THE LAW AND DOMESTIC VIOLENCE AGAINST WOMEN.

The history of law reforms in relation to domestic violence against women from the 18th to the 20th century and an analysis of women victims' needs in contemporary socio-legal discourse.

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ABSTRACT.

The thesis is divided into two parts, Part I contains four chapters which map the pattern of legal changes relating to domestic violence against women from the 18th century to the 1980s. The history is written from the viewpoint of the legal interventions available to and used by women victims of domestic violence. Statutory enactments, case law and procedural changes in the relevant areas of criminal, family (ecclesiastical) and welfare law are described. Throughout Part I the discussion of the remedies available and reforms implemented is supplemented by the inclusion of case examples and statistical evidence showing local and national patterns of use. Chapter 1 describes the period from the start of the 18th century to the beginning of the 20th; Chapter 2, 1900 to the 1960s, Chapter 3 from 1969 to 1977 and Chapter 4 the more recent history in the 10 years between 1977 to 1987.

Part II contains five chapters and is based upon an analysis of women victim's needs in contemporary socio-legal discourse. Part II grew out of a concern about the part played by the law in the secondary assault of women. The main aim of the discussion is to look at how women victims' self defined needs inform the practice of the law and how the legal approach contributes to the creation of violent relations between men and women in the social institution of heterosexuality. Part II emphasises the use of written and spoken language in interactional settings to define women's needs. The discussion is based upon the analysis of:

1. a survey of women involved in 54 legal cases concerning their partners' behaviour supplemented by interviews with legal advisors;
2. case records obtained from solicitors' offices with the women's permission;
3. over 300 decisions traced from the published Law Reports;
4. 105 press reports of cases of domestic violence against women.

Chapter 5 describes the method employed in the research for Part II. Chapter 6 contains the analysis of the women's cases; Chapter 7 the reported decisions and Chapter 8 the press reports. Chapter 9 offers a summary of academic discourse and the abuse of women as well as a concluding discussion on some possibilities for the empowerment of women in law.
ACKNOWLEDGEMENTS.

The views contained within this report are my responsibility but I would like to thank everybody who helped me to see this research project through to completion. I would especially like to thank the women who helped by volunteering for the survey. I sincerely hope that you will regard the finished project as worthy of the investments you made in time and emotion. During the project I gave birth to my third daughter and relied upon the support of my family and friends who acted on numerous occasions as surrogate mothers. My own mother, Kate Smith and my friends Joyce Hamblet and Pat Kiernan helped set me back to work. John and Jasmine Radford helped me much more than I deserved and always encouraged me to carry on even when the stress the work created within the family seemed unbearable. I am especially indebted to Gill Seidel of Bradford University's Dept. of Modern Languages for expending considerable effort in helping me to become more familiar with socio-linguistic discourse analysis. Without Gill Seidel's help I would have found it very difficult to cope with the range and complexity of the materials included in the research. Hilary Rose and Jalna Hanmer assisted me by way of supervision, frequently giving support way beyond the usual call of duty. I would like to dedicate the project to my two daughters Jasmine and Abigail.
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In 1812 Mrs Waring applied for a court order as a result of her husband's cruelty (Waring v Waring (1813)). Mr Waring had given his wife an emetic in order to produce a miscarriage, compelled her to leave her bed straight after miscarrying, forbidden her contact with her family, dragged her from a chair and beaten her head against a marble chimney shelf, dragged her by the arm across the room, sworn at her and slapped her face. Witnesses and neighbours said they had often heard Mrs Waring screaming for help from the windows when her husband beat her. The court refused Mrs Waring's order on the ground that, as a result of her own behaviour, she had deserved such treatment. Mrs Waring had occasionally refused to cook her husband's dinner and resorted to her own strategies of defence (one day she confiscated her husband's wig and locked him in his room, just once she fought him back). Over 170 years later, women victims of domestic violence recount strikingly similar tales of legal non-interventions where professionals have sought legitimacy for their decisions on the grounds that the victims, as Edwards put it, 'provoked their own demise' (Edwards, 1987).

In a sense, women who experience male violence are subject to a double victimisation - a primary assault by the aggressor and a secondary assault executed by the institutional response to such crimes (see Dobash & Dobash, 1980; Stanko, 1985). The documented experiences of women victims of domestic violence show repeatedly
that legal, social and welfare agencies reinforce, condone and legitimise their victimisation with victim-blaming responses or refusals to intervene (Binney, Harkell & Nixon, 1981; Homer, Leonard & Taylor, 1984). When individuals at the grass roots level of the legal profession and public services refuse a battered woman (and her children) housing, welfare support, an injunction or police protection on the grounds that the assault was 'just a domestic', a 'trivial' matter, or deserved, they are reinforcing and supporting her victimisation. The secondary assault of women victims makes it harder for them to leave violent relationships by reinforcing their feelings of guilt and shame, making them feel even more powerless and certain that nobody cares or is able to help them. The part played by the law in the secondary assault of women forms the central focus of this study.

For feminist activists, law reform presents a paradox. This has traditionally been at the forefront of campaigns even though it has been recognised that legal involvement can have the opposite effect of supporting the gender inequalities which reformers wish to eradicate. The history of law reform and domestic violence against women clearly demonstrates this contradictory feature of the law. In Chapters Three and Four for example, the introduction of special legislation to remedy some of the problems of battered women is discussed. It will be argued that legislation introduced in the 1970s to improve emergency and housing provisions for women victims of domestic violence could also be used in a perverse manner to
contribute to their secondary assault. By looking at the part played by the law in the secondary assault upon women, my intention was primarily to explore possibilities for change and to leave scope for future work on how to use the law to improve the position of battered women in society. The project was motivated by the understanding that although the law alone could not eradicate social inequalities, careful exploration of the law in action might nonetheless offer some possibilities for challenging their legal supports.

Throughout history the debates on law reform and domestic violence against women oppose two conflicting views - what lawyers, judges, the police and policy makers say the law can do and what actually happens in practice. Although it has never been the subject of comprehensive policies, domestic violence against women has periodically been an issue of concern in debates on reform of divorce and matrimonial law, housing and welfare provision, police powers and the criminal law and the treatment of violent offenders. Other researchers have noted that historically domestic violence is a problem which 'emerges' or is 'discovered' every few years to be 'solved' by policy reforms (Dobash & Dobash, 1980). On a cyclical pattern, those involved in reformist debates can put forward remarkably similar explanations concerning the need for legal intervention, the nature of the problem and the matters which hinder its eradication. Later discussion will show for example that time and again, lawyers, reformers and policy makers have argued that, in
its present form, the law offers 'sufficient' scope for the protection of battered and abused women. By divorcing the law from its social context and influences (such as race, class and sexual inequalities) and discussing its history in the politically aseptic vacuum of 'good intent', defenders of the legal status quo are able to map a pattern of policy changes which show a trend of the gradual easing of legal scrutiny and court control to produce fast and easy divorces, legal separations, 'quick' injunctions and so forth (see especially the discussion in Chapter Four). Whilst it may be relatively easy to maintain that the legal provisions for women victims of domestic violence are more adequate to cope with their needs than had previously been the case, the provisions available and their implementation in practice are not necessarily matched. The fact that domestic violence against women is or has been for 130 years or so illegal does little to alter women's recurring experiences of their victimisation as legitimate.

The thesis is divided into two parts. Part I and Part II offer discrete yet complementary surveys of the law and domestic violence against women. The aim of Part I is to trace the pattern of legal changes relating to domestic violence against women from the eighteenth century to the 1980s. Part I describes the 'lawyers' history whilst Part II aims to broaden the discussion in the contemporary era by analysing the law in its context as part of social life. Apart from the fact that the 'lawyer's history' in Part I is a piece of women's history yet to be documented (and, I would
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contend, of value in its own right) it was necessary to conclude this prior to the discussion of material in Part II because:

a. the survey shed light on the main preoccupations of lawmakers and legislators who had influence on the initiation, reform and implementation of the legal approach to cases of domestic violence against women. This was necessary for the later investigation of women’s self-defined needs.

b. it is not easy to understand the intricacies and peculiarities of the present without some prior knowledge of the past. It would be difficult to look at the treatment of women's needs in contemporary legal discourse without prior discussion of the legal remedies available and how they developed, or without some knowledge of procedural matters.

Whilst Part I discusses the provisions which were made available for women victims of domestic violence, Part II looks at how women victims' self defined needs inform the practice of the law and how the law contributes to the creation of violent relations between men and women in the social institution of heterosexuality.

In Part I the development of statutory enactments, case law and procedural changes affecting the problem of domestic violence against women has been traced. The discussion does not document the origins of legal involvement in this area. An historical study with that objective would alone involve a considerable thesis which it was
felt would be best left to the historians. Readers who are interested in finding further information on the origins of legal involvement may find some already published research helpful. For example, as part of their 'context specific' research on domestic violence against women Dobash and Dobash (1980) traced legal involvement back to ancient Roman codes. In Part I the eighteenth century was selected as a 'starting point' for the historical discussion in order to give bearing to the massive reforms made to courts, legal procedure and statutory enactments during the nineteenth century.

Many of the features of the present day legal system were founded in the nineteenth century - an hierarchical court structure, civil divorce procedure, police force, system of summary relief for 'family' cases, etc. As the nineteenth century advanced, more and more individuals had experience of the legal system because this expanded and became cheaper and more accessible. Historians, sociologists and lawyers have argued that prior to the twentieth century, most people lived 'outside' the law because marriages and divorces were informal rather than legally scrutinised and extra-legal mechanisms existed for the resolution of neighbourhood conflicts or personal disputes (Dobash & Dobash, 1980; Eekelaar, 1984; Menefee, 1981). It could of course be argued that people today seldom have personal experience of the legal system and also live 'outside' the law. In the 1980s however, most individuals have knowledge of the law, if not from personal experience, then from the experiences of others or through
ideological messages of the media and communication system. Even if it has only symbolic effect, the law today reaches most people's lives.

Part I describes the strategic choices the law has offered battered women. The discussion is very much a 'lawyer's' form of history, with the modest refinement of 'taking women into account' (Bottomley, Gibson & Meteyard, 1987). Slowly, feminists are beginning to unravel evidence of violence against women in times past (Bland, 1985; Clark, 1987; Dowd, 1983; Edwards, 1981; Jones, 1980; Morrell, 1981; Ross, 1983). Wherever possible, evidence of women's experiences of the legal system in dealing with situations of domestic violence has been included. Published research findings and statistical evidence on women's use of legal provisions on national and local levels have been collected to aid the analysis.

Perhaps due to tradition or for reasons of convenience, orthodox 'black letter' law teaches students on the basis of divisions between various fields of expertise - family, criminal, property, welfare law, etc. Historical discussions of violence against women in legal texts tend therefore to correspond to these arbitrary divisions. The innovative and extremely useful sourcebook written by Hoggett and Pearl for instance offers a brief history of the law and domestic violence against women solely on the basis of injunctions and divorce proceedings (Hoggett & Pearl, 1985). In criminal law texts, domestic violence against women as a specific category does not exist except
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occasionally by reference to marital rapes (Smith & Hogan, 1983). Legal involvement in this problem has been piecemeal, pragmatic and inconsistent, falling upon several of the conflicting categories which form the artificial divisions of the legal textbook. Only recently have lawyers produced advice guides and texts which begin from the woman's perspective rather than from their own. Instead of asking the lawyer's question, 'What are the provisions of family law? etc.' recent texts have started to pose the question 'What reliefs are available for this woman?' Joanne Foakes for example lists some 32 different remedies available for battered women including criminal assault charges, rape prosecutions, trespass actions, suing for damages, injunctions, divorce, magistrates' matrimonial orders and bind over orders (Foakes, 1984). Part I will adopt this type of approach by looking at the remedies available as well as those deemed appropriate by the legal profession. This fragmentation of the history of law as regards women victims made the collection and presentation of material for Part I difficult, but the duplication, conflict and inconsistencies of jurisdiction are important factors in the discussion.

Part I comprises four chapters describing the major reforms in the periods from the 18th century to the start of the 20th century, 1900 to the 1960s, 1969 to 1977 and 1977 to 1987. Chapter One situates the rest of the history by briefly describing the minimal provisions prior to the 19th century period of reforms. Women victims of domestic violence could apply for bind over orders for breach of the
peace, ecclesiastical court orders for *divorce a mensa et thoro*, or, if wealthy wives protect themselves with equitable settlements or divorce via a Parliamentary Act. The attempts made during the 19th century to curb men's violence to wives through reform of the criminal law, the creation of a civil divorce procedure and empowerment of magistrates to offer their own types of matrimonial relief are discussed. For the majority of the population however the law would have seemed irrelevant, inaccessible and unconcerned. During this period, and thereafter, women's ability to escape husbands' violence depended upon their social class, physical ability to escape, economic resources to support themselves and, in the absence of family or community protection, power to keep their whereabouts secret. Even when legal provisions existed, as in the ecclesiastical court powers, intervention was not likely unless the man's violence threatened a woman's life or limb.

In Chapter Two the immediate impact of reforms in the 19th century are evaluated from statistical data and a survey of historical studies. Chapter Two describes how the early provisions were made increasingly more accessible to less well off people. From the turn of the century up to the 1960s the wealthy woman's ability to leave a violent man with the help of the courts was made gradually more available to a larger proportion of the population. The most rapid expansion during this time took place in the area of 'family' law. The period up to the 1960s saw a shift in the relative positions of criminal and matrimonial remedies. Family law reforms were based
upon an assessment of fault which was subject to an expansion in its definition and an increasing relevance to men's as well as women's complaints. The grounds for the provision of matrimonial relief in divorce and magistrates' courts were expanded to cover a greater variety of matrimonial 'faults', not just adultery, cruelty, desertion and neglect to maintain but also forced prostitution, drunkenness, drug addiction, and so on.

During this time the courts also began to define situations where assaulted and 'blameless' wives could remain in the home on the breakdown of the marriage or when husbands attempted to evict them. Unequal provisions for rich and poor persisted especially between magistrates' and divorce court remedies. For working class women however matrimonial remedies were made more accessible as well as more necessary due to the policies of public authorities which demanded court orders as prerequisites to their consideration for housing provision, financial and child care agreements.

To qualify for legal protection, a battered woman had to experience severe violence from her husband as well as have her own behaviour judged. The courts would only intervene in cases of severe ('grave and weighty') violence towards 'blameless' wives. Remnants of the Church's control over the marriage 'sacrament' ensured that separation and divorce would not be easily gained. Whilst more grounds for complaint existed, women were still constrained in their ability to
obtain relief as a result of their husband's counter allegations or assertions about their wives' adultery.

Even the criminal jurisdiction of magistrates' courts was affected by a marriage saving philosophy similar to that found in the matrimonial law. The value attached to reconciliation encouraged the use of stalling tactics such as repeated adjournments in magistrates' courts dealing with both family and criminal cases in the hope that couples would sort things out for themselves. The legal approach to situations of domestic violence against women was 'decriminalised' as many women victims could no longer turn to the criminal law administered by the magistrates for emergency relief. By the later 1960s the 'protection' afforded by the criminal law declined significantly in importance for cases of wife assault. Through their harsh policies the courts and public authorities exacerbated the problems confronting women victims of domestic violence.

Chapter Three outlines the main trends in the law during and after the period of divorce law reform and on the creation of domestic violence legislation. Divorce law reform abolished the 'fault' based system and brought a reduction in the grounds of divorce to just one - irretrievable breakdown proved on the basis of five facts. One of these facts, the concept of unreasonable behaviour, replaced the former standard of cruelty. The trend established by court decisions prior to the 1969 Act away from a reliance upon the 'grave and weighty' standard for assessing violence was thereafter
accelerated towards an emphasis upon personal incompatibility. In Chapter Three statistical data shows a paradoxical feature of the abolition of the fault based system - despite the movement away from fault or 'bad conduct' as a prerequisite for relief, allegations of unreasonable behaviour in divorce petitions continued to grow substantially. The analysis of published statistics suggests a correspondence between the increased share of women's petitions and the growth of petitions alleging a partner's unreasonable behaviour.

During this period changes in the information supplied in Criminal Statistics revealed a high incidence of cases of domestic violence against women. In 1969 for instance, the Home Office began to publish statistics showing the relationship between victims and offenders in cases of homicide. Although research studies into homicide statistics had previously shown domestic violence against women to be the largest single relationship category of homicides, Criminal Statistics had previously recorded the relationship between victims and offenders only for cases of murder followed by suicide. The discussion in Chapter Three shows that the activities of supporters of battered women, public concern about the inadequacy of legal provisions and the demands made by interested parties in Parliament led to further investigation of the problem and recommendations for reform. After repeated requests to the government and Home Office additional information on the numbers of women criminally assaulted and denied help by the police was given to Parliament and later to a Select Committee On Violence In Marriage
(1975). Chapter Three shows there is evidence to suggest that during the 1960s to early 1970s, that the problems of battered women worsened. The numbers of spouses killed and assaulted each year and the rate of refusals battered women recieved when applying for housing, welfare and legal protection had increased in real terms. Chapter Three describes how attempts to alter the policies of legal and public bodies towards women victims of domestic violence brought new legislation to cover domestic violence injunctions and applications for public housing as homeless persons. The newly created National Womens Aid Federation (NWAF), formed from a network of womens' groups supporting refuges for battered women, struggled for and won a number of specific policy changes including public funding for refuges and the inclusion of unmarried women in statutory provisions. Chapter Three describes NWAF's and the Select Committee's suggestions for reform and the government's response. The suggestions of the Finer Committee on One Parent Families and the Select Committee for the creation of a unified and comprehensive approach to the legal and welfare problems of women victims of domestic violence and, along with NWAF, special financial provision for women's maintenance and for refuge provision, are also discussed. Only one out of the 32 recommendations made by the Select Committee was ever implemented. The recommendations of the Finer Committee have been consistently ignored. Chapter Three shows that the policy measures implemented in the 1970s to help women victims of domestic violence were minimal reforms.
Chapter Four shows that in the 1980s even these minor concessions to battered women's needs have been subject to erosion in a cost cutting and reactionary climate. Chapter Four also includes statistical data which illustrates the continued growth of behaviour allegations in matrimonial law. National, regional and local statistics on the implementation and enforcement of matrimonial remedies and injunctions are included to show the continued growth of these and the severe problems associated with their enforcement. The regional statistics show considerable variation in the implementation and enforcement of the domestic violence legislation.

The late 1970s and early 1980s brought a great deal of court activity concerning the 'correct' interpretation of domestic violence legislation, ousters, powers of arrest and emergency (ex parte) orders being especially subjects of controversy. An analysis of case law demonstrates that the provisions quickly lost their discretionary scope and subsequently much of their capacity to fulfill the emergency needs of women victims. The debates in the Family Division of the High Court, the Court of Appeal and the House of Lords shifted from the issue of emergency protection on to the more rigorous assessment of women's needs and the identification of situations where non-intervention might be more appropriate. Legal discussions became largely preoccupied with the all too ready availability of protective measures for women and the effects of these upon men's rights. At the same time, due to the policies of
many local authorities, women's rights to housing in emergency situations had to be 'clarified' or negotiated by the law.

By the 1980s both the legal profession and the battered women's movement were expressing unease about the adequacy and applicability of the 'protective' legislation to deal with the problem of domestic violence against women. Research on the experiences of women who visited refuges supported women's complaints about the continuing inadequacy of the new legislation and general lack of interest in its enforcement and welfare provisions. During the early 1980s the courts and policy makers tended to advise that women's complaints about men's unreasonable behaviour or violence were best kept out of the law. Simultaneously, the Matrimonial and Family Proceedings Act 1984 reintroduced men's complaints about women's behaviour into realms of consideration. Concerns about the increased use of matrimonial injunctions especially as regards the matrimonial home and the still growing share of petitions containing allegations of unreasonable behaviour were expressed by the expanding conciliatory movement who added their suggestions to the contemporary calls for reform towards a less adverserial and more unified approach to matrimonial breakdown.

Ironically, within the criminal jurisdiction recommendations were being made for more legal action in cases of domestic violence against women. In the 1980s attention was increasingly centred upon the interpretation of policy at the local and national levels.
National crises in inner city policing, adverse publicity over West Yorkshire police's handling of the mass murderer Peter Sutcliffe, Thames Valley police's insensitive treatment of rape victims and the collection of the first National Crime Survey helped to make the policing of cases of violence against women into an issue. Further research commissioned by the Metropolitan Police into their approach to cases of domestic violence against women found a high rate of refusal to implement and enforce the available provisions (Edwards, 1986). New policy initiatives, such as police training schemes, special violence against women units and rape suites at local police stations, at the time of writing still in an experimental stage, were suggested as partial remedies to the legal problem. Chapter Four briefly considers this latest trend and the recent recommendations for further reform and debates about the future.

Part II breaks with the more conventional legal discussion by focusing on women and their needs. Part II is based upon the analysis of women victim's needs in contemporary socio-legal discourse. As the researcher's intention was to look at the law in its social context, the discussion includes the definition of women's needs in legal cases from the 'grass roots' (interactional level between clients and solicitors) to solicitors and the court case outcomes, to the debates of the published law reports, press coverage of court cases and policy recommendations and explanations concerning the problem in academic texts. Part II looks at violence against women in socio-legal discourse from the level of recounted experience...
to its ideological representation. Part II emphasises the use of written and spoken language in interactional settings to define women's needs.

In Chapter Five the methods employed in the research for Part II are outlined. Chapter Five contains information on the sources of data collection and the assumptions made about the nature of language and the law. Prior to the 1970s, surveys which were victim oriented, rather than offender based, were held to be too difficult to warrant the serious attention of academics (Gelles, 1980). In recent years feminist research on domestic violence against women has contributed a great deal to the established methods of study. Feminist work on the law and on language however is a much newer area of interest and less guidance was available from this source to help with the present research. Chapter Five outlines the decisions made about the collection and analysis of survey and textual data in relation to feminist, socio-legal and socio-linguistic approaches.

Chapter Six contains the analysis of the research findings on women's experiences of the legal system. It is based upon interviews with 20 women and 6 legal advisors plus the examination of 15 case records. As the method employed in the research looked at women's experiences of gaining relief by following their progression through cases which were initiated, dropped, 'lost' or 'won', information on the women's involvement in many more legal cases was yielded. The 20 women who volunteered for the survey had been involved in a total of 54 legal
cases. The high number of legal cases reflected the women's problems in obtaining legal relief. Most had experienced false starts and failures before arriving at practically useful outcomes. The survey included a whole range of cases from assaults to divorce to injunctions to separation orders but all but two of the 54 cases arose as a result of a partner's unacceptable behaviour which the women described as 'violence'. Chapter Six describes some of the extremely violent behaviour involved in the women's relationships. Eleven out of the twenty women had experienced violence which threatened life.

The women gave a number of reasons for their initial contact with the law. These ranged from emergency and welfare needs to orders from family and friends or what is best described as 'chance' involvement. Involvement with the law was lengthy for most of the women surveyed, the time range being from 6 weeks to 12 years. Although all eventually obtained the legal outcome desired, most expressed some dissatisfaction with the law and its treatment of their needs. For some women legal involvement had adverse effects leading to further violent assault, financial loss, distress to the children and the aggravation of feelings of guilt and shame. The women's experiences supported general complaints about the law as a secondary assault. The reasons for these feelings included the well known and common complaints about police, lawyers', magistrates' and judges' reluctance to intervene, trivialisation and distortion of the behaviour alleged and of the women's needs. Feelings of
powerlessness, a lack of control and a belief that lawyers and women speak different languages were also recounted such that even 'good' solicitors could be seen to be alienated.

Some women allowed research upon their case records collected from solicitors' offices. A textual analysis of case records found the process of transforming women's needs into 'good' cases depended more upon lawyers' concerns than women's needs. Women's needs and 'good' cases, i.e. those which succeeded, seem to have been judged as one and the same. Chapter Six shows how stylistic variations and linguistic transformations had effects upon subsequent contextual shifts in meanings. The relevance of ambiguity in legal discourse and its exploitation for the creation and transformation of good cases is demonstrated with the use of specific examples.

Chapter Seven takes up a similar theme. Chapter Seven is based on a textual analysis of over 300 decisions traced from the published Law Reports where a male spouse, cohabitee or lover's behaviour had provided the original impetus for legal involvement. As in Chapter Six, a broad range of legal cases are included from manslaughter appeals to damages actions to divorces and injunctions etc. The inclusion of a wide range of cases is possible in this chapter because the analysis is not concerned with their specifically legal content. The precedents, principles and matters of statutory interpretation which were discussed in Part I play a minor role in Part II. The cases are examined in terms of the relevance of
behaviour to legal intervention. Examples are used to show how the behaviour ranged in importance from being irrelevant to holding a central position in the text. The strategies employed for countering allegations, justifying violent behaviour, trivialising it, ignoring it or even making it a serious 'grave' matter are discussed on the basis of the textually constructed relationships between men, women, witnesses, experts and the law. Chapter Seven suggests how the judiciary and legal actors legitimate their roles — as upholders of public order, protectors of 'private freedoms', impartial arbitrators and just men concerned not to punish the sick or stupid — by making violence between men and women into something else, e.g. an understandable response to 'provocation', a facet of the victim's behaviour, an individual problem, etc. In reported decisions the debates often revolve around the court's ability/power to intervene. Four key concerns of the interventionist problem — the public/private divide; justification and counter-allegation; expert vs legal decision making and justice vs protection — are used to illustrate some of the discursive techniques found to have been employed.

The press plays an important part in the representation of women victims' needs in socio-legal discourse. For many individuals, press reports are the only source of information on the workings of the law. Chapter 8 is based on the analysis of 105 reports of cases of domestic violence against women traced from the 'quality' non-tabloid press between the years 1983-1986. Although the non-tabloid press may rigorously defend its accurate and impartial reporting, newspaper
 coverage of cases of domestic violence against women are first and foremost 'stories', the general population's 'entertaining' accounts of legal cases. Chapter 8 looks at how the behaviour of wife batterers and wife killers and women's victimisation are described and made into 'good stories' in the non-tabloid press. Examples are used to show how the bald reference in the narrative to men's active involvement in the crimes is a rarity. Like the court reports, press reports more commonly explain, distort and justify men's acts of violence towards women. Freed from the constraints of legal language, but with the additional need to entertain the public, at the misogynistic extreme, press reports may even glorify domestic violence against women by portraying wife assailters and wife killers as national heroes. It is noted that the glorification and sexualisation of acts of violence against women in press reports is not limited to 'wives'. The heroic form of murder was attributed to a number of relationships between men and women, e.g. a stranger or a son and explanations of the reasons for the crimes were commonly offered in terms of 'appropriate' heterosexual behaviour. Two cases which shared common features in being pre-planned crimes committed by high status men against unfaithful, 'sexually promiscuous' wives are discussed at length to illustrate the similarities and differences between the coverage of assaults on wives and assaults on women in general. The discussion shows that, even when reporting cases involving a maximum sentence for murder where a husband's acts were strongly denounced, the use of violence against women can nonetheless be given tacit support.
Chapter Nine is the concluding chapter. Chapter Nine brings together the preceding discussions in Part I and Part II. The definition of women victim's needs from the level of the individual case to the law report to press coverage and the prescriptive discussions of academic disciplines are briefly compared and contrasted. Chapter Nine examines the emphasis on domestic violence against women in academic discourse by looking at recent debates in the therapeutic, sociological and feminist work which inform socio-legal and reformist strategies. In common with press and legal reports, academic discussions have traditionally explained, justified and excused men's use of violence against women. Academic discourse, especially prior to the 1970s, has been preoccupied with an individualism which prioritised the victim's behaviour and pragmatic concerns about the 'treatment' of offenders. However more recent research and debate in the academic discipline, especially in feminist work, has gone beyond the limited pragmatic concern with the 'repair' of individuals to emphasise structural and material impediments to the eradication of domestic violence against women. Feminist work has stressed gender inequalities and the need to restructure relations between men and women. Part of this has involved taking on the job of challenging the established practices in law and society which help to perpetuate and maintain men's violent oppression of women. Chapter Nine contains a review of feminist analyses of domestic violence against women.
Chapter Nine sums up a theme which runs throughout the thesis, i.e. that whilst the disparate practices from the grass roots level between solicitor and client to the technical concerns of the Law Reports to the cultural representations of the Press and prescriptive findings of academic research and political debate may contribute to the secondary assault of women victims of domestic violence, and the subsequent neglect/distortion of their needs, the possibility for change is not precluded due to their domination by an overdeterministic patriarchal structure. The research argues that the exclusion of women from access to the means of legal relief by individual actions at the grass roots or by institutional responses has marked effects upon women's experiences of victimisation, contributes to their secondary assault and, as a result, should be stopped. But the double victimisation of women could also result from the practices of individuals genuinely concerned about battered women's problems — solicitors seeking to achieve 'good cases', judges acting as 'protectors', newspaper editors publishing and commenting on cases of 'public interest', academics and policy reformers establishing explanations and directives. Chapter Nine shows how inappropriate treatment programmes for violent men and women victims were suggested by people such as Erin Pizzey who claimed a genuine concern for and understanding of battered women's difficulties. The discussion is completed with some concluding remarks about the research's findings on some future possibilities for the empowerment of women victims involved with the law. Whilst prescriptive conclusions on the basis of exploratory work need to be guarded it is
hoped that this qualitative survey will leave scope for further work and exploration on this topic. It is hoped that future work will continue to emphasise the need to stress the effects of domestic violence upon women, and children, and to search for ways to give victims more control over the definition of their needs.
CHAPTER ONE.


The foundations for many of the contemporary features of the law relating to domestic violence against women were laid down in the context of the radical legal changes which occurred during the nineteenth century. In the Victorian era there was a complete overhaul of an antiquated and chaotic system of courts, of criminal law, laws of property, punishment principles and methods of trial and evidence. The various superior courts of the church, of common law, equity, admiralty and bankruptcy, administering separate bodies of law, using different procedures and even different languages were, by the 1873 Judicature Act, reformed into a new system governed by just one supreme court competent to deal with all cases. Reforms to the law relating to domestic violence against women thus took place within this climate of centralisation and professionalisation of the law. The discussion will begin with the period immediately prior to the nineteenth century reforms.

Early Involvements.

Friends, neighbours and relatives have always had some involvement in domestic violence against women (see Dobash & Dobash, 1981; Homer,
Leonard & Taylor, 1985; Ross, 1983; Tomes, 1977. The sort of assistance neighbours can offer a woman experiencing domestic violence from her husband - especially refuge and immediate protection - is frequently of greater value than legal provisions. Ross's study of a pre 1914 London community found women indeed placed great emphasis upon neighbourly support in situations of domestic violence. This pattern was confirmed by my own previous study of local court cases in Uxbridge between the years 1853-1903 (Radford, 1983).

The women's rights campaigner Frances Power Cobbe and the Victorian historian William Andrews asserted that in earlier times the peasant community regulated themselves with the aid of rituals such as 'rough music' or 'riding the stang' (see Andrews, 1890; Cobbe, 1876.). This basically involved ridicule, torment or torture of an offender by a mob. In rural areas wife beaters were supposedly dumped into the horsepond, with or without the help of ducking stools (Andrews, 1890). Although mob intervention between man and wife has been found to have continued well into the twentieth century, there is scant evidence to satisfy present day historians as to its effectiveness in curbing domestic violence against women. At best, only the most extreme violence, that likely to result in brutal murders, was controlled by the community (Dobash & Dobash, 1981; Tomes, 1977.).
The protection the law offered a woman in the early nineteenth century varied greatly according to her income. Theoretically, in the early half of the nineteenth century, a woman's complaints could be dealt with by the King's law (by e.g. appeal to the local justices for a bind over order for breach of the peace), the common law (which condoned the husband's use of some violence), the ecclesiastical court (for a *divorce a mensa et thoro*), the courts of equity (for wealthy wives who could afford to use civil law equitable settlements) or direct to Parliament (for a private Act to be passed for a *divorce a vinculo*).

