing the attack, more likely to feel 'entitled' to 'their day in court'. However dominant cultural agendas of revenge encourage them to pursue emotional 'closure' by seeking maximum incarceration. Assault complaints today are taken seriously by police, prosecutors, judges, and juries—particularly when the victim is middle class, white, gainfully employed or still at school; living with her parents if under 20, or a 'chaste woman', 'faithful wife', and 'good mother' if living with a man (Comack and Balfour, 2004). However, the single mother on welfare, the Aboriginal woman on a reserve, the runaway street kid, the prostitute—women without the moral, social, and economic capital to force criminal justice to take them seriously—still face scepticism and demonisation.

However, the value of criminalisation must be judged, first and foremost, by its impact on the women the laws were intended to help, the victims of domestic or sexual assault. And research shows few benefits here. Reformers apparently forgot that criminal laws must be interpreted by criminal justice personnel, and their interpretation is informed by complex, multi-faceted social, economic, political, and cultural factors. Thus, counter-charging practices are now common in the courtrooms of North America. Counter-charging refers to the practice of charging both parties in a domestic assault situation. In the typical case a woman, often visibly injured, has called police, but when they arrive the male partner complains, 'She hit me too'. Counter-charging is enabled by law, facilitated by backlash against feminist claims by police and court personnel, and driven by the culturally created need for criminal justice to appear gender-blind. Similarly, mandatory response and zero tolerance statutes have exposed victims of domestic assault to contempt of court charges should they (almost always 'she') refuse to testify against the assailant. Indeed, the first person to serve prison time under Canada's mandatory charging provisions for domestic assault was a woman in exactly this position (Snider, 1998).

Other problems are created by the equality discourses dominating western cultures today. Multiple media sources feed beliefs that women today have not just caught up to men, they are now differentially advantaged, hogging more than their share of economic, social and cultural resources. 'And if they are so bloody equal', the rhetoric goes, they must be equal in all respects. Thus, if 'wife battering' is a problem, 'husband battering' must be too. If young men act out and create social disorder ('the lads'), there must be a similar number of young women doing the same ('the ladettes'). If a certain percentage of

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men sexually abuse children, this must be matched by an equal number of predatory women. These beliefs dominate practice, policy and rhetoric today; the dearth of supportive empirical evidence (Jiwani, 2000; Statistics Canada, 2005) is explained by 'male chivalry' (reluctance to report) or by women's superior ability to hide their crimes. (The latter is reminiscent of long-discredited claims by criminologists a century ago, who argued that the clitoris-concealing, menstruation-hiding and orgasm-faking anatomy of women made them 'naturally' better at deception.) Zero tolerance provisions, therefore, have been interpreted to mean that men and women inflict equal social harm, are equally dangerous and equally culpable.

A third unwelcome effect, particularly for the poor and marginalised groups most often targeted by mandatory criminalisation, is the risk of intensified state intervention. Forced to call police to stop an ongoing attack—because police are the only public agency available 24 hours a day—victims unwittingly open themselves up to compulsory state scrutiny. If there are children in the home, state workers will assess the female partner's competence as a mother (typically through the middle class lens of the worker) and housekeeper (unwashed dishes and dirty houses count against her not him). Her sexual habits, buying habits, appetites and lifestyle will be scrutinised for potential drug (ab)use. She may be ordered to undergo compulsory relationship counselling, may face changes in her welfare entitlement, or even lose custody of her children. If the woman is an immigrant, the consequences of inviting the state in can be even more serious: if she is economically dependent on a partner whose employment is jeopardised by the time and expense of compulsory criminalisation, or if the immigration status of either partner is dodgy, the entire family may be deported.

Some argue that the policies, nonetheless, have succeeded. Several studies show that police today are less likely to trivialize assaults, more charges are laid, attrition rates have been reduced, and 'more appropriate'—that is longer and harsher—sentences have become the norm (Ursel, 1991). However, this increase in punishment has been both race and class-specific: most of those charged are young, poor males from minority groups. In Manitoba for example (where the Ursel study was done), particularly sharp increases occurred in the incarceration rates of impoverished Aboriginal men. This is very troubling, because we know that the marginalised have no monopoly on sexual or domestic assault. *But* marginalised men are very much the easiest for law enforcement agencies to discover and convict. Often forced to lead public lives in crowded housing compounds and seek their entertainment on the streets, they have no gated suburbs or private social clubs to protect their privacy, no expensive lawyers, and credentialled character witnesses to delay prosecution and prevent conviction.

And what are the results of their encounters with criminal justice programmes and personnel for the men themselves, 'the perps', in courthouse lingo. Apart from the economic costs for the society—which are massive—do criminal justice remedies 'work'? Do they make the offender less likely to act out in a violent manner? Are subsequent attacks prevented or deterred? Unfortunately, the one undisputed reality of incarceration is that it makes those subjected to it more bitter, resentful, misogynous, and significantly less employable. It is hard to argue that subjecting marginalised populations to public censure and stigmatisation, and/or to jail, 'mandatory counselling' or 'compulsory therapy', is a step towards social justice. It takes those who have suffered the injuries of class and race all their lives and turns them into statistics—data which are then used to 'prove' the system is operating as it should.

To conclude: policies mandating arrest and punishment do not provide practical solutions to the real-life problems of women *or* men. They do not ameliorate the day-to-day realities of battering, rape, and assault, and frequently they increase the burden by adding a public level of suffering, at the hands of the criminal justice system, to what is endured at home. While scapegoating marginalised men and poor families through universal-sounding 'get tough', 'zero tolerance' rhetoric makes a good sound-bite, it fails by every other criterion. ■

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