

**The differences in application of legislation and criminal justice practice to address issues
experienced by victims of private versus public violence.**

Dr. Hannah Scott, Ontario Tech University

May 4, 2021

Dr. Hannah Scott, Ph.D. Professor

Faculty of Social Science and Humanities,

Ontario Tech University (formerly UOIT)

2000 Simcoe St. North (Downtown Campus, Bordessa Hall)

Oshawa, ON. Canada. L1G 0C5

Email: hannah.scott@ontariotechu.ca

Phone: 905-721-8668 X2653

The differences in application of legislation and criminal justice practice to address issues experienced by victims of private versus public violence.

Executive Summary

This paper examines the violent landscapes of public and private violence, noting the historic preference for concerns with public safety, while diminishing the threat of violence for those being victimized in private spaces. Crimes of private violence have a gendered pattern, affecting predominantly women, children, and elderly, often living with offenders. As such, crimes in private settings have several well documented reporting challenges faced by victims, given the relational and social proximity to the offender. This paper argues that victims of private violence are underserved by the criminal justice system. Evidence is provided that shows that more than one quarter to three in 10 calls for service are for some form of private violence, representing a significant proportion of calls for violent crime. It is also well known that calls concerning private crime are often repeated to same locations. Repeat calls for police are a significant risk factor for homicide vulnerability in private settings.

This paper questions the assumption that private violence is not associated with significant public risk and that private safety risk factors are less severe or assessed as lower risk than threats to public safety. As partners within the criminal justice system in helping identify and provide evidence for various others, victims need to receive support in order to participate fully in the process. One legislative tool which may be helpful is to design policy that

acknowledges repeat offender patterning specifically targeting victims in private settings, often grooming victims to accommodate to danger by using methods of coercive control. As such, applying similar rules to both victims of public and private violence in these cases, such as identifying repeat private violence offenders as repeat or serial offenders, may help to stem some of the legislative inequities that exist between violence landscapes.

Acknowledgements

This paper was supported by a grant from the Office of the Federal Ombudsman of Victims of Crime and the help of my Research Assistant, Samantha Chopik who worked diligently in supplying the raw materials for this document.

The differences in application of legislation and criminal justice practice to address issues experienced by victims of private versus public violence.

Introduction

Victims of crime remain one of the most vital parts of the criminal justice process in the identification, apprehension, extraction, and sometimes even rehabilitation of offenders. They often are the people who hold keys that open the doors to the criminal justice system. Victims are the first to call police, help the police by offering their victimization experience as evidence, are expected to defend that experience to police, attorneys, and other criminal justice system personnel, and are often exposed to repeated questioning by numerous others. They are asked to testify if needed to help the system seek justice and may offer victim impact statements at bail, sentencing, and parole hearings. They are a full partner in the criminal justice system, without which the system would significantly slow and/or grind to a halt in criminal detection, apprehension, and extraction. Yet despite this essential need for the victim to participate in the criminal justice system, they are expected to partner with minimal supports. When violence occurs in private spheres the victim experience is compounded leaving victims more vulnerable, often suffering from complex trauma (Dokkedahl, Kristensen, Murphy, & Elklit, 2021; Gilbar & Ford, 2020; Naughton, O'Donnell, & Muldoon, 2015; Smith, Patton, McLeigh, & Spalding, 2016; Wamser-Nanney & Vandenberg, 2013), less able to report the crimes committed against them (Conroy, Burczycka, & Savage, 2019), with fewer supports to seek safety and justice (Meyer, 2011) when compared to those victimized in more public landscapes.

Criminal justice systems rely heavily on more *overt* “evidence” often seen in the forms of testimony, physical damage to bodies, and eyewitness evidence of harms. This ignores what most victims experience as private violence. In private violence, repeat offenders (i.e., abusive parents, partners, children, other family, etc.) often seek to groom victims (Dietz, 2008) via isolation, emotional abuse, control, coercion (Gill & Aspinall, 2020; Start 2007) and other forms of *covert* violence, to gain continued access to a small number of victims. Covert tactics are less risky for offenders, as they are almost undetectable under the current system of laws which rely almost exclusively on *overt* evidence.

The facts set forth in this paper are nothing new, in that they rightly identify several trends around private violence that are relatively well known. Victims of violence seek protection and justice inside a system initially designed to serve more traditional patriarchal interests of victims, most often male, being victimized in public spaces away from home. Victims of violence in private spaces are predominantly women and children and are less likely to call police than other victims of violence for a variety of reasons which are well documented (Finkelhor, Wolak, & Berliner, 2001; Ha & Colle, 2013; Voce & Boxall, 2018). When victims do call police, more often it is after a relatively long history of unreported violent victimization and, therefore, are underserved by our criminal justice system. This paper examines the current notions of public and private violence, and how the criminal justice system responds to private forms of violence (e.g., family violence such as child maltreatment, intimate partner abuse, and elder abuse) as isolated incidents, rather than repeat acts of violence against a smaller set of victims. This repetitive exposure to violence may not be recognized as being as dangerous as other more public forms of repeat offending.

This paper also seeks to reframe criminal justice system terminology using concepts of

public and private violence, rather than terms such as “domestic violence,” invoking a more gendered neutrality in standard terms. More specifically, it will put forth the argument that “domestic violence” is more accurately “private violence” as it is both private in space but also in nature. This document also seeks to reframe terms such as “a history of violence” when referring to incidences of private violence into more accurate descriptive terms such as criminal acts carried out by “repeat offenders” and “serial offenders” which are more often used outside private spheres when dealing with frequent calls for service to public locations. It will also reexamine the application of when and how the concept of “risk to the public” is used when dealing with sentencing and other risk assessment documents and reframe how the criminal justice system thinks about “risk to reoffend.” The reader will be challenged to consider what is meant when public risk is assessed in private violence cases. This paper will attempt to reframe discussions to reflect the seriousness of private violence, which traditionally has been downplayed as a public harm. Finally, recommendations on how to more effectively identify, address, and respond to issues of private violence in Canada will be offered. It is hoped that this re-examination and reframing of ideas will continue to move the needle towards increasing support, both within and outside the criminal justice system, for victims of private violence.