Bind over orders for breach of the peace had been established since at least the 12th century to enable local magistrates and worthy men to deal with the constant threats to public order which occurred. By the mid nineteenth century, local magistrates were praised with great powers of intervention into marital relations (see e.g. Wharton, 1853). A recognizance to keep the peace would be forfeited if the husband subsequently committed or threatened actual bodily harm on the wife. Husbands who breached the peace and attacked their wives again would be fined or imprisoned if unable to pay.

Bind overs could also be used to back up a man's violent attempts to keep his wife under control. According to Andrews (1890), scolding wives could be classified as offenders against the public peace. Any wife taking her husband before the court would be the subject of extra scrutiny because of the directive that applications for bind
over orders made on the grounds of 'malice' or 'vexation' would fail. Wives were very much at the mercy of the magistrate's sympathy and subsequent interpretation of their cases as deserving.

The laws relating to marriage, divorce and legitimacy developed in an era where government of the family was a husband's privilege. Upon marriage, a woman became *feme courverte*, she lost her separate legal status of *feme sole* and came under her husband's tutelage. This meant that the bulk of her rights - to own property, hold custody of her children, etc. - and obligations, torts or liabilities passed over to her husband. (A wife could still be prosecuted separately criminally.) Even custody of the wife's body belonged to a husband. Should she flee he could secure a writ of habeus corpus for her return. As he was legally responsible for her, he had the right to restrain her with the use of moderate correction or to force her to return home should she leave his house without due cause.

Since the time of King Henry II the church courts had been responsible for the laws of marriage, divorce and legitimacy. Marriage in the Canon law was a holy sacrament and totally indissoluble. Although the Church law required that a husband treat his wife with 'conjugal kindness', a precise definition as to the level of this kindness was lacking. The power to discipline a wife was supposedly confined to that within 'reasonable bounds' but there seems to be little agreement as to what was reasonable punishment. In theory, should a husband refuse to receive his wife at home with
'conjugal affection' he could be excommunicated from the church and imprisoned. Yet, even a wife's protection from starvation by a miserly husband was not guaranteed. Although the husband's provision of the necessaries of life (board, lodgings, clothing, medical care, furnishings) suitable to his station in life were implied by the laws of marriage, a woman had no way of impelling him to provide these for her if he unjustly refused to do so. Her only relief from starvation in the absence of means to support herself lay in application to the church court or to the parish for Poor Law relief.

A husband's cruelty was recognised by the ecclesiastical courts as grounds for a divorce a mensa et thoro (a form of judicial separation) and as a defence against the restitution of conjugal rights. The early Canon law defined cruelty as deadly hatred between the spouses evidenced by violence causing danger to life. Conduct had to be proved to be cruel, so only severe physical violence obvious to the court would produce any relief. The ecclesiastical court would not interfere into the marriage unless the cruel behaviour made cohabitation so unsafe for the wife that it was impossible for her to discharge the duties of married life. Women who provoked violent treatment from their husbands would be advised to amend their own behaviour instead. A further catch for assaulted wives existed in that if the court believed she had condoned her husband's violence, by for example returning to him after she had left, she would be refused help.
A divorce *a mensa et thoro* was not really a divorce as such in that it only removed the woman's obligation to live with her husband. She could not remarry and he still retained his rights and obligations regarding her financial dealings. A wife (or husband) who left a marriage could be forced to return by the ecclesiastical court on hearing a petition for the restitution of conjugal rights (Stone, 1977). The husband's cruelty could be taken as a valid defence against his petition for restitution of conjugal rights but if he claimed that he had not meant to hurt his wife the court could insist she return.

Wealthy women were able to obtain some personal protection from exploitative husbands via equitable settlements and, very rarely, divorce by Parliamentary Act. Absolute divorce (with the right to remarry) was not possible at all until 1698 and even then it was used exclusively by men, wanting to divorce wives for adultery. No women brought divorce cases before Parliament until 1801. Many would have been deterred by the cost, which was from 200 to 5000 pounds.

Generally inspired by a wealthy family's desire to prevent scoundrels from marrying heiresses and making off with the family fortune, marriage settlements in an equity court prior to a marriage meant that a woman's property could be held in trust for her. This allowed her the comparative freedom of being able to use the income and, under certain conditions, the property itself. The unequal
provision of legal remedies for wealthy and poor women has been a persistent feature of the history of the law and domestic violence against women.

19th Century Reforms Of The Criminal Law.

Magistrates and the police, disturbed about the incidence of local cases of violence against wives, became increasingly critical of the legal remedies from the 1850s onwards. In Parliament, Thomas Phirin introduced a limited return on assaults upon women and children in London and urged corporal punishment of wife beaters as a solution. This demand for the flogging of wife beaters re-emerged periodically over the next 30 years or so. In March 1853, the government responded to the mounting pressure with a bill which aimed to offer women and children the same level of protection as that which the courts afforded 'poodle dogs and donkeys'. For wives this merely added to the magistracy's already existing powers to bind over husbands to keep the peace. The Act for The Better Prevention And Punishment of Aggravated Assaults Upon Women And Children empowered magistrates to summarily punish those convicted of an aggravated assault on women and males under 14 years of age with a term of imprisonment, with or without hard labour, of up to six months, or with a fine of up to £20. The offender would also be bound over to keep the peace following the expiration of the sentence for up to six
months. Should he fail to keep the peace, he could be returned to prison by the magistrates for a maximum term of 12 months.

Between 1855-1860 1,960 men were sentenced under the act, one third of whom had been found guilty of wife assault (May, 1978). There is no doubt that the new legislation was used by wives in desperation. But the risks associated with charging a husband with this type of violent assault could outweigh the protection afforded women and children by the prison sentence. Not only were the wife and children left vulnerable to a husband's revenge whilst awaiting his trial for violent assault or following his release from prison, those unable to find paid work would be forced on to the stringent mercies of the Poor Law.

**Family Law Remedies.**

An early attempt was made in the House of Commons in 1830 by Dr Phillimore to gain serious consideration of civil divorce. Dr Phillimore argued that Parliament was not the right body to give divorce a vínculo and urged for a royal commission to look into alternatives in the courts of law. The motion was defeated after a brief debate and the matter lay dormant for almost twenty years (Stetson, 1982).
A Royal Commission was appointed to look at the idea of civil divorce in 1850. The commission's recommendations were implemented in the Matrimonial Causes Act 1857 which passed over responsibility for matrimonial cases from the Church court to the new Court for Divorce and Matrimonial Causes based in London. The act introduced divorce in its presently understood form. The provision of legal relief for women however was still greatly unequal to that offered to men. Men could divorce their wives on the sole ground of adultery but a wife had to prove that her husband had committed intolerable adultery, i.e. adultery accompanied by incest, bigamy, sodomy, bestiality, rape or cruelty. Thus, unless a husband was adulterous as well as violent, a woman could not obtain a divorce in law.

The grounds for divorce were based on the principle that marriage could be legally ended only if an innocent spouse had proved the partner's guilt of a matrimonial offence. If it should be found that the petitioner was not innocent, had condoned or connived the offence, then the court could dismiss the petition. The divorce a mensa et thoro persisted in the form of a legal separation which allowed a woman to live apart from her husband if he maltreated her. But again, if the court felt that the wife had contributed by provocation to the man's violence, it would refuse her a decree.

The 1857 Act did not alter at all the legal principles applied by the courts examining the violent behaviour of men towards their wives. Although more wives were now able to become divorced due to the
reduced costs of the procedure, it was still only very severe violence which was acted upon by the court. A series of court decisions had shifted attention from violence which threatened life or limb to that which caused injury to health. Problems in deciding whether conduct was violent or not, what could be termed mental cruelty, whether a more 'refined' wife suffered disproportionately were almost inevitable (see Chapter 2).

The court held the power to order a husband to pay alimony and child support. A wife had no right to maintenance as such but this could be given in some cases at the discretion of the court. The act instructed the court to take into account the wife's wealth, the husband's ability to pay, and the conduct of both the parties if making a financial settlement. Husbands could sue the alleged adulterer for damages and use this money if he wished for the support of the children and maintenance of the wife. Women had no corresponding rights against their husbands' lovers. Whilst living apart from her husband a woman could now be treated as a feme sole, resuming the property rights and status of a single woman.

The creation of civil divorce did bring substantial changes to the procedure involved in getting a decree. The ecclesiastical court proceeded on written evidence only (libels). The new Divorce Court operated with oral hearings, so a husband could now appear in court to counter the wife's allegations. In the ecclesiastical court, the onus of proof for violent conduct lay with the wife. The new rules
of evidence and procedure allowed a shift in the onus of proof towards the husband. Divorce was very much a public affair and undoubtedly a most painful matter for those involved. Under the provisions of the Matrimonial Causes Act 1857, a jury could be called to judge the alleged conduct of the spouses. The press published lurid and intimate details (see Radford, 1983).

The expense of a divorce or separation petition continued to be too great for working class women and only one court in the entire country was able to hear cases. Technically it was possible for the poor to go to Somerset House Divorce Registry to take out forms pauperia swearing to have an income less than £50 per year and thus dispense with the court fees (of about £40), but this was seldom taken up. No protection was given to women who had run away from violent men or were married to men who were not technically deserters, but who came and left as they pleased, taking with them the woman's earnings.

Flogging.

Discontent continued to rumble over the inadequacy of the magistrates' powers to protect working class women. In the House of Commons on May 18th 1874, Colonel Egerton Leigh rose to call attention to the 'very insufficient punishment' given to wife beaters and to recommend public flogging as a cure. The 1853 Aggravated
Assaults Act of 24th and 25th Victoria did not give sufficient punishment in wife assault cases. Although under the Act a man might be imprisoned for up to six months, it did not actually prevent him from continuing his violent behaviour on release.

In 1874, the Home Secretary sent around a circular to members of the judiciary and police in order to guage opinion on the matter of flogging. Although the majority who sent in returns were in favour of flogging no action was taken and by the late 1880s calls for public punishment fizzled out. One problem noted by opposers of corporal punishment was that even if applied to only extreme cases, flogging 'brutalised' individuals was not only a suspect but also an arbitrary solution (a strong man may scarcely flinch whilst another near died). As Justice Keating pointed out to the Home Secretary in 1874, flogging was of little use to the victims and had failed as a deterrent for wife assault in Leeds (Report on Brutal Assaults, 1875). Emphasis gradually shifted on to reforms which would protect victims by offering them viable alternatives to abusive relationships.

The Creation Of Magistrates' Matrimonial Remedies.

Magistrates and feminists took up the theme about the difficulty of enforcing the law to deal with cases of wife assault when the women lacked alternatives to abusive relationships. Poor women had precious little practical relief from the law until magistrates were
given the power under an Act proposed by Frances Power Cobbe (Matrimonial Causes Act 1878) to release women from their obligations to live with violent husbands. This 'poor person's divorce' is said to have laid the foundation for the modern law's approach to matrimonial proceedings in magistrates' courts (Eekelaar, 1984). The 1878 Act empowered the court to grant a non-cohabitation order, custody of children under the age of ten years and maintenance, if a husband had been convicted of an aggravated assault on the wife. The provisions obviously applied only to very extreme cases of prosecuted cruelty. Husbands were still able to avoid their responsibilities as any charge of adultery by the wife, before or after the award would remove her right to relief. The numbers using the act were very small and pressure continued for more generous provisions.

Many women were physically prevented from leaving violent husbands due to the ruling in Re Cochrane (1840) where it was held that a husband could confine his wife if she refused to cohabit with him. Although the Matrimonial Causes Act 1884 had taken away a husband's power to enforce a restitution of conjugal rights, it had not altered his common law rights to custody of her body. It was not until 1891 that the Court of Appeal was able to argue positively that a husband had no right to forcibly assume custody of his wife's body (R. v Jackson (1891)). Whether or not he could kidnap her remained undetermined until the 1970s (see Chapter 3).
In 1895 the Summary Jurisdiction (Married Women) Act consolidated and improved on the 1886 act and the 1878 Matrimonial Causes Act by allowing married women to apply to the magistrates' courts for separation and maintenance orders if their husbands had:

i. been convicted of an aggravated assault under S.43 of the Offences Against The Persons Act 1861

ii. been convicted on indictment for assault and sentenced to at least two months imprisonment or fined £5

iii. deserted them

iv. been guilty of persistent cruelty so as to make their wives leave home

v. wilfully neglected to maintain so as to cause their wives to leave home.

These grounds for separation and maintenance orders remained the basic grounds for legal intervention until an act of 1960 introduced some modifications. The 1895 act increased magistrates powers to give the wife custody of children up to the age of 16 years. Maintenance provisions were set at a maximum of £2 per week. No order would be given to wives proven guilty of adultery or connivance.

In 1902 husbands also acquired the right to apply for separation orders. Section 5 of the Licensing Act 1902 marginally extended the powers given magistrates to cover cases in which either spouse was a habitual drunkard. By the start of the 20th century therefore
women who suffered unprovoked violence from their husbands which caused injury to their health were able to apply for a mixture of criminal and matrimonial provisions. They could be granted non-cohabitation orders, or divorces, own their own property and keep their earnings or be given maintenance. Their access to the provisions varied according to their social class and their own 'blameless' behaviour. In Chapter 2 the analysis of statistical data will give an indication of the impact of these reforms before continuing the historical discussion.
CHAPTER TWO.

Expanding And Equalising Grounds : Reconciling Provisions.

1900-1960s.

Introduction.

This chapter, an historical progression to the previous, will outline the relevant changes in the statute, case law and procedure relating to domestic violence against women from the start of the 20th century up to the 1960s. Information from one of the women interviewed for the survey in Part II will be used at the end of the chapter to illustrate some of the severe practical difficulties women still faced in the 1960s. Table 1 presents a summary of the main changes influencing the law in this period. Table 1 reads from left to right and lists (without hierarchy) six key categories of changes which took place from the start of the century up to the 1960s.

In the early nineteenth century the punishment of violent men by way of the criminal law had been the major preoccupation of those involved in reformist debates. By the twentieth century the emphasis had shifted towards reform of the family law as a means of alleviating the problems of abused wives. By the second half of the twentieth century, the courts were dealing with more family law cases than cases of criminal assault (Table 2).
Expanding And Equalising Grounds: Reconciling Provisions.

Table 1: Summary of Reformist Trends 1900 to 1960s.

1. Type of adjudication.
   - In public
   - In private

2. Main gender of petitioners.
   - Male
   - Female

3. Features emphasised in debates on court procedure.
   - Humiliation
   - Punishment
   - Protection
   - Criminal
   - Conciliation
   - Reconciliation
   - Special 'family' approach

   - Objective
   - Subjective

5. Grounds for dissolution of marital union.
   - Unequal - preference male grounds
   - Offences likely to hamper lineages of family (adultery, VD, life-threatening cruelty)
   - Unequal - preference female grounds
   - Offences making married life a practical impossibility (adultery, VD, life-threatening cruelty, insanity, failure to maintain, etc.)
   - Equal grounds
   - Faults of partners making married life intolerable

6. Allocation of costs.
   - Paupers costs only
   - Legal aid
   - Everyone has rights as long as they can afford to pay for them
   - Subsidised
   - Economic individualism
   - Means tested benefit
Expanding And Equalising Grounds : Reconciling Provisions.

A previous study of cases of domestic violence against women in one Middlesex court found that following the 1895 Act a rise in the number of reported applications by assaulted wives to magistrates for matrimonial relief accompanied a decline in the reported numbers prosecuting for criminal assault (Radford, 1983). The selected period of research into the court's work ended at 1903 therefore no firm conclusion can be drawn as to the permanence of the trend.

TABLE 2: Average Numbers Of Matrimonial Orders and Cases of Non-Indictable Assault In Selected Years, 1900-1967, England and Wales.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Divorce</th>
<th>Judicial Sepn.</th>
<th>Magistrate Matrimonial</th>
<th>Aggravated assaults</th>
<th>Common assaults</th>
</tr>
</thead>
<tbody>
<tr>
<td>1900</td>
<td>600</td>
<td>80</td>
<td>8000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1920</td>
<td>3090</td>
<td>13603</td>
<td>512</td>
<td>32589</td>
<td></td>
</tr>
<tr>
<td>1938</td>
<td>9970</td>
<td>14382</td>
<td>154</td>
<td>14663</td>
<td></td>
</tr>
<tr>
<td>1954</td>
<td></td>
<td>55</td>
<td></td>
<td></td>
<td>12811</td>
</tr>
<tr>
<td>1958</td>
<td>22584</td>
<td>71</td>
<td>24089</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1962</td>
<td>33818</td>
<td>28306</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1967</td>
<td></td>
<td>25</td>
<td>9790</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Further discussion will show that despite the decline in use, applications to magistrates for criminal prosecution as well as for matrimonial relief remained important to women who suffered domestic violence well into the twentieth century.
By the turn of the century, the divorce court was issuing some 600 divorces and 80 judicial separations per year and magistrates were granting approximately 8000 separation and maintenance orders (McGregor, 1957). At this time England had one of the lowest divorce rates in the Western world. Divorce petitions did not overtake the summary proceedings offered to wives under the 1895 act until the 1960s.

Although feminists had campaigned for easier divorce and judicial separation with the intention of improving women's positions, men in fact were granted these orders by the new court of Divorce and Matrimonial Causes more frequently than were women (Table 3). Women may have been apprehensive about going to court because if they lost the case they would have to pay the court costs and might lose custody of their children as well. Compared to the previous under-utilisation of divorce bills by women however this would have been a substantial increase. From the end of the 17th century to 1857, there were 330 Divorce Acts before Parliament and only four of these were passed in order to grant women dissolutions. The first woman to get a divorce this way was Mrs Addison who succeeded with her Act in 1801.

Due to the requirement not to grant orders in cases where collusion was found petitions for divorce and judicial separation had a high

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(8The new court of Divorce and Matrimonial Causes was incorporated into the Supreme Court in 1883 as the Probate, Divorce and Admiralty Division - law students flippantly refer to this as the division for wills, wives and wrecks.)
failure rate. Magistrates granted orders to 74% applicants between 1893-1909 (McGregor et al, 1970). In the divorce court, between 1858-1907 63% to 84% of men's petitions and 65% to 94% of women's petitions were granted (Savage, 1983). It was not until after 1910 that the rate of divorce began to rise dramatically. The 1910 court issued 581 decrees. By 1920 this had risen to 3,090.

Table 3: Proportion of Petitions For Dissolution By Husbands and Wives, 1859-1908, England and Wales.

<table>
<thead>
<tr>
<th></th>
<th>1859-63</th>
<th>1874-78</th>
<th>1884-8</th>
<th>1894-98</th>
<th>1904-08</th>
</tr>
</thead>
<tbody>
<tr>
<td>Husbands</td>
<td>62%</td>
<td>60%</td>
<td>58%</td>
<td>58%</td>
<td>56%</td>
</tr>
<tr>
<td>Wives</td>
<td>38%</td>
<td>40%</td>
<td>42%</td>
<td>42%</td>
<td>44%</td>
</tr>
</tbody>
</table>


The twentieth century brought more grounds on which orders could be granted, improvements in the availability of legal aid and in the accessibility of the courts. As the twentieth century progressed, the courts' matrimonial work expanded dramatically. There was a gradual shift towards dissolution of marriage as the most frequently sought legal remedy and women became the majority of the petitioners in both divorce and summary jurisdictions. The rest of this chapter will show how specific changes in the law, mainly in criminal and matrimonial law, contributed to the gradual decriminalisation of remedies.
Problems arose with the new matrimonial powers in the summary courts almost immediately. Magistrates, who lacked formal legal training, were frequently criticised by the judiciary and reformist elite for misinterpreting and wrongly executing their legal responsibilities in matrimonial cases. Occasionally this 'ignorance' was seen to have 'favoured' women. In the case of Cobb v Cobb in 1900 for example, the magistrates awarded the wife £1 a week maintenance from her husband's total wage of 23 shillings. Having spent two spells in prison for maintenance arrears, Mr Cobb, a railway porter, raised enough money from train passengers and other sympathisers to return to court, amidst much publicity, where his maintenance obligation was reduced to 8 shillings per week. The Cobb case offers an early example of the dual morality persistently applied to maintenance cases - incomes below the subsistence level are loudly and publicly condemned by the legal profession as inappropriate for men but ignored as an inevitability for women and children (see Chapter Four).

Separated women unable to provide for themselves by employment, faced a choice between uncertain maintenance, the Work House or returning to violent husbands. Maintenance, limited to a maximum of £2 per week had to be enforced by the wife herself. It is very likely that women who had left violent and oppressive husbands found the responsibility of collecting their own maintenance troublesome. The difficulty in getting it must have given many no choice but to
set up house with other men or take in lodgers when possible. The ex-husband could then complain to the court that his wife was guilty of adultery and her right to maintenance could be lost for good. One single act of adultery or a resumption of cohabitation with the husband for six weeks were sufficient to revoke an order of maintenance.

Three private members bills in the early part of the twentieth century had sought to increase the security of working class wives. The first bill, the Assaults on Wives (Outdoor Relief) Bill was introduced by Mr J.C. Wedgwood in 1900 and aimed to give outdoor relief at a rate of 10 shillings per week to women whose husbands were sentenced to over one month's imprisonment for aggravated assaults upon their wives. Mr Philip Snowden's Summary Jurisdiction Bill of 1911 was drafted to give women the right to maintenance without the involvement of the Poor Law Guardians by use of an attachment to earnings order (separated wives did not get this for another 50 years or so). The third, the Summary Jurisdiction (Matrimonial Causes) Bill, introduced in 1913 and again in 1914, sought to expand the grounds on which an order could be granted to include adultery, wilful desertion or the husband insisting upon sexual intercourse with the wife whilst knowing that he suffered from venereal disease. Changes in the law governing divorce however again became the preoccupation of the reformers and these relatively minor alterations were lost in favour of 'broader' debates.
Expanding And Equalising Grounds : Reconciling Provisions./2.

The Second Phase Of Divorce Reform.

Divorce reform became a public issue again because of the efforts of judicial and legal elites, such as Lord Gorrell, a former president of the Divorce Court and member of the House of Lords. Reforms were intended to bring 'justice' to the law by expanding and equalising the provisions offered to men as well as to women. For the next thirty years debates over the expansion of the grounds for divorce raged throughout government and legal quarters. In 1906 the Divorce Law Reform Union was organised by M. L. Seaton-Tiedemann. The union did much to publicise the growing dissatisfaction with the law. It was composed of lawyers and others concerned that the divorce laws were unrealistic and caused a great deal of suffering to those involved. Members argued that many wives (and some husbands) were left desolate by being bound to drunken, criminal, insane, or cruel and violent spouses and they were not under current law free to remarry. The union wanted the grounds of divorce to be expanded to include insanity, desertion, drunkeness and penal servitude. Such proposals were rigorously opposed by the Church, still committed to the idea of indissolubility of marriage. Lord Gorrell (or Sir Gorrell Barnes as he then was known) composed a great tract of complaint against the law's illogicalities as part of his judgement of the case of Dodd v Dodd in the Probate, Divorce and Admiralty Division in 1906. In 1909, he again brought the matter of divorce law reform before Parliament through a motion in the House of Lords to extend jurisdiction in divorce matters to the county courts. The
Asquith government responded by appointing a Royal Commission on Divorce and Matrimonial Causes in 1909 and handing the chair to Lord Gorrell. The Commission was to look at the law of divorce and matrimonial causes, including separation orders, and the work of the magistrates and recommend changes. The final report and evidence was published as an extensive four volume compendium in 1912 (Royal Commission on Marriage and Divorce, 1912).

The inadequacy of the magistracy was a recurrent theme of the Report. The Commission wanted to take away magistrates' powers to grant separation orders leaving them with only limited powers to grant orders in cases needing immediate protection or support. By a majority of eleven to three, they favoured an expansion of the grounds of divorce to include adultery, desertion for three years, cruelty, incurable insanity, habitual drunkenness and imprisonment under a commuted death sentence; equal grounds for divorce between men and women; expanded provisions for nullity to failure to consummate, insanity, venereal disease and pregnancy at the time of marriage; a limitation of the publication of divorce case details and a reduction in cost for divorce procedures. The report met with a very hostile reception and greatly due to Church opposition, the government failed to act upon its recommendations. After Lord Gorrell's death in 1913, his son introduced a Bill to the House of Lords in an attempt to bring to law the recommendations on which the Commission had agreed but had to withdraw it as it was too late in
the session for discussion. Before it could be reintroduced war broke out and the second Lord Gorrell was killed.

Feminists favoured an equalisation of the grounds for divorce between men and women. Millicent Fawcett had skillfully argued in her evidence to the Gorrell commission that unequal grounds for divorce allowed a double standard of morality between men and women. Women were expected to forgive a husband's adultery unless he aggravated it with violent behaviour or desertion etc. whilst men could divorce their wives for just one act of adultery. Two more bills were introduced into Parliament in 1920 and 1921 attempting to enact some of the Gorrell commissions proposals but both failed to become law. It was not until feminists drafted their own bill for equal grounds in 1923 that their demands were accepted by Parliament.

Carol Smart has argued that by the first half of the twentieth century, the belief that a husband's adultery was as disruptive to family stability as a wife's had taken hold (Smart, 1984). There certainly was less resistance to the essentially procedural, equal treatment reform of divorce law than to the highly controversial expansion of grounds of divorce. The Matrimonial Causes Act of 1923, sponsored by Lord Buckmaster, succeeded because it aimed simply to make adultery, equally for men and women, the sole ground for divorce. But this new 'equality' in divorce provision probably had little effect on women victims of domestic violence. Although the divorce rate increased from an average number of 2954 petitions
between 1916-1920 to an average of 4052 for each year between 1926-1930, changes in procedure allowing the poor's undefended cases to be heard in Assizes towns accounted for the rise in petitions more than 'reforms' in the grounds of divorce (McGregor, 1957).

**Maintenance, Prostitution and Working Class Wives.**

The lawmakers' eagerness to grant orders on equal grounds for men and women did not extend to the magistrates' courts. In fact the very opposite occurred, reforms here allowing an expansion of the grounds for the granting of orders. The Summary Jurisdiction (Separation and Maintenance) Act of 1925 increased the grounds for the granting of orders for both husbands and wives but a wife's grounds for complaint were more compendious than were a husband's. The Bill was introduced to Parliament in 1924 under the direction of the National Union for Equal Citizenship and taken up by the Conservative government. Between 1925 and 1960 husbands had three grounds for complaint upon which to apply for a magistrates' order (1. the wife's persistent drunkeness, 2. cruelty to the children, 3. adultery) whilst wives had a total of ten (1. a husband's conviction for violence against his wife, 2. his persistent cruelty to her, 3. his persistent cruelty to the children, 4. his habitual drunkeness, 5. his drug addiction, 6. his insistence upon sexual intercourse with her whilst being venereally infected, 7. his compelling her into
prostitution, 8. his adultery, 9. desertion, 10. wilful neglect to maintain her or the children).

Much of the impetus for the 1925 Act seems to have sprung from despair about the moral standards of working class wives rather than from an awareness of their real problems in escaping from violent men. A great proportion of the debates on the Bill centred upon whether or not husbands could force wives into prostitution. Feminist supporters of the Bill argued that the problem for working class wives was not a husband's physical compulsion that they should become prostitutes but other types of behaviour far more 'devilish'. The lack of accommodation at the time meant further that wives had nowhere to go to live apart from violent men. Whilst awaiting the hearing of her case before the magistrates for a separation order, a battered woman was forced to live in absolute destitution or maintain herself as best she could. In a time of great economic depression, with unemployment rife some separated women may have had no choice but to support themselves by prostitution. Prostitution offences averaged at 4,317 cases being tried per year in the magistrates' courts between 1920-1924 compared with averages of 3,130 per year between 1925-1929 and 1,555 per year between 1930-1934 (Criminal Statistics, 1947).

Those who emphasised the economic dependence of women as being at the root of the prostitution problem were treated with great hostility in the House of Commons. Some male M.P.s feared wives
were too well protected by the law and there was a danger of them abusing their legal privileges in order to bully their husbands. Mr Storry-Deans for instance tramped out the following tale of the 'silly, capricious wife' who makes her long suffering husband's life a misery:

A lady got an order against her husband, I gather the conduct complained of was not very bad, but she contrived to persuade the magistrates that she had been deserted by her husband, because in a temper, when she said she wondered how he managed to live with her if she were so bad-tempered as he suggested, he replied, "Get out, then". She took him at his word and got out, and she thereupon got her order from a sympathetic bench of magistrates. Benches of magistrates are rightly sympathetic to the claims of women. That is my experience. They gave this lady her order. She went away to live in a distant part of the country, and the husband faithfully paid the amounts due under the order. After a while, at his urgent solicitation, she returned to him and lived with him for about a week, and then, without any quarrel having taken place, she again left him. He did not apply for the order to be annulled, and he continued to pay her the allowance. After another three or four months she returned again and lived with him for ten days - one week and two weekends. Then she went away again and the husband (.....) applied for the order to be discharged. (.....) We do not want to take away or to injure any right which women have, but on the other hand we do not desire to put into the hands of any woman who might be capricious the power to act in the manner I have explained.'

(Hansard, 1924, 4 July.)

Another M.P. complained wives may frame their separation orders, hang them over the fireplace and bring them down to periodically remind their husband's of their duties (Hansard, 1924, 4 July). In comparison to the attitudes aired in debates about violence against women in the nineteenth century, there was a hardening of sympathies in the 1920s. Ardent masculinists in the nineteenth century had attempted to convince reformers that battered women did not need
protection in law because they merely fought back. In the 1920s they denied women were assaulted altogether.

Any legal imbalance which favoured wives was a very long way off acting as a positive discrimination for the protection of women. Although cases such as the one described by Mr Storrey Deans may have occurred, many of the provisions which 'favoured' wives were largely unworkable in practice. For example, a woman was often reluctant to have her husband charged with criminal assault before she could apply to the civil jurisdiction. Although the 1925 Act was meant to relieve women of the need to leave the husband before going to the court to complain of his cruelty or neglect to maintain, if she was unable to find separate accommodation within three months any order made would lapse. In practice then, a wife was still obliged to render herself homeless by leaving her husband to have a separation order of any value.

**Reconciling Marital 'Differences'.**

Despite the persistent difficulties faced by women leaving violent men, the 1925 Act must have brought some improvement. Following the 1925 Act, maintenance applications rose from 9,553 in 1900 to 15,991 in 1930 (McGregor, Gibson & Blom-Cooper, 1970). The seeds of suspicion regards the genuine nature of a woman's claims however were beginning to show signs of germination. Criticisms of the
magistracy's gullibility hardened. Reformist debates in the 1930s showed grave concerns that magistrates were not only unskilled muddlers but they in fact aggravated marital upsets. The idea of persuading magistrates to effect reconciliations rather than protect wives became an important theme. As early as 1912, the Royal Commission on Divorce had noted the wastage in court time caused by couples who later reconciled their differences:

We find that a very large percentage of the persons separated by such orders become reconciled afterwards.... largely through pressure caused by the increased cost of living separately, by some witnesses this percentage is placed as high as 50 or even, in some cases, as high as 75.

(Hansard, 1936-7, Vol.319, Col.1939)

Efforts to encourage reconciliation were proffered in the late 1920s and originally focused on changes to the court environment. The Court of Domestic Relations Bill was introduced into the House of Commons three times between 1928 and 1930. Each time separate court buildings to deal with the matrimonial cases of the working classes were proposed. In 1934 Lord Listowel introduced the Summary Jurisdiction (Domestic Procedure) Bill to produce a special conciliation procedure whereby one spouse could summons the other to appear before the court to help them resolve their differences. Lord Merrivale also tried to introduce a Bill on the same subject into the House of Lords but withdrew it on hearing that the government had set up a committee of enquiry. Chaired by a Mr Harris of the Home Office, the Departmental Committee on Social
Services in Courts of Summary Jurisdiction was to look into social services in the magistrates courts especially in terms of matrimonial disputes, probation officers and conciliation machinery. Their report, published in March 1936, stressed the shortage of reconciling influences in the magistrates courts. The Committee had examined 136 witnesses and held 47 meetings in the first review of matrimonial powers in the summary courts since their creation in the 19th century. Figures returned from the courts after a request for further information showed that in London 79% of complainants first saw a probation officer for reconciliation work, resulting in only 9% of cases then going before the court for adjudication (McGregor et al, 1970). For women victims of domestic violence this delay would have greatly increased the dangers associated with taking a complaint to court. Unless she was living elsewhere in the meantime, the husband's scope to coerce her into dropping the charges would have been great.

