

Introduction to Domestic Violence: Opposing Viewpoints

Domestic Violence, 2012 

"Domestic violence is a problem that must be dealt with for what it is: a criminal act. The only way to effectively diminish it is through the full force of the criminal justice system, which must treat domestic violence the same as it treats crime by strangers." —Kalyani Robbins, professor of law, University of Akron School of Law

"Criminal justice intervention [in domestic violence cases] has produced troubling results for individual victims, the communities in which they live, and the domestic violence movement generally." —Deborah M. Weissman, professor of law, University of North Carolina School of Law

On a typical day in America, as many as three women are murdered by their husbands or intimate partners. While these numbers are indeed shocking, domestic violence and domestic homicide have in fact declined in recent years. Nevertheless, domestic violence remains the leading cause of injury to women. Men also can be victims of such violence, and the children of violent homes often grow up to become victims and/or perpetrators. In addition to the physical and emotional toll of domestic violence, the economic cost to American society also is significant. Domestic violence victims lose nearly 8 million days of paid work per year in the United States. These realities have led some to fear that the recent statistical drop in domestic violence will lead to complacency. Indeed, some analysts maintain that domestic violence statistics can be deceptive because many abused women and men do not report abuse. In addition, data collected often does not include figures on teen dating violence or violence among unmarried intimate partners. Data on domestic violence in rural areas or on Native American reservations also is scarce. Thus, these advocates argue, more needs to be done to address the problem.

While analysts generally agree that domestic violence is reprehensible, there is wide debate about how society should respond. Some believe that existing criminal laws are adequate to address domestic violence. They argue that expansive government policies and programs are unnecessary and that such policies unconstitutionally interfere with the family. These commentators claim that government-sponsored domestic violence programs often go beyond protecting victims and promote antifamily social philosophies that demonize men. On the other hand, domestic violence activists assert that to address the social causes and consequences of domestic violence, strong government action is necessary. Victims have a right to be protected, they argue, and if local laws and policies are inadequate to do so, the federal government should intervene. Balancing the need to protect family privacy and the often conflicting need to protect people from domestic violence has been an ongoing challenge in the United States. Indeed, these competing values are reflected in the historical debate over how to address domestic violence.

In colonial America, domestic violence was considered a family matter. Women were the property of their husbands, who had the legal right to punish them for disobedience. Colonial courts followed the 1768 English "rule of thumb" law, which stipulated that husbands could beat their wives as long as the stick used was no thicker than the man's thumb. Not until the late nineteenth century did US courts begin to overturn this right. In 1883, Maryland was the first state to enact a law outlawing wife

beating, but it would not be until the mid-twentieth century that the issue would be the subject of public debate. Even then, attitudes about how best to respond to the problem would change little until the end of the century.

During the 1960s, the United States seemed to erupt in violence in the eyes of many. The nation was rocked by race riots, violent antiwar protests, and the assassinations of President John F. Kennedy, his brother Senator Robert F. Kennedy, and civil rights leader the Reverend Martin Luther King Jr. These events prompted the creation of a Presidential Commission on the Causes and Prevention of Violence. The commission's conclusions concerning domestic violence were troubling. As many as 25 percent of men questioned believed it was acceptable, under some circumstances, to hit their spouses. Moreover, the prevailing view was that domestic violence was a family matter and not a crime. When people heard couples fighting, they did not call the police. Most Americans believed that family violence was personal and not their business. Police officers and judges also were reluctant to intervene. It would not be until the late 1970s and into the 1980s that this attitude would change.

In the 1970s, as women began to fight for equal rights, one of the movement's major objectives was to combat domestic violence. Women's rights activists believed that domestic violence was not a family matter but a crime. They argued that women had the right to be free from violence at the hands of their spouses—just as all Americans had the right to be free from violence by strangers. These activists also began to challenge a political and social system that they believed condoned such abuse. Battered women's shelters, hotlines, and grassroots efforts to help women negotiate the legal system began to spring up across the nation. Police officers and judges in some communities also began to change their views. In 1977, Oregon passed the nation's first mandatory-arrest law regarding domestic violence, which required the police to arrest at least one partner when responding to reports of domestic violence. By 1980 all but six states had domestic violence laws. Nevertheless, in many communities, the criminal justice system remained reluctant to approach cases of domestic violence the same way they did other crimes.

Some argue that it took the horrific case of Tracy Thurman, which so shocked the nation, to get attitudes to dramatically shift. Thurman had repeatedly asked the police to help protect her and her son from her estranged husband's abuse. Despite protective orders, the police failed to do so. While at her house, the police refused to intervene while her husband stabbed her thirteen times and broke her neck. A jury in 1984 awarded a \$2.3 million judgment against the Torrington, Connecticut, police department for failing to protect Thurman and her son. Thurman's case gained widespread public attention following the television dramatization of her story. Indeed, while some still believed domestic violence to be a private matter, the voices of those who held that victims needed legal protection and that abusers should be prosecuted as criminals began to grow. In fact, Congress passed the Family Violence Prevention and Service Act and the Victims of Crime Act that same year. These laws provided money for states to establish battered women's shelters and hotlines. By the end of the decade, many of the nation's large police departments adopted policies that required officers to make an arrest in domestic violence cases.