Historical practice

Terry (2016) argues that how men and women ‘do gender’ is “...typically a product of history, culture, and current gender ideology” (Terry, 2016, p. 74). Patriarchal power restricts roles of men and women resulting in structural divides which, in turn, continue to establish unequal and hierarchical social power structures. This is amplified and/or compounded when additional intersectional identities, such as race and sexuality are factored into social hierarchies.

This author effectively argues that these gendered processes serve to perpetuate and reinforce existing constructions of patriarchal power. To illustrate, this male bias is perpetuated in everyday use of titles and names for men, women, and children, specifically for women and girls. Spender (1980) notes that the term Mister (Mr.) is derived from the title “Master.” Married women were identified as Mistress (Mrs.) inside the home who were traditionally expected to change their last names to the Master’s and in public be addressed by the Master’s name (e.g., Mrs. John Henry). Women who were not married were assigned the term “Miss” identifying them as eligible for marriage, while single men retained their title as Master throughout their lives regardless of marital status or age. Although more women are opting for the title of “Ms.” so as not to reveal their marital status in their titles, the title remains a derivative of Mrs. or Mistress, and as such remains a designation that suggests women are not Masters, but something “other.” This continued effort to address this historical patriarchal influence is also reflected in the efforts of Common Law systems to address the victimization of targets of private violence, who continue to be, predominantly, women and children.

For example, men historically, and to a slightly lesser extent currently, are more likely to occupy public spheres working outside the home. Male public engagement is reinforced in Common Law, initially designed by governing men, directing a legal system that was largely concerned with the criminal acts of men acting out in public spaces. Therefore, protecting men from other men, in public, became the foundation upon which the legal system is based. Historically, under Common Law, men specifically were equal under the law and assumed to be of equal stature, at a time that women were not able to participate in public life. As equal rights of women were entrenched in various documents in numerous countries under Common Law, women initially became assumed under the word “men” and therefore granted equal rights to

men. Women essentially were treated as men under the law, despite having different lived experiences, most notably living within and under patriarchy. The continued application of law based in patriarchal world views has resulted in a continued mismatch in dealing with the victimization of women, children, and elderly, who are largely victimized in private spheres by male offenders well known to them (Conroy, Burczykca, & Savage, 2019).

Delineation of space under male dominated social systems

Traditionally, under male-dominated systems, the home is promoted as a place of safety and rest. Men returning from work, outside the home, arrived at a place of relative safety when compared to the threats they faced in the outside world. The roles of women as traditional caretakers, wives, and mothers was relegated to the home helping to further delineate women's traditional role ascriptions to the realm of family and the private sphere (Boyd, 2016, p. 13). Boyd (2016) comments that men sought to protect the private sphere from the public sphere, over which they had domain. Although private space was relatively safe for men, this space both traditionally and currently can be a dangerous place for women and children. Boyd (2016) offers that this has resulted in a failure of the laws designed initially to protect the public, at protecting people living primarily in private spheres.

For example, early legislation encouraged the corporal punishment of women and children "behind the veil" of public life (Stedman, 1917). Under Common Law, men were able to "chastise" their wives, or implement "minor correction" as he would his children, with the caveat that the switch used to punish his wife was no bigger than the width of the abuser's thumb (Stedman, 1917). This legislative guidance then moved into the common vernacular as "the rule

of thumb.” Men were further directed that they should chastise their wife should her conduct “require it” in such a way that it should “not do serious bodily harm or inflict permanent injury” (p. 243). Stedman further notes that in addition to being the “duty” of the husband in the dealings with his family, that in an earlier ruling by Chancellor Kent in the United States, offered that it was important that he do so in order to “... ‘to draw a veil over dealings between man and wife,’ the idea being that a little wholesome chastising, to ‘make her behave herself,’ privately administered, would make less noise and scandal than the publicity of a court” (p. 243). Men’s private lives, and therefore their lived experiences of women, were to remain in the private domain.

In another example, prior to legislative changes in Canada in 1983, husbands who forced sexual intercourse on their wives could not be charged with rape. It was assumed that sexual access of married men to their wives was absolute, essentially allowing for complete sexual access of husbands to their wives, including rape and other forms of sexual assault (Hinch, 1988). In both examples of patriarchal legal practice above, there was no such reciprocal privilege for women. The persistent influence of these patriarchal roots to Common Law continues in the realization that private spheres largely remain unprotected from the public gaze. It is suggested here that laws and criminological theory designed to explain public violence must move “indoors,” or *behind the veil*, to explain more private forms of violence.

Criminological theories, stemming from these same roots, base their understanding and explanation of criminal activity on male delinquency and street crime in public where male youth victimize other males (Naffine, 1997). Therefore, our ways of thinking about crime, and its causes, overlook the experience of victims of violence in private settings, largely considered the domain of women and children. A criminal justice system based on these deep-rooted

assumptions about the nature of crime and criminality, it is argued, is ill equipped to deal with crimes in private settings. Where the criminal activity occurs becomes part of the discourse given the gendered patterning of space. There are strong correlations between social and criminal engagement, the relationship between the offender and the victim, and space in which the criminal activity occurs. Those in closer relationships often share more intimate space.

At the heart of this argument are the geographic concepts of place and space, where place is assumed to be a situated locale while space is more permeable, temporary, and characterized by flow of movement which can be changed by those individuals who traverse through them (Harris, 2018). Space can be conceptually divided beyond the binary categorization of public and private. Geographers also note that space can be hybridized, in a form of continuum, moving from private, to semi-private, to semi-public, and public places. They acknowledge that where we are in space can significantly affect our behaviour (Pain, 1991). Further, feminist geographers have noted how place and space are gendered, often imbued with meaning, embedded inequalities, and social power structures, and in the case of private abuse, violent landscapes (Harris, 2016, 2018). Given that our criminal justice system, and our explanations of criminal behaviour, are largely based on criminal activity in public spaces, issues related to crime prevention, criminal detection, offender apprehension, and extraction become increasingly complicated as we move from public to more private spheres of living.