Having a smaller volume of work altogether, things seem to have been better for women visiting courts in the non-metropolitan areas. In the County Borough and County Divisional Courts only 28% of couples saw a probation officer first, 22% to 40% of whom later carried on to have their cases heard (McGregor et al, 1970). Acting tentatively upon the encouragement gained from these figures, the Committee recommended courts should, at their discretion, promote the work of conciliators and make further use of interim orders in the hope that couples may sort themselves out without court involvement. Some
procedural changes would be needed to defuse the rampant hostility exhibited when cases came to court. Cases should be heard at special sessions and even evening sittings could be tried. The bench, which could presently comprise an intimidating group of 30 or so magistrates adjudicating one case, ought to be restricted to a maximum of three magistrates, one of whom should be a woman, and they would be empowered to sit in private.

In 1936, Sir Arnold Wilson took up themes from the Committee's report and twice urged the government to consider its recommendations. Sir Arnold, also worried about magistrates' lack of training, added the new complaint of middle class bias to the list of their shortcomings. The issues were given at last a formal hearing during the readings of the Summary Procedure (Matrimonial and Other Matters) Bill in 1937. Supporters of the Bill pointed out how the legal protection for women victims of domestic violence was now 'satisfactory'. Battered wives could now get non-cohabitation orders, maintenance, custody of the children and court costs, but husbands were in a less favoured position having fewer grounds on which to apply for relief. The unsatisfactory court environment worked to deny individuals their legitimate rights. Hearings were packed with 'a host of busybody neighbours' attending for morbid reasons along with a press who gained profit from sensationalising private affairs. Whilst some speakers, e.g. Mr Rathbone and Mr Messer, pointed out how wives were the most likely to be oppressed in court and intimidated into silence, others believed they orchestrated the entire shambles:
A wife may have been dejected because of a fancied neglect, and she gets neighbours to sympathise with her, and before you know where you are, trouble arises.

(Mr Macquister, Hansard, 1936.)

The majority of the House however agreed that the Summary Procedure Bill would preserve the family against break up by implementing most of the Departmental Committee's recommendations, (i.e. encourage reconciliation, a further use of probation officers and interim orders, special sittings apart from criminal cases, restriction of the bench to three magistrates one of whom should be a woman, restrictions upon the press and witnesses permitted in court). Apart from a change of name in 1937 to the Summary Procedure (Domestic Proceedings) Bill, the proposals were agreed to be very good and became law that year.

Expanding The Grounds For Divorce.

At about the same time another private members bill proposed a liberalisation of the law of divorce by expanding the grounds on which orders could be granted. This time, in addition to resistance from the Church, the Bill faced strong opposition from powerful members of the government of the day. For example, the Lord Chancellor, despite the recommendations of his legal colleagues, opposed further 'liberalisation' because of fears that it would increase the work load of the courts and create a need for more
judges in the Probate Divorce and Admiralty Division. The bills sponsors, Alan Herbert and Rupert de la Bere, helped by the Divorce Law Reform Union, lawyers and feminists, scored a major coup in debates by arguing that the bill aimed to preserve respect for the church, law and marriage not destroy them. With such limited grounds for divorce, the law, the institution of marriage and the Church fell into disrepute. Prospective petitioners were faced with committing either adultery or perjury to legally end their relationships. If they were unwilling to do either, they were forced to live 'in sin', out of wedlock, increasing the population of illegitimate children. Some practising clergy reinforced this argument by pointing out that marriage should be based upon the desire to dwell together out of sheer affection and respect for one another, not duty for duty's sake. In a letter to the Times, the Archdeacon of Coventry wrote of the stupidity of England, a Protestant country, clinging on to adultery as the sole ground of divorce whilst Catholic neighbours offered further grounds.

Herbert and De la Bere took up the issue of reconciliation by trying to argue that the summary courts, being courts for more immediate relief, should be persuaded to exercise their capacities in this respect. Mr Claud Mullins, a magistrate in the South West of England, had supplied them with information on the potential here. In seven months he had had 220 summons for relief out of which only 89 orders needed to be eventually made. Most of the wives were said to be 'better off' without court involvement because the problem
at the root of their difficulties was later found to be a 'medical matter' which could be referred to a doctor. Mr Mullins did not mention whether the wives or the husbands received medical treatment, nor what this consisted of.


<table>
<thead>
<tr>
<th></th>
<th>1938</th>
<th>1958</th>
<th>1962</th>
<th>1968</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total filed</td>
<td>9970</td>
<td>25584</td>
<td>33818</td>
<td>54036</td>
</tr>
<tr>
<td>Adultery</td>
<td>4989 (50%)</td>
<td>11553 (45%)</td>
<td>15366 (45%)</td>
<td>26011 (48%)</td>
</tr>
<tr>
<td>Desertion</td>
<td>3909 (39%)</td>
<td>8880 (35%)</td>
<td>9160 (27%)</td>
<td>11147 (21%)</td>
</tr>
<tr>
<td>Cruelty</td>
<td>699 (11%)</td>
<td>4869 (19%)</td>
<td>5791 (17%)</td>
<td>12753 (24%)</td>
</tr>
<tr>
<td>By Husbands</td>
<td>4649 (47%)</td>
<td>11540 (45%)</td>
<td>14271 (42%)</td>
<td>20130 (37%)</td>
</tr>
<tr>
<td>By Wives</td>
<td>5321 (53%)</td>
<td>14044 (55%)</td>
<td>19547 (58%)</td>
<td>33906 (63%)</td>
</tr>
</tbody>
</table>

NOTE: Where totals do not add to 100%, remaining petitions were based on other grounds.


The Matrimonial Causes Act 1937 liberalised divorce law further when implemented in 1938 by adding to adultery the offences of cruelty, desertion for three years and the incurable insanity of the other spouse as grounds for divorce. Adultery however remained the most common ground for divorce until the passing of the Divorce Reform Act 1969 (Table 4).
Expanding And Equalising Grounds : Reconciling Provisions./2.

Immediately following the Act, the number of divorce applications increased. There was a peak increase during and after the second world war and another increase in petitions for divorce in 1950 when the Legal Aid and Advice Act 1949 came into force. During the war large numbers of servicemen and women were in need of legal assistance with their marital difficulties so the government of the day set up a rudimentary system of legal aid to deal with service divorces. The Rushcliffe Committee in 1949 noted the legal profession’s anxiety that the government take on responsibility for legal services. Legal aid was thus introduced as a lawyer’s insurance policy as well as a welfare benefit.

Table 5: Divorce Petitions Filed England And Wales 1937-60.

<table>
<thead>
<tr>
<th>Year</th>
<th>Filed by husband</th>
<th>Filed by wife</th>
<th>Total</th>
</tr>
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<tbody>
<tr>
<td>1937</td>
<td>2,765</td>
<td>2,985</td>
<td>5,750</td>
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<tr>
<td>1942</td>
<td>6,303</td>
<td>5,310</td>
<td>11,613</td>
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<tr>
<td>1944</td>
<td>10,154</td>
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</tr>
<tr>
<td>1946</td>
<td>26,429</td>
<td>15,275</td>
<td>41,704</td>
</tr>
<tr>
<td>1948</td>
<td>18,456</td>
<td>18,619</td>
<td>37,075</td>
</tr>
<tr>
<td>1950</td>
<td>13,207</td>
<td>15,889</td>
<td>29,096</td>
</tr>
<tr>
<td>1952</td>
<td>14,705</td>
<td>19,065</td>
<td>33,770</td>
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<tr>
<td>1954</td>
<td>12,708</td>
<td>15,639</td>
<td>28,347</td>
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<td>1956</td>
<td>12,538</td>
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</tr>
<tr>
<td>1958</td>
<td>11,540</td>
<td>14,044</td>
<td>25,584</td>
</tr>
<tr>
<td>1960</td>
<td>12,109</td>
<td>15,761</td>
<td>27,870</td>
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</table>

Source: (Smart, 1984, p.33).

The grounds for divorce between the years 1950 to 1960 also changed in proportion towards a much lesser emphasis upon desertion and
greater reliance upon cruelty and adultery (adultery 43%, cruelty 13%, desertion 42% in 1954 to adultery 53%, cruelty 19% and desertion 26% in 1966). Changes in the grounds for divorce coincided with changes in the share of divorces granted to wives in comparison with husbands. Most war time divorces were granted to men (in 1945 this peaked at 65%). At other times, women obtained more than half the divorce petitions (55% in 1954) (Table 5). Men and women petitioned equally on the grounds of adultery and desertion but 95% of cruelty petitions were brought by women (Stetson, 1982). Thus, the increase in the frequency of the petitions based upon cruelty coincided with an increase in the numbers of women petitioning for divorce.

In 1956, the Morton Commission (set up in 1951 to review the law of divorce and matrimonial causes, including magistrates powers) recommended further minor expansions in the grounds for divorce to cover wilful refusal to consummate the marriage, artificial insemination by donor without the husband's consent and detention as a mental defective of dangerous and violent propensities (Royal Commission On Marriage And Divorce, 1956). Minor changes affecting the divorce of insane spouses were brought in by the Divorce (Insanity and Desertion) Act 1958 and the Mental Health Act 1959.

A more significant reform for women hoping to divorce violent men was introduced in 1965. The Matrimonial Causes Act modified the bars to collusion and condonation which had prevented many couples
from getting divorced even though their marriages had broken down. The abolition of the principle of condonation in relation to cruelty brought some relief for battered wives in cases where their forgiveness was likely to be asserted or assumed. Allegations of condonation of violent acts would be a problem for wives who returned repeatedly to violent husbands due to lack of accommodation or other means of support. Women who returned to their husbands were at a great risk as they would have to await a further act of violence to revive the past incidences in order to abolish the condonation barring a divorce.

'Traditional' Remedies.

Despite the importance attached to the matrimonial powers of summary and divorce courts, many women, wives and cohabitees, continued to depend on the more 'traditional' powers of magistrates to enforce the peace. Statistics showing the numbers of bind over orders do not include information on the sex and relationship of complainants and offenders. In the 1960s however, academic and practising lawyers were stressing the continued use of these orders for emergencies in cases of domestic dispute. The frequency of applications for orders to keep the peace and the attitudes of the judiciary towards their imposition seem to have changed little since the nineteenth century:

There is a popular superstition which will probably endure as long as Justices of the Peace themselves that magistrates have
a sovereign specific which is a remedy against all the ills a wife can suffer at the hands of her husband. This specific is known as a Protection Order - sometimes affectionately as a "Protection". Although such an order is unknown to magisterial law today, wives go on asking for it at a busy court at the rate of about four per week. Furthermore they appear to think it can be granted upon application as readily as a doctor writes out a medical certificate, and once obtained will unfailingly frighten the husband into better ways. The magistrates certainly have been entrusted with great powers to protect one spouse from the misconduct of another and to compel a husband who is not maintaining his family to do so. But they are not so summary and informal as this.

(Giles, 1963, p. 208.)

The Magistrates Court Act of 1952 did provide a broad scope for intervention in theory by bringing within its compass not only failure to keep the peace but failing to 'be of good behaviour'. The maximum punishment was committal for six months but should an offender be committed for failing to find sureties, the court could later reduce or dispense with them on fresh evidence. This Act aimed to apply the reconciling philosophy to parties involved in disputes covered by the bind over powers. In stark contrast to the nineteenth century police court, where neighbours gathered almost as if at a social event to witness cases and frequently interrupted proceedings, the public were no longer admitted into the court. The size of the bench was curtailed, S56(2) of the 1952 act required the bench to be made up of no more than three justices, whenever practicable of both sex.

Although the press could still attend, S58 severely curtailed their reporting powers. The aim of these procedural changes were:
to encourage a friendly and conciliatory attitude, the proceedings may be as informal as is consistent with a fair and legal hearing.

(Giles, 1963, p. 208).

<table>
<thead>
<tr>
<th>Year</th>
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<td></td>
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<td>Aggrav.</td>
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<td></td>
<td>Assault</td>
<td>6 F</td>
<td>4 F</td>
<td>-</td>
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<td>Common</td>
<td>11,368 M</td>
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<td>53 M</td>
<td>19 M</td>
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<td></td>
<td>Common</td>
<td>6,879 M</td>
<td>3,576 M</td>
<td>1,176 M</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>2,579 F</td>
<td>1,392 F</td>
<td>638 F</td>
</tr>
</tbody>
</table>

* Category includes charges withdrawn or dismissed, persons sent to institutions under mental health acts, absolute and conditional discharges.
# Bracketed figures indicate cases where proceedings were not yet complete at the time the statistics were published.


Statistics show that the bind over powers were indeed applied very frequently to cases of assault even if these were aggravated (Table 6). For the years 1947, 1954, 1967 and 1968 bind overs were used for between 13% to 33% of common assault cases (in keeping with...
sentencing patterns in general, female offenders were more likely to be bound over than males).

<table>
<thead>
<tr>
<th>Year</th>
<th>Indictable Assault</th>
<th>Aggravated Assault</th>
<th>Common Assault</th>
</tr>
</thead>
<tbody>
<tr>
<td>1900-4</td>
<td>160</td>
<td>1310</td>
<td>48 149</td>
</tr>
<tr>
<td>1905-9</td>
<td>158</td>
<td>1021</td>
<td>38 827</td>
</tr>
<tr>
<td>1910-14</td>
<td>135</td>
<td>781</td>
<td>33 560</td>
</tr>
<tr>
<td>1915-19</td>
<td>56</td>
<td>354</td>
<td>24 118</td>
</tr>
<tr>
<td>1920-24</td>
<td>75</td>
<td>512</td>
<td>32 589</td>
</tr>
<tr>
<td>1925-29</td>
<td>60</td>
<td>347</td>
<td>25 089</td>
</tr>
<tr>
<td>1930-34</td>
<td>43</td>
<td>214</td>
<td>18 389</td>
</tr>
<tr>
<td>1938</td>
<td>40</td>
<td>144</td>
<td>14 540</td>
</tr>
<tr>
<td>1945-49</td>
<td>59</td>
<td>131</td>
<td>17 094</td>
</tr>
<tr>
<td>1955-59</td>
<td>199</td>
<td>62</td>
<td>12 107</td>
</tr>
<tr>
<td>1962</td>
<td>269</td>
<td>49</td>
<td>10 626</td>
</tr>
</tbody>
</table>


Charges for assault had nonetheless declined since the start of the century. Table 7 shows the average numbers of indictable assaults, aggravated assaults and common assaults brought from 1900 to 1962. The figures show a marked decline in assaults during the two wartime periods when a large proportion of the male population were away fighting. The other years showing a decline coincide with the introduction of more grounds for divorce, i.e. 1925-1929 and 1938. Although there appears to be a coincidence between the divorce law reforms and the drop in prosecutions for assault cases, the rise in the numbers of divorces granted was small in comparison to the fall in the assault prosecutions. Furthermore, the decline in the
numbers of assaults recorded however do not give any indication of the number of applications made yet not counted because the justices considered other remedies more appropriate. It could be that the reconciling philosophy and the existence of expanded grounds had an impact on the number of applications refused and withdrawn so that increasingly more women could have been denied legal relief.

The continued applications for bind over orders by wives caused bafflement to the legal profession at the time although there are a number of possible explanations for this. After divorce or judicial separation these were the only remedies available against persistent pestering for women who could not afford to take actions for trespass or damages in the County Court. For unmarried women without their own tenancies, bind over orders and assault actions for damages were the only options available. As a complaint to the magistrates could entirely pre-empt threatened violence, bind over orders had the scope to be broader than even the contemporary remedies provided by matrimonial injunctions. Having a husband bound over to keep the peace would also serve as 'proof' of his past violence should this be insisted upon by a solicitor, magistrate, or housing officer. As separation orders at the time were ideally supposed to be temporary, women victims of domestic violence could attend court on a number of occasions, become involved with probation officers concerned to effect reconciliations and find the pressures to return to the violent husband too great to resist. Bind over orders might have provided some protection for wives in this
situation and would indeed be their only options if separation orders were no longer a possibility. The interviews conducted during the survey discussed in Part II demonstrated well why some women had little option but to use magistrates' orders (see Part II, Chapter Six). Although Chapter Six will discuss at length the findings of the survey, it is worth looking at one example briefly now to illustrate the problems women encountered when applying for legal help in the 1950s and 1960s. Bearing in mind that practice varied from court to court, interview data showed strong pressures on some wives to reconcile even in cases of life threatening violence. One woman, whom I shall refer to as 'Una' *, first approached the courts for help in 1955, obtained 13 separation orders, telephoned the police on many more occasions and eventually, after twelve years and his attempted murder of her, succeeded in getting a divorce from her husband. Una's husband had been imprisoned for three months for cruelty to his children, released and returned to the family, served an 18 month prison sentence for grievous bodily harm to his wife, released and sent back to the family, nine days later attempted to murder her again by stabbing her and again sent to prison for three months, released and arrested repeatedly for six months until Una was granted her divorce. During this time, Una was coerced into reconciliation procedures by the court, probation officer and prison welfare officer who clung on to their opinions that her marriage

* All the names of women interviewed have been changed as well as any other details which could lead to their identification.
should be preserved, in spite of their awareness of her husband's violence. Their unrealistic beliefs in his capacity for reform and reconciliation reinforced Una's husband's view that he could do what he liked in the privacy of his home.

Whilst the courts urged women to effect reconciliations when applying for bind over or matrimonial orders, they penalised them for their continued cohabitation if applying for property adjustments. Under the Married Women's Property Act 1882, no criminal proceedings could be taken against a husband whilst the wife was in cohabitation. If therefore a husband damaged/removed a woman's property he could not be prosecuted if she remained in cohabitation. Even if she left the home the courts might not intervene on her behalf due to confusion over which situations allowed the wife's evidence to be heard. In 1953 for example, Mr Moore set fire to the lodging house in Bradford where his wife had fled in order to escape his violence. It was necessary for a higher court to clarify whether or not Mrs Moore could be heard as a competent witness in the trial of her husband for arson (R v Moore (1954)).

The criminal law still gave tacit support to men's access rights to their wives' bodies. A case in 1946, DPP v Holmes, reiterated the special importance the criminal law attached to a woman's act of adultery. Mr Holmes had quarrelled with his wife because a man in the local pub had winked at her. Mrs Holmes later said that she would admit to being unfaithful if it would make her husband feel
less guilty about his ongoing adulterous relationship with Mrs X. When they got home Mr Holmes hit his wife repeatedly on the head with a hammer. He then killed her by strangulation because he said he did not like to see her suffering. The next day he left home to meet Mrs X. When tried for murdering his wife, Mr Holmes claimed he was not guilty because of the provocation she had given him by admitting adultery. Although Mr Holmes was found guilty of murder because he had no corroboration that his wife had committed adultery, the House of Lords confirmed that, if he had corroboration such as finding her in the act of adultery, this would have been sufficient provocation to reduce the charge to manslaughter. A wife's adultery was to be considered the one special case in the law of provocation (Holmes v DPP (1946)).

In a later case the Court of Appeal condoned cases of wife rape providing that husbands did not use undue force. In R v Miller in 1954 the court held that just because a woman left her husband and lodged a petition for divorce it did not mean that she had revoked her consent to sexual intercourse with him. Mrs Miller was raped by her husband 14 months after she had left him and 2 months after she had lodged a petition for divorce. Mr Miller argued that ever since she had gone he had been trying to get her to come back. He claimed that the rape was evidence of his efforts. The court supported Mr Miller's right to continued sexual use of his wife but argued that he must not use undue force to obtain it. It was decided he could not be charged with rape but, because of the
violence used in his attempt to obtain his conjugal rights, he could be charged with causing actual bodily harm (R v Miller (1954)).

Gender Equality In The Magistrates' Courts.

This disregard of inequalities in the criminal law stands in stark contrast to the almost obsessive fears of reformers about unequal grounds of complaint within the family law. The lawmakers' concerns over equal grounds for complaint did eventually turn upon claims within the summary courts. The power to make separation and maintenance orders was expanded and consolidated in the Matrimonial Proceedings (Magistrates' Courts) Act 1960. This Act brought together some previously disparate statutes and incorporated as well some of the Morton Commission's recommendations. The grounds, laid out in SI, aimed 'as far as humanly possible' to put the husband and the wife on an equal footing even though by the 1960s wives were the enormous majority applying for relief. The grounds now included all the hotch potch of grievances which had developed within the fault based system - desertion, persistent cruelty, being found guilty of an assault upon the complainant, attempting to commit or actually committing certain sexual offences, committing adultery, insisting upon sexual intercourse whilst being infected with a venereal disease, addiction to drugs or alcohol, compelling the wife into prostitution, neglecting to maintain the wife or children.
As proof of the allegations, witnesses might be required, and would be preferrable, if the husband contested a wife's explanation of her injuries. Women who could not persuade friends or neighbours to attend the court were, as in the 19th century, dependant upon the sympathies of the bench. In the absence of reliable witnesses, magistrates were urged to draw upon their own discretion as to the truth of the allegations. Whilst it was not necessary to demand the high standard of proof required in criminal cases, the court should do its best to discover what was true beyond reasonable doubt. According to Davis v Davis (1950) the magistrate would need strict proof beyond reasonable doubt of acts of cruelty alleged.

Some courts' rather zealous attempts to encourage reconciliations were given an approving nod by the Act, a depressing prospect for battered wives. In his discussion of the Act, one legal academic noted: 'From every point of view the wife will be advised to let the probation officer try his hand at reconciliation before the court acts at all' (Giles, 1963, p.209). Section 59 of the Act introduced more daunting powers to stall proceedings through the provision of interim orders on the hope that whilst the couple continued to cohabit, they would reconcile themselves.

**The Definition Of 'Cruelty' In The Courts.**

Meanwhile, in the courts, certain changes were being made by judges to the laws regulating violence to wives. The emphasis upon
individualism (each case having to be judged according to the specific facts of the case) meant that no irony was detected in a lawyer's recommendation that magistrates treat a woman's allegations of even life threatening violence with scepticism whilst judges or Law Lords debate exhaustively whether it is cruel to break a man's masonic regalia. In the higher courts a gradual shift in emphasis towards more subjective standards of cruel behaviour was advised through judicial interpretation, although confusions arising from a conflict between subjective and objective definitions continued to provide case law with developmental detours. When cruelty is defined subjectively variations in standards could be justified with relative ease. Some emphasis upon subjective definitions would be relevant in all cases of cruelty where proof of injury to health was a prerequisite for a petition. Because of variations in temperament or physique between individuals, conduct which caused injury to the health of one person may not cause injury to that of another. A further individualisation of standards of cruelty would inevitably provide even greater scope for a judge's own personal beliefs and biases regards appropriate social norms. In the case of Usmar v Usmar for example it was held that a wife's constant nagging could amount to cruelty (Usmar v Usmar (1949)). Mrs Horton's 'malevolent' damage to her husband's masonic regalia, cigarette case and spectacles was taken to be sufficiently malicious as to constitute cruelty and an 'evil unwifely spirit' (Horton v Horton (1940). Mr Horton had tried to solve his own problems before seeking a divorce by taxing his wife 24 shillings from her housekeeping as recompense.
for the damage to his glasses and calling in the family doctor to
deal with her 'hysterical' belief that he wanted to poison her).

Criminality and imprisonment could be cruelty depending on the
circumstances of the case. It would not be cruel if the wife was
involved in the activities, by for example attending meetings of the
husband's gang (Boushall v Boushall (1964)). A summons for custody
of the children could be cruelty in view of the background to the
parties' relationship (Buxton v Buxton (1965)).

As Lord Thankerton put it in Watt (or Thomas) v Thomas (1947): 'The
law has no footrule by which to measure the personalities of the
spouses' (quoted in Biggs, 1962.). This certainly gave scope for
gender biased judgements. In Meacher v Meacher in 1946, it was
held that a husband was within his rights in assaulting his wife
because she had disobeyed his orders not to visit her relations.
(This decision was reversed at the Court of Appeal on the ground
that the husband's demands were unreasonable. His 'right' to
discipline as such was not altered ) (Meacher v Meacher (1946)).

Mrs McKenzie's husband was ticked off by the court in 1959 for
giving her the 'hardest smacked bottom she had ever had' as
punishment for adultery. The court argued that his attack was
savage. Had he punished her as one punishes a naughty child, it
would not have been cruel (McKenzie v McKenzie (1959)).

The maltreatment of children, through a series of judgements in the 1950s
to 1960s, even in the absence of the wife and without any malicious
intent against her, was held also be evidence of cruelty to a wife (see Wright v Wright (1960)).

Whether or not refusal of sexual relations was a cruelty depended upon the circumstances of the case, the age of the spouses and the stage in the marriage of the refusal (Evans v Evans (1965); B(L) v B(R) (1965)). Lack of desire for sex would not be cruel even if it was known this could cause injury to a partner's health (P v P (1964)). In P (D) v P (J) (1965) however it was said to be cruel if one partner sexually excited the other and then refused intercourse. Due to the overinflated importance attached to male sexual desires this meant in practice that a wife's refusal of intercourse could be cruelty whilst a husband's would not (see Kaslefsky v Kaslefsky (1951), Clark v Clark (1958), P v P (1964), B (L) v B (R) (1965), P (P) v P (J) (1965), Evans v Evans (1965)). Lord Denning took a particularly bleak view of such behaviour by a wife:

the wilful and unjustifiable refusal of sexual intercourse is destructive of marriage, more destructive, perhaps, than anything else. Just as normal sexual intercourse is the natural bond of marriage, so the wilful refusal of it causes a marriage to disintegrate.

(Kaslefsky v Kaslefsky (1951))

Sexual intercourse was so 'normal' a need for husbands that some judges condoned their use of force to consummate the marriage (Saunders v Saunders (1947)). 'Normal' sexuality offers variable standards of conduct for men and women and it was not until 1966 in
a case at the Court of Appeal that the principle sexual frustration could be equally cruel to wives was applied. Mrs Sheldon managed to prove her case of alleged cruelty on the basis of her husband's refusal of intercourse having offered corroborative evidence to convince the court that her health had suffered, not only from sexual frustration, but also from the frustrated urge to have her own child (Sheldon v Sheldon (1960)). Where it could be shown that a woman was a lesbian or merely had a close relationship with another woman, the courts readily interpreted it as a wife's cruel behaviour (Gardner v Gardner (1947); Spicer v Spicer (1954)) yet a man's rejection of heterosexual relations would not necessarily encourage a court to find grounds for a divorce (Bohnel v Bohnel (1960); Coffer v Coffer (1965)).

Judges sometimes disagreed with one another over appropriate standards of behaviour in marriage. In Lauder v Lauder, Lord Merriman P. and Pearce J. found that the husband's deliberate moody and sulking conduct was cruel yet Singleton L.J. argued it was not serious (Lauder v Lauder (1949)). Similarly, in Squire v Squire, Hodson J. disagreed with Tucker and Evershed L.J. because he felt that the conduct of a sick wife in keeping her husband awake reading to her was not sufficiently grave and weighty to be cruel (Squire v Squire (1949)).

In some cases the emphasis upon subjectivity could lead to sympathetic treatment of a wife's complaints. In 1955, for instance
Lord Goddard held that a husband’s insistence that his wife masturbate him was a 'filthy practice' and a cruelty (Lawson v Lawson (1955)). Similarly, Lord Merriman, President of the Probate Divorce and Admiralty Division, decried a man's persistent sexual demands upon his wife as cruelty. But, any boost for women's rights awarded by such decisions was ambiguous because the emphasis on variable standards virtually invited a division between 'deserving' and 'undeserving' wives with a consequential reaffirmation of the victim blaming ideology that some wives 'asked for it'. The following extract from Lord Merriman's judgement illustrates the ambiguity of the approach as, on the one hand, a progressive step for women (by acknowledging the hardship created by persistent or forced sex in marriage) yet, on the other, a retrograde step (in stating that some wives were more tolerant of their husband's needs/desires):

No one can sit here as long as I have sat without realising that there is great diversity of standards between one set of spouses and another as to what is or is not a normal standard of sexual intercourse. What will be regarded as grossly excessive demands by one wife (or by the husband as the case may be) will be regarded as quite normal and reasonable by another wife or husband. (....) There are things strictly outside what may be called normal sexual intercourse which will be regarded by one wife (or one husband as the case may be) as so revolting as to be unmentionable, whereas other couples will regard them as nothing more than natural, normal love-making.

(Holborn v. Holborn (1947)).

Up to 1964, it was held that conduct must be voluntary to be cruel. Thus, accident, mistake or aspects of insanity, no matter what the effects upon the victim, could not constitute legal cruelty. By 1964
it was possible to obtain a divorce on the grounds of a partner's cruelty, without proving intent to commit harm. Proof that an intolerable situation had arisen was henceforth sufficient in order to obtain relief. According to the new line of thinking, no conduct is inherently capable or incapable of being cruel; the effect of the conduct in the circumstances of the individual case must always be the criterion. Thus, no distinction could theoretically be drawn between objectively violent and non-violent conduct, or between physical and mental cruelty, because the only issue should be whether injury to health was caused as a result of the conduct.

Although it might seem a simple standard to state, the existence of injury to health created considerable difficulty because of doubts as to the scope and meaning of the term itself. It was not until 1952 that the published cases from the courts positively stated that certain effects of violent behaviour, such as bruises or similar contusions were actual injuries to a partner's health. Mrs Fromhold for example had petitioned for a divorce on the ground of her husband's cruelty, alleging that he had treated her with violence on a number of occasions, as a result of which she suffered pain, bruises, a black eye and some cuts. Only after appealing to the Court of Appeal could Mrs Fromhold obtain legal acceptance that her husband's behaviour was cruel and resulted in injury to her health (Fromhold v Fromhold (1952)).
The inclusion of conduct resulting from mental illness presented particular problems. In Swettenham v Swettenham (1938) being of an incurably unsound mind was defined as a state which was 'irrecoverable'. The test was whether the respondent was capable of managing him/herself and his/her affairs including the 'problems of society and married life' (see also Whysall v Whysall (1960); Chapman v Chapman (1961); Robinson v Robinson (1965)). In earlier times, injury to health may have been easy to define in that mental disorders were not considered unless they were manifested in a physical way. With the expansion of psychiatry and psychology, injury to health could no longer be proved as a physical fact. Unhappiness resulting from a partner's conduct would not necessarily constitute an injury to health, whereas a 'neurosis' or medically quantifiable mental disorder may. Mental distress could only be seen as injurious to health if it was 'grave and weighty' according to a judge's discretion. To see if conduct was grave and weighty, the court had to make due allowance for illness because accusations from an insane person were seen as less hurtful than similar accusations from a sane person. Insanity could not be a defense against cruelty allegations if the conduct was objectively (i.e. physically) violent. If the conduct was not found to be physically cruel, in the absence of intent insanity would be a defense (Crump v Crump (1965)). By the mid 1960s therefore successive interpretations of 'cruel' behaviour in the courts had resulted in a most confusing, inconsistent and over-meticulous body of case law.
Maintenance,

The area of the law with perhaps the greatest practical impact, maintenance, was yet to be touched by the reformers' equality of provisions trend. It was taken for granted that husbands would support wives. This also meant that men could not claim maintenance from wealthy wives. Until 1970, divorce law did not oblige a wife to pay maintenance to a husband except where he was classified as insane and kept in hospital. This lack of reciprocity encouraged judges' preoccupations with the behaviour of a wife who had to 'earn' her maintenance by being virtually beyond reproach. Even women who were badly battered by their husbands could have their maintenance reduced if the court decided they had been 'unkind' to their husbands. Mrs Courtney for instance had divorced her husband on the ground of his cruelty but the court reduced her maintenance because of her conjugal unkindness (Courtney v Courtney (1966)). Adulterous wives were rarely awarded maintenance even if the 'adultery' was committed years after the husband's desertion (Eekelaar, 1978; McGregor et al, 1970). This meant that separated wives had to remain 'chaste' for the rest of their lives to evade a husband's discovery of 'adultery'. In M v M, a woman lost her right to maintenance because it was discovered that she had borne a child by another man eleven years after separating from her husband (M v M (1962)). It takes little imagination to realise that the law of maintenance gave substantial potential for a man's surveillance of his separated wife. This gained a further boost when a wife's need
to 'earn' her maintenance became a principle of statute law under the Matrimonial Proceedings (Magistrates' Courts) Act of 1960. (This Act, as the previous discussion noted, was devised to put men and women on as equal a footing as possible.)