Several other widely publicized cases drew public attention to the problem as well. A growing body of evidence also began to dispel the myth that domestic violence was a problem of the poor and uneducated alone. In 1985, President Ronald Reagan forced the resignation of John Fedders, a top Securities and Exchange Commission official, when it was discovered he had for eighteen years

repeatedly beaten his wife. In 1987, New York City lawyer Joel Steinberg was convicted of beating to death his eight-year-old adopted daughter Lisa. During his trial, America was introduced to Steinberg's partner, Hedda Nussbaum, whose battered face and unresponsive gaze became the symbol for "battered women's syndrome." Some legal experts argued that this psychological condition, characterized by loss of self-esteem, extreme fear, passivity, and isolation, made it impossible for Nussbaum to intervene and protect Lisa. The case that arguably finally generated the political will to support broad government intervention was the arrest in 1994 of football star and actor O.J. Simpson for the murder of his ex-wife, Nicole Brown Simpson, and her friend, Ronald Goldman. Records showed that Nicole had made frequent calls to police to report her former husband's abuse. Although Simpson was not convicted of the criminal charges, he was found civilly liable for their deaths and was ordered to pay the victims' families compensatory and punitive damages.

Indeed, 1994 was a turning point for what came to be called the domestic violence movement—those who saw domestic violence as a social problem requiring significant government action. That year, Congress passed the Violence Against Women Act (VAWA). In the years since, the act has dedicated billions of dollars to programs that encourage local governments to create coordinated community responses to domestic violence. VAWA also dedicates funds to train police officers and court officials. The act established a national battered women's hotline and made it a federal crime to cross state lines to commit acts of domestic violence. In the 2000 revision of VAWA, Congress added "intimate partners" to the definition of domestic violence to address dating violence and violence against unmarried partners. The 2005 revision dedicated funds to address teen dating violence. By the late 1990s and early into the new millennium, a majority of Americans now saw domestic violence as a serious social problem worthy of government intervention. In fact, studies of social movements suggest that the movement to end domestic violence has so much societal support that a counter movement would be nearly impossible. Nevertheless, there is such a movement—the fathers' rights movement. These activists claim that VAWA unfairly targets men and paints all men as abusers. They argue that VAWA is too broad and criminalizes noncriminal disputes that should remain private, family matters. Although the need to protect victims is strong, privacy remains highly valued in the United States.

The members of the fathers' rights movement do not contest the goal of reducing domestic violence. They oppose the strategy of demonizing men, particularly fathers faced with the dissolution of their families. These activists argue that the domestic violence "industry" uses VAWA programs to help women gain advantage in child custody hearings and to evict men from their homes. They believe that child custody cases should be decided on the facts of the case, not used to promote broad social policies. Public policy professor Jocelyn Elise Crowley summarizes their views. Fathers' rights activists, she maintains, believe that "domestic violence advocates should focus solely on providing services to violence victims, not on pursuing social change by interfering in cases that [do] not specifically involve them."¹ Opponents of broad domestic violence policies also argue that false allegations of abuse are used to gain advantage in divorce proceedings. They maintain that some domestic violence programs encourage women to obtain protective orders, also known as restraining orders. Activists cite cases in which men have been evicted from their homes even when these orders are investigated and dismissed. Moreover, they claim that a protective order is ineffective in preventing violence, "but it is very effective in establishing a firm upper hand in a divorce situation."²

Even some in the women's rights movement are shifting their attitudes from the criminal justice approach to protecting victim privacy. Some of the broad policies of VAWA, such as mandatory arrest, actually can limit a woman's autonomy—her ability to make her own choices and deal with family matters in private. According to law professor Kimberly D. Bailey, "Because of the special nature of intimate relationships, some victims may view the violence in their home as a personal matter in the sense that they do not want criminal justice intervention under any circumstances."³ The goal of the women's and the domestic violence movements was to make the personal political and thus challenge the idea that domestic violence is a private matter. However, by engaging the criminal justice system and the government, these movements may have limited the autonomy of women, as the criminal justice system is a public forum that many women may want to avoid. Policies such as mandatory arrest or pursuing domestic violence cases even when victims choose not to, remove the autonomy that these activists hope to protect. "The limited number of [domestic violence] victims who desire to engage with this system is an important metric in determining the criminal justice system's effectiveness."⁴ Thus, in the eyes of some women's rights activists, the criminal justice approach may compete with the very autonomy of the women they hope to protect and, in turn, prevent victims from seeking help. "Unless the desire for privacy is acknowledged and further explored, a significant number of women will continue to be alienated and to suffer from private violence in silence."⁵

Clearly, the competing interests of maintaining personal and family privacy while protecting victims of domestic abuse remains one of the fundamental controversies in the domestic violence debate. *Opposing Viewpoints: Domestic Violence* highlights this tension in many of the viewpoints presented in the following chapters: Is Domestic Violence a Serious Problem? What Are the Causes of Domestic Violence? What Policies Best Address Domestic Violence? and What Laws Will Best Reduce Domestic Violence? From its humble beginnings in the 1960s to the present, the domestic violence movement has done much to protect women, children, and men from violence at the hands of intimate partners. The movement is indeed one of the most powerful social justice movements in American history. Nevertheless, criticism of VAWA spending, the fathers' rights movement, and internal debate among women's rights activists is growing. How policy makers will reconcile these conflicting forces remains to be seen.