Prevalence of victimization in private domains

Private victimization is relatively common. According to Conroy, Burczykca, and Savage (2019) there were 60,651 child and youth victims (aged 17 and younger) of police-reported

violence in Canada in 2018. Females in this group were identified as more at risk for victimization (57%) than males (43%). The overwhelming majority of these reports found that nine of every 10 children and youth were victimized in private residences (females = 91%; males = 90%). Both girls and boys were significantly more at risk of family violence when they are under the age of five (girls = 71%; boys 72%) and between six and 11 years of age (girls = 58%; boys = 50%). Physical force was identified as the primary weapon used in three quarters (75%) of all cases within this group reported to police. Disturbingly, over one sixth (15%) had weapons used in their assaults. While both female and male children and youth victims had similar rates for physical assault (143 versus 148 per 100,000 population), the rate for sexual offences was nearly five times higher for female victims than male victims (149 versus 32 per 100,000 population) demonstrating that female children and youth were reported to be sexually assaulted at similar rates for physical assault of all children and youth.

Sexual offenses were less likely to be cleared (47%) than physical assaults (31%), or other offences involving violence or threat of violence (39%). Children and youth were also more at risk for homicide by family members (n=285), when compared to non-family members (n=208), with those under the age of five (57%) accounting for a majority of those deaths. It is important to note that 93 percent of victims of childhood physical and/or sexual abuse did not report the abuse to either police or child protection services before the age of 15. The majority of victims (67%) did not speak to anyone, including friends or family about their abuse. For both females (75%) and males (73%), youth victims of private violence were most likely to share a residence with their offender. Police reports also recorded that one third (33%) of girls and 29 percent of boys, aged 17 and under, were identified as being victimized by a family member.

Intimate Partner Violence (IPV) represented one quarter (25%; Sinha, 2011) to almost a third (30%; Conroy, Burczykca, & Savage, 2019) of all violent crimes reported to police making these calls one of the largest components of total calls to Canadian police services. In almost four fifths of these calls (79%), women, aged 15 to 89 years, were identified as victims and of all violence reported to police by women, almost half (45%) were for IPV. The creation of these reports relies heavily on physical signs of abuse such as indications of use of physical force, or presence of a firearm upon arrival at the scene. Intimate partner violence, whether in dating or more long-term arrangements, remains the most significant threat of violence for women. The majority of victims of IPV (87%) were attacked by a current spouse; half (50%) of victims in IPV calls for service lived in the same residence at the time of the assault and almost five of every six IPV calls for service identified a private residence as the place where victimization occurred. The majority (60%) of spousal homicides in the 10 years after 2008 were preceded by a known history of family violence. Women were over five times more likely to be killed as a result of IPV interactions (women = 0.5/100,000; men 0.1/100,000) than men, and 2.5 times more likely to be victims of attempted homicide by their spouse (women = 0.5/100,000; men = 0.2/100,000). Of all homicides committed on women in 2018 (N = 169), 44 percent were the direct result of IPV; this compares with just 6.6% (n = 319) of men. Women are most likely to be killed by an intimate partner, while men are more likely to be killed by an acquaintance or stranger (Roy & Marcellus, 2019).

According to Stark (2007), in an analysis of calls for service to Connecticut Police showed that “all of the women seeking protection orders had called police at least once and a third had done so from 5 to 10 times” (p. 61). Police data showed that spousal/partner assaults were reported in a minimum of three out of every four cases where those orders were served,

and, in a majority, often repeatedly. Stark also noted in a classic study carried out in the American cities of Kansas City and Detroit found that police had responded to a “domestic disturbance at least once in 90% of the households where a homicide or aggravated assault occurred and five or more times in 50% of the cases” (p. 92-93). Finally, Stark (2007, p. 93) draws attention to an early Canadian study (Jaffe & Burris, 1982) which “found that women who charged their husbands with assault had suffered an average of 35 previous assaults.” Conroy, Burczycka, and Savage (2019) support this finding, noting that 70 percent of IPV cases, reported to large scale Canadian government surveys, were never made known to the police. Risk for serious harm or injury increases when the victim attempts to separate from their abuser (Ornstein & Rickne, 2013). Sinha (2011) shows that 45% of male-perpetrated murder-suicides from 2001-2011 involved a spouse.

Similarly, Walby and Towers (2018, p. 17) analyzed reports of repeat IPV and observed that “...over 80 per cent (83 per cent) of high frequency victims (more than 10 crimes) are women” and that “Almost half (42 per cent) of victims report more than one domestic violent crime within a 12-month period and 85 per cent of domestic violent crimes are series events” (p. 18). Within the criminal justice system, in a majority of these crimes, the accused remains unidentified, and therefore a significant number of incidents go undetected, as the victim is unable, or unwilling, to file a complaint against their abuser to police. Laws that are designed to deal with public violence and street crime, it is argued, are ill equipped to deal with crimes in private settings, where women and children tend to be targeted. Although there has been some social infrastructure built (for example: public awareness campaigns on violence against women, shelter systems, educational programs, case law, and more recently employment policies) to protect victims of private violence largely due to Civil and Women’s Rights movements, which

may be changing perceptions of private violence, it has had little effect on coercive control and no real long-term protection for victims of private violence (Stark, 2007).

With respect to crimes against seniors, often overlooked when discussing private violence, Conroy, Burczycka, and Savage (2019) report that while men are slightly more likely to report being victimized to police (males = 55%; females = 45%), women are far more likely to report that their assailant was a family member (43%), when compared to men (25%).