State assistance for battered women did not offer an attractive alternative to maintenance. McGregor et al found in their study of the magistrates' matrimonial jurisdiction that three quarters of wives got their orders within six weeks (McGregor et al, 1970). In urgent cases, or if the maintenance was late in arriving, women were forced to go for state assistance from the National Assistance Board (the NAB was created in 1948 to take over relief provided for the poor by the Poor Law Guardians). The Board could insist the woman return to the court to check that the maintenance had not arrived. In rural areas travelling from the court to the NAB office would have been expensive in time and money. In 1965 the DHSS began issuing regular order books for women whose husbands were persistent defaulters.

Many women, separated from their husbands due to domestic violence, were made more vulnerable to further assaults by the procedures of the National Assistance Board. Women could be pushed unwillingly into legal action for a maintenance order by the Board, who felt it their duty to encourage them to claim maintenance rather than claim from the state. Even if an ex-husband did not take up the opportunity offered by the court proceedings to physically harass or
discover the whereabouts of a woman, his potential to inflict further
grief was huge if he managed to evade or delay any maintenance
payments he had been ordered to honour.

**Injunctions, Non-Cohabitation Orders and Housing Rights.**

Injunctions derived from equitable remedies and could originally only
be provided by the High Court of Chancery. An injunction is:

> an order of a court requiring a party either to do a specific
> act or acts (a **mandatory** or positive injunction) or to refrain
> from doing a specific act or acts (a **prohibitory** or negative
> injunction).

(Bean, 1982, p. 3.)

In other words, they are used to amend or prevent an infringement of
legal rights. For the sake of clarity, three further types of orders
should be defined at this stage:

A **perpetual injunction**, as the name suggests, is a final order of the
court and usually only granted after a full trial on the merits of
the case.

An **interlocutory injunction** is a provisional measure taken at an
earlier stage in the proceedings before the court has had the
opportunity to hear and weigh fully the evidence on both sides. It
is generally expressed to continue in force 'until the trial of this
action or further order'.
An interim injunction is even more temporary and remains in force until a specified date/time e.g. 10.00 a.m. Wednesday 1st July.

Injunctions to exclude/remove another from property or to prevent molestation had been available under property and tort law since at least the 19th century. The expense involved, coupled with the requirements to be a property owner or to prove actionable assault respectively meant that battered women took up these protective options rarely. Wives petitioning for divorce could get interlocutory injunctions for protection by application to the High Court or, after 1967, to the County Courts. These would provide temporary protection only although moves were made in the courts to marginally extend their scope. In Cook v Cook (1964) for example, it was held that an injunction could be granted after the decree nisi of divorce to last until the decree absolute. In Robinson v Robinson one year later it was held that if molestation was the reason for the injunction, it could continue after the granting of the decree absolute, providing the orders were not made too freely (Freedman v Freedman (1967)).

Towards the end of the 1960s, the legal profession tried to encourage battered women to use injunctions in preference to magistrates' orders. In contrast to the position in the divorce court (see Table 2), by 1966, complaints of cruelty had lost their dominance in cases before the magistrates courts. McGregor et al (1970) found that in 1966, the single grounds of a sample of 1,271
orders were as follows:

<table>
<thead>
<tr>
<th>Ground</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Desertion</td>
<td>47%</td>
</tr>
<tr>
<td>Wilful neglect to maintain</td>
<td>31%</td>
</tr>
<tr>
<td>Persistent cruelty</td>
<td>14%</td>
</tr>
<tr>
<td>Adultery</td>
<td>7%</td>
</tr>
</tbody>
</table>

When multiple complaints were included in the analysis the figures were:

<table>
<thead>
<tr>
<th>Ground</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Desertion</td>
<td>70%</td>
</tr>
<tr>
<td>Wilful neglect to maintain</td>
<td>47%</td>
</tr>
<tr>
<td>Persistent cruelty</td>
<td>22%</td>
</tr>
<tr>
<td>Adultery</td>
<td>11%</td>
</tr>
</tbody>
</table>

Separation orders still ranked very highly even though magistrates had long been advised to use them only as a last resort. At the turn of the century they had been granted automatically but the procedure was criticised repeatedly from the time of the Gorrell Commission onwards. In 1903, 93% of magistrates orders included non-cohabitation clauses, by 1935 this had fallen to an average of 61% of orders and to 40% by 1964. McGregor et al found that of 549 live court orders, 30% of the non-cohabitation clauses had been inserted by the order of the court itself, and not always when cruelty had been alleged by the wife. Of the non-cohabitation clauses included in 1964, cruelty was alleged in only 62% of cases. Furthermore, some courts seemed more prone to insert the orders than others. In the Northern court A, 37% of orders had non-cohabitation clauses, only 55% of which contained allegations of persistent cruelty. In Northern court B, 33% had non-cohabitation orders, 86% of which contained allegations of persistent cruelty. For three London courts, the clauses were included far less frequently, in only
14% of orders, 73% of which were based upon persistent cruelty. In one South Western court, the approach was very strict, only one separation order was made. McGregor et al concluded that the clauses were included in orders by the court clerks out of defiance or misunderstanding of High Court directives (McGregor et al 1970).

In Corton v Corton (1965) the 'habit' was severely criticised and cases where a wife needed protection said to 'hardly arise'. Women 'truly' needing protection were advised that they could obtain injunctions from the High Court for non-molestation or from the County Court by starting divorce proceedings. As magistrates had no statutory powers to enforce non-cohabitation orders anyway, an injunction had scope to be a more useful sanction for a woman in need of protection. A non-cohabitation order would not force a husband to leave the matrimonial home, it only relieved the spouses of their obligations to live together. Although problems may be encountered if a woman later wanted to apply for a divorce on the ground of desertion because non-cohabitation orders would act as a bar to this plea (MacKenzie v Mac Kenzie (1940)), they did act as legal barriers to a husband returning to live with his estranged wife.

Separated wives had but minimal rights to housing unless they had their own strict legal claims upon property. Rights to housing on divorce were also partly contingent upon the court's evaluation of moral behaviour. Up until the end of the 1950s the law of
matrimonial property was based upon the separate property principle derived from the Married Women's Property Act 1882. Thus, although a wife was allowed to own her own property, ownership was established most often by the name in which the property was held. The conveyancing practice of registering matrimonial homes in the sole name of the husband (even when a wife was in reality intended by a couple's agreement to be joint owner) rendered the man the sole legal owner. A woman had no strict legal rights to the home unless she could prove that she had contributed to the deposit or mortgage payments. The common division of resources between married couples where a husband paid the mortgage installments and the wife used her salary for food and general upkeep of the household was not necessarily guaranteed recognition sufficient to establish an interest in the property by the court. If a woman was not engaged in paid work, her household chores were not regarded as economic contributions.

After the case of Bendall v McWhirter (1952) the courts accepted that a deserted wife had rights of occupation and this right was given statutory force in the Matrimonial Causes Act 1958. But a husband could relatively easily evade this obligation to a former wife by selling the home, unbeknown to her, to an innocent third party or by making himself bankrupt. In Montgomery v Montgomery (1965), the High Court held that an injunction to exclude the husband from the home would not be granted for cases where the wife had no property right in the home. Similar insecurity for wives and children existed.
Expanding And Equalising Grounds : Reconciling Provisions.

In the rented sector as property rights to a tenancy were likewise established on the basis of the named tenant, i.e. the husband. Courts at the time lacked the power to transfer tenancies into a wife's name so for many battered women prospects were a bleak choice between continued abuse or homelessness and the loss of the children into local authority care.

Separation orders may have helped women effect 'transfers' of local authority tenancies, especially as injunctions were limited to cases where wives could prove legal rights. Some enterprising individuals, faced with much suffering, found ways to mitigate the harsh principles applied to matrimonial housing. The experiences of one of the women interviewed for the survey discussed in Part II illustrate not only the difficulties women faced at the time but how concerned individuals could, if motivated, find a way around the legal obstacles. After Una's husband's final attempt to stab her to death, the police, a solicitor and a housing officer devised a technical eviction of her and her husband in order to transfer the tenancy into her name and reinstate her in the matrimonial home.

She described how this was achieved as follows:

He spent eighteen months in prison for the attempted murder, which the court whittled down to grievous bodily harm because he was so full of remorse. I had no choice but to let him come back after being in prison. The council house was in joint names and he would not have his name off the rent book. He was out of prison for nine days and he assaulted me again. He attempted to stab me to death. The priest got the police and they sent him back to prison for three months. The Chief Inspector of police said that if there was no divorce I would soon be a corpse. The police and my solicitor and a housing
officer had to work out a 'technical eviction'. We had to put a coffee table outside the front door and they held a ceremony to evict us both and I was reinstated in the house. The police could intervene more then. So I called the police each time he appeared then and proved the house was in my name. So I had protection for six months and he was arrested over and again until the divorce. This was the only way I could get a divorce. This was before they had things like the Matrimonial Homes Acts. The police could not stop it as it was in his own home and he could do what he wanted.

Having the property in her sole name provided the final solution to her twelve year struggle for legal protection. In her case, only by 'exploiting' the law during this period, was relief and protection from her husband's violence obtained. This ironic feature of women's experiences with the law will be discussed further in Part II.

A wife's right to stay in the matrimonial home was improved slightly by the Matrimonial Homes Act 1967, which protected a spouse's right to remain in the matrimonial home against claims made by third parties, as long as the spouse's right had been registered. Section 1 of the Matrimonial Homes Act 1967 gave wives some protection from eviction by husbands although the provisions were not greatly used and by 1974 only 57 orders were being made per year (Judicial Statistics, 1974). Section 1 gave protection from eviction or exclusion from the matrimonial home to spouses not entitled to occupation by virtue of estate or interest etc. A wife without these rights could not be evicted or excluded from the home without a court order and she could apply for court permission to enter and occupy the home should her husband try to exclude her otherwise. Providing one spouse had the right to occupy the home, Section 2 of
the Act allowed the other partner to apply to the court for an order declaring, enforcing, restricting or terminating these rights to occupy. The Act also allowed the court to except part of the dwelling from occupation of the spouse (especially if it had a business use); to ask for periodical payments for the part so occupied; and to impose obligations for its repair and upkeep. The provisions in the Act gave rise to illogical and unworkable court decisions (see Chapter 3). Further amendments to the law concerning injunctions and housing rights will be discussed in the next chapter. Chapter 3 will continue to trace the history of reforms in terms of the linear progression of statute, debates, cases and policy directives in the era of divorce reform.
CHAPTER THREE.


Introduction.

In contrast to the 19th century phase of domestic violence law reform, legislative measures aimed at alleviating the problems of battered women in the latter 20th century followed reforms to the law of divorce. In the early 1970s the term 'battered women' was coined by the women's liberation movement to become accepted terminology. Legal minds in Parliament and the courts, wrangled with the definitions of 'cruelty', 'unreasonable behaviour' and 'domestic violence'. Substantial changes to the procedure and availability of divorces brought the dissolution of an unhappy marriage within the scope of a much broader range of the population. Women continued to be the majority of consumers, by 1975 they were bringing 70% of all petitions for divorce, 36% of these being granted to petitions particularising the unreasonable behaviour of husbands. As an emergency or even speedy remedy for women victims of domestic violence however, divorce would not have been a viable option. It was obviously of no relevance to cohabiting women needing legal protection from violent men, nor to those with such scarce resources that they lacked alternative accommodation and income support whilst awaiting a decree. Until the growth of the refuge movement, these
women had little alternative but to continue to use the summary court provisions, where the fault based doctrine of relief still operated. Criticisms of the magistrates' courts, by bodies such as the Finer Committee on One Parent Families, bubbled throughout the 1970s but no positive action was taken until the numbers of matrimonial applicants using the summary courts had greatly declined. In the 1970s the involvement of the criminal law in cases of domestic violence against women was frequently criticised. Women connected with the expanding refuge movement complained of the refusal of the police and courts to implement the criminal law for domestic disputes. At the same time the pleas of some lawyers and enforcers giving evidence before the Select Committee on Violence in Marriage to maintain a separation of civil and criminal matters were repeated elsewhere in the debates on marital rape, wife kidnap and police powers to intervene in domestic disputes. A crossing of the so-called 'civil-criminal divide' was eventually achieved in new legislation covering domestic violence injunctions.

The early 1970s brought many changes in legal and welfare provision for women victims of domestic violence. The feminist movement campaigned for and won a number of reforms to the law and social policy affecting women's position in society, and specifically in the area of domestic violence against women, alterations to family and housing law, local and central government aid for the provision of refuges. There is not space here to include a discussion of the struggles of the women's liberation movement, although reference will
be made to this briefly in parts of the chapter. Supplementary information can be found in the comprehensive discussions of a number of contemporary texts, particularly Coote & Campbell, 1982; Schechter, 1982. As in previous chapters the discussion which follows will centre upon the specific responses of the law in relation to domestic violence against women. First the next wave of divorce reform will be described, followed by an outline of subsequent shifts in judicial interpretation in the case law relating to cruelty and conduct. The position in magistrates courts and statistics on their use will provide a background to the calls for reform made by bodies such as the Finer Committee. The final sections will look at the provision of injunctions, developments in the criminal law, the Select Committee on Violence in Marriage and the efforts to introduce legislation to cope with emergency relief and housing rights for battered women.

The Pressure For Divorce Law Reform.

Reform and liberalisation of the law governing divorce resurfaced in Parliament in the 1960s this time due to concerns about the effect of the fault-based doctrine on 'illicit unions', illegitimacy and the reputation of the law itself. Fears were expressed in many sections of society, including the Church, that publicity arising from 'hotel divorces' and the effects of a court enquiry into matrimonial offences made a mockery of the law. Whilst violence against women
was taken into account in the ensuing debates, there was scant reference to the need to protect abused women which had been so important during the earlier phase of reform (see Chapters 1 & 2). The main consideration now was the alleviation of marital conflict by laying to rest 'dead marriages' for the sake of all involved, especially children. Marital violence, when mentioned, tended to be seen as an effect of the breakdown rather than its cause (see Smart, 1984; SPCK, 1966; Law Commission, 1966).

In 1964, two private members bills, the Family Preservation Bill and the Strengthening of Marriage Bill, were put forward (unsuccessfully) to halt 'marital decline'. In July 1966, the Church published its own review of divorce law in its report *Putting Asunder - A Divorce Law For Contemporary Society* (SPCK, 1966). This argued that a government's laws could not attempt to maintain the moral standards of Church law, as they applied to many people who were not connected to the Church. The contemporary approach based upon matrimonial fault was unsatisfactory because it created unnecessary conflict, led to perversion of law and marriage (through collusion, cohabitation and illegitimacy). It was inconsistent and unfair. Guilt and innocence were frequently hard to establish as many marriages merely broke down. The report suggested replacing the unfair notion of 'fault' with that of irretrievable breakdown. To prevent a decline in the moral value of marriage, i.e. to stop divorce becoming too easy, a system of legal inquest into the truth of marital breakdown was proferred. To back up divorce reform, the Archbishop's group
suggested that the financial and property laws be revised to protect dependent wives.

Immediately after the publication of Putting Asunder, the Lord Chancellor referred the matter of divorce reform to the newly created Law Commission. In their report entitled Reform of the Grounds of Divorce: The Field of Choice, produced four months later, the Commission stated the desired aim of a good divorce law to be the provision of a 'decent burial' for 'dead marriages' in order to reduce the bitterness of divorce disputes, particularly regarding the effects upon children (Law Commission, 1966). The Commission maintained that matrimonial 'offences' such as cruelty or violence were responses to marital breakdown, rather than cause. The present law failed to buttress the stability of marriage by not providing scope for reconciliation and encouraging illicit marital unions. This was unjust to wives and neglectful of the urgent need to protect the interests of children. Like the Archbishop's group, the Law Commission preferred the principle of marital breakdown, rather than offence, to underly the divorce law. Unlike the Archbishop's group however, any form of 'inquest' hearing into the viability of marriages of parties presenting to the courts for divorce was rejected. This would increase the parties' bitterness and be too burdensome for the courts. The Commission considered more effective safeguards against too free a divorce law could be found by introducing a three year bar to divorce, providing the court with powers to adjourn in order to facilitate reconciliation and to refuse a decree in cases of wilful
deceipt. In the debate on divorce law in the House of Lords in 1966, the principle of breakdown received overwhelming support (see Smart, 1984).

The Divorce Reform Bill was presented to the Commons in November 1967 by William Wilson, aided by numerous supporters. On the Bill's second reading in February 1968 the sponsors reaffirmed the aims of a 'good' divorce law as being: a. to buttress the stability of marriage; b. to encourage reconciliation and c. to 'bury the dead shell of a marriage that has broken down without bitterness between the parties'. Because divorce should no longer be concerned with the punishment of one spouse and the relief of the other, blame was irrelevant and the only valid ground for divorce now could be irretrievable breakdown of the marriage. The other party's intolerable behaviour was to be the sole standard to cover the old 'offenses' of cruelty, insanity, etc. in order to establish whether irretrievable breakdown had occured. The 'five facts' put forward as proof of irretrievable breakdown provided a compromise solution to the Church's system of 'inquest'.

Any reform to the grounds of divorce however could not help unhappily married couples without first improving access to the courts and ensuring better financial provision for women and children. Faced with opposition in the House that the Divorce Bill would be a 'Casanova's charter', the government promised legislation on matrimonial property and financial provision prior to divorce
reform. The Law Commission produced a White paper on financial relief on divorce in 1967 and a final report in 1969. This formed the basis of the 1970 Matrimonial Homes and Property Act which was passed prior to the enforcement of the Divorce Reform Act 1969.

Improved access to the new legal provisions was given through a decentralisation of the divorce courts. The Matrimonial Causes Act, operative on 11th April 1968, offered divorce on a local basis by designating certain County Courts as divorce courts with the power to hear and determine undefended matrimonial causes. Defended cases still had to be heard at the High Court but a few could be tried in the Royal Courts of Justice and at Divorce Towns as County Court judges now had the power to hear short defended cases sitting as Special Commissioners. (S1 of the Administration of Justice Act 1970 also renamed the Probate, Divorce and Admiralty division of the High Court the Family Division).

Thus, the Divorce Reform Act 1969 made irretrievable breakdown of marriage the sole ground for divorce. Proof of this would be based upon the establishment of one or more of the following:

a. that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

b. that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
c. that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;

d. that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to the decree being granted;

e. that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.

The 'facts' previously held to establish grounds for divorce, i.e. the matrimonial offences of cruelty, adultery, desertion, were retained in a modified form. The most significant change was the introduction of a form of restricted divorce by consent based upon the two year separation of parties prior to the proceedings. Although conduct in the form of the five facts was still relevant to obtain a divorce, the court's primary consideration had shifted from an examination of this for proof of marital 'failure' on to the question of whether or not the marriage had broken down.

Following implementation of the Act, the divorce rate showed a rapid growth but throughout the 1970s the conduct grounds continued to be used more frequently than both the separation grounds put together. The proportions of the total divorces filed on specific grounds for 1938, 1963, 1968-1975 are shown in Table 8.

As with the 19th century phase of divorce reform, initially, male petitioners benefited proportionately more from the legislation than
did women petitioners. Men's shares of petitions grew by 4% and women's declined by 4% in 1971, the Act's first year of implementation.


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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Cruelty/behaviour</td>
<td>7%</td>
<td>23%</td>
<td>28%</td>
<td>28%</td>
<td>29%</td>
<td>22%</td>
<td>27%</td>
<td>29%</td>
<td>31%</td>
<td>33%</td>
</tr>
<tr>
<td>Adultery</td>
<td>50%</td>
<td>54%</td>
<td>53%</td>
<td>54%</td>
<td>56%</td>
<td>27%</td>
<td>31%</td>
<td>30%</td>
<td>30%</td>
<td>29%</td>
</tr>
<tr>
<td>Desertion</td>
<td>39%</td>
<td>32%</td>
<td>25%</td>
<td>23%</td>
<td>21%</td>
<td>13%</td>
<td>11%</td>
<td>8%</td>
<td>6%</td>
<td>4%</td>
</tr>
<tr>
<td>Separation</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>42%</td>
<td>36%</td>
<td>36%</td>
<td>36%</td>
<td>35%</td>
</tr>
<tr>
<td>Other grounds</td>
<td>4%</td>
<td>0.6%</td>
<td>0.3%</td>
<td>0.2%</td>
<td>0.3%</td>
<td>0.08%</td>
<td>0.02%</td>
<td>0.01%</td>
<td>0.01%</td>
<td>-</td>
</tr>
<tr>
<td>By husbands</td>
<td>46.6%</td>
<td>41.8%</td>
<td>37%</td>
<td>37%</td>
<td>36%</td>
<td>40%</td>
<td>35%</td>
<td>34%</td>
<td>32%</td>
<td>30%</td>
</tr>
<tr>
<td>By wives</td>
<td>53.4%</td>
<td>58.2%</td>
<td>63%</td>
<td>63%</td>
<td>64%</td>
<td>60%</td>
<td>65%</td>
<td>66%</td>
<td>68%</td>
<td>70%</td>
</tr>
<tr>
<td>TOTALS</td>
<td>9970</td>
<td>36385</td>
<td>54036</td>
<td>60134</td>
<td>70575</td>
<td>110017</td>
<td>109822</td>
<td>115048</td>
<td>129993</td>
<td>138048</td>
</tr>
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</table>

NB: As multiple grounds are included in the percentages columns do not total 100%.


All the 'fault' grounds declined at the time of introduction of the Divorce Reform Act as a 'backlog' of divorces based on separation grounds were cleared (see Table 8). Bearing in mind certain factors which affect the comparative value of these figures (e.g. the practice of listing prior to 1961 only the first allegation made in multiple allegations), the figures for the rest of the early 1970s do suggest the Divorce Reform Act was followed by a clear rise in the number of petitions filed on the ground of cruelty/behaviour corresponding with
a decline in the proportion of petitions alleging desertion and adultery. Were these changes the result of the new grounds in the legislation or were other factors operating to bring an increase in cruelty/behaviour petitions?

Petitions based upon desertion and adultery may have proportionately declined for the following reasons:

a. a shift in men's and women's filing behaviour from petitions on the ground of desertion to separation grounds;

b. a shift in men's and women's filing behaviour from petitions on the ground of adultery to separation grounds;

c. a higher and growing proportion of female petitioners in relation to male petitioners;

d. a relative easening of the required particulars for a petition on the ground of behaviour and/or less stringent demands for proof;

e. an increase in cases of domestic violence against women and/or women's use of the law for relief.

Probably all factors hold some explanatory relevance. Point d. will be discussed later in this chapter. Further calculations may shed some light on the validity of points a., b. and c. (see also Haskey, 1982).

Table 9 shows wives growing share of divorces coincided with an increase in the percentage of petitions based upon cruelty. However
there are fluctuations in the growth of cruelty/behaviour petitions which do not directly match the increase in women’s petitions e.g. in 1956, 1957, 1959, 1963, 1965. Between 1954 and 1959, cruelty petitions increased by 4 percentage points, an increase which could have two likely explanations a. greater ability of women victims of domestic violence to obtain legal help, b. changes in interpretation of 'cruelty' ground in courts (see Chapter 2).

**TABLE 9: Divorce Petitions Filed Alleging Cruelty/Behaviour As Ground c.f. Percentage Of Total Petitions Filed By Wives, 1938, 1954-1975, England & Wales.**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>CRUELTY</th>
<th>WIVES</th>
<th>YEAR</th>
<th>CRUELTY</th>
<th>WIVES</th>
<th>YEAR</th>
<th>CRUELTY</th>
<th>WIVES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1938</td>
<td>7%</td>
<td>53%</td>
<td>1961</td>
<td>22%</td>
<td>57%</td>
<td>1969</td>
<td>28%</td>
<td>63%</td>
</tr>
<tr>
<td>1954</td>
<td>16%</td>
<td>55%</td>
<td>1962</td>
<td>22%</td>
<td>58%</td>
<td>1970</td>
<td>29%</td>
<td>64%</td>
</tr>
<tr>
<td>1955</td>
<td>16%</td>
<td>55%</td>
<td>1963</td>
<td>23%</td>
<td>58%</td>
<td>1971</td>
<td>22%</td>
<td>60%</td>
</tr>
<tr>
<td>1956</td>
<td>18%</td>
<td>55%</td>
<td>1964</td>
<td>25%</td>
<td>60%</td>
<td>1972</td>
<td>27%</td>
<td>65%</td>
</tr>
<tr>
<td>1957</td>
<td>19%</td>
<td>55%</td>
<td>1965</td>
<td>26%</td>
<td>60%</td>
<td>1973</td>
<td>29%</td>
<td>66%</td>
</tr>
<tr>
<td>1958</td>
<td>19%</td>
<td>55%</td>
<td>1966</td>
<td>27%</td>
<td>61%</td>
<td>1974</td>
<td>31%</td>
<td>68%</td>
</tr>
<tr>
<td>1959</td>
<td>20%</td>
<td>55%</td>
<td>1967</td>
<td>28%</td>
<td>63%</td>
<td>1975</td>
<td>33%</td>
<td>70%</td>
</tr>
<tr>
<td>1960</td>
<td>20%</td>
<td>57%</td>
<td>1968</td>
<td>28%</td>
<td>63%</td>
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</tbody>
</table>


Table 10 shows the numbers and percentages of divorces granted on certain grounds to husbands and wives for 1968-1975. It can be easily seen from these figures that men very rarely divorced during this period on the ground of their partner’s behaviour whereas for divorcing women, well over a third made some reference to their partners’ behaviour. Proportionately, men were more likely than women to be granted divorces on the grounds of their partner’s


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<tbody>
<tr>
<td></td>
<td>W</td>
<td>H</td>
<td>W</td>
</tr>
<tr>
<td>Total</td>
<td>22%</td>
<td>3%</td>
<td>22%</td>
</tr>
<tr>
<td>Behaviour/cruelty</td>
<td>57%</td>
<td>70%</td>
<td>58%</td>
</tr>
<tr>
<td>Adultery</td>
<td>25%</td>
<td>30%</td>
<td>24%</td>
</tr>
<tr>
<td>Desertion</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other grounds</td>
<td>0.3%</td>
<td>0.3%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Share of total</td>
<td>100%</td>
<td>61%</td>
<td>39%</td>
</tr>
<tr>
<td>TOTALS</td>
<td>47959</td>
<td>29450</td>
<td>18509</td>
</tr>
<tr>
<td></td>
<td>1971</td>
<td>1972</td>
<td>1973</td>
</tr>
<tr>
<td>Total</td>
<td>W</td>
<td>H</td>
<td>W</td>
</tr>
<tr>
<td>Behaviour/cruelty</td>
<td>18%</td>
<td>4%</td>
<td>21%</td>
</tr>
<tr>
<td>Adultery</td>
<td>21%</td>
<td>44%</td>
<td>32%</td>
</tr>
<tr>
<td>Desertion</td>
<td>15%</td>
<td>15%</td>
<td>11%</td>
</tr>
<tr>
<td>Separation</td>
<td>30%</td>
<td>38%</td>
<td>33%</td>
</tr>
<tr>
<td>Other grounds</td>
<td>0.07</td>
<td>0.08</td>
<td>0.07</td>
</tr>
<tr>
<td>Share of total</td>
<td>100%</td>
<td>60%</td>
<td>40%</td>
</tr>
<tr>
<td>TOTALS</td>
<td>88460</td>
<td>52796</td>
<td>35664</td>
</tr>
<tr>
<td></td>
<td>1974</td>
<td>1975</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>W</td>
<td>H</td>
<td>W</td>
</tr>
<tr>
<td>Behaviour/cruelty</td>
<td>26%</td>
<td>35%</td>
<td>7%</td>
</tr>
<tr>
<td>Adultery</td>
<td>31%</td>
<td>27%</td>
<td>41%</td>
</tr>
<tr>
<td>Desertion</td>
<td>6%</td>
<td>7%</td>
<td>6%</td>
</tr>
<tr>
<td>Separation</td>
<td>39%</td>
<td>33%</td>
<td>47%</td>
</tr>
<tr>
<td>Other grounds</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Share of total</td>
<td>100%</td>
<td>67%</td>
<td>33%</td>
</tr>
<tr>
<td>TOTALS</td>
<td>117017</td>
<td>78268</td>
<td>38749</td>
</tr>
</tbody>
</table>


adultery, although the percentage of men's divorces granted on this ground declined greatly from a peak of 73% just before the Divorce
Reform Act 1969 to 40% by 1975. This change in men's petitioning behaviour supports point b..

Women's petitions on the ground of adultery also declined in relative terms, although less dramatically than men's petitions. The figures also show a drop in the use by both male and female petitioners of the desertion ground on the introduction of the separation grounds (point a.).

The success rate for specific grounds would ultimately effect filing behaviour through a solicitor's advice to clients. Had there been more time available for the study comparisons could have been made between the numbers of petitions for divorce granted on specified facts and the numbers of petitions filed. Comparative figures for filing and granting petitions will be discussed in Chapter Four. Divorce for women victims of domestic violence was undoubtedly made 'easier' following the changes to availability and procedure in the early 1970s. The following discussion will suggest however that the 1970s saw as well an increased need for legal intervention. The most likely causes of this increased need were 1. the restriction of battered women's options due to economic and social policy changes, and 2. feminist success in publicising this 'hidden crime' and creating new alternatives.
Case Law Developments From Cruelty To Unreasonable Behaviour.

The trend away from the 'fault' based doctrine in divorce law had repercussions for the interpretation of unacceptable behaviour in the courts. Goodrich v Goodrich (1971) was one of the first cases to be tried under the new law. In this case Mrs Goodrich had petitioned for an injunction and a divorce on the ground of her husband's cruelty. The petition was set aside and the husband applied under the new law alleging the unreasonable behaviour and adultery of his wife. His allegations consisted of the claim that married life was impossible because Mrs Goodrich persisted in making 'false charges' of cruelty against him. Granting the husband's petition, the court held that the test of intolerable behaviour was purely subjective, and related to what was intolerable for this particular man and this particular woman.

Clashes between the objective and subjective approaches however still continued to dog decision making in the courts, especially when confronted with what were considered to be women's 'trivial' complaints. Whilst women's allegations of violent treatment could be quite closely scrutinised by the court (or if not here by solicitors testing their viability prior to hearing) it was not until 1974 that a husband's bare denial of allegations was held to be insufficient to establish his case. (see Andrews v Andrews (1974)). A woman's mere assertion of fear of further assault or violence was not enough evidence of the irretrievable breakdown of her marriage. In Ash v
Ash in 1972 a woman's claims that she still feared further assault from a violent and alcoholic husband were dismissed as mere assertions. In this case Mr Ash had previously given an undertaking not to molest Mrs Ash. In an attempt to guarantee some protection whilst awaiting a divorce, she had changed the locks to the house to bar his entry. Mr Ash's violence had been admitted by him and corroborated by others yet Mrs Ash's behaviour became the main concern of the court. Scantily masking its inconsistency with various appeals to legal principles, the court applied an objective approach to Mrs Ash's 'assertions' of fear of further assault and a subjective approach to the particulars describing Mr Ash's violent conduct. In relation to his violent behaviour the court had to decide:

- can this petitioner, with his or her character and personality, and with his or her faults and other attributes, good and bad, and having regard to his or her behaviour during the marriage, reasonably be expected to reside with this respondent?

This justified therefore some judgement of Mrs Ash's behaviour to discover whether she was so well accustomed to 'this sort of life' that the violence would be insignificant. Some women still clearly had to put up with their lot, although judges seldom said so directly, tending to talk of 'spouses', 'petitioners' or 'partners' when making this point:

- a violent petitioner can reasonably be expected to live with a violent respondent; a petitioner who is addicted to drink can reasonably be expected to live with a respondent similarly addicted; a taciturn and morose spouse can reasonably be expected to live with a taciturn and morose partner; a flirtatious husband can reasonably be expected to live with a
wife who is equally susceptible to the attractions of the other sex; and if each is equally bad, at any rate in similar respects, each can reasonably be expected to live with the other.

(Bagnall, J. 140, Ash v Ash, (1972)).

The possible implications of this type of reasoning, i.e. emphasising the application of equality principles on conditions of inequality will be further examined in Part II. The unfairness of applying 'equal' principles in this case with biased standards of evaluation or proof will no doubt be obvious.

The test of unreasonable behaviour was said in some cases to be similar to that applied to constructive desertion under the 'old' law. Pheasant v Pheasant in 1972 was a case where the husband's allegation of cruelty by the wife - i.e. her refusal of sexual intercourse - was held to be a problem (neuroses) of his own creation. Here again it was argued that the test of unreasonable behaviour could not be purely subjective (looking at the report it seems there were fears the courts would be out of a job). Ultimately the courts had to decide whether behaviour was unreasonable in terms of the personalities and characters of spouses to prevent the law of divorce from being:

reduced to a series of almost hysterical assertions by the petitioner and calm rebuttals by the respondent.

(Pheasant v Pheasant (1972))

This sort of activity had the potential to increase the bitterness
and humiliation of divorce and could make a mockery of the concept of desertion (all deserters claiming that it was the unreasonable behaviour of their partners which justified their leaving). A broad approach to the matter, as applied in the case of Lissack v Lissack in 1951, was recommended. This would require the court to:

consider whether it is reasonable to expect this petitioner to put up with the behaviour of this respondent, bearing in mind the characters and difficulties of each of them, trying to be fair to them both, and expecting neither heroic virtue nor selfless abnegation from either.

(Lissack v Lissack (1951)).

Rather than emphasise the outmoded concept of the matrimonial offence, the courts ought to favour an approach based upon breach of obligation by one spouse or another.

Reasoning on these lines inevitably raised problems of intent for any breach of obligation occurring due to a spouse's mental illness. Problems in fitting the breach of obligation test to situations of ill-health were noted soon after the Pheasant decision in the case of Katz v Katz in 1972, where a wife alleged the unreasonable behaviour of her mentally disturbed husband. Here the husband's habit of writing eccentric letters to public figures, obsession with tape recorders, long periods of silence, 'cabbage-like' trances, and constant playing of loud music on a transistor radio were described by his counsel as caused by mental illness and, as a result, falling short of the category of 'grave' behaviour. the counsel argued that
neutral, silly and irrational acts could only be unreasonable if the perpetrator intended to do harm. The court held that in such cases where judgement of intent was irrelevant, some form of objective test not based upon breach of obligation would be needed to decide whether the behaviour was harmful. A test which made reasonable allowances for an individual's mental difficulties was necessary. A method along the lines of that established in Williams v Williams was recommended. Suitably amended, this would allow that:

a decree should be pronounced against any such an abnormal person .... because the facts are such that, after making all allowances for his disabilities and the temperaments of both parties, it must be held that the character and gravity of his behaviour was such that the petitioner cannot reasonably be expected to live with him.

(See Katz v Katz (1972)).

The constructive desertion test was finally abandoned as inappropriate to the modern law in 1974. The case of Livingstone-Stallard v Livingstone-Stallard in 1974 has been a much quoted example of the less stringent approach to the concept of unreasonable behaviour applied under the new law. This case arose from yet another dispute over a woman's petition which was said to be based upon 'trivial' allegations. Mr Livingstone-Stallard's 'trivial' abuses of his wife included a whole range of oppressive, degrading and violent behaviour - treating her as a stupid child, constantly criticising her, calling her names, being rude and boorish, spitting at her, kicking her out of bed, following her around in a car, bruising her arms and legs and threatening to kill her. One February night
he forcibly locked her out of the house (in her nightclothes) and threw cold water at her from a bedroom window. Mr Livingstone-Stallard's counsel tried to maintain that these acts were not of sufficient gravity to allow a divorce on the basis of constructive desertion under the old law. To prove constructive desertion, the court needed to weigh the gravity of the conduct against the sanctity of the marriage bond. Mr Livingstone-Stallard, who used to tell his wife daily that 'in order for them to be happy, wives have to be subservient to their husbands', had argued that his young wife had simply got fed up and walked out. As Ash v Ash, Pheasant v Pheasant and Katz v Katz (all in 1972) had firmly established that incompatibility of temperament was not enough to entitle a petitioner to relief, Mrs Livingstone-Stallard should be refused a divorce. (Mr Livingstone-Stallard is quoted in the case as being eager to continue his 'training' of his wife.) Rejected the notion of constructive desertion, Dunn J held that it was nowadays more helpful when dealing with behaviour cases to assume that a contentious case was being tried by judge and jury who would ask the question:

would any right-thinking person come to the conclusion that this husband has behaved in such a way that this wife cannot reasonably be expected to live with him, taking into account the whole of the circumstances and the characters and personalities of the parties?

(Dunn, J. 771, Livingstone-Stallard v Livingstone-Stallard (1974)).

Mrs Livingstone-Stallard was therefore granted her divorce.
One effect of the Livingstone-Stallard case was to encourage the courts to emphasise the history of behaviour during a marriage rather than select isolated acts. This would have benefited the significant proportion of women controlled by fear resulting from threat, sexual violence and domination by husbands who used physical force and violence more occasionally. In 1975 a court was able to announce again that objective tests of behaviour were irrelevant. In O'Neill v O'Neill of that year, only a test based upon the history of the marriage would be relevant for legal consideration.

A further shift from the preoccupation with intent was executed in the case of Thurlow v Thurlow in 1975 which arose from negative behaviour caused by a woman's illness. Mr Thurlow petitioned to divorce his wife alleging her unreasonable behaviour because of the maleffects on his own good health resulting from her epilepsy, neurological disorders and permanent hospitalisation. In the judgement, Rees J claimed that it was not helpful to distinguish behaviours such as violence and abuse from negative action such as silence or total inactivity because both could be patently unreasonable. The problem in this particular case was, could involuntary behaviour caused by sickness (here mostly of the physical type) be unreasonable? According to the decisions in Williams v Williams (1963) and Katz v Katz (1972) mentioned above, involuntary behaviour could only be unreasonable if the 'character and gravity of the behaviour is such that the petitioner cannot reasonably be expected to reside with him.' This meant according to Rees J, the
The case must be decided on the individual facts with regard to all the circumstances of the case. A good law should protect the petitioner from injury, including injury to health caused by having to remain married to a woman who was a 'human vegetable'. Negative behaviour could therefore be relevant in some circumstances if the effects were unreasonable.

Despite the trend away from emphasis upon the objective calculation of harm resulting from specific acts of violence, women victims of domestic violence could still find themselves unable to qualify for a divorce due to lack of proof of irretrievable breakdown. Until refuges offered some alternative and women's rights to accommodation were altered, those with minimal financial resources could find themselves sentenced to remain in a violent situation by legal technicalities. Subject to variations in local policy implementation, some women could discover they had no right to housing from the local authority without first petitioning for a divorce. But, they could not petition for a divorce based upon unreasonable behaviour unless they left home, i.e. had alternative housing. Women hoping to obtain divorces on other grounds need not necessarily live in separate accommodation from their husbands, providing they lived separate lives (not sharing cooking and cleaning, having independent finances and no sexual relations) (see Mouncer v Mouncer (1972)). Maintaining this sort of arrangement long enough to satisfy the court a marriage warranted dissolution would be very difficult for women tied to violent men. In Bradley v
Bradley in 1973 the wife had already obtained two separation orders from magistrates as a result of her husband's persistent cruelty but he had ignored these and remained in the house. Having seven children and after being advised that the local authority would not house her until she obtained a divorce, Mrs Bradley had little choice but to remain there with him. Because of her fear of the husband, she continued to cook and clean for him and share the same bed. Mrs Bradley filed a petition for divorce alleging her husband's unreasonable behaviour and particularising numerous acts of violence but this was dismissed when the court discovered she was still living with him. Fortunately, the Court of Appeal overturned this decision, Lord Denning arguing that, although one could usually conclude that if a woman remained with her husband his behaviour must be tolerable, this case was exceptional as Mrs Bradley clearly had nowhere to go. Scarman LJ attempted to further weaken the policy of barring women from legal relief merely because they stayed with their husbands:

There are many, many reasons why a woman will go on living with a beast of a man. Sometimes she may live with him because she fears the consequences of leaving. Sometimes it may be physical duress, but very often a woman will willingly make the sacrifice of living with a beast of a husband because she believes it to be in the true interest of her children. Is such a woman to be denied the opportunity (....) of calling evidence to show that, although she is living with him, yet the family situation is such and his behaviour is such that she cannot reasonably be expected to do so?

(Scarman LJ, Bradley v Bradley (1973) at 753.)

The recognition by the courts that some battered women were unable
to leave violent men was a significant improvement on the constructive desertion philosophy.

The Relevance Of Conduct To Maintenance Awards.

The previous chapter showed that prior to divorce law reform, the court would usually award an 'innocent' wife one third of the family's joint income for her own maintenance plus maintenance for the children. Over the years judges worked out a formula for 'just' payments, adjusting down the woman's maintenance in cases of her 'misconduct'. An 'innocent' wife, technically, was not to be forced into a standard of living less than her husband's.

The Matrimonial Proceedings and Property Act of 1970 contained an attempt to remove a divorcing partner's financial need to dwell upon issues of conduct. This Act made awards less discretionary by providing guidelines to the courts to use when making property and financial settlements on divorce. It authorised courts to require periodical payments, lump sum payments, or the transfer of property between spouses on divorce. When granting orders the courts were expected to leave the parties in a financial situation as close as possible to that before the divorce, although they may take into account the conduct of the parties if this should be so 'gross and obvious' that it would be unjust to ignore it. Either partner, man or woman, could claim maintenance and a share in the matrimonial
property (usually the home or family business) based upon their contributions to the care of home or family, or on their work for the business.

Prior to the Matrimonial Proceedings and Property Act it was feared that if individuals were prevented from raising matters of conduct in maintenance proceedings, the numbers of defended divorce petitions would increase (see Tumath v Tumath (1970)). In practice this meant giving a husband the power to contest his wife's right to maintenance. Although technically some maintenance could be awarded even to a woman found to be solely responsible for the marital breakdown (see Iveson v Iveson (1967)) only rarely did the emphasis upon conduct in maintenance hearings work to benefit women. (One such rare example was where maintenance could be increased because the marriage had lasted longer than it should have done because of the husband's obstruction of divorce proceedings (see Brett v Brett (1969)).

With the introduction of the Matrimonial Proceedings and Property Act 1970 and the Matrimonial Causes Act 1973 'guilt' was no longer relevant to the granting of maintenance. Section 25(1) reads:

It shall be the duty of the court in deciding whether to exercise its powers (.....) to have regard to all the circumstances of the case including the following matters, that is to say -

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable
future;
(b) the financial needs, obligations and responsibilities
which each of the parties to the marriage has or is likely
to have in the foreseeable future;
(c) the standard of living enjoyed by the family before the
breakdown of the marriage;
(d) the age of each party to the marriage and the duration
of the marriage;
(e) any physical or mental disability of either of the
parties to the marriage;
(f) the contributions made by each of the parties to the
welfare of the family, including any contribution made by
looking after the home or caring for the family;
(g) (....) the value to either of the parties to the
marriage of any benefit (for example, a pension) which by
reason of the dissolution or annulment of the marriage
that party will lose the chance of acquiring.

and so to exercise those powers as to place the parties, so far
as it is practicable and, having regard to their conduct, just to
do so, in the financial position in which they would have been
if the marriage had not broken down.

In the courts the idea of a discount on a man's liability to pay
maintenance was quickly held to be repugnant to the principles
underlying the new legislation. In Ackerman v Ackerman in 1972, the
Court of Appeal over-ruled a lower court's decision to cut a woman's
maintenance award because of her conduct in retaliating against the
extreme violence of her husband. In Wachtel v Wachtel in 1973, the
relevance of conduct under the new law was further reviewed. Here
it was decided that, although legislation obliged courts to have
regard for the conduct of parties, judges should not get involved in
holding lengthy 'post mortems' to find out who had 'killed' a
marriage. Except in the very small proportion of cases where the
conduct of one party had been so obvious and gross that it would be
unjust to order the other party to give financial support, the court
should not reduce an order for financial provision merely because of
what was formerly regarded as guilt or blame. Later decisions confirmed that such cases would be extremely rare so that the effect of Wachtel v Wachtel was to virtually make conduct irrelevant in contrast to the earlier approach.

In Harnett v Harnett (1973) the wife's conduct in sleeping with a youth did not excuse the husband's violence nor mitigate his liability to maintain her. According to Sir George Baker in W v W (1975) the conduct needed to be so gross that an 'ordinary mortal' would throw up his hands and say 'surely that woman is not going to be given any money'. For a few cases of gross misconduct, a man's financial liability might be increased. In Jones v Jones (1975) the husband's conduct after a decree of divorce justified a variation in the maintenance order by way of a lump sum payment. Three months after their separation on divorce, Mr Jones had attacked his ex-wife with a knife and disabled her hand with the result that she was unable to continue in her employment as a nurse. Although Mr Jones had been imprisoned for his crime and Mrs Jones had received a payment from the Criminal Injuries Compensation Board, it was held to be unjust when calculating financial settlements to ignore his responsibility for her inability to support herself.

The shift away from an emphasis upon the woman's conduct in maintenance cases would not of course make husbands more generous or more wealthy. The problems noted in Chapter One during the discussion of the Cobb case - where a low standard of living was
intolerable for the husband but an inevitability for the wife and children - were left untouched. Chapter Four will show that the lesser emphasis upon conduct in maintenance hearings became a subject of much complaint by the 1980s.

Magistrates' Matrimonial Remedies And Their Use By Working Class Women.

In the magistrates' courts the grave and weighty standard still applied for the granting of orders in cases of domestic violence against women. Applications for matrimonial relief here continued to be judged according to the 'fault' system and the feelings of guilt experienced by parties involved were aggravated by the courts' practice of mixing criminal and matrimonial hearings (see Chapter 2). The Finer Committee Report, published in 1974, criticised the stark contrast in the means of justice offered to applicants in the divorce courts and the magistrates' courts. A decree of judicial separation could be made by a divorce court according to the principles established by the 1969 act, but magistrates could not make a non-cohabitation order without proof of one of the offences set out in the Matrimonial Proceedings (Magistrates' Courts) Act 1960. Whilst all the traditional bars to relief - i.e. connivance, collusion, condonation and conduct conducing - had been abolished in the divorce court jurisdiction, apart from collusion in relation to cruelty, these continued to apply to the magistrates' courts.
In the 1970s, approximately half of those who went before the magistrates for relief sought a divorce later. This continued emphasis upon matrimonial offence fitted ill with the new divorce law. Unlike the divorce courts where all but 'gross and obvious' conduct was ignored, in the summary courts however gross the husband's conduct and whatever a wife's needs, she was automatically barred from obtaining relief for herself if she committed adultery unless she could show her husband had connived, conduced or condoned it by his behaviour.

It has already been noted that the summary court jurisdiction in matrimonial matters had traditionally been a matter of concern to the judicial elite (see discussion in previous chapters). Magistrates were criticised in appeal cases for their neglect of legal principles and procedures in cases of cruelty to women prior to the creation of further inequities on the introduction of the Divorce Reform Act (see Blaise v Blaise (1969); Vye v Vye (1969); Aggas v Aggas (1971); Brewster v Brewster (1971)). Following the implementation of the Divorce Reform Act, jurisprudence of the matrimonial offence for the divorce court was dramatically reduced making interpretation of the law more difficult, especially for lay members of the magistrates' courts.

The Finer Committee pointed out that the matrimonial jurisdiction of the magistrates' courts continued to be a service mostly offered to working class women or those with limited means in need of immediate
relief (Finer Committee, 1974). The double standard applied to the provisions of divorce courts and magistrates' courts in matrimonial matters thus adversely and disproportionately affected working class wives. Tables 11 and 12 give details of the type and scale of work handled. The tables show the numbers of matrimonial, maintenance and bind over orders made during the years 1969-1974 and 1968-1975.

**TABLE 11 : Summary Of Magistrates Orders Granted 1969 to 1974.**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Bound Over (no charge or conviction)</th>
<th>Matrimonial wife.</th>
<th>Maintenance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1969</td>
<td>7,594 (8,862)</td>
<td>20,045 (29,408)</td>
<td>17,424 (26,753)</td>
</tr>
<tr>
<td>1970</td>
<td>7,483 (8,510)</td>
<td>20,934 (30,321)</td>
<td>18,557 (27,905)</td>
</tr>
<tr>
<td>1971</td>
<td>8,802 (9,877)</td>
<td>19,483 (28,143)</td>
<td>17,407 (26,009)</td>
</tr>
<tr>
<td>1972</td>
<td>9,478 (10,508)</td>
<td>18,817 (27,782)</td>
<td>16,592 (25,472)</td>
</tr>
<tr>
<td>1973</td>
<td>9,938 (10,819)</td>
<td>No figures</td>
<td>13,657 (20,993)</td>
</tr>
<tr>
<td>1974</td>
<td>No figures</td>
<td>No figures</td>
<td>8,899 (12,027)</td>
</tr>
</tbody>
</table>

( ) Bracketted figures show numbers of applications made.


As with the tables for earlier chapters, it is not possible to see from these statistics exactly how many cases of domestic violence against women came before the courts. The comparative decline in bind over orders for cases of assault continued, although the use of these orders without a charge being made increased to almost 10,000...
per year by 1974 (the last date in this period for which figures are available).

As magistrates' matrimonial orders greatly outnumbered bind over orders, it could be reasonably assumed that women would be more likely to use the remedies of the matrimonial law. In the absence of access to local court records, there is regrettably no way of discovering how many women victims of domestic violence had their applications thrown out or bind over orders made instead of separation orders.

In contrast to the position at the start of the century, magistrates' orders were now very much less common than divorces. Magistrates matrimonial work began a sharp decline in the 1970s most probably as a result of the continued emphasis upon 'fault' based approaches. Table 11 shows that applications before magistrates had a high failure rate. About one third of the cases before magistrates failed to get the relief sought. By 1972 only 27,782 orders were made and the number fell steadily thereon each year. Magistrates were also at a distinct disadvantage in being less able to investigate the financial circumstances of separating couples. This meant that husbands had great scope either to deceive the court or mislead it by under-estimating their incomes in order to cut their liability to maintain. Should this fail, they could disappear and evade payment altogether.
### TABLE 12: Persons Aged 21 and Over Dealt With Summarily For Cases Of Assault And Result Of Proceedings, 1968 to 1975.

<table>
<thead>
<tr>
<th>Year</th>
<th>Offence</th>
<th>No. Persons</th>
<th>Not guilty /No Sentence#</th>
<th>Bound Over</th>
<th>Found Guilty</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968</td>
<td>Aggrav.</td>
<td>10 M</td>
<td>2 M</td>
<td>-</td>
<td>7M(+1)</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>2 F</td>
<td>-</td>
<td>-</td>
<td>2F</td>
</tr>
<tr>
<td></td>
<td>Common</td>
<td>2,873 M</td>
<td>1,593 M</td>
<td>498 M</td>
<td>737M(+45)</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>872 M</td>
<td>557 F</td>
<td>197 F</td>
<td>114F(+4)</td>
</tr>
<tr>
<td>1969</td>
<td>Aggrav.</td>
<td>17 M</td>
<td>6 M</td>
<td>2 M</td>
<td>9M</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Common</td>
<td>3,219 M</td>
<td>1,916 M</td>
<td>579 M</td>
<td>706M(+18M)</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>956 F</td>
<td>593 F</td>
<td>249 F</td>
<td>114F</td>
</tr>
<tr>
<td>1970</td>
<td>Aggrav.</td>
<td>9 M</td>
<td>2 M</td>
<td>-</td>
<td>6M(+1)</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>1 F</td>
<td>-</td>
<td>-</td>
<td>1F</td>
</tr>
<tr>
<td></td>
<td>Common</td>
<td>4,736 M</td>
<td>2,856 M</td>
<td>988 M</td>
<td>866M(+26)</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>1,472 F</td>
<td>866 F</td>
<td>446 F</td>
<td>159F(+1)</td>
</tr>
<tr>
<td>1971</td>
<td>Aggrav.</td>
<td>14 M</td>
<td>5 M</td>
<td>1 M</td>
<td>7M(+1)</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>1 F</td>
<td>1 F</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Common</td>
<td>5,560 M</td>
<td>3,047 M</td>
<td>1,233 M</td>
<td>1,015M(+265)</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>1,852 F</td>
<td>1,017 F</td>
<td>568 F</td>
<td>175F(+92)</td>
</tr>
<tr>
<td>1972</td>
<td>Aggrav.</td>
<td>7 M</td>
<td>2 M</td>
<td>1 M</td>
<td>4M</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>4 F</td>
<td>3 F</td>
<td>-</td>
<td>1F</td>
</tr>
<tr>
<td></td>
<td>Common</td>
<td>5,226 M</td>
<td>2,842 M</td>
<td>1,106 M</td>
<td>1,055M(+223)</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>1,977 F</td>
<td>1,108 F</td>
<td>575 F</td>
<td>215F(+79)</td>
</tr>
<tr>
<td>1973</td>
<td>Aggrav.</td>
<td>19 M</td>
<td>-</td>
<td>2 M</td>
<td>16M(+1)</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>5 F</td>
<td>-</td>
<td>1 F</td>
<td>4F</td>
</tr>
<tr>
<td></td>
<td>Common</td>
<td>6,195 M</td>
<td>3,381 M</td>
<td>1,326 M</td>
<td>1,213M(+275)</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>2,177 F</td>
<td>1,230 F</td>
<td>623 F</td>
<td>226F(+98)</td>
</tr>
<tr>
<td>1974</td>
<td>Aggrav.</td>
<td>16 M</td>
<td>2 M</td>
<td>3 M</td>
<td>11M(+1)</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>2 F</td>
<td>1 F</td>
<td>-</td>
<td>1F</td>
</tr>
<tr>
<td></td>
<td>Common</td>
<td>6,987 M</td>
<td>3,814 M</td>
<td>1,282 M</td>
<td>1,491M(+400)</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>2,475 F</td>
<td>1,374 F</td>
<td>677 F</td>
<td>272F(+152)</td>
</tr>
<tr>
<td>1975</td>
<td>Aggrav.</td>
<td>38 M</td>
<td>9 M</td>
<td>2 M</td>
<td>24M(+3M)</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>8 F</td>
<td>2 F</td>
<td>-</td>
<td>2F(+4)</td>
</tr>
<tr>
<td></td>
<td>Common</td>
<td>5,879 M</td>
<td>2,579 M</td>
<td>1,176 M</td>
<td>1,396M(+728)</td>
</tr>
<tr>
<td></td>
<td>Assault</td>
<td>2,579 F</td>
<td>1,393 F</td>
<td>638 F</td>
<td>282F(+266)</td>
</tr>
</tbody>
</table>

# includes dismissed, mental health act, conditional and absolute discharges.


In the case of Roberts v Roberts in 1970, the problem of sharing a
limited income on separation was considered with a further complication. In this case the court was faced with legal and moral problems arising from maintenance where a man had remarried and was required to maintain two families on a limited wage. In these situations where people had small incomes, the Finer Committee noted that both divorce and magistrates' courts had difficulties enforcing the principle that an 'innocent' wife should not suffer extra financial hardship on divorce. Although it was repeatedly stressed that divorcing men had obligations to maintain their ex-wives and children before meeting any new expenses from second wives, the numbers of maintenance defaulters showed very few put this moral exhortation into practice. Even those men with relatively generous incomes would most likely see their main financial obligations as being with the family with whom they presently shared a home.

Women with inadequate maintenance had to turn to what the Finer Committee called the 'third system of family law', i.e. the Supplementary Benefits Commission. In the 1970s the SBC were themselves responsible for a large proportion of applications in the magistrates' courts (see Finer Committee on One Parent Families, 1974). Earlier chapters have shown the development of 'public' support for deserted and battered women through the Poor Law provisions to the NAB and later SBC. Unlike the magistrates' and divorce courts the Supplementary Benefits Commission assumed it would be easier to enforce maintenance for the family with whom a
man lived rather than for those he had left elsewhere. This meant that the Commission took into account a man's obligations and present living expenses with his new family before calculating his liability to maintain the wife and children he no longer lived with. The Supplementary Benefits Commission made up shortfalls if women applied for financial support as divorced and separated wives. Women unable to support themselves therefore swapped their economic dependence upon an individual man for dependence upon the state. For women who had experienced domestic violence even the subsistence level of Supplementary Benefit could have offered a relative improvement in their standards of living. To some men, keeping a woman short of money, clothing or food is just another strategy of abuse (see Binney, Harkell & Nixon, 1981; Homer, Leonard & Taylor, 1984; Pahl, 1980; Rose, 1978.) Poverty was still the most likely outcome of divorce and separation for women and children, whether 'innocent' or 'guilty' according to the old dicta.

Women victims of domestic violence had considerable problems obtaining benefit because of the 'liable relative' rule, established in the Ministry of Social Security Act 1966. Re-enforcing the Poor Law philosophy, this 'rule' was designed to ensure that the Supplementary Benefits Commission encouraged women to first try to enforce their maintenance orders rather than draw upon state benefit. Pressure was put upon women to effect reconciliations even if these were patently impractical and likely to have dangerous results (see Streather & Weir, 1974). Should a woman escape persecution from
liable relative officers, she might still face persecution from the social security 'snoopers' who enforced the cohabitation rule. Women on Supplementary Benefit could lose their rights to claim if they were judged to be cohabiting with a man. Cohabitation (at one stage this meant little more than sexual relations) and maintenance were assumed to go hand in hand. In a survey of single mothers who lost benefit as a result of cohabitation Ruth Lister found only five out of the fifty women regarded themselves as the 'cohabiting' man's common law wife and only four women had received financial contributions from the men concerned (Lister, 1973).

The assumptions about obligations to maintain in the laws of maintenance and social security were much criticised for their inconsistencies (see Finer Committee, 1974). Under divorce law for example it was assumed a man's responsibility was to maintain his first wife and children even if he had a new family of dependents. Only if his first wife remarried would she lose her rights to maintenance. Her cohabitation with a new partner was no longer an automatic ground for the cessation of maintenance. In the magistrates' courts and under social security provisions however the woman's cohabitation or sexual relations with another man would still be grounds for loss of maintenance or benefit. Under social security law the husband's obligations to support was with the family with whom he cohabited, the SBC providing benefit instead for his first family. For low income families these inconsistencies were most marked. Divorced men could find themselves liable under a
court order to pay maintenance to an ex-wife and children leaving insufficient income to maintain their present dependents. As any maintenance received would be deducted from her Supplementary Benefit some divorced or separated women were no better off for receiving the maintenance, especially if the husband's reluctance to pay caused delays in its receipt. In these situations the three systems of family law could aggravate the problem of poverty faced by many families with young children (see discussion in Chapter Four).

To cope with inequities and inconsistencies arising from these three systems of family law and to alleviate the financial problems of one parent families the Finer Committee made a number of recommendations:

1. The 620,000 one parent families who were estimated to exist at the time should be given a guaranteed maintenance allowance, available by right (but subject to an earnings rule). Together with a proposed tax credit scheme designed to lift individuals out of the poverty trap the average income for a one child one parent family would have been £15.35p per week.

2. The Supplementary Benefits Commission would continue to assess a husband's maintenance contributions but, even when he did not have new obligations to a second family, he should be allowed to retain subsistence for himself.
3. The magistrates' courts' matrimonial jurisdiction would be abolished and responsibility for collecting maintenance pass to a new system of family courts offering their own family court welfare service.

4. The Supplementary Benefits Commission should stop trying to encourage women to initiate court proceedings to get maintenance.

5. The Matrimonial Homes Act 1967 should be amended to allow the courts to exclude a husband from the home even if he was the sole owner or tenant and Rent Acts should be amended to allow possession orders to be suspended to enable the spouse in possession to have the tenancy restored. Council and Housing Association tenants should be given the same security of tenure as private tenants.

6. Daycare and employment facilities for women should be improved to enable those with dependent children to become self-supporting.

The Committee also recommended a reversal of the reconciliation philosophy urged upon magistrates courts. It was at last suggested that once in court, reconciliation was probably too late anyway. Conflict diffusing energies should instead be expended on conciliation, i.e. reaching moderate agreements on separation terms by

negotiation with the parties and an impartial advisor. The emphasis upon conciliation and a unified approach to family law via a family court system was to become a matter of great importance to reformist debates in the 1980s.

A number of these proposals, if implemented, could have improved the situations faced by women trying to leave violent marriages. In a written statement to the Select Committee on Violence in Marriage in 1975 the National Women's Aid Federation urged that the government especially consider introducing the Guaranteed Maintenance Allowance and the tax credit scheme for children (Select Committee on Violence in Marriage, 1975). The low priority given to meeting women's needs meant that any special financial provision to provide temporary housing or refuges for battered women and their children had to be wrung out of government bodies by women's groups working mostly at the local levels. In later debates on domestic violence against women government attention centred mostly on the legislative measures which involved minimum costs.


Chapter 2 showed that women victims of domestic violence not able to petition for a divorce or judicial separation could obtain injunctions for non-molestation by bringing a civil action for tort of assault and battery and exclusion orders by bringing actions for trespass in
the county court (assuming they held the tenancy of the home).


<table>
<thead>
<tr>
<th>YEAR</th>
<th>Numbers of injunctions granted:</th>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>S17 MWPA 1882</td>
<td>S1 MHA 1967</td>
<td>Matrimonial Injunction</td>
<td></td>
</tr>
<tr>
<td>1972</td>
<td>607</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>1973</td>
<td>908</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>1974</td>
<td>929</td>
<td>57</td>
<td>5336</td>
<td></td>
</tr>
<tr>
<td>1975</td>
<td>837</td>
<td>48</td>
<td>8676</td>
<td></td>
</tr>
<tr>
<td>1976</td>
<td>-</td>
<td>-</td>
<td>13,341</td>
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</tbody>
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MWPA = Married Women's Property Act 1882.
MHA = Matrimonial Homes Act 1967.


Whilst this option technically existed for the benefit of cohabitees, lawyers giving evidence to the Select Committee on Violence in Marriage pointed out that the provisions were seldom used, being dependent upon an individual solicitor's knowledge of and/or interest in being involved in the procedure (Select Committee on Violence in Marriage, 1975). Knowledge of the procedures, whether or not correctly used, was noticeably on an upward wave. The numbers of matrimonial injunctions applied for and granted increased significantly from the start of the decade (see Table 13).

Without analysis of divorce court records at the local level, comparison with earlier years is impossible because there are no
figures published which show the numbers of matrimonial injunctions granted during the 1960s. Some further calculations however can demonstrate the significance of the rise in the number of injunctions in the 1970s. The increase in petitions based upon behaviour/cruelty has already been mentioned above (and in Chapter 2). By 1968 24% of petitions alleged the cruelty of a spouse. By 1976, matrimonial injunctions were granted in 13,341 cases. The total number of divorce decrees filed that year were 143,698 (42,866 by husbands and 100,832 by wives). Injunctions might therefore have been granted in approximately 9% of divorce cases. (The actual figure is impossible to discover without a study of local divorce statistics as some petitioners may have had additional injunctions (e.g. ousters) for earlier petitions.) Assuming these would only be applied for if the particulars in a petition concerned the unreasonable behaviour of a spouse which accounted for (49,231) 34% of the petitions filed, injunctions could have been awarded in as many as 27% of these cases based upon behaviour. Simply put, by 1976 well over one quarter of petitions based upon the unreasonable behaviour of a spouse could have included applications for an injunction. Figures for 1975 show that a small proportion (252) were obtained ex parte, three quarters of these being granted in large cities (Freeman, 1978).

Changes in the procedure and recent decisions in the courts convinced some members of the legal profession that this area of the law could now be adequately applied to cope with the emergency needs of women
victims of domestic violence (see e.g. Ian Percival, Hansard, 13 February 1976; Michael Irvine, Select Committee on Violence in Marriage, 26 March 1975). The remainder of this section will outline the general principles governing the granting of injunctions at the time to provide a context to the future debates on reforming this area of the law.