Approximately nine in every 10 senior victims who were victimized by a family member (females = 92%; males = 88%) were victimized inside a residence. Slightly more women (62%) reported cohabitating with the victimizer than men (58%). Physical force was identified by both men and women in almost two thirds (63%) of cases, reported to police, with women (65%) reporting physical force slightly more than men (60%). In the case of violence committed within private settings, reporting victimization is compounded by many of the same issues that hamper other victim groups in private spaces (e.g., dependency, fear, embarrassment, etc.) suggesting that cases of private violence against seniors are significantly underreported.

In sum, women and girls are more likely to be victimized and revictimized by someone they know, in a private residence, and their offenders are more likely to be family members when compared to men. The offender grooms targets of private violence for long-term access to an individual target, or a small group of viable victims (Dietz, 2018; Farrell, Phillips, & Pease, 1995). Victims learn to accommodate to danger and ignore dangerous cues (Bancroft, 2002). If police are not called within the first instances of criminal offending, the victim chooses not to prosecute, or decides not to show up in court, then the violence is likely to continue (Ventura & Davis, 2005). The system resists acknowledging the seriousness of serial offending against a single victim in private settings preferring, instead, to direct more attention and resources towards

repeat offenders with multiple victims in more public spaces.

Responses to private violence under patriarchal/public design

Current crime prevention and legal options are based historically on patriarchal legal structures and theories of crime derived from the delinquent behaviour of men and boys operating in public, respectively. Patriarchal rights, which considered wives and children as chattel, allowed men to commit acts of brutality to members of their own families and was considered non-criminal (Stedman, 1917). Private crime becomes unaddressed as laws do not reflect the dynamics of private crime, largely committed by men against their families. The inability for the criminal justice system to protect victims of violence in the private sphere reinforces patriarchal discrimination against victims of private violence.

Individuals who carry out private violence are often not considered public threat as evidenced in the traditional handling of IPV cases where men who beat women were often asked to leave for a period of time, or fined, but seldom charged. Under the law, legal practice is evidence-based, historically focused on crimes that take place in public spaces, where judges and/or juries are shown physical items to prove beyond a shadow of doubt that the offender did, in fact, commit the crimes against the victim. Evidence is clearest in the form of “hard evidence” which includes, but is not limited to, documented letters, screen captures, witnesses, recordings of violence or threats of violence and, often most compelling, detailed documentation of sustained injuries as a result of violence. Covert forms of violence, including the use of coercive violence tactics are not collected in these reports in a dedicated manner because they lack “hard evidence” features (Gill & Aspinall, 2020).

When violence occurs, which Stedman (1917) described as *behind the veil* in private settings, this kind of hard evidence requirement becomes hampered. In many cases, the victim is

often the only witness in the criminal event. If other people are present in the private setting, those other witnesses and/or bystanders and/or victims may have ties and/or are dependent on the offender. This complicates traditional remedies such as charging the accused and/or offender extraction, which are easier when violence occurs in public settings, and the victim and offender are relatively unknown and not dependent on each other in any way. Criminal justice systems may be limited, or incapable of addressing the realities of private crime in familial relationships. Because of the repeated access to the victim in a controlled setting, without the watchful gaze of the public view, more covert tactics are often used to control the victim, such as emotional abuse, isolation, intimidation, using children, threatening and coercive behaviour, name calling, 'crazy making,' blaming the victim for their abuse, and controlling and/or withdrawing finances (Pence & Paymar, 1993), otherwise known as coercive control (Gill & Aspinall, 2020; Stark, 2007).

To complicate the criminal justice response, this evidence-based system which emerged out of historical, patriarchal, and cultural origins informs police discretion on scene. When the victim finally summons the courage to call for help, knowing that this may very well put them at increased danger (Ornstein & Rickne, 2013), police arrive using standard protocols looking for physical evidence and witnesses other than the victim. These police act as gatekeepers to the criminal justice system who are looking for physical keys to activate the doors of those who serve within it to bring about justice. In other words, police may not be queued to the more common, covert, and coercive tactics being used by the offender. It is argued here that even if the police suspect coercive control tactics are being used, they are left without effective legislative tools to pursue charges. What charge options they do have are not pursued as finding hard evidence (witnesses, body damage, other forms of documented evidence, etc.) to back these charges is needed for the Crown to prosecute.

To illustrate, Douglas (2012), using semi-structured qualitative interviews of women who had been victims of IPV and had called the police, noted that some women in the study reported that after a domestic violence assault, some police officers at the scene would ignore the IPV assault unless it involved physical assault. One of the respondents asserted that: “[the police officer] also said to me he hasn’t actually sort of done anything, has he? It’s all just threats” (Douglas, 2012, p. 125). Another respondent said “it helped that I had a black eye...and strangulation marks and everything” (Douglas, 2012, p. 127). This study articulates that majority of women’s experiences with IPV, which are coercive in nature (Gill & Aspinall, 2020; Stark 2007) are often viewed as inconsequential to the law. This is reiterated in the Douglas (2012) study when an interviewee claimed that police assumed the domestic violence offence would be impossible to prove because there were no physical injuries, so they did not bother to gather evidence at the scene. In the court system, one interviewee said that the magistrate on her case claimed that the offence committed against her was just the result of two parties that did not know how to communicate. This capture of judicial opinion clearly illustrates how the court system can push matters of domestic violence into the private sphere, suggesting that being assaulted in private settings is a personal matter. Many women in this study also made remarks that if the violence that happened to them had happened to a stranger instead, then the offender would be in jail.

Stark (2007) outlines many different areas of violence against women with a specific focus on coercive control. Stark (2007, p. 5) observes that how men achieve domination over the private sphere, and particularly women, is by “interweaving repeated physical abuse with three equally important tactics: intimidation, isolation, and control.” He discusses the entrapment of women within the home and in their personal lives as:

“hard to discern because many of the rights it violates are so basic – so much a part of the taken-for-granted fabric of the everyday lives we lead as adults, so embedded in female behaviors that are constrained by their normative consignment to women – that their abridgement passes largely without notice... some of the rights batterers deny to women are already protected in the public sphere, such as the right to physical integrity and property. In these instances, law is challenged to extend protections to personal life” (Stark, 2007, p. 15).

He goes on to discuss how many of the harms involved in coercive control are invisible to the law, providing more evidence that this bias of public violence when applied to private settings carries even deeper into the criminal justice system and into the courts.

Murray and Powell (2009), in noting the patterning of female and male victimization as predominantly in private and public spheres respectively, provide examples of policy shifts around domestic violence in Australia during the last twenty years. The authors became concerned with language and how domestic violence is described in both government policy and societal beliefs. Similar to the women’s and shelter movements in the United States (Stark 2007) and Canada in the 1960s and 1970s, in Australia during the 1980’s, domestic violence experiences were only informed by those women who sought refuge from their intimate partners, and “...was widely considered to be a private, individualized matter that was often blamed on the victim” (Murray & Powell, 2009, p. 537). It was not until the late 1990’s that literature surrounding the domestic violence problem in Australia became public. They note that women’s movements and feminist activities that began in the 1970’s were responsible for much of the change surrounding domestic violence policy in Australia. In their arguments, they note the importance of language and how it must be generated and reflect the nature of violence in private spheres. Language, they argue, is also an important facet of the discussion because it can have a

positive or detrimental effect on how this type of violence in the private sphere is perceived by public policy makers.

Hessick and Hessick (2011) discuss the idea that non-stranger/domestic violence offenders could be perceived as less risky than unknown offenders by the criminal justice system because they have mistakenly assumed that familial violence offenders pose minimal threat outside of the specific relationship in which the violence occurred. It follows then that in bail, sentencing, probation, and parole hearings, offenders' *risk to reoffend* may be considered lower risk as traditionally reoffending has been entwined with *risk to the public*. The underlying assumption then is that if there is only risk to one small group that this is somehow less dangerous to the public. This consideration of risk to the public ignores the number of people who are affected by this violence, the developmental impact on children and families, and that private violence can transport from private to public settings. As a result, acknowledging that a specific location has a "history of violence" is not locating the responsibility for that violence on the offender. Rather, this more neutral term sheds light on the gendered nature of violence landscapes (Harris, 2016), and suggests that both parties are equally responsible for these repeat calls for service. This paper argues that these assumptions can have a subsequent effect on sentencing.

Sentencing of cases of private violence may be more likely to be perceived as less serious and, therefore, require less penalties. Hortsman, Bond, and Eriksson (2019) examined public perceptions with regards to sentencing severity, which used two, almost identical, scenarios: one of domestic violence assault (where the victim and offender were intimate partners) and the other of non-domestic violence assault (where the parties were strangers). Respondents supported harsher sentencing severity for the non-domestic assault category, suggesting that victim-offender relationship plays a crucial role in the severity of sentencing. In this study, "one in five agreed

domestic violence could be excused if the perpetrator became so angry they lost control or if they regretted their behavior” (Hortsman, Bond, & Eriksson, 2019, p. 9). With regard to sentencing, results of the study show that a higher proportion of participants also thought that imprisonment was necessary in the non-domestic violence scenario. This study suggests that the public views non-domestic violence assault as warranting harsher punishment than domestic assault. These perceptions, in turn, may influence decision making by members within the criminal justice system (police, jurists, advocates, etc.) on decisions concerning the handling and sentencing of cases involving violence in private spaces.

Risk to reoffend and risk assessment tools.

While there is deep concern for young men engaged in delinquency in the public sphere becoming repeat offenders, the same concern does not appear to be extended to those who are at risk of becoming serial/repeat offenders behind closed doors. A number of risk assessment tools (e.g., ODARA: Ontario Domestic Assault Risk Assessment; SARA: Spousal Assault Risk Assessment) used by police, in family and intimate partner violence calls for service, identify “a history of violence” towards partners and/or children and “risk to reoffend” as key factors in determining further victimization risk of the target (Northcott, 2012). Domestic violence risk assessment tools fully acknowledge the risk to reoffend for this offender class. Yet, there appears to be resistance to identifying those who are assessed at risk for reoffending in private places as serial or repeat offenders, implying harsher sentencing requirements for both general and specific deterrence. Individuals, as repeat offenders, may have considerable criminal records demonstrating a number of varied charges (e.g., drug possession, trespassing, assault, including assault in family settings), over extended time periods. These offenders are of concern to the

criminal justice system, rightly identifying that these offenders have the potential to be of significant cost to the criminal justice system, in the form of use of police services, repeat court appearances and, in many cases, repeated incarcerations (Stewart, Wilton, Baglolle & Miller, 2019). Repeat offender status infers “high risk.” The authors of this study note that those initially convicted and placed in federal custody for violent offences such as assault (41.3%) had some of the highest recidivism rates based on the Offender Management System (OMS) and Canadian Police Information Centre (CPIC) records. It is important to note that serial offenders have a higher likelihood of coming from homes where children were repeatedly exposed to private violence was (Segeren, Fassaert, deWit, & Grimbergen, & Popma, 2020) as are repeat victims (Conroy, Burczycka, & Savage, 2019).

Repeat offender status appears to operate under the assumption that it is the number of victims affected (public bias) and not merely the number of incidents of criminal offending that is important. There is no requirement in the definition of serial offending that there be multiple victims, only repeat criminal activity by a single offender. This concern for repeat offending in the public sphere, and not in the private sphere, continues to put victims of private violence at risk. This is evidenced by the high call volume to police for domestic violence situations (Conroy, Burczycka, & Savage, 2019; Sinha, 2011). There does appear to be some support for repeat offender status for many private violence perpetrators. A study by Johnson and Leone (2005) examined two forms of IPV: intimate terrorism and situational couple violence. Intimate terrorism is characterized by the need of the offender to exert control over victims in private settings, often supported by escalating violence. This is separated out from the concept of situational couple violence which is more common, is not characterized by the need for control by either party, and is situationally specific, without escalation. The concept of intimate

terrorism, although identified less frequently than situational couple violence, suggests that patterns of repeat offending inside private domains, have already clearly been identified by those within various disciplines.

It is also evidenced by legislative measures such as Clare's Law in Saskatchewan (Saskatchewan, 2018), inspired by similar actions in the United Kingdom. The legislation was created in response to the death of Clare Wood, at the hands of her partner (Fitz-Gibbon & Walklate, 2017) who had a history of assaulting previous intimate partners which had been reported to police. The new law was built on the assumption that victims should have the ability to get information that indicates whether someone they are dating has a history of violence with other partners. Armed with this information, potential and actual victims can make more informed choices about continuing a relationship where there is potential for abuse. Although this legislation is proactive in its direction, in that it seeks to help victims in detection of repeat offenders who target women and/or children inside the private context, critics argue that it continues to place the onus on potential IPV victims to protect themselves (Fitz-Gibbon & Walklate (2017). Although new additions to policy and legislation are designed to help, they lack the intuitive development needed based on a private victimization model. By continuing to add private violence pieces to a system that is primarily based on the public violence of men, we are supporting those foundational assumptions of public systems as more relevant, despite ever increasing evidence suggesting that private violence is increasingly the more prevalent violence form (Conroy, Burczycka, & Savage, 2019). It is possible that as legislative tools such as Clare's Law become available, using them may be used to blame the victim for persisting with a relationship knowing the offenders past. Paradoxically, victims may also be penalized for not using the law to be better informed.

Implications

Lack of commitment to vulnerable groups perpetuates their vulnerability. Victims of more private forms of violence face systemic discrimination by the criminal justice system, based on strong evidence of lack of support for this victim class, suggesting there is a systemic failure affecting victims of private violence seeking justice. Without systems that facilitate reporting and acknowledgement of the nature and substance of private criminal activity, victims of private crime are more at risk for repeat victimization and serious injury. Victims are often the only witness to their own victimization, with a close relationship to the offender, and heavily scrutinized by the criminal justice system in its simultaneous attempts to both uphold and/or suspend rights of the offender. The creation of the Canadian Victims Bill of Rights is an attempt, at the federal level, to bring more balanced representation for victims who help the criminal justice system in processing the offender (OFOVC, 2021).

Additionally, because the criminal justice system is founded upon physical evidence-based practices which fails to capture acts of coercive violence (Gill & Aspinall, 2020) and the day-to-day living of covert, rather than overt, repeat victimization, offenders who operate in private spheres are more likely to commit repeated criminal acts undetected. Offenders, without the victim's help expected by the criminal justice system, are less likely to be penalized by the system. If identified and successfully processed, sentences for private violence offenders may be lower than for similar acts carried out in public places (Hortsman, Bond, & Eriksson, 2019). Less reporting and detection suggest that targets are less likely to be able to access services available to victims once identified by the criminal justice system. Victims of private violence become systematically underserved despite the dangerousness of the crimes committed against them.

If public bias assumptions are not challenged and/or left in place, outcomes will continue

to be, and have been, fatal to private violence targets. This continues to lead to increased risk of more serious forms of victimization of targeted individuals in private spheres of repeat offenders who operate well under those conditions. Private violence leaves private settings in any number of ways, including, but not limited to, workplace violence (Wathen, MacQuarrie, & MacGregor, 2015) and increasing proclivity of future violence by exposing children to private violence settings and methods (Conroy, Burczycka, & Savage, 2019). This challenges the notion of risk to public safety, given the short and long-term effects of repeated victimization on private violence targets.

In essence, the current system may be perpetuating the legitimization of victims of private violence by not providing adequate resources within a system that was historically never designed to address their concerns. Without acknowledgement of the problems faced when reporting private crime (fear, lack of witnesses, lack of physical evidence, close social proximity of the offender, loss of income, hopes that the offender will change, etc.) victims face increased challenges, in fulfilling their partnership expectations within the criminal justice system, in helping the system mete out justice.

Prioritizing the Rights of offenders over the Rights of victims, in the criminal justice partnership, reflects ongoing public/patriarchal ideologies providing more protection for the most common offender class: males (Conroy, Burczycka, & Savage, 2019). The criminal justice system becomes partner in the discrimination of those who are most at risk for private violence, where the gendered pattern of victimization and vulnerability is clear. Evidence suggests that addressing private violence may be effective in widespread crime prevention strategies in the long term as these private violence landscapes have been found to have criminogenic properties for children and youth (Naughton, O'Donnell, & Muldoon, 2015).

Conclusion

With respect to violence in private spheres, this paper suggests that we must re-examine the model of “add private violence victims and stir” to a criminal justice system traditionally designed to serve the criminal acts of men and male youth against other males, outside private settings. This same system historically has also allowed for the assault of women and girls, in private settings by male heads of household, in efforts to avoid issues of what was deemed to be private concern in receiving public scrutiny. Criminal justice responsiveness, to victims of private violence, has emerged out of the same system designed to deal with concerns of public safety which has been associated with risk to reoffend and is tied to the accused’s threat to public safety. By not adequately addressing threats to private safety, the current criminal justice system continues to put those who are victims of private violence at risk. Because of the gendered patterning of private crime, this lack of recognition of the seriousness of serial/repeat offending inside private places and spaces becomes part of the larger system of systemic discrimination of women and girls. We must acknowledge that, at the very least, public violence and private violence are equally dangerous and we must respond, collectively and equitably, of threats to both public and private safety.

Recommendations

- Adopt terms such as public and private violence, rather than more gendered terminology such as domestic violence, to describe private victimization experiences in order to acknowledge the challenges that these landscapes pose to victims.
- Understand, and scaffold into criminal justice policy, that violence landscapes are gendered, where females are primarily targeted in private settings, while males continue to

be the majority of victims outside the home.

- Recognition is needed by all levels of government that are concerned with issues of crime and victimization that private landscapes of violence have historically been, and continue to be, underserved by the criminal justice system; a system designed to be more concerned with public risk.
- Continued integration of threats to private safety for victims into formal structures that traditionally have been concerned with public safety risk assessments.
- Emphasize that risk to reoffend in private landscapes is a risk to the public, both in the long and short term.
- Encourage the criminal justice system to allow repeat offender status to offenders of private violence where there is evidence of a pattern of repeated targeting of one or more victims in private settings.

References

- Bancroft, L. (2002). *“Why does he do that?” Inside the minds of angry and controlling men*. New York: Berkley Books.
- Bond, C. E. W., & Jeffries, S. (2014). Similar punishment? Comparing sentencing outcomes in domestic and non-domestic violence cases. *British Journal of Criminology*, 54, 849-872, doi: 10.1093/bjc/azu034.
- Boyd, S. (2016). *Challenging the Public/Private Divide: Feminism, Law, and Public Policy*. Toronto, Canada: University of Toronto Press. Retrieved from: <https://www-deslibrisca.uproxy.library.dc-uoit.ca/ID/417737>

- Conroy, S., Burczycka, M., & Savage, L. (2019, Dec. 12). Family violence in Canada: A statistical profile, 2018. *Juristat*. Ottawa, Canada: Statistics Canada. Retrieved from: <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2019001/article/00018-eng.pdf?st=8iGpc7-h>
- Dietz, P. (2018). Grooming and seduction. *Journal of Interpersonal Violence*, *33*(1), 28-36, doi: 10.1077/0886260517742060.
- Douglas, H. (2012). Battered women's experiences of the criminal justice system: Decentering the law. *Feminist Legal Studies*, *20*, 121-134, doi: 10.1007/s10691-012-9201-1. Retrieved from: <https://link-springer-com.uproxy.library.dc-uoit.ca/article/10.1007/s10691-012-9201-1#citeas>
- Dokkedahl, S., Kristensen, T., Murphy, S., & Elklit, A. (2021). The complex trauma of psychological violence: cross-sectional findings from a cohort of four Danish women shelters. *European Journal of Psychotraumatology*, *12*(1), 1863580–. <https://doi.org/10.1080/20008198.2020.1863580>
- Farrell, G., Phillips, C., & Pease, K. (1995). Like Taking Candy: Why does repeat victimization occur? *The British Journal of Criminology*, *35*(3), 384-399. doi: 10.1093/oxfordjournals.bjc.a048523.
- Finkelhor, D., Wolak, J., & Berliner, L. (2001). Police Reporting and Professional Help Seeking for Child Crime Victims: A Review. *Child Maltreatment*, *6*(1), 17–30. <https://doi.org/10.1177/1077559501006001002>

- Fitz-Gibbon, K., & Walklate, S. (2017). The efficacy of Clare's Law in domestic violence law reform in England and Wales. *Criminology & Criminal Justice*, 17(3): 284-300, doi: 10.1177/1748895816671383.
- Gilbar, O., & Ford, J. (2020). Indirect effects of PTSD and complex PTSD in the relationship of polyvictimization with intimate partner violence victimization and perpetration among men in mandated treatment. *European Journal of Psychotraumatology*, 11(1), 1794653–1794653. <https://doi.org/10.1080/20008198.2020.1794653>
- Gill, C. & Aspinall, M. (2020). *Understanding coercive control in the context of intimate partner violence in Canada: How to address the issue through the criminal justice system?* Paper prepared for the Office of the Federal Ombudsman for Victims of Crime, Ottawa, Canada, Department of Justice. Retrieved April 1, 2021 from: <https://www.victimfirst.gc.ca/res/cor/UCC-CCC/Research%20Paper%20on%20Coercive%20Control%20-%20April%202020.pdf>
- Ha, L., & Code, R. (2013). *An Empirical Examination of Elder Abuse: A Review of Files from the Elder Abuse Section of the Ottawa Police Service*. Ottawa, Canada. Department of Justice. Retrieved April 16, 2021 from: https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr13_1/
- Harris, B. (2016). Violent landscapes: A spatial study of family violence. In Harkness, A., Harris, B., & Baker, D. (Eds.), *Locating Crime in Context and Place: Perspectives on Regional, Rural and Remote Australia*. Federation Press, Annandale, Australia, pp. 70–84.
- Harris, B. (2018). Spacelessness, spatiality and intimate partner violence: Technology-facilitated abuse, stalking and justice administration. In Fitz-Gibbon, K., Walklate, S., McCulloch,

- J., & Maher, J. M. (Eds.), *Intimate Partner Violence, Risk and Security: Securing Women's Lives in a Global World*. Routledge, London, pp. 52–70.
- Hessick, C. B. & Hessick, F. A. (2011). Recognizing Constitutional Rights at sentencing. *California Law Review*, 99(1), 47–94.
- Hinch, R. (1988). Inconsistencies and contradictions in Canada's sexual assault law. *Canadian Public Policy / Analyse de Politiques*, 14(3), pp. 282-294, doi: 10.2307/3550431.
- Hortsman, N. J., Bond, C. E. W., & Eriksson, L. (2019). Sentencing domestic violence Offenders: A vignette study of public perceptions. *Journal of Interpersonal Violence*, 124: 1-24, doi: 10.1177/10886260519888533
- Jaffe, P., & Burris, C. (1982). *An integrated response to wife assault: A community model*. Ottawa: Research Report of the Solicitor General of Canada.
- Johnson, M.P. & Leone, J.M. (2005). The differential effects of intimate terrorism and situational couple violence: Findings from the National Violence Against Women Survey. *Journal of Family Issues*, 26(3): 322-349, doi: 10.1177/0192513X04270345.
- Meyer, S. (2011). Seeking help for intimate partner violence: Victims' experiences when approaching the criminal justice system for IPV-related support and protection in an Australian jurisdiction. *Feminist Criminology*, 6(4), 268–290.
<https://doi.org/10.1177/1557085111414860>
- Murray, S., and Powell, A. (2009). “What’s the problem?” Australian public police constructions of domestic and family violence. *Violence Against Women*, 15(5): 532-552, doi: 10.1177/1077801209331408.

- Naffine, N. (1997). *Feminism and Criminology*. Cambridge, MA: Polity Press.
- Northcott, M. (2012). *Intimate Partner Violence Risk Assessment Tools: A Review*. Ottawa, ON: Research and Statistics Division, Department of Justice Canada.
- Naughton, C., O'Donnell, A., & Muldoon, O. (2015). Family identification: a beneficial process for young adults who grow up in homes affected by parental intimate partner violence. *Frontiers in Psychology, 6*, 1249–1249. <https://doi.org/10.3389/fpsyg.2015.01249>
- Office for the Federal Ombudsman for Victims of Crime (OFOVC, 2020). *Progress Report: The Canadian Victims Bill of Rights*. Ottawa, ON., Government of Canada. Retrieved April 2, 2021, from: https://www.victimsfirst.gc.ca/res/pub/PRCVBR-RECCDV/40-061B%20OFOVC%20Progress%20Report_EN_web.pdf
- Ornstein, P., & Rickne, J. (2013). When does intimate partner violence continue after separation? *Violence Against Women, 19*(5), 617–633. <https://doi.org/10.1177/1077801213490560>
- Pain, R. (1991). Space, sexual violence and social control: integrating geographical and feminist analyses of women's fear of crime. *Progress in Human Geography, 15*(4), 415–431. <https://doi.org/10.1177/030913259101500403>
- Pence, E., & Paymar, M. (1993). *Education groups for men who batter: The Duluth Model*. New York, NY: Springer.
- Roy, J. & Marcellus, S. (2019). Homicide in Canada, 2018. *Juristat*, 4–33. Ottawa: Statistics Canada. Retrieved from: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00016-eng.htm>
- Saskatchewan (2018). *Bill No. 141: An Act respecting the Disclosure of Certain Information in accordance with an Interpersonal Violence Disclosure Protocol*. Third Session, Twenty-eighth Legislature. Saskatchewan, Canada. The Speaker of the Legislative Assembly of

Saskatchewan. Retrieved April 2, 2021 from:

<http://docs.legassembly.sk.ca/legdocs/Bills/28L3S/Bill28-141.pdf>.

Segeren, M., Fassaert, T., de Wit, M., Grimbergen, C., & Popma, A. (2020). The relationship between adverse childhood experiences and self-sufficiency problems in early adulthood among violent offenders. *Child Abuse & Neglect*, *101*, 1-10, <https://doi.org/10.1016/j.chiabu.2019.104354>

Sinha, M. (2011). *Family violence in Canada: A statistical profile*. Ottawa: Statistics Canada. No. 85-002-X *Juristat*. Retrieved April 2, 2021 from: https://www150.statcan.gc.ca/n1/en/pub/85002x/2013001/article/11805-eng.pdf?st=_X1DHtAm

Smith, J., & Patton, D. (2016). Posttraumatic Stress Symptoms in Context: Examining Trauma Responses to Violent Exposures and Homicide Death Among Black Males in Urban Neighborhoods. *American Journal of Orthopsychiatry*, *86*(2), 212–223. <https://doi.org/10.1037/ort0000101>

Spender, D. (1980). *Man Made Language*. Melbourne, Australia: Routledge & Kegan Paul

Stedman, B. (1917, Aug.). Right of husband to chastise his wife. *Virginia Law Register*, *3*(4), pp. 241-248. Retrieved Aug. 25, 2020 from: <https://www.jstor.org/stable/pdf/1106112.pdf>

Stark, E. (2007). *Coercive control: The entrapment of women in personal life*. New York: Oxford University Press. Retrieved from: <https://books-scholarsportal-info.uproxy.library.dcuoit.ca/en/read?id=/ebooks/ebooks0/oxford/2011-05-05/1/115892#page=1>

- Stewart, L. A., Wilton, G., Baglole, S., & Miller, R. (2019, Aug.). *Research Report: A Comprehensive Study of Recidivism Rates among Canadian Federal Offenders* (No. R-426). Correctional Service of Canada. Ottawa, ON.
- Terry, A. (2016). Reconceptualizing gender: A historical perspective from structure to process and intersectionality. *Journal of Research in Gender Studies*, 6(2): 69-82.
- Ventura, L. A., & Davis, G. (2005). Domestic violence: Court case conviction and recidivism. *Violence Against Women*, 11(2): 255-277, doi: 10.1177/1077801204271722.
- Voce, I., & Boxall, H. (2018). Who reports domestic violence to police? A review of the evidence. *Trends and Issues in Crime and Criminal Justice*, 559, 1–16.
- Walby, S. & Towers, J. (2018). Untangling the concept of coercive control: Theorizing domestic violent crime. *Criminology & Criminal Justice*, 18(1): 7-28, doi: 10.1177/1748895817743541.
- Wamser-Nanney, R., & Vandenberg, B. (2013). Empirical Support for the Definition of a Complex Trauma Event in Children and Adolescents. *Journal of Traumatic Stress*, 26(6), 671–678. <https://doi.org/10.1002/jts.21857>
- Wathen, C., MacQuarrie, B., & MacGregor, J. (2015). *Can work be safe, when home isn't?: Initial findings of a pan-Canadian survey on domestic violence and the workplace*. Centre for Research & Education on Violence Against Women and Children, London, ON: Western University.