Chapter 2 described how the High Court's powers to grant an injunction was set out in SS 43 and 45 of the Supreme Court of Judicature (Consolidation) Act 1925. Sections 45 and 43 allowed the court some discretion in the granting of such orders to enable the parties to a dispute to settle matters finally in law without hindrance or interference. The County Court's jurisdiction, laid down in S 74 of the County Courts' Act 1959, was potentially as broad as that of the High Court but later decisions placed certain restrictions on the granting of injunctions. In Des Salles d'Epinoix v Des Salles d'Epinoix (1967) it was decided that there must be sufficient nexus between the subject matter of the main action and the relief sought by injunction. The decision in Montgomery v Montgomery in 1965, established than an injunction could only be used to support a legal right. During the 1970s, the courts defined a woman's personal right to remain in the home as one such right capable of protection from an injunction (see Gurasz v Gurasz (1969); Jones v Jones (1971); Softley v Softley (1975)). Such orders could only be temporary though because the right to remain in the home ceased on termination of the marriage (see Vaughan v Vaughan (1953);
Brent v Brent (1975). Any proprietary interest a woman had in the home was yet another separate right (see Phillips v Phillips (1973)).

Prior to domestic violence legislation in 1976 then, matrimonial injunctions could be obtained ancilliary to a divorce or judicial separation according to the following general guidelines on:

A. The definition and substantiation of 'molestation':

Although injunctions were commonly called the most 'drastic' orders (see Hall v Hall (1971); Bassett v Bassett (1975)), the courts could take a relatively generous approach to the definition of 'molestation'. For example, in Vaughan v Vaughan (1973) it was held that communication could, depending on its fact and degree, amount to molestation. Mr Vaughan, who had been committed to terms of imprisonment at least five times for physically assaulting his wife, continued to pester her, stopping short of using violence, for years after their separation. In this case the words 'molest' and 'pester' were held to be the same and a new non-molestation injunction was issued. In Jones v Jones (1971) an ouster injunction was granted in a case where no violence had occurred at all due to the court's belief that it would be 'impossible' for the wife to live in a house with the husband and his mistress. A similarly 'generous' approach to the substantiation of allegations existed. In Hunt v Hunt in 1975, the wife had made repeated allegations of the husband's violence and left home as a result. She applied to have him ousted on the grounds of his violence and emotional disturbance to the children so
that she could return. She was not able to substantiate her allegations by offering further proof such as doctor's evidence etc. The Court of Appeal decided that it was not necessary for her to provide definite proof on the truth of the allegations. All that was needed was evidence sufficient to enable them to conclude that they might be true. In her case there were sufficient grounds to conclude that this was so. (This approach to the truth of allegations in matrimonial cases, where there is great emphasis upon the judge's assessment of validity is not limited to cases of violence, see Browne v Pritchard (1975)).

B. Duration:

The court could make an injunction before, during and after a matrimonial suit. A non-molestation injunction could be granted to last or even made after the decree absolute (see e.g. Robinson v Robinson (1965); Ruddell v Ruddell (1967); Devas v Devas (1969); Rooke v Rooke (1969); Stewart v Stewart (1973)) but the courts were reluctant to oust a man if the marriage was already dissolved (see Montgomery v Montgomery (1965)).

C. Protection of Children:

A broader approach for ousters was applied to cases where violence against the children had also taken place. In Adams v Adams (1965), Beasly v Beasly (1969), Phillips v Phillips (1973) and Stewart v Stewart (1973) the exclusion of the former husband was justified in terms of the need to protect the welfare of the children. Powers to
do so were said to arise from the inherent jurisdiction of the High Court to protect children. The County Court had no such jurisdiction, the statutory powers here failing to cover the exclusion of the former husband. Ousters to protect women were temporary remedies only (Jones v Jones (1971); Robinson v Robinson (1965); Brent v Brent (1974)).

D. Limitations On Ousters To Protect Women Only:
In cases where the husband had not used violence against the children as well, exclusion from the home could only take place to protect the wife from molestation pending the hearing of the suit for divorce or judicial separation. Women hoping to divorce a violent man within the first three years of marriage had additional problems because of confusion over whether or not the court was empowered to oust husbands in such cases at all. A non-molestation order could definitely be granted within the first three years of marriage (see Mc Gibbon v Mc Gibbon (1973)) but in only one case (Mc Leod v Mc Leod (1974)) was it suggested the husband could be ousted in these circumstances, and here the wife was the sole tenant of the matrimonial home.

E. Extreme Circumstances:
Ouster injunctions could only be granted if it was impossible for a couple to live together (see Hall v Hall (1971)). In Mamance v Mamance (1974) this was further clarified as meaning only circumstances where it was both 'imperative' and 'inescapable'. This
strict reasoning could even apply to cases involving children. In the Mamance case the order was refused despite the husband's proven, repeated violence and the feared maleffects of this behaviour upon the wife's two small children.

F. Lack of alternative accommodation for children:
In sympathy with the concern over housing shortfalls in the 1970s, some judges expressed the opinion that it would be easier for a single man to find alternative accommodation than for a woman with small children (see e.g. Gurasz v Gurasz (1969); Bassett v Bassett (1975)). Uncertainty as to the powers to grant ouster injunctions lead to two conflicting approaches being established by the Court of Appeal. Decisions such as those in Mamance v Mamance (1974) and Hall v Hall (1971) stressed the exceptional and emergency nature of such orders. Cases such as Bassett v Bassett (1975) and Hunt v Hunt (1975) took an essentially 'welfare' approach by suggesting that the court should place greater emphasis upon the needs for housing and stability for the children involved. Judge Ormrod stressed the need for orders for protection to override property interests:

My conclusion is that the court, when it is dealing with these cases, particularly where it is clear that the marriage has already broken down, should think essentially in terms of homes, especially for the children, and then consider the balance of hardships .... property rights as between the spouses are of comparatively minor importance.

(Ormrod, J. Bassett v Bassett, 1975).
G. Non-intervention into local authority decisions:

This area of injunction law provides another example of unequal standards operating for the relief of poorer women victims of domestic violence. Local authority tenancies were generally regarded as being excepted from the courts' powers to make property adjustments under S 4 of the Matrimonial Causes Act 1973 and S7 of the Matrimonial Homes Act 1967. In Brent v Brent (1975) the court supported this general principle of non-intervention into local authority policy and refused to oust a man after the decree nisi for divorce. Reluctance to intervene in local authority decisions was to be a recurrent theme in the later 1970s.

For women owning or renting their homes, if the tenancy was in joint names or the woman's sole name, exclusion of the husband could alternatively be obtained via S1(2) of the Matrimonial Homes Act 1967. This act gave a wife rights to occupy the home even if she had no beneficial interest in it or 'strict legal right to do so (see Baynham v Baynham (1969)). Powers to exclude a husband were limited though to the protection of a married woman's accommodation rights only. In Maynard v Maynard (1969), court powers to grant an injunction regulating occupation were limited to S1 of the Matrimonial Homes Act 1967. Women who needed permanent settlements were here advised to first obtain a decree absolute for divorce and, if the husband failed to leave the matrimonial home, to
apply to the County Court for an action against him as a trespassing stranger. In Tarr v Tarr (1971) a court held that a property owning spouse could not be permanently excluded from the home. This decision gave rise to a number of cases where, instead of excluding a violent husband, the court divided the home into separate accommodation giving e.g. the wife sole use of a bedroom and living room and the husband the remainder. For women victims of domestic violence this solution was extremely impractical if not dangerous.

Many solicitors avoided injunction cases because of the expense demanded in time and effort (see Meredith, 1977). For women in need of emergency protection, the procedure for obtaining an injunction was dogged by potential delays. To apply for an injunction a woman's solicitor had to serve a summons or notice of application on the husband at least two clear days before the hearing. Whilst it was technically possible to abridge this period in certain cases a Practice Direction issued in 1972 stressed that only a very small proportion of injunction cases should be seen to be so urgent that no notice to the husband was required. The summons or notice of application had to be supported by affidavits setting out the grounds on which relief was to be sought. Should there be an extreme emergency, affidavits could be lodged later and the case heard ex parte (i.e. without the husband's presence). For a non-molestation injunction, a woman had to prove that she or the children were in such immediate danger from further assault that they needed
protection before the matter could come to court. An ex parte ouster order would succeed very rarely indeed.

Up until 1974, injunction cases were heard with the public present in an open court. Leaving aside the obvious distress likely to result in women having to describe in public their previous experiences of victimisation, this would have increased the potential for a husband's harassment by enabling him to bring friends or relatives into court to intimidate his wife. Fear of the husband's and associates' proximity in the court was an intimidating factor of the legal experience remembered by all the women surveyed/interviewed for this study who had been to court (see Chapter Six). Those unable to bring their own moral support would be at a distinct disadvantage here. Should the husband succeed in obtaining an adjournment for the hearing, the delay and harassment problem would be further aggravated.

The public should be aware that for a long time the courts have been accustomed to granting injunctions at the shortest notice if the correct procedures are used. I have telephoned a judge on a Saturday afternoon to find out whether he is home and then gone to his home - and having given an undertaking to file a petition - and have obtained from him the necessary order without proceedings having ever been started. The judge made an order for the protection of children. So informal were the proceedings, that when the judge made the order he asked what he should write it on. There were no papers in this case - no writ, or anything else. These speedy procedures are available now .... the difficulty is knowing who to ask at the time when advice is needed.

(Ian Percival, Hansard, 13 February 1976.)
This confident incantation of correct practice contrasts sharply with another (more experienced in this field) lawyer's claim that:

you have actually got to present (the court) with a near corpse before they will take emergency action.

(Margueritte Russell, 20 March 1975, Select Committee on Violence in Marriage.)

One researcher on violence against women, Jalna Hanmer, later quipped, mention of the inadequacy of injunctions 'put a sparkle in the eye' of Select Committee members (Sutton & Hanmer, 1984). Legislative reform of injunctions would be a zero cost way of doing something to help women victims of domestic violence. Throughout the early 1970s battered women and those involved with their legal difficulties had complained that injunctions were too slow to offer effective emergency relief, could enhance a husband's scope for harassment and were difficult or even impossible to enforce (see Select Committee on Violence in Marriage, 1975; Hansard, 1976; Meredith, 1977.). Even if a woman succeeded in getting her violent husband into court, by giving an undertaking to behave well in the future he could forestall further proceedings. Breach of an injunction was a contempt of court which could technically result in a fine or committal to prison but again, many a husband could evade these sanctions by purging his contempt - basically apologising to the court. The woman had to apply for court notice of contempt herself when her husband broke the injunction. He was then given two days' notice of the committal hearing and the case could be adjourned if he decided to contest the
charge. Should she succeed in proving the injunction had been broken, the husband might be imprisoned. Even when he was committed to prison for a breach of an injunction he need only purge his contempt by promising the judge he would behave himself in future and the whole process would start over again. A husband could go for six months avoiding imprisonment whilst continuing to attack and harass his wife. Injunction proceedings could go along this yo-yo route of assault-court-apology for some considerable time. As injunctions were civil proceedings, the police felt justified in washing their hands of the proceedings on the grounds that only bailiffs were responsible for enforcement. Bailiffs, as court employees, worked office hours and were of little use to women who had emergencies at evenings or weekends.

In their evidence to the Select Committee on Violence in Marriage in 1975, National Womens Aid Federation (NWAF) described one woman's three year struggle to gain legal protection from injunctions. It is worth quoting this here in full because the extract demonstrates so well the experience of many women who attempted to use the law for protection:

1972 :
Mr D (the husband) attacked his wife fracturing her skull and left arm. He was imprisoned for a term of nine months and released after six. Mrs D started divorce proceedings but took the husband back on release into her home, because of his pestering. The violence began again.

5-10 Nov. 1974 :
Mrs D left with the children to go to the local authority's Homeless Families Accommodation. She applied for the divorce to be made absolute.
and was granted non-molestation and ouster injunctions which were served on the husband.

11-12 Nov. 1974: Mrs D returned home and was molested when her husband broke into the house. The police were called but Mr D had gone when they turned up. Mrs D then brought an action for breach of injunction and a warrant for arrest and a committal order was made. Mr D was not arrested.

13-28 Nov. 1974: There were more breaches of the injunction. Mrs D returned to the Homeless Families Unit but her husband continued to pester and molest her here. The bailiffs escorted Mrs D to take her children to school but her husband was not seen that day.

28 Nov.-22 Dec. 1974: Mrs D moved into a refuge. Her husband visited her there about ten times. The police were called and told of the warrant but Mr D evaded arrest. The police claimed they could only arrest Mr D if they caught him in the act of breaching the peace. The warrant for contempt of court was said to be a civil matter for the bailiffs to enforce.

22 Dec. 1974: Mrs D went home to collect some clothes for the children where her husband threatened her with a knife. He then visited the refuge and kicked the door. He lived in the house, in disobedience of the injunction, for three months. Mrs D told her solicitor.

Feb. 1975: Mrs D found a bed missing from her home and told her solicitor.

3rd March 1975: Mr D was arrested for breaching the peace at the refuge. The police were told of the warrant and the injunction and Mr D went before the magistrates the next day. Mrs D told her solicitor this so that the contempt warrant could be served but the solicitor said she had to go to court to do this herself. Mrs D, who had small children to look after, arrived at the court late in the morning and so missed the case. Mr D had been fined and had gone. Most of Mrs D's furniture was taken from her house by the husband.

(Extracted from Select Committee on Violence in Marriage, 1975).
Police Involvement and The Criminal Law.

Requests to enforce a separation of criminal and civil law matters appeared in a number of the debates about the state of the law in the 1970s. Evidence submitted to the Select Committee on Violence in Marriage by NWAF and Erin Pizzey's publication of battered women's experiences in her book 'Scream Quietly Or The Neighbours Will Hear' (Pizzey, 1974) demonstrated that a number of women, like Mrs D. above, were still turning to the criminal law and the police for protection. Following the publicity generated by Pizzey's involvement in Chiswick Women's Aid and the compilation and circulation of a dossier of battered women's experiences with the law, certain concerned M.P.s attempted to find out from the Home Office the actual numbers of women turning to the police and criminal law for emergency relief. During the period 1973-1975, a number of Written Answers to Jack Ashley and others from representatives of the Home Department and the Secretary of State for Scotland stressed it was not possible, nor economic, to distinguish from published statistics on offences known to the police assaults by husbands on their wives (see e.g. Hansard 20 June 1973 140 WA; 26 June 1973 WA 322; 4 July 1973 140 WA; 5 July 1973 WA 171; 1974 WA 445; 13 Nov. 1974 WA 139.). In a written report to the Select Committee on Violence in Marriage in 1975, NWAF drew on research into homicide statistics from the 1950s and 1960s to show how a large proportion of women victims had been killed by their husbands/cohabitees (Select Committee on Violence in Marriage, 26 March 1975).
My own data for the 1970s drawn from the Home Office publication *Criminal Statistics* shows that spouse/cohabitee/lover killings amounted to 21-30% of all homicides during the period 1969-1976 (1969 = 23%; 1970 = 22%; 1971 = 25%; 1972 = 21%; 1973 = 28%; 1974 = 29%; 1975 = 28%; 1976 = 30%) (*Criminal Statistics, 1972; 1973; 1974; 1975; 1976*). As homicides per million population increased from the 1969 level of 6.8 offences per million people to 9.2 in 1975 (an increase in the rate of about 26%) the larger proportion made up of these spouse killings represents a most alarming increase which has not yet been adequately researched or explained. Working backwards from the percentages to the plain figures, about 76 spouses were killed in 1968 compared with 126 in 1975. So not only were a large proportion of women being killed by their spouses/cohabitees each year but the actual numbers dying this way were increasing. Further research which examined the DPP's homicide records for the period 1969-1977 could yield more information on the increase in spousal killings. Later discussion will show that the alternatives for women victims of domestic violence coupled with the frequently applied, inappropriate reconciling efforts of housing departments, benefit officers and magistrates' courts undoubtedly made it more difficult for women to leave violent relationships. Discussion of the sentencing policies will also show a possible link between findings of diminished responsibility and attempted or actual wife killings (see discussion below and also Chapter Six). It is possible that the increase in spousal homicides was partly a result of the increased difficulty women had when trying to leave a violent relationship.
relationship, i.e. more battered women did not escape in time to save their lives.

Available statistics on assaults from unpublished figures show a similarly depressing situation. In July 1973, Jack Ashley informed the House of Commons that on the basis of a Staffordshire report, where 320 battered women had contacted the local police for assistance in the last year, up to 16,000 requests for help from the police were being made by battered women in England and Wales each year (Hansard, 1973). This estimate of 16,000 swamps the actual numbers of aggravated and common assault prosecutions made. Table 12 above shows that the maximum number of prosecutions for assault in the period 1968 - 1975 made by magistrates was just over 9,000. Figures forwarded from the Bedfordshire police to the Select Committee on Violence in Marriage in 1975 gave further evidence of many more women victims of domestic violence attempting to use the criminal law than appeared in the statistics. Out of 288 cases of domestic violence against women notified to the police, only 73 continued to a prosecution. Of these 73 cases, 8 offenders were imprisoned or given suspended sentences, 31 were fined or bound over to keep the peace, 5 were given probation orders, 17 received conditional or absolute discharges and 12 were otherwise dealt with. Research started in 1974 into over 32,000 Scottish police and court records when published in 1980 found that 25% of all assaults known to the police and courts were assaults by husbands on their wives (Dobash and Dobash, 1980).
According to representatives of the Home Office at the time:

The law does not discriminate between assault by a husband on his wife and other assaults. Any assault constitutes a criminal offence.

(Jack Carlisle, Secretary of State for the Home Department, Hansard, 20 June 1973.)

Yet glaring examples of discrimination against wives were being problematised before the courts, Select Committee and Parliament. Leaving aside for a while the gap between reality and practice which formed the experience of most battered women who spoke out at the time and for this study, this statement was patently incorrect even on the basis of the principles advanced by practitioners of the criminal law. Not only did the criminal justice system 'fail' to offer women victims of domestic violence equal rights in principle, but inequality was practised and justified. Wives, and all victims of family violence, were excluded from claims for compensation from the Criminal Injuries Compensation Board, created in 1968. Paragraph 7 of the scheme initially excluded family victims because of:

1. problems associated with facts - lack of witnesses, dangers of connivance, fraud, etc.
2. fears that the compensation would find its way into the hands of the offender.

Even if separated from an ex-husband, women victims of domestic violence could still be excluded, by way of their past relationship, from a claim for compensation. In R v Criminal Injuries
Compensation Board ex parte Staten in 1972, Lord Widgery of the Divisional Court bent his legal rhetoric over backwards in an attempt to avoid paying out damages to a battered woman. In this case, Mrs Staten no longer shared the bedroom with her husband and had ceased to cook and clean for him. According to the principles of matrimonial law, she was no longer living with Mr Staten as his wife. She had remained in her council flat following the assault by her husband because, having eight children, she had no alternative accommodation. Despite a non-cohabitation order from the magistrates Mr Staten refused to leave the home. Mrs Staten was deemed to be ineligible for relief on the ground that the family exemption phrase in Paragraph 7 of the scheme referring to couples 'living together...as members of the same family' had an 'ordinary', 'natural' meaning not that derived from the principles of matrimonial law (see Chapter Four for discussion of the scheme when wives were no longer excluded from claims).

Whilst the courts found little difficulty in concluding that injuries incurred by a woman running away from violence were the result of the offender's threat and thus constituted an assault in themselves (see R v Roberts (1971)), uncertainty as to whether wives could be physically prevented from doing so by their husbands persisted. The case of R v Jackson in 1891 (mentioned in Chapter 1) established that physical confinement of a wife by a husband to enforce his order for the restitution of conjugal rights was unlawful. R v Reid in 1972 concerned a similar case where a woman, still married to her husband,
was physically removed by him against her will. In the judgement of this absurd case the court noted the English law's lack of guidance on whether a husband's removal of his wife constituted 'kidnap'. A dispute arose as to whether a man had to conceal his wife to be guilty of this offence or whether the mere removal of her from the place where she wanted to be was a kidnapping. It was decided that, although a woman's consent to sexual intercourse on marriage could be assumed on her behalf (hence husbands could not be guilty of rape), her consent to his companionship and other forms of intercourse could not. Therefore the act of taking away Mrs Reid constituted a kidnapping offence.

Having thus settled the matter of whether or not wives who ran away from their husbands could be physically brought back by them, the question remained—as to whether or not husbands could still visit separated wives to satisfy their 'conjugal rights'. Certain limitations on the presumption of a wife's consent to sexual intercourse were made by the courts in the 1970s. In R v O'Brien (1974), the woman's decree nisi of divorce was held to be sufficient to revoke her consent and in R v Steele in 1976, the husband's undertaking not to molest his wife was taken as being the same revocation of consent as an injunction. In two infamous cases of gang rapes upon battered wives however, the courts weakened the ability of all women to obtain prosecutions by making consent virtually irrelevant. Court decisions in rape cases demonstrate quite clearly how it is not just violence against wives which the law
and society legitimates but violence against women within relations of 'normal' heterosexuality. In the cases R v Cogan and Leak and DPP v Morgan, both in 1975, the husbands had invited other men back to their homes to have sexual intercourse with their wives, telling their guests to ignore any protests as the pretence of refusal or apparent distress was 'normal' to their lovemaking. In Cogan and Leak, the invited rapist was found not guilty on the ground that he believed Mrs Leak was consenting to intercourse. This was a classic case of a man believing that when a woman says 'no' she means 'yes'. In Mrs Morgan's case, the three men who raped her with her husband's help, argued that they were not guilty if they believed she had consented, even if this belief was not based on reasonable grounds. Although the House of Lords upheld the verdict of guilty of rape in this case, this was a decision forced by the violence involved (Mr Morgan and his three accomplices had dragged the sleeping woman out of a bed shared with her children in order to forcibly rape her) rather than any apparent respect for the woman's right to say no. These two cases gave rise to a great deal of controversy over the law of sexual offences, culminating in the Heilbron Report (1975) and new legislation designed to over-turn the decisions. In S11A of the Sexual Offences (Amendment) Act 1975 rape was defined to include the case where the rapist was reckless of whether a victim consented.

Husbands who used excessive force on wives during the exercise of their conjugal rights could technically be found guilty of actual bodily harm, rather than rape. Getting the police to enforce the
criminal law in situations of domestic violence against women was however exceedingly difficult according to the evidence submitted to Parliament and the Select Committee on Violence in Marriage. Women victims of domestic violence repeatedly stressed that the police often refused to become involved in assaults which were just 'domestics' (Select Committee on Violence in Marriage, 1975).

Even when I fled to a police station with my face covered with blood all they did was write a report down in a book.

(Quote from a letter to Jack Ashley, Hansard, 1973.)

The question of how the criminal law is not enforced is one of great importance. Failure to prosecute is not the only way in which the law could resist treating cases of domestic violence against women with appropriate severity. Prosecution followed by 'lenient' sentencing or whittling down a charge to a less serious offence are also important factors (see Stanko, 1985). Statistical evidence on these matters however tends to be rather ambiguous. The Home Office statistics on violent crimes, even after some secondary analysis to compare crimes of violence against women with other such offences do not always offer much insight into whether discriminatory treatment is part of the criminal justice system. Statistics show that terms of imprisonment are not necessarily the guaranteed (nor necessarily desireable) outcome for any of those charged with violent offences. Historically and on humanitarian grounds, sentencing for homicides and other offences is variable from a suspended term to life imprisonment. Only the charge of murder

carries a mandatory life sentence. Tables 14 and 15 show variations in the outcome of cases of homicide for the years 1968 to 1975.

<table>
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</tr>
</thead>
<tbody>
<tr>
<td>Initially recorded by police as homicide</td>
<td>420</td>
<td>395</td>
<td>396</td>
<td>459</td>
<td>480</td>
<td>465</td>
<td>599</td>
<td>510</td>
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<tr>
<td>Currently recorded as homicide</td>
<td>360</td>
<td>332</td>
<td>342</td>
<td>407</td>
<td>410</td>
<td>391</td>
<td>527</td>
<td>451</td>
</tr>
<tr>
<td>Decided by court to be:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Murder</td>
<td>73</td>
<td>69</td>
<td>91</td>
<td>85</td>
<td>88</td>
<td>82</td>
<td>148</td>
<td>84</td>
</tr>
<tr>
<td>S2 Manslaughter</td>
<td>56</td>
<td>64</td>
<td>66</td>
<td>78</td>
<td>93</td>
<td>82</td>
<td>105</td>
<td>78</td>
</tr>
<tr>
<td>Other manslaughter</td>
<td>114</td>
<td>117</td>
<td>111</td>
<td>134</td>
<td>137</td>
<td>142</td>
<td>169</td>
<td>166</td>
</tr>
<tr>
<td>Infanticide</td>
<td>25</td>
<td>17</td>
<td>15</td>
<td>17</td>
<td>18</td>
<td>9</td>
<td>16</td>
<td>6</td>
</tr>
<tr>
<td>Court decision pending</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>7</td>
<td>34</td>
</tr>
<tr>
<td>Suspect died/suicide</td>
<td>47</td>
<td>28</td>
<td>21</td>
<td>42</td>
<td>32</td>
<td>32</td>
<td>33</td>
<td>26</td>
</tr>
<tr>
<td>Suspect found insane</td>
<td>8</td>
<td>10</td>
<td>5</td>
<td>14</td>
<td>10</td>
<td>6</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>No further proceedings</td>
<td>6</td>
<td>10</td>
<td>10</td>
<td>5</td>
<td>10</td>
<td>3</td>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td>No suspect</td>
<td>30</td>
<td>17</td>
<td>23</td>
<td>32</td>
<td>22</td>
<td>35</td>
<td>33</td>
<td>43</td>
</tr>
<tr>
<td>Current homicide offences per million popn.</td>
<td>7.4</td>
<td>6.8</td>
<td>7</td>
<td>8.3</td>
<td>8.4</td>
<td>8</td>
<td>10.7</td>
<td>9.2</td>
</tr>
<tr>
<td>No longer recorded as homicide</td>
<td>60</td>
<td>63</td>
<td>54</td>
<td>52</td>
<td>70</td>
<td>74</td>
<td>72</td>
<td>59</td>
</tr>
<tr>
<td>Decided by court to be lesser offence</td>
<td>23</td>
<td>21</td>
<td>14</td>
<td>16</td>
<td>23</td>
<td>17</td>
<td>21</td>
<td>20</td>
</tr>
<tr>
<td>No offence on grounds of:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Self defence</td>
<td>17</td>
<td>16</td>
<td>11</td>
<td>13</td>
<td>12</td>
<td>28</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>Accident</td>
<td>19</td>
<td>21</td>
<td>26</td>
<td>19</td>
<td>29</td>
<td>19</td>
<td>28</td>
<td>16</td>
</tr>
<tr>
<td>Other grounds</td>
<td>1</td>
<td>5</td>
<td>3</td>
<td>4</td>
<td>6</td>
<td>10</td>
<td>6</td>
<td>6</td>
</tr>
</tbody>
</table>


Convictions for murder between 1968-1975 ranged between 16-25% of
all offences initially recorded as homicide convictions for manslaughter from 40-48% of all offences initially recorded as homicide. If spouse/cohabitee/lover killings for the years 1973 and 1974 are compared with other types of homicide, it can be seen that suspects charged with murder or manslaughter were more frequently found guilty (see Table 16).

Table 15: Final Classification Of Offences Initially Recorded By The Police As Homicide, 1968 to 1975, Percentages.

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Initially recorded by police as homicide</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Currently recorded as homicide</td>
<td>86%</td>
<td>84%</td>
<td>86%</td>
<td>89%</td>
<td>85%</td>
<td>84%</td>
<td>88%</td>
<td>88%</td>
</tr>
<tr>
<td>Decided by court to be:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Murder</td>
<td>17%</td>
<td>17%</td>
<td>23%</td>
<td>18%</td>
<td>18%</td>
<td>18%</td>
<td>25%</td>
<td>16%</td>
</tr>
<tr>
<td>Manslaughter</td>
<td>40%</td>
<td>46%</td>
<td>45%</td>
<td>46%</td>
<td>48%</td>
<td>46%</td>
<td>46%</td>
<td>48%</td>
</tr>
<tr>
<td>No court decision*</td>
<td>22%</td>
<td>16%</td>
<td>16%</td>
<td>20%</td>
<td>15%</td>
<td>16%</td>
<td>14%</td>
<td>16%</td>
</tr>
<tr>
<td>Other*</td>
<td>7%</td>
<td>5%</td>
<td>2%</td>
<td>5%</td>
<td>13%</td>
<td>2%</td>
<td>3%</td>
<td>8%</td>
</tr>
</tbody>
</table>

* See Table 18 above for full category. *Source: Criminal Statistics, 1975.*

Men who kill their wives/cohabitees would undoubtedly be much more easily discovered as offenders than strangers who could escape from a locality leaving no evidence of association with the victim. For wife/cohabitee killers therefore the police would invariably have to prosecute. Unlike assault cases where the culprits too frequently evade prosecution and arrest, in domestic homicides the 'lack of
severity' occurs because the offenders are much more likely to have reduced terms of imprisonment due to their greater likelihood of

Table 16: Outcome of Spousal And Other Homicides Compared, 1973-1974.

<table>
<thead>
<tr>
<th>Relationship to victim</th>
<th>Murder</th>
<th>Manslaughter</th>
<th>Decision pending</th>
<th>No suspect</th>
<th>Suspect dead</th>
<th>No proceeding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spouse/cohabitee</td>
<td>21%</td>
<td>58%</td>
<td>1%</td>
<td>-</td>
<td>22%</td>
<td>-</td>
</tr>
<tr>
<td>Lover</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Relative/associate</td>
<td>13%</td>
<td>76%</td>
<td>4%</td>
<td>-</td>
<td>6%</td>
<td>2%</td>
</tr>
<tr>
<td>Other</td>
<td>22%</td>
<td>34%</td>
<td>10%</td>
<td>31%</td>
<td>3%</td>
<td>-</td>
</tr>
<tr>
<td>Total %</td>
<td>17%</td>
<td>59%</td>
<td>5%</td>
<td>7%</td>
<td>8%</td>
<td>4%</td>
</tr>
<tr>
<td>Totals</td>
<td>78</td>
<td>222</td>
<td>23</td>
<td>33</td>
<td>38</td>
<td>2</td>
</tr>
</tbody>
</table>

Outcomes for Homicides 1974

<table>
<thead>
<tr>
<th>Relationship to victim</th>
<th>Murder</th>
<th>Manslaughter</th>
<th>Decision pending</th>
<th>No suspect</th>
<th>Suspect dead</th>
<th>No proceeding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spouse/cohabitee</td>
<td>22%</td>
<td>54%</td>
<td>7%</td>
<td>-</td>
<td>12%</td>
<td>1%</td>
</tr>
<tr>
<td>Lover</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Relative/associate</td>
<td>17%</td>
<td>69%</td>
<td>4%</td>
<td>-</td>
<td>9%</td>
<td>3%</td>
</tr>
<tr>
<td>Other</td>
<td>28%</td>
<td>14%</td>
<td>28%</td>
<td>28%</td>
<td>-</td>
<td>&lt;1%</td>
</tr>
<tr>
<td>Total %</td>
<td>21%</td>
<td>51%</td>
<td>11%</td>
<td>7%</td>
<td>7%</td>
<td>2%</td>
</tr>
<tr>
<td>Totals</td>
<td>114</td>
<td>274</td>
<td>61</td>
<td>40</td>
<td>37</td>
<td>9</td>
</tr>
</tbody>
</table>


being able to mitigate the severity of a sentence following findings
of provocation or 'diminished responsibility'. Research on diminished responsibility and the courts by Susan Dell shows that wife killing comprises the largest category of diminished responsibility homicides. Wife killings accounted for 38% of the findings of diminished responsibility between 1966-1969, 35% between 1970-1973 and 42% between 1974-1977. Dell's research suggests the tide is beginning to turn against the wave of lenient sentencing. The latest trends in her analysis show a less 'lenient' approach to the sentencing of wife killers than was formerly the case. An increasing number of domestic killings were however considered unsuitable for hospitalisation, the offenders serving terms of imprisonment instead (Dell, 1984).

Reported crimes are of course the mere tip of an iceberg. A greater proportion of offences are never turned into statistics. Recent work on the enforcement of the law in cases of domestic violence against women has examined the discretionary decision making role of the police (Farragher, 1985; Stanko, 1985). The Association of Chief Police Officers specified to the Select Committee on Violence in Marriage the following factors affecting their decision to intervene:

(i) the seriousness of the assault; (ii) the availability of witnesses; (iii) the character of the alleged assailant; (iv) age, infirmity, etc. of the complainant; (v) previous domestic history; (vi) the wishes of the complainant; and (vii) if prosecution ensued against the wishes of the complainant, would the
domestic situation be adversely affected.

(Select Committee on Violence In Marriage, 1975).

Mark Carlisle, Minister of State for the Home Office stressed the most frequently voiced complaint of the police that not only were women unwilling to prosecute cases of assault by husbands but once in court they changed their minds and dropped the proceedings. Research into the prosecution of cases by battered women does not support this assertion. In the mammoth study into police and court records completed by Rebecca and Russell Dobash, only 6% of assault charges brought by battered women against their husbands were dropped before the final adjudication and then only after considerable postponement of the court proceedings (Dobash & Dobash, 1980). Without alternative accomodation or some form of protection from further assault it would be difficult for women to resist pressures put on them not to prosecute.

**Domestic Violence Legislation**

In the early hours of 16th July 1973, Jack Ashley initiated an adjournment debate in the House of Commons on the problem of domestic violence against women and put forward a fifteen point plan of government action. Along with yet another request that the government collect statistics on the numbers of battered women criminally assaulted, the plan demanded better protection from the
criminal law, the police to prosecute cases of assault themselves providing protection for women in the meantime, funding for refuges, the provision of emergency benefits and temporary accommodation, equal rights to the matrimonial home with the automatic right of sole occupation to whichever partner had custody of the children.

In September 1973 a Working Party paper published by the Home Office and the Law Commission suggested a separation of matrimonial affairs from the criminal law. This recommended empowering magistrates to grant non-molestation orders as well as non-cohabitation orders with possibly powers also to prevent husbands from entering the matrimonial home. These orders would work like injunctions and be enforceable by a fine or imprisonment.

In February 1974 a joint circular on the homelessness of battered women was issued by the DHSS and sent to all local authorities. Government funding for the nation's first refuges, the Chiswick house set up by Erin Pizzey and Camden Women's Aid (ex-Brixton), was provided by way of grants through the urban aid programme with 25% payable from the local authorities. By July 1974 there were around forty refuges in the UK. Figures for November that year show, thirty local authorities were fully or partially funding refuges housing 352 women victims of domestic violence and their children (Hansard, 1974). Secure and direct central government funding for refuges however was a matter which was consistently dodged. Apart from DHSS grants for funding central offices, since the beginning of
the refuge movement in the UK, government financial support has come via encouraging local authority subsidies and housing association grants.

In July 1974, William Hamilton announced to the Commons that he had taken over from Jack Ashley the job of 'championing the cause' of battered women. He asked for a grant of £55,000 to enable the Chiswick group to buy an empty house to expand their grossly overcrowded premises. He also demanded that the government consider examining the feasibility of legal aid by phone for women in emergency situations, police rather than bailiff enforcement of injunctions, the automatic denial of access to children of husbands divorced as a result of unreasonable behaviour and the full transfer to wives on such a divorce of rights to the matrimonial home.

That same month, the leader of the House of Commons announced a Select Committee was to be set up in the Autumn to investigate the problem of family violence. This would look at woman and child abuse and make recommendations for future policy. When formed the Committee had thirteen members, just three being women until a fourth, Gwyneth Dunwoody, joined in March.

Before the Committee had completed its work Jack Ashley presented a private members bill designed to alleviate the housing problems of women victim of domestic violence. The Battered Wives (Rights To Possession Of The Matrimonial Home) Bill aimed to give courts the
power to make an order for the total right to occupation of the matrimonial home for the wives of men convicted of acts of violence against them. This very simple and short bill was intended to 'put the shoe on the other foot' by evicting violent men from the matrimonial home. Ashley argued that the threat of property loss might deter some men from committing grievous bodily harm on their wives. Where the bill scored points for simplicity it lost them for vagueness and in consequence had a rough ride in Parliament resulting in its failure. The violence which Ashley aimed to curb was grievous bodily harm yet this was nowhere expressed in the bill. Following prosecution a husband would lose his rights to occupation but the wording concerned ownership rights. Edward Lyons, MP for Bradford West complained about the neglect of equality principles in the bill, battered spouses rather than battered wives should have been the subjects of new legislation. Some lawyers in the house objected to the use of the 'journalistic', 'emotive' and imprecise phrase 'battered women'. Most resistance however came on the grounds that not only would the bill hamper the trend towards discretionary decision making in family law but property rights could be interfered with.

NWAF made some demands of their own in a written memo to the Select Committee in March 1975 (Select Committee on Violence in Marriage, 1975). Not one of the 30 recommendations at this stage concerned matrimonial injunctions, the emphasis centred on improving battered women's immediate needs for security, housing and financial provision.
NWAF wanted unmarried, cohabiting women to be included in any proposals for reform not just wives. They suggested greater care and understanding by employees of the DHSS of women's needs to keep secret their whereabouts, better and more generous provision of emergency payments by the DHSS, guaranteed maintenance for women and increased family allowances as recommended by the Finer Committee, adequate funding and local authority help for refuges in each area with a population above 50,000, the recognition of all battered women as homeless, local authority housing departments' cooperation in situations where women needed to move or transfer tenancies to different areas, the provision of short term accommodation for women awaiting divorce property settlements, research into the causes and prevention of domestic violence against women in conjunction with NWAF. Many of NWAF's specific, practical demands were met, albeit on a goodwill basis by local authorities working on advice from refuge support groups. The most crucial demands however, for funding for refuges and guaranteed income supplements for separated women, were consistently dodged.

Some members of the legal profession who gave evidence before the Select Committee supported the remedies suggested by the Home Office and Law Commission. Sir George Baker and Mr Justice Arnold, the Solicitor General, spoke in favour of giving the police powers of arrest for injunctions. But the Metropolitan Police in a memo before the Committee expressed concern about the mix of criminal and
civil law matters plus the extra burden this would create for an already overstretched police force.

On 17 December 1975, with overwhelming support from Select Committee Members, Jo Richardson presented her Domestic Violence Bill. This turned out to be the only recommendation of the Select Committee implemented. It aimed to amend the law relating to matrimonial injunctions and provide the police with powers of arrest for breach. In no way was the Bill put forward as a panacea for battered women. It was devised to rectify just one of the problems highlighted by the Select Committee. Unlike Jack Ashley's precursor, thanks to drafting assistance from members of the Lord Chancellor's Department the opponents' scope to negate the bill on technical grounds was cut down. As a concession to the male equality lobby, the bill's wording applied equally to a man or a wife, i.e. a man could get an injunction against his wife. Perhaps the biggest improvement offered by the bill was the ability to provide quick action in cases of emergency. Clause 1 aimed to provide injunctions for non-molestation and exclusion without the need to initiate ancillary court proceedings. Clause 2 gave powers of arrest to the police. It would be the duty of the police to find a judge and get the offender before him/her. If this could not be done within 24 hours, the offender would be released. Clause 3 allowed courts to order a spouse's exclusion from the home. Clause 4 covered co-ownership so that these women could obtain the same rights to protection from eviction etc as those with no ownership rights. Section 1(2) of the
Matrimonial Homes Act 1967 was amended, over-ruling the decision in Tarr v Tarr (1973) so that either spouse could apply for a court order restricting the other's occupation rights. Provisions for cohabiting women in Sections 1 and 2 of what later became the Domestic Violence and Matrimonial Proceedings Act 1976 were introduced at the bill's committee stage in the House of Commons.

There were a number of shortfalls in the Domestic Violence and Matrimonial Proceedings Act right from the start however. Only men — and women who were living together as husband and wife — were covered by the statute. The Domestic Violence and Matrimonial Proceedings Act did not give courts powers to grant injunctions after a divorce so these types of injunctions were in this respect narrower than the matrimonial kind (see discussion above). This meant that after a divorce, separation or cessation of cohabitation, women were not eligible for injunctions under the act. Molestation was defined as in matrimonial law to refer to 'pestering'. The next chapter will show that this made non-molestation injunctions relatively 'easy' to obtain. The arrest powers though did not deal with the arrest and prosecution policy adopted by the police. Although the police technically had powers of arrest in cases of actual bodily harm, their actual implementation of these powers could still be foregone.

empower magistrates to grant personal protection and exclusion orders. Magistrates did not get these powers until 1978.

Homelessness And Domestic Violence Against Women.

1976 brought more expansion for the refuge movement. NWAF grew from 38 affiliated groups in 1975 to well over 100 in 1977. Securing alternative accommodation, temporary or permanent was also a growing problem however (Rose, 1978). Matrimonial property reforms and alterations in security of tenure did not greatly affect a local authority's essentially discretionary power to provide accommodation to divorced and separated women. It has been argued that women's access to housing is largely dependent upon their position in the family (see Pascall, 1986). Poverty and the low status ascribed to women living without men has historically worked to limit their ability to become owner occupiers or sole tenants of local authority accommodation though the 1970s again brought some improvements here. A Law Commission survey in 1972 found over half owner occupied homes were held in joint names, the remaining 42% being in the husband's name alone and just 5% in the wife's name. The shift towards joint ownership increased women's financial status and ability to find alternative housing on divorce (having one half of the income from the sale of the home rather than a third). For local authority tenants a trend towards joint tenancy (see above discussion) did not necessarily guarantee better housing security.
The decline in privately rented accommodation which occurred during the 1960s and 1970s pruned the chances of women alone and with children to find alternative and crisis accommodation. Local authority policies thus became of crucial importance as the alternatives had withered away. Whether ultimately owner occupiers, private sector or local authority tenants, temporary accommodation from local authorities became a priority for women victims of domestic violence.

Local authorities operate housing policies primarily for an assumed population of 'standard' family types - elderly couples, parents with dependent children, etc. Their preferences are expressed in a variable and discretionary manner at the local level through their selection of households which are eligible for accommodation and through the allocation of properties from stock to individual applicants. The following discussion will show how statutory duties for local authorities to assist the homeless have historically provided the scope for the exercise of discretion.

Under the provisions of the National Assistance Act 1948 S 21(1), local authorities were under a duty to provide:

(1) residential accommodation for persons who by reason of age, infirmity or any other circumstances are in need of care and attention which is not otherwise available to them.
(2) temporary accommodation for persons who are in urgent need thereof, being need arising in circumstances which could not reasonably have been foreseen or in such other circumstances as the authority may in any particular case determine.

(Quoted from Arden, (1982), p.3.)
The duty to provide assistance to the homeless extended only to persons ordinarily resident in a local authority's area (S24). The National Assistance Board /Supplementary Benefits Commission had the power to require the local authority to provide accommodation when satisfied that a person was in urgent need of it, but the determination of situations of urgent need were largely discretionary. The Minister of Health gave general guidance regards local authorities administrative duties towards the homeless but this remained open to considerable deviation. The 1948 Act did not impose a full or permanent duty on local authorities to protect all the homeless. A duty only existed for the unforeseeable emergencies covered (fire, flood or other disaster) (see London Borough of Southwark v Williams (1971) 1 Ch. 734 CA). Unless the SBC was involved, the duration of the accommodation was a matter for the local authority. Urgent need was not matched by permanent need (see Roberts v Dorset County Council (1976) 75 LGR 462).

Three problems arose from the provisions in 1948 Act, the essentially discretionary duties and subsequent temptation to allocate accommodation on the basis of availability rather than need; disputes arising from the definition of an applicant's 'ordinary residence' resulting in some local authorities merely shuttling the homeless out of their area; and the division of responsibilities between authorities within a locality which resulted in the 'yo-yoing of the homeless between different offices and departments. This was aggravated by the Local Government Act 1972 (operative 1 April 1974)
which altered the boundaries and responsibilities of local authorities. Social services outside London and in non-metropolitan areas became the responsibility of county councils but housing the responsibility of district councils.

Although the Seebohm report had recommended that local authorities should take increased responsibility for housing 'vulnerable families' children were frequently taken into local authority care purely because of their parents' lack of accommodation. The Minister of Health's Circulars 20/66 and 19/67 urged local authorities not to split up families in temporary accommodation but research commissioned by the DHSS showed that in some areas of the country very little progress had been made (see Glastonbury (1971); Greve et al (1971)). Between 1962-1963, 3,610 children in England and Wales had been taken into care merely because of their parents' homelessness. This figure represented 7.4% of all the care receptions for England and Wales. Between 1967-1968 the numbers dropped to 1,983 (4% of total) but they began to rise again so that by 1970 2,693 (5.2%) were removed from their families. Research published by Shelter in 1972 cited a number of local authorities using the offer (threat) to take children into care as a technique to frighten away homeless applicants (Bailey & Ruddock, 1972).

A significant number of the homeless were divorced or separated women with children (as many as two thirds in non-metropolitan areas according to Glastonbury (1971)) or immigrant families who had been
evicted (Greve et al found 30% of homeless applicants were immigrants (Greve et al (1971)). The Cullingworth Committee found that divorced and separated women and immigrants were unjustly disadvantaged in their attempts to obtain public housing by local authorities' methods of selection, assessment and grading of applicants (Cullingworth, 1973). The residence eligibility rule was impossible for any newcomers to fulfill. Afro-Carribean and Asian immigrants were especially disadvantaged. They had been actively recruited from overseas to satisfy the economy's need for cheap labour yet the government neither made nor encouraged housing provision for them. To qualify for a place on the local authority waiting list they had to satisfy a residence requirement between 6 months to five years. (Similar discriminatory policies had been employed for the provision of building society loans (Rex and Moore, 1967).) In some parts of the country the residence requirement was so severely interpreted that Shelter was led to conclude that merely having a previous address was sufficient grounds for some local authorities to refuse assistance (Bailey & Ruddock, 1972). Other eligibility rules could include a rag-bag of excuses for discrimination against Asians or Afro-Carribeans, large families, cohabitees, ex-slum dwellers, ex-lodgers, furnished tenants, and so on. These were backed up by the policies used for the allocation of permanent accommodation by assessment techniques which aimed to find the most 'appropriate' dwelling for an applicant but could result in the creation of public housing ghettos/dumping grounds. If an
applicant refused an offer of housing an authority might argue that its responsibility had been discharged.

The true extent of the homelessness problem in the early 1970s will probably never be known as the government statistics measured only those actually given temporary accommodation. A very large number of the homeless were unsuccessful in their applications for emergency assistance. In 1969, only 2,569 were admitted into local authority hostels out of 8,913 applicants. In 1970, 10,149 applications were made but only 2,898 were admitted (Bailey & Ruddock, 1972). Available research shows that a large number of homeless applications were made by women victims of domestic violence even though many would be either turned away or forced back home for a 'reconciliation'. Greve et al found husband-wife 'disputes' accounted for 34% of homeless persons admissions in London in 1959 compared with one fifth from 1966-1970. The decline in admissions was attributed by the researchers to a much smaller admission rate due to the close scrutiny and suspicion of domestic violence cases. Only 24% of women victims of domestic violence applying as homeless persons were accommodated compared with a rate of 53% for married couples with children, 32% for women alone with children and 7% for cohabiting couples (Greve et al, 1971). Battered women were not considered to be 'genuine' cases for relief on the grounds that they stayed in temporary accommodation for such short times.

In the survey there were accounts of wives admitted to temporary accommodation at their doctors' request to recover from
quite severe beatings; there were husbands who threw their dinner at the wall or the furniture out of the window; there was an attempted strangling and a knife fight in which the husband was stabbed in the stomach. This suggested the occasional need of a temporary refuge for families for a few days, but the problem was an unpopular one for official or police interference, and at least one authority had responded to the growing demand by deciding that ill-treated wives no longer qualified for admission. They said that the wife in almost every case returned home voluntarily after one or two nights in hostel, and therefore such women were not technically homeless (Glastonbury, 1971, p. 213).

Local authority reluctance to house battered women must have had a significant impact on the effectiveness of the Select Committee on Violence in Marriage. In Greve et al's study 37% of women accommodated because of domestic 'disputes' stayed for only one week, 50% for under a month. Most were said to return home again (Greve et al, 1971). Glastonbury found 21% of his sample in temporary accommodation were women victims of domestic violence and asserted that the majority used the hostel to enforce a domestic 'cooling off' period. As women victims of domestic violence were also frequently the subject of 'reconciliation' attempts by the local authority, or were given travel warrants to return home, evicted by the Housing Department as a matter of policy after just six weeks, kept in appalling conditions in ex-prisoner of war camps, shared dormitories which housed the local vagrant alchoholic population, or were refused Supplementary Benefit on the grounds that their claims of marital breakdown were insincere, refused separation orders by magistrates with the result that they lacked sufficient 'proof' of violence to convince housing departments a tenacy transfer would be possible, it
is not surprising, leaving aside the problem of a husband's harassment at the hostel, many had no choice other than to return home (see discussion above and in Chapter 2; Glastonbury, 1971; Greve et al, 1971).

As previously noted, in February 1974 a Joint Circular, DOE Circular 18/74, DHSS Circular 4/74 directed at social service and housing departments was issued. This aimed to encourage the transfer of housing stock held by social service departments for homeless accommodation to local authority housing departments and to rationalise allocation policies by identifying priority groups amongst the homeless. The priority groups, families with dependent children, those homeless through emergencies such as fire or flood, those vulnerable due to old age, disability, pregnancy or other special reason, closely resembled those later defined as being priority need in subsequent legislation. The Circular emphasised the importance of providing 'family' housing, urged that husbands, wives or children should not be separated unless there were very sound reasons (such as the need for refuge of victims of domestic violence). By mid 1975 a government review found that 40% of housing authorities in England and Wales had not followed the advice in the Circular (Hansard, 8 February 1977). Despite a commitment expressed in Parliament in February 1976 to legislate on the problem of homelessness, the issue became dependent upon private members' applications.
With the support of members involved in the Select Committee on Violence in Marriage and backing from some voluntary bodies involved with the homeless, Stephen Ross introduced the Housing (Homeless Persons) Bill to Parliament to make provision for the homeless and those threatened with homelessness, to give assistance to voluntary bodies working with the homeless and to repeal S25 of the National Assistance Act 1948. Clause 1 was said to offer the very first statutory definition of homelessness and to put 'beyond doubt' that all battered women were to be treated as homeless persons (Hansard, 8 February 1977). Like the 1974 Circular, one primary aim of the Bill was to keep families together. Authorities were to have duties to provide assistance to homeless persons in priority need. Priority need contains four specified categories: those with dependent children, those homeless/threatened homeless due to fire, flood or any other disaster; those or any persons usually living with them vulnerable due to old age, mental or physical handicap/disability or other special reason and pregnant women. Due to the intention to keep families together, an individual living apart from her/his children/other members of the family for no reason other than a lack of suitable accommodation could now be defined as homeless. Homelessness in the Act was defined not merely as a person's physical lack of a roof but in terms of having no accommodation which s/he is entitled to occupy with anyone else who normally resides with her/him. A battered woman's inability to return home was also covered by the Act. A person would be homeless if s/he had accommodation but could not secure entry to it (by being locked out,
etc), or occupation would lead to violence/threat of violence from someone living there who is likely to carry out the threats. Those living in caravans and other mobile homes unable to find a residential site and those threatened with homelessness in the next 28 days were also defined as homeless. The legislation was intended to rationalise provision by placing responsibility for the homeless on district and borough councils (S19). There were provisions to enable the transfer of stock from social services to housing departments. The provision of a uniform and national definition of situations where local authorities could shift their responsibility for the homeless on to other areas was also attempted in the local connections clauses. These were devised to make individuals employed in an area eligible for temporary relief even if they were newcomers or had family and historical connections elsewhere. To encourage 'good policy' interpretations of the provisions a Code of Guidance was issued with the bill.

Although most M.P.s admitted a need for legislation on the matter, from the outset the bill encountered great hostility. W.R. Rees-Davies described it as a 'charter for scroungers and scrimshankers' (Hansard, 18 February 1977, 905). George Cunningham suggested that women would become pregnant in order to acquire a priority need for accommodation and later terminate their pregnancies. Toby Jessel feared queue jumpers, especially 'foreigners', abusing the provisions and warned that 'Families can contrive to make themselves homeless by stirring up family quarrels' (Hansard, 18 February 1977, 931).
This current of paranoic suspicion led to a flurry of amendments to the bill, the House of Lords alone providing a total of 57. The biggest alteration came with the local authority safety mechanism against abuse by way of the new intentional homelessness category. Conservatives fought for the inclusion of this category to halt a feared onslaught of undeserving queue jumpers. Basically this addition meant that if a homeless person had done something or failed to do something which resulted in his/her homelessness he/she would be intentionally homeless and ineligible for temporary accommodation. The potential for local authorities to use this category to deny assistance to women victims of domestic violence was noted at the time by Millie Miller, an Ex-Select Committee member (Hansard, 8 July 1977 1590-1733).

Critics argued that the bill only became law because MPs believed it to be better than nothing:

They believe that this rotten Bill (....) is better than the properly drafted, properly constructed and properly conceived Bill that we would have if we put this one where it belongs - in the river - and started afresh next year with the advantage of the consideration given to this measure this year (....) in my seven years in the house there is no doubt that this is the worst drafted, worst constructed, worst conceived and worst prepared Bill I have ever seen.

(George Cunningham, Hansard, 27 July 1977).

Despite the conclusions of homelessness research that provision was matched more to the availability of stock than to the level of need, no extra financial provisions were made to enable local authorities
to better accommodate the homeless. Ross, the Bill's supporter in fact argued that property was standing empty and shortage was not the biggest problem (Hansard, 8 February 1977). The adequacy of this provision in improving the housing situation of women victims of domestic violence will be discussed in the next chapter.

**Summary.**

In summary then, the 1970s saw an increase in the numbers of women victims of domestic violence making applications to the law for relief. Homicide and assault statistics show an alarming rise in cases of domestic violence against women during this period. In comparison with previous years, forty extra 'spouses' were killed in 1976. There is no way of telling for sure whether these extra deaths occurred because marriages became more violent or society less willing to intervene to prevent them. In the 1970s the alternatives for women trapped in violent relationships declined due to the lack of private rented accommodation and the unabashed refusal of housing departments, social services and police to become involved. Publicity surrounding the problem and the growth of the refuge movement along with the trend in matrimonial law to facilitate the provision of dissolutions, injunctions and financial agreements would also have had some effect on the increased need for legal involvement (see discussion in Part II). Further research would be required to show whether or not the position of women victims of
domestic violence was qualitatively worse in the early 1970s than it had been in the rest of the later 20th century. The last chapter in this section will look at the workings of the new domestic violence legislation in the 1980s and the latest attempts at reform.
CHAPTER FOUR

Reforms In The 1980s.

Introduction.

In this chapter the main trends in reform of the law in relation to domestic violence against women between the years 1977-1987 will be discussed. In contrast to the preceding phases of reform where statutory innovations brought most changes in these years alterations in policy matters and procedures had a greater impact. During the years 1977-1987 the courts held an important role in interpreting the new 'protective' legislation. Considerable conflict arose over the policy issues involved when granting orders to exclude a spouse/partner from the matrimonial home and the provision of emergency housing on relationship breakdown. Criticisms of the adverserial nature of matrimonial cases grew into a persuasive and powerful conciliatory movement. Domestic violence legislation and other measures devised to protect individuals and their children from further abuse were feared to have adverse effects, especially by some members of the conciliatory movement. Concerns were also expressed in the courts that unscrupulous individuals may try to manipulate the law in order to score tactical advantages over their partners in matters of housing, custody or finance. The following discussion will demonstrate that by the mid 1980s the courts'
attention had emphasised predominantly the 'draconian' effects the new legislation had upon men's rights.

Persistent references to the (unsubstantiated) need to decriminalise the legal approach to cases of domestic violence against women (e.g. Maidment, 1978; Pizzey & Shapiro, 1982) made a stark contrast with feminist calls for the more adequate policing of violent men (e.g. Edwards, 1984; Hanmer & Saunders, 1984; Radford, 1986; Stanko, 1985). Feminist demands for more adequate policing, especially to treat all cases of violence against women as crimes of 'public' importance, were the inevitable outcome of the anger which arose from the publicity attached to the killings of women such as Balwant Kaur, stabbed by her husband in 1984 at the door of a refuge.

Legislation at last settled years of dispute over whether or not a wife should/could be compelled to give evidence against a violent husband. The Police and Criminal Evidence Act made wives compellable witnesses against their husbands in cases of violent assault. The legislation however had little effect upon the prosecution rate for criminal assaults in the 'domestic' context as police discretion over viable cases and 'serious' assaults was left unreined. The criminal law saw a number of other policy and procedural innovations still in their infancy. These are referred to briefly in the final section of this chapter although no conclusions as yet can be drawn as to their impact upon the police involvement. At the time of writing initiatives for the future seem likely to turn
back towards an emphasis upon the remedies offered by the criminal law.

The De-Legalisation Of Divorce & Growing Emphasis Upon Behaviour.

Special procedure had been introduced in 1973 and extended in 1977 to cover all undefended cases. To obtain a dissolution by special procedure a petitioner had to file an affidavit to be examined by the registrar. A certificate would be produced to be read in court where the divorce would be announced. By 1978 97% of all divorces were granted by special procedure. This had grown to 98% by 1980. The examination of facts in special procedure petitions is considerably less stringent in comparison to a heard case. This worked to further remove the emphasis upon active behaviour and objectivity in unreasonable behaviour petitions. Although special procedure was intended to offer an easier and less traumatic method of granting divorces, it was also a cost cutting measure. Legal aid was removed from undefended cases at the same time, but no savings to the Legal Aid Fund resulted. Even though by 1986, 20% of divorce petitions were brought by personal application rather than through a solicitor (Judicial Statistics, 1986), solicitors' involvement and applications to the Legal Aid Fund continued to increase because of their work in the allied matters of financial provision, housing and custody.
In 1980, the Law Commission published a Working Paper which criticised the three year bar to divorce claiming that it worked to merely postpone dissolutions thereby causing unnecessary hardship. Since 1977 the numbers of judicial separations had risen from 211 to 3,650 in 1979 and there had been a corresponding drop in magistrates' matrimonial orders. The increase in judicial separations is said to have been largely a consequence of the three year bar to divorce and applicants needs for settlements without the magistrates' emphasis upon fault based conditions (see Bromley, 1981; Hoggett & Pearl, 1983; Maidment, 1982.). The only way to get a divorce in the first three years of marriage involved proving 'exceptional hardship' as a result of the spouse's 'exceptional depravity'. This ground was seldom applied for or argued successfully (see C v C (1979)). With some reservation, mainly based on a fear that marriages of convenience may increase—especially among immigrants (see Law Commission, 1980, p.181), the Law Commission recommended a reduction in the three year bar to a one year bar to divorce.

The Family Law Sub-Committee of the Law Society urged further reforms to finally abolish the relics of the matrimonial offence system (see Family Law Sub-Committee, 1979). The Booth Committee, set up in 1983 to investigate possible reforms of matrimonial procedure wanted to cut out the need to furnish respondents in divorce cases with particulars of behaviour unless this should be requested by them specifically, and to abolish the requirement that an adulterer's name be included in a petition (Booth Committee, 1985).
Some suggested taking the trend to its logical conclusion by abolishing the judicial aspect of divorce altogether, recognising it as merely an administrative matter. This movement towards 'private bargaining' would restrict the courts' job to adjudicating matters of finance and child care provisions (Burgoyne, Ormrod & Richards, 1987; Mnookin, 1979).

Statistics on petitions filed and granted show that 'private bargaining', whatever its merits, would increasingly have concerned the issue of unreasonable behaviour. Table 17 shows the grounds for divorce petitions filed in England and Wales between 1976 and 1986. Petitions based upon the unreasonable behaviour of a partner continued to increase so that by 1986 they comprised 46% of all petitions. The growth in behaviour petitions was accompanied by a decline in petitions alleging desertion and separation. As wives' share of the total number of divorce petitions had a more modest increase from 70% of the total petitions filed in 1976 to 72-73% by the later 1980s, unlike the previous decade (see Chapter 3), their increased share of the total would not account for the growth in petitions on behaviour grounds. The 1980s therefore brought an increased tendency of petitioners to base their complaints on the unreasonable behaviour of their partners.

Table 18 shows the petitions filed on the basis of the specific facts alleged by husbands and wives. This shows that both husbands and wives substantially increased their complaints of their partners'
behaviour in petitions for divorce. The percentage share of wives petitions alleging unreasonable behaviour increased from 45% of wives petitions in 1976 to 55% in 1986.

**TABLE 17: Facts Cited In Divorce Petitions Filed In England & Wales, 1976-1986, Percentages.**

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NB. Multiple grounds are included so columns do not add up to 100%.
* = %ages calculated from estimated figures based on two month court surveys.
# = %ages calculated from estimated figures based on two month court surveys and rounded up to ten.


This increase in behaviour allegations was accompanied by a decline in allegations of adultery or separation in wives petitions. Husbands' petitions on the basis of the unreasonable behaviour of their wives showed a very dramatic increase from 11% of husbands petitions relying on this fact in 1976 to 22% in 1986. For husbands
Reforms In The 1980s.

The shift towards behaviour petitions started around 1980. Husbands' petitions based upon a period of separation saw a corresponding decline from 1980 onwards whilst petitions alleging their wives' adultery increased from 39% in 1979 to 43% in 1986. For husbands therefore the trend away from petitions on the basis of a period of separation to those relying upon allegations of behaviour or adultery was a more radical and more recent trend than for wives (see Chapters 2 and 3).

The pattern of decrees granted shown in Table 19 indicates that although more behaviour petitions succeeded to the award of decrees, the growth in the proportion of decrees granted on this basis was much smaller than the increased tendency of husbands and wives to file on this basis. Behaviour petitions were also the least likely of all petitions to proceed to the granting of a decree.

1985 saw an increase in the numbers of petitions filed and granted due to the implementation of the Matrimonial And Family Proceedings Act 1984 which allowed parties to initiate divorce proceedings after just one year of marriage. There was a 6% increase in petitions granted for divorce in 1985 followed by a 6% drop in 1986. This bulge in divorce cases was accompanied by a decline in judicial separation and nullity petitions.

As with previous divorce reforms (see Chapters 2 and 3) the reform brought in with the 1984 Act provided more immediate relief for men.

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### Sources:

Following the introduction of the Matrimonial and Family Proceedings Act 1984 the proportion of men's petitions granted increased whilst the proportion of women's petitions decreased. By 1986 20% of men's

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<tr>
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<td>70%</td>
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<tr>
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<td>150385</td>
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<table>
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<tbody>
<tr>
<td></td>
<td>T</td>
<td>W</td>
<td>H</td>
</tr>
<tr>
<td>Behaviour</td>
<td>40%</td>
<td>48%</td>
<td>18%</td>
</tr>
<tr>
<td>Adultery</td>
<td>30%</td>
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<td>2%</td>
<td>2%</td>
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</tr>
<tr>
<td>Totals</td>
<td>147140</td>
<td>42400</td>
<td>116570</td>
</tr>
</tbody>
</table>

NB. * = estimates on basis of two month courts survey, # estimates on basis of two month courts survey rounded up to ten.
petitions were granted on the basis of allegations of the unreasonable behaviour of their wives. C.f. 51% of wives' decrees granted on this basis that year. The biggest increase in men's petitions alleging the adultery of their wives occurred following the introduction of the Matrimonial and Family Proceedings Act of 1984. Later discussion in the chapter will show that the Act's provisions encouraged men's allegations on the basis of their wives' conduct. Between 1976 and 1983 however men's allegations of unreasonable behaviour increased from 8.5% to 15% of their petitions and wives' from 40% to 47%. After 1985 the growth in men's petitions on this basis was very rapid, from 15% in 1983 to 20% in 1986 compared with 47% in 1983 for wives to 51% in 1986. Although therefore the Matrimonial and Family Proceedings Act 1984 had some effect on the increase in behaviour petitions there must have been other factors at work in addition.

In Chapter 3 the increase in behaviour petitions 1963-1975 was discussed. It was noted that changes in the proportion of petitions alleging certain facts are the likely result of a number of different factors such as a. shifts in filing behaviour from one fact/ground to another; b. changes in the proportions of male and female petitioners; c. an easing of the required particulars and standards of proof for petitioners on that basis; d. a net increase of violence/unreasonable behaviour in society or/and a greater willingness to use the law for relief. Table shows an overall shift from petitions based upon separation, desertion and other facts towards petitions which were
Reforms In The 1980s.

Based upon claims of unreasonable behaviour. The share of petitions which alleged unreasonable behaviour increased by 12% 1976-1986 (from 34% to 46%) whilst petitions which alleged desertion, separation or other grounds declined by a total of approximately 12.5% (from 4% to 1.5% for desertion petitions, from 34% to 24% for separation petitions and 0.8% to 0.07% for petitions brought on other grounds). Leaving aside for a while the question of an increasingly violent society/growth of spousal violence, a shift towards behaviour based petitions could suggest a growing reluctance/inability of individuals to wait the necessary time or effect the marital division required to base a petition on the facts of separation or desertion. Academic wisdom at present holds that petitions alleging unreasonable behaviour have increased because they offer a speedy route to divorce without the need to involve another person to cite as an adulterer (Burgoyne, Ormrod & Richards, 1987). If this were totally the case though one might reasonably expect an increase in petitions on this ground after the reduction of the divorce bar to one year. Men's petitions based upon unreasonable behaviour of their wives effectively doubled in the decade from 11% in 1976 to 22% in 1986. Men's petitions which alleged adultery by their wives increased more slowly from 40% in 1976 to 43% of total in 1986. Petitions based upon desertion and separation declined by a total of 15%, men's desertion petitions falling from 3% to 2%, separation petitions falling from 47% 1976 to 33% 1986.
Women's petitions alleging the unreasonable behaviour of their husbands increased by 10% between 1976 to 1986 (from 45% to 55%), with all the other allegations declining by 12% (adultery petitions from 25% to 24%, desertion petitions from 4% to 1%, separation petitions from 29% to 20%). Both husbands and wives might therefore have been equally prone to opt for 'speedy' dissolutions by basing their petitions upon behaviour grounds.

Point b. has already been considered and does little to explain the increase in petitions alleging behaviour between 1976 to 1986. The introduction of divorce by special procedure might offer some support for point c., i.e. the lesser standard of proof required for allegations to succeed (see Freeman, 1976). Ormrod, Burgoyne & Richards (1987) stress the relationship between social class and allegations of unreasonable behaviour and adultery. Although domestic violence and unreasonable behaviour are by no means class specific (Dobash & Dobash, 1980) the ability of those with scarce resources to bring petitions on separation or other grounds would be limited by economic factors such as the lack of alternative accommodation. Couples with young dependent children have been found to be the most likely group to base petitions upon allegations of behaviour, men in this group more frequently alleging the adultery of their wives (Ormrod, Burgoyne & Richards, 1987). Later in this chapter, discussion of housing policy may shed further light on the increase in behaviour petitions particularly since 1980.
Family lawyers have noted that there are considerable regional variations in petitioning behaviour (Eekelaar, 1984). It is unlikely that these variations result because Northern marriages are more unreasonable than those in the South. Many other factors will affect petitioning behaviour, e.g. local court and solicitor policies, local authority policies, economic factors etc. Research into regional trends in behaviour petitions, although regretably limited by the lack of statistical documents and refusal of access to cases held, did cast some light on national trends. Tables 20 and 21 show the proportion of petitions alleging certain facts in Court A for a 7 year period and Courts B and C for the years 1984 and 1985 (before and during the recent divorce 'bulge'). The Lord Chancellor's Department in 1985 was advising court staff that it was only necessary to store their individual statistical returns relating to the previous two years, so that as the next year's batch were produced those for three years ago were shredded. The Lord Chancellor's Department, working with computerised data, would follow a similar policy with live and dormant data so that access to data for earlier periods would have involved turning dormant data, stored in compressed forms on data storage discs, back into a workable form. This would have involved access to computing facilities of comparable power to that of the Lord Chancellor's Department. The effort involved would obviously have been unjustified. The discovery of statistics for a seven year period for Court A was mostly a matter of luck. Most courts are unable to store more paperwork than is absolutely necessary but statistical returns for the whole seven year
period were discovered by chance in a drawer by the Court Clerk in Court A.

Tables 20 and 21 show that there are considerable variations in the filing and granting of petitions based upon allegations of unreasonable behaviour. Court A, an urban area within the Northern Court Circuit, suffering considerable economic deprivation, showed the highest rate for filing and granting petitions on this basis, in 1985 having 56% of all petitions alleging unreasonable behaviour (63% of wives and 34% of husbands) and granting 47% divorce decrees on proof of this fact (56% wives' decrees and 21% husbands' decrees). Court B, a wealthy town in a rural area of the South Eastern Circuit, and Court C, an industrial growth area in the South Eastern Circuit, had proportions of petitions filed and granted on behaviour facts lower than the national rates for 1984 and 1985.

Table 20 shows that Court A had a similar pattern of change to that seen in the national trends, although the increase in husband's allegations of unreasonable behaviour were much greater than the national trend increasing from 6% of husbands decrees in 1979 to 21% in 1986 cf. 8.5% all decrees granted on behaviour basis England and Wales 1976 to 18% in 1985. Court A saw also a marked increase in husband's petitions based upon adultery and decline in those relying on separation facts. In all courts husbands' petitions on the basis of unreasonable behaviour were more likely to proceed to full divorce status. Women's behaviour petitions were the least likely to
Reforms In The 1980s. /4.

continue to this status in Court A.

<table>
<thead>
<tr>
<th>FACTS</th>
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<th>1980 Total</th>
<th>1981 Total</th>
<th>1982 Total</th>
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<td>26%</td>
<td>74%</td>
<td>100%</td>
</tr>
<tr>
<td>Adultery</td>
<td>30%</td>
<td>41%</td>
<td>35%</td>
<td>26%</td>
</tr>
<tr>
<td>Desertion</td>
<td>2%</td>
<td>3%</td>
<td>1%</td>
<td>2%</td>
</tr>
<tr>
<td>Separation</td>
<td>35%</td>
<td>49%</td>
<td>32%</td>
<td>27%</td>
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</table>

In Part II women's experiences of individual court and solicitors' policies will be discussed. In the absence of research into cases
In the courts, it is not possible to conclude whether there were similarities or qualitative differences between men’s and women’s behaviour petitions.

<table>
<thead>
<tr>
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<tbody>
<tr>
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<td>(37%)</td>
<td>(37%) (12%)</td>
<td>(46%) (34%)</td>
<td>(8%) (34%)</td>
<td>(44%) (17%)</td>
<td>(54%)</td>
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<td></td>
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</tr>
<tr>
<td></td>
<td>37% 26% 41%</td>
<td>31% 8%  42% 31%</td>
<td>39% 13% 36% 16% 46%</td>
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<td></td>
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</tr>
<tr>
<td>Adultery</td>
<td>(35%) (37%)</td>
<td>(33%)</td>
<td>(33%)</td>
<td>(28%) (33%)</td>
<td>(26%) (38%)</td>
<td>(46%) (34%)</td>
<td>(26%) (46%)</td>
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<tr>
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<td>(0.4%)</td>
<td>(3%) (4%)</td>
<td>(2%)</td>
<td>(0.4%)</td>
<td>(6%) (1%)</td>
<td>(2%)</td>
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<tr>
<td>Separation</td>
<td>(40%) (53%)</td>
<td>(34%)</td>
<td>(32%)</td>
<td>(51%) (26%)</td>
<td>(28%) (45%)</td>
<td>(21%) (28%)</td>
<td>(37%) (25%)</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>36% 40% 35%</td>
<td>33% 35% 30% 39% 41% 38% 27% 34% 23%</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Total %</td>
<td>(100%) (32%)</td>
<td>(68%)</td>
<td>(100%)</td>
<td>(26%) (74%)</td>
<td>(100%)</td>
<td>(30%) (70%)</td>
<td>(100%)</td>
<td>(27%) (73%)</td>
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<tr>
<td></td>
<td>100% 21% 79% 100% 68% 32% 100% 30% 70% 100% 34% 66%</td>
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<tr>
<td>Total</td>
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<td>(168) (185)</td>
<td>(185) (136)</td>
<td>(239) (71)</td>
<td>(168) (171)</td>
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<td></td>
<td>163 35 128 114</td>
<td>37 77 217</td>
<td>64 153 199</td>
<td>67 132</td>
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</tr>
</tbody>
</table>

NB. Bracketed figures = petitions filed, figures without brackets = decrees granted.

Part II will examine gendered aspects of the legal approach to men's and women's allegations of unacceptable behaviour and the relationship between statements in petitions and women's experiences of violence in a marriage. Later discussion will also demonstrate that legal concerns with 'sex equality' had a significant impact upon case law approach to matters of behaviour, conduct and violence.
When coupled with housing policy and economic decline, especially in inner cities, these encouraged the increased tendency of men and women to allege unreasonable behaviour.

Reforms In The 1980s.

Magistrates Courts.

Reform of the fault based grounds for relief in the magistrates' courts was recommended in 1976 by the Law Commission (Law Commission 1976; and see Chapter 3). The ground of persistent cruelty was replaced by an 'unreasonable behaviour' standard and bars to relief abolished. The reform was a little late in the day to remedy the problems caused by over 90 years of double standard provision. By 1978 magistrates were dealing with only 6% of matrimonial cases in England & Wales (Gibson, 1982). Their main work was enforcing maintenance orders which wives had obtained in the divorce court, rather than in issuing their own orders.

The Domestic Proceedings (Magistrates' Courts) Act 1978, implemented on the 1st February 1981, abolished the summary powers to grant separation orders and gave magistrates instead similar more limited powers to the county courts to issue personal protection and exclusion orders on behalf of wives. Injunctions under the Domestic Proceedings (Magistrates' Courts) Act were relatively simple to obtain and the approach less formal.
than in the County Court. But, personal protection orders only dealt with the use, threat or incitement of violence not with the 'pesterings' included in the County Courts' powers to stop 'molestation'. Applicants had to prove actual bodily harm, or its threat, had already occurred to qualify for protection. Threats of violence were not sufficient cause for action. The Law Commission recommended mental cruelty be excluded from the concern of the summary courts due to the belief that magistrates would not be competent to assess the expert evidence of psychiatrists or doctors. There was no guarantee magistrates would abandon the old notions of 'fault' by interpreting matters of unreasonable behaviour consistently with the divorce court.

In Bergin v Bergin (1983), a higher court had to overrule the magistrates' decision to refuse an order to a woman who had suffered a number of violent attacks (resulting in severe bruising and black eyes) on the grounds that she had no call to leave home. The magistrates had argued that because Mrs Bergin had 'put up with' her husband's violence on previous occasions, her claims that she was presently in fear of him were not true.

In Vasey v Vasey (1984), the woman was refused financial provision by the magistrates on the ground that, as she had deserted her husband, her conduct negated any claim to relief.

Magistrates could exclude a violent partner from the home, order him to leave, prohibit him from entering it and require him to allow the wife to enter and remain in residence. But to do
this, certain conditions had to be fulfilled first. The court had to be satisfied that a. the appellant and/or the children were in danger of physical injury and b. the respondent had already used violence to the appellant and/or the children, had threatened it and used it against another person or had threatened it in contravention of a previous order made (see S16(3) and S16(4)). The danger to the woman and/or the children had to be 'real' inasmuch that fear was held to be insufficient grounds for the order (see McCartney v McCartney (1981)). There was no power to allow the wife re-entry without exclusion.

For cases of imminent danger a single justice (rather than the usual three required) could make an expedited order (forbidding the use of violence, not excluding the culprit) which could last for 28 days at which date another order might need to be made. Expedited orders were very much slower than the emergency procedures in the County Court and there were no special procedures available to cover holidays.

The arrest powers were also more limited than the County Court powers. Again, magistrates could only attach powers of arrest if they were satisfied the spouse had already injured the other spouse/children and was likely to do so again. Justices were obliged to state why they considered powers of arrest were necessary (see Widdowson v Widdowson (1982)). If no powers of arrest were attached the appellant had to apply for a warrant to
reform the partner who could then be fined for up to £1,000 or imprisoned. Two months was the maximum period of imprisonment which could be imposed for breaching an injunction under S63(3) of the Magistrates Courts Act 1980. This directive was confirmed in Priest v Priest in 1981 where the Court of Appeal ordered the immediate release of a man after repeated periods of imprisonment for contempt of an injunction. For contempt, where an injunction without powers of arrest was breached, magistrates could only commit the culprit for one month's imprisonment (Head v Head (1983)). Whilst the County Courts were similarly limited to a maximum one month's sentence for contempt (Peart v Stewart (1983)), they were able to impose consecutive (and suspended) sentences for contempt (Lee v Walker (1985)).

The lesser protection provided by this Act perpetuated the tradition of second class remedies from magistrates courts. To make things worse, the problem of police inaction which hindered the Domestic Violence and Matrimonial Proceedings Act's provisions was soon plaguing magistrates' provisions. The service of injunction papers on the other spouse had to be executed prior to the hearing of the case and this was the specific responsibility of the police. McCann's research into magistrates' personal protection and exclusion orders in three courts in Northern England revealed 14% of applicants had cases adjourned to a later date because the police had not yet served the papers on the spouse. Expedited orders had to be made as a
Reforms In The 1980s.

last resort for cases where papers were continually left unserved (McCann, 1983).

Most applications for Domestic Proceedings (Magistrates Courts) Act injunctions are made on summons. McCann found 77% of applications made by summons (McCann, 1983; see also McCann, 1985) and this is supported by the Home Office figures which show expedited orders to comprise 33% (2,940) of applications in England and Wales in 1982, 32% (2,560) in 1983, 30% (2,680) in 1984 and 34% (2,350) in 1985 (see Home Office Statistical Bulletins, 1984, 1985, 1986.). About two thirds of the women who applied for injunctions in magistrates courts therefore had to wait for about two weeks for a hearing. Two weeks is a long time to have to avoid further assault or harassment from a husband bearing a grudge over the proceedings.

This delay in obtaining a decision must have had considerable affect on the withdrawal rate of applications. Expedited orders had a much lower refusal and withdrawal rate than orders for injunction by summons, 7% expedited orders being refused or withdrawn 1983 cf 53% of applications by summons being refused or withdrawn, 6% of expedited refused/withdrawn 1984 cf 52% applications by summons and 9% of expedited refused/withdrawn 1985 cf 49% applications by summons (Home Office Statistical Bulletins 1984, 1985, 1986.). Table 24 below shows furthermore that applications for injunction in the magistrates courts were
much more likely to be refused or withdrawn than were the speedier Domestic Violence Act injunctions.

Table 24 also shows that, as suggested by the principles embodied in the legislation, powers of arrest are harder to get for magistrates' injunctions and the actual arrests made very small in number, only 2% of spouses arrested for breach of injunctions in 1984 and 1985. About half the injunctions granted in England and Wales are orders for non-molestation without powers of arrest attached. In 1985, 47% (9,202) of orders under the Domestic Violence and Matrimonial Proceedings Act 1976 were for non-molestation only and 50% (2,254) of injunctions under the Domestic Proceedings (Magistrates Courts) Act 1978 were for non-molestation only (see Judicial Statistics 1985; Home Office Statistical Bulletin, 1986).

At first the Domestic Proceedings (Magistrates Courts) Act 1978 seemed to have had the desired effect of increasing the workload of the magistrates courts (see Table 22). But by 1985, enthusiasm over the 'expansionist' trend had started to decline, all applications apart from affiliation and attachment to earnings showing a real drop in numbers (see Home Office Statistical Bulletin, 1986). In some respects the expansionist trend may have been much more modest than at first appeared. Changes in the collection of statistical information from the magistrates courts introduced in 1982 affect comparative figures.
The substantial increase in maintenance applications from 7194 in 1978 to 27330 in 1983 has been held to be the result of incomplete information prior to the new system of collection (see Home Office Statistical Bulletin, 1986). Figures collected under the new system were also overinflated by the fact that all applications relating to family protection under the Domestic Proceedings (Magistrates Courts) Act 1978 were counted as injunctions. Serious discrepancies in the totals and lack of continuity from year to year necessitated contacting Home Office statisticians for clarification.


<table>
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<th>Maintenance</th>
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<td>N/A</td>
<td>9705</td>
</tr>
<tr>
<td>1977</td>
<td>27701</td>
<td>N/A</td>
<td>8782</td>
</tr>
<tr>
<td>1978</td>
<td>25928</td>
<td>N/A</td>
<td>7194</td>
</tr>
<tr>
<td>1982</td>
<td>52640 (58%)</td>
<td>8920 (10%)</td>
<td>28570 (32%)</td>
</tr>
<tr>
<td>1983</td>
<td>46360 (57%)</td>
<td>7950 (10%)</td>
<td>27330 (33%)</td>
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<tr>
<td>1984</td>
<td>46190 (57%)</td>
<td>8720 (11%)</td>
<td>25040 (32%)</td>
</tr>
<tr>
<td>1985</td>
<td>43360 (59%)</td>
<td>6960 (10%)</td>
<td>22350 (31%)</td>
</tr>
</tbody>
</table>


* Other matrimonial includes custody, access, guardianship, affiliation, permission to marry and registration of orders made by High Court, County Court, Court in Scotland or Northern Ireland and court outside the UK.

It appears that there was some double counting in the first two statistical bulletins so that where an application for personal protection or exclusion included a request for the attachment of
powers of arrest, this would be counted as two injunctions. The figures in Table 22 have been adjusted to conform with the present accuracy level of the Home Office.

Statistical changes had an impact on the recording of the use made of bind over powers. From 1980 onwards Criminal Statistics does not include records of these in cases of non-indictable assault. The latest available statistics for the years 1976, 1978 and 1979 show a big decline in the number of common assault cases brought and subsequently dealt with by way of bind over orders. 1976 had 491 bind over orders issued for 3,052 common assaults committed by males, 1978 had 578 for 3458 common assaults committed by males and 1979 had 464 for 2744 common assaults committed by males (Criminal Statistics, 1976, pp.106-107; Criminal Statistics, 1978, pp. 200-201; Criminal Statistics, 1979, pp. 212-213).

Not long after the implementation of the Domestic Proceedings (Magistrates Courts) Act 1978 the policy of compelling applicants to use the summary court proceedings for injunctions was ascribed to the Legal Aid authorities (see Bean, 1982). The Legal Aid Act 1979 expanded the Green Form scheme of granting legal aid from £25 to £40 and allowed legal assistance to be extended from advice to representation in court. The main areas dealt with under the Green Form scheme since 1979 have been family matters in the magistrates courts (see Legal Action, 1983). As the
discussion in the next section will show, although steps may have been taken to force applicants to use summary provisions in the first instance, the provisions in the county and divorce courts still offered broader and more permanent relief.

Injunctions, 'Protective' Legislation And The Courts.

In Grenfell v Grenfell (1978) Ormrod LJ reminded the court that divorce was only possible on the ground of irretrievable breakdown. The term 'unreasonable behaviour' was said to be a 'misnomer' in that it was not the behaviour as such which was unreasonable but its effects upon the other spouse. This concern with the effects of violent behaviour upon women was all too often absent when making decisions about the domestic violence legislation.

Since 1983, injunctions under the Domestic Violence and Matrimonial Proceedings Act have been the most important form of matrimonial injunction. Table 23 shows that injunctions under the Domestic Violence and Matrimonial Proceedings Act almost doubled between the years 1983 to 1986, whilst other injunctions and those granted under the Domestic Proceedings (Magistrates' Courts) Act declined. In proportion to behaviour petitions filed, injunctions ancillary to divorce had an uneven pattern of

<table>
<thead>
<tr>
<th>Year</th>
<th>S17 MWPA</th>
<th>MHA</th>
<th>Matrimonial</th>
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<th>DPMCA</th>
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<td>13,319</td>
<td>(3,072)</td>
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<td>1,898</td>
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<td>(267)</td>
<td>(1,405)</td>
<td>3,869</td>
<td>(23,510)</td>
<td>23,049</td>
</tr>
</tbody>
</table>

* = figures for June-December 1977 only.


growth and decline during the years 1977-1986. In 1977, the figure for injunctions ancillary to matrimonial proceedings was 21% of the figure for petitions filed on the basis of unreasonable behaviour.
By 1981, this figure had grown to 26%. For 1982 it saw a huge growth to 37%. 1983 brought a decline to 22% and by 1986 a sharp fall to just 5%. 1986 shows a marked shift from injunctions ancilliary to matrimonial proceedings to those issued under the Domestic Violence & Matrimonial Proceedings Act 1976. Injunctions under the Matrimonial Homes Acts and the Married Women's Property Act grew but these were a tiny minority of those issued. The following discussion will look at the effects of court decisions and legal policy on the pattern of injunction use.

Dissatisfaction with the working of injunctions was voiced very shortly after the implementation of the Domestic Violence and Matrimonial Proceedings Act (see Ansell, 1979; Meredith, 1978; NWAF, 1977). Ansell's research shows that some solicitors considered it necessary to have proof of violence before making an application for an injunction (Ansell, 1979). Courts later endorsed this practice by arguing (albeit inconsistently) that some evidence of violence was generally required. In Spindlow v Spindlow (1979) it was argued that a wife had to have some evidence of molestation first to qualify for a non-molestation order ancilliary to divorce proceedings. In cases concerning injunctions under the Domestic Violence and Matrimonial Proceedings Act and the Domestic Proceedings (Magistrates Courts) Act violence rather than molestation was required (see Homer v Homer (1982)). Magistrates furthermore required some objective proof of violence and need not rely on the subjective feelings of the woman. Her fears of assault could be discounted as exaggerations.
or fancy (McCartney v McCartney (1981)). In an advice booklet for women on the new law, NWAF advised women not to go to solicitors but to try and get injunctions for themselves (NWAF, 1980). The disadvantages of using solicitors were they were not available 24 hours a day, hence seldom about when needed, they disliked and avoided this aspect of matrimonial work, were ill-informed about the new provisions and might try to force clients to take alternative proceedings (e.g. a divorce) because they want the income (NWAF, 1980). The success rate of injunctions would be vitally affected by solicitors' skills and the specific practices employed at each court. Unfortunately, the Lord Chancellor's Department does not publish figures on the numbers of Domestic Violence Act injunctions classed as having been 'withdrawn', only those refused. Research into the available figures held by one court in the North of England (Court A) revealed rates which seemed to fluctuate considerably. In 1982, 60 applications (46%) for injunction were withdrawn/refused, in 1983 27 (22%), 1984 just 4 were recorded as being refused or withdrawn (4%) but by 1985 this had increased again to 59 (37%). Table 25 below shows that the number of injunctions granted by Court A doubled in 1984. This suggests a possible link between court and solicitors' 'policies' at the time and the rates of withdrawal. Another factor affecting the success of the cases could be the policies of the local Law Society in granting legal aid (see Part II).

Although cohabitees are covered, Domestic Violence and Matrimonial Proceedings Act 1976 injunctions only apply to those living together

<table>
<thead>
<tr>
<th>YEAR</th>
<th>TYPE</th>
<th>TOTAL NUMBER</th>
<th>GRANTED</th>
<th>REFUSED</th>
<th>WITH POWERS OF ARREST</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>TOTAL</td>
<td>North Lond.</td>
<td>South</td>
<td>Total</td>
</tr>
<tr>
<td>1977</td>
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<td>703</td>
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<td>219</td>
</tr>
<tr>
<td></td>
<td></td>
<td>% 100%</td>
<td>13%</td>
<td>25%</td>
<td>24%</td>
</tr>
<tr>
<td>1978</td>
<td>DVA</td>
<td>7310</td>
<td>1694</td>
<td>1688</td>
<td>516</td>
</tr>
<tr>
<td></td>
<td></td>
<td>% 100%</td>
<td>11%</td>
<td>23%</td>
<td>23%</td>
</tr>
<tr>
<td>1979</td>
<td>DVA</td>
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<td>1903</td>
<td>1793</td>
<td>439</td>
</tr>
<tr>
<td></td>
<td></td>
<td>% 100%</td>
<td>10%</td>
<td>25%</td>
<td>22%</td>
</tr>
<tr>
<td>1980</td>
<td>DVA</td>
<td>8091</td>
<td>2254</td>
<td>1776</td>
<td>300</td>
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<td>10%</td>
<td>25%</td>
<td>24%</td>
</tr>
<tr>
<td>1981</td>
<td>DVA</td>
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<td>1745</td>
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<td></td>
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<td>20%</td>
<td>27%</td>
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<td>DVA</td>
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<td>1809</td>
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<td>10%</td>
<td>19%</td>
<td>27%</td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
<td>% 100%</td>
<td>-</td>
<td>-</td>
<td>-40%</td>
</tr>
<tr>
<td>1983</td>
<td>DVA</td>
<td>12458</td>
<td>3301</td>
<td>2296</td>
<td>367</td>
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<tr>
<td></td>
<td></td>
<td>% 100%</td>
<td>12%</td>
<td>16%</td>
<td>24%</td>
</tr>
<tr>
<td></td>
<td>DPMCA</td>
<td>5130</td>
<td>-</td>
<td>-</td>
<td>-2820</td>
</tr>
<tr>
<td></td>
<td></td>
<td>% 100%</td>
<td>-</td>
<td>-</td>
<td>-35%</td>
</tr>
<tr>
<td>1984</td>
<td>DVA</td>
<td>16156</td>
<td>3350</td>
<td>4029</td>
<td>380</td>
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<tr>
<td></td>
<td></td>
<td>% 100%</td>
<td>12%</td>
<td>21%</td>
<td>25%</td>
</tr>
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<td></td>
<td>DPMCA</td>
<td>5405</td>
<td>-</td>
<td>-</td>
<td>-3314</td>
</tr>
<tr>
<td></td>
<td></td>
<td>% 100%</td>
<td>-</td>
<td>-</td>
<td>-38%</td>
</tr>
<tr>
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<td>DVA</td>
<td>19555</td>
<td>3831</td>
<td>4835</td>
<td>511</td>
</tr>
<tr>
<td></td>
<td></td>
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<td>11%</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td></td>
<td>DPMCA</td>
<td>4524</td>
<td>-</td>
<td>-</td>
<td>-2436</td>
</tr>
<tr>
<td></td>
<td></td>
<td>% 100%</td>
<td>-</td>
<td>-</td>
<td>-35%</td>
</tr>
<tr>
<td>1986</td>
<td>DVA</td>
<td>23049</td>
<td>4416</td>
<td>6011</td>
<td>461</td>
</tr>
<tr>
<td></td>
<td></td>
<td>% 100%</td>
<td>19%</td>
<td>19%</td>
<td>26%</td>
</tr>
</tbody>
</table>

Table 24: Injunctions and Property Orders 1977-1986, showing numbers refused/withdrawn, arrest powers and arrests made in England & Wales, Northern, London and Southern Court Circuit Areas.

<table>
<thead>
<tr>
<th>Year</th>
<th>Type</th>
<th>ARREST POWERS ADDED ON*</th>
<th>ARRESTS MADE*</th>
<th>COMMITTALS*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total North Lond.</td>
<td>South</td>
<td>Total North Lond.</td>
<td>South</td>
</tr>
<tr>
<td>1977</td>
<td>DVA</td>
<td>134</td>
<td>6</td>
<td>47</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>8%</td>
<td>3%</td>
<td>14%</td>
</tr>
<tr>
<td>1978</td>
<td>DVA</td>
<td>241</td>
<td>21</td>
<td>54</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>5%</td>
<td>3%</td>
<td>5%</td>
</tr>
<tr>
<td>1979</td>
<td>DVA</td>
<td>143</td>
<td>20</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
</tr>
<tr>
<td>1980</td>
<td>DVA</td>
<td>270</td>
<td>30</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>6%</td>
<td>6%</td>
<td>2%</td>
</tr>
<tr>
<td>1981</td>
<td>DVA</td>
<td>361</td>
<td>61</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>7%</td>
<td>14%</td>
<td>3%</td>
</tr>
<tr>
<td>1982</td>
<td>DVA</td>
<td>426</td>
<td>64</td>
<td>49</td>
</tr>
<tr>
<td></td>
<td>%</td>
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<td>12%</td>
<td>5%</td>
</tr>
<tr>
<td>1983</td>
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<td>470</td>
<td>82</td>
<td>65</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>6%</td>
<td>8%</td>
<td>5%</td>
</tr>
<tr>
<td></td>
<td>DPMCA</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1984</td>
<td>DVA</td>
<td>537</td>
<td>116</td>
<td>90</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>5%</td>
<td>6%</td>
<td>3%</td>
</tr>
<tr>
<td></td>
<td>DPMCA</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1985</td>
<td>DVA</td>
<td>741</td>
<td>75</td>
<td>240</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>6%</td>
<td>5%</td>
<td>11%</td>
</tr>
<tr>
<td></td>
<td>DPMCA</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1986</td>
<td>DVA</td>
<td>662</td>
<td>61</td>
<td>126</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
</tr>
</tbody>
</table>


* See notes.
NOTES ON TABLE 24.


Total granted: percentages for Northern, London and Southern Circuit areas are shown as percentage of total for England and Wales.

The Home Office does not publish comparable figures to the Lord Chancellor's Department to show the number of injunctions granted. Home Office figures show the numbers of applications, not all of which are granted. Figures for injunctions under Domestic Proceedings (Magistrates Courts) Act 1978 had therefore to be calculated from Home Office Statistical Bulletins Table 2 which shows number of applications made and percentage rate of refusal and withdrawal.

1982 figures for injunctions under the Domestic Proceedings (Magistrates Courts) Act 1978 are based upon Home Office estimates as only 67 magistrates courts were included in the collection of information that year. The new system of data collection was extended to all magistrates courts on 1st January 1983.

1977 figures for injunctions under the Domestic Violence and Matrimonial Proceedings Act 1976 based upon Lord Chancellor's department estimates on the basis of six month figures. This makes early figures less reliable for comparative purposes due to seasonal variations in applications.

Refused/Withdrawn:
No figures available on the numbers of injunctions under the Domestic Violence and Matrimonial Proceedings Act 1976 withdrawn apart from those from own research not included in this table.

Percentages show applications refused/withdrawn as percentage of all applications.

Arrest powers added on:
Percentages shown in proportion to injunctions granted without powers of arrest.

Arrests made:
Percentages in proportion to all injunctions granted.

Committals:
Percentages in proportion to all injunctions granted.
Reforms In The 1980s.

as husband and wife so problems arose if a husband only began his violent campaign after leaving home. In one case, that of McLean v Nugent (1979) the Court of Appeal allowed an injunction to be granted two months after the couple had ceased to live together as husband and wife. In another, the court claimed to have some jurisdiction where the parties had been occupying separate rooms in a two roomed flat (Adeoso v Adeoso (1980)). But more usually, problems would occur for women whose husbands continued to harass them after separation. Mrs White for example had applied for an exclusion order under the Domestic Proceedings (Magistrates Courts) Act but her husband continued to harass her and threaten her with violence late at night. This behaviour was not covered by the magistrates' order so she applied under the Domestic Violence and Matrimonial Proceedings Act 1976, hoping to get an injunction preventing 'molestation'. This was refused her on the ground that she and her husband were no longer living together as husband and wife (White v White (1983)).

Powers of arrest could only be attached under the Domestic Violence and Matrimonial Proceedings Act 1976 after an assault occasioning actual bodily harm had occurred (S2). Actual bodily harm involved more than a slap and generally required a wound or mark as proof. Within just five months of the implementation of the Domestic Violence and Matrimonial Proceedings Act 1976 the Court of Appeal was arguing that powers of arrest could only be attached in cases of persistent disobedience of injunctions. In Lewis v Lewis (1978) the
Court of Appeal issued a warning that powers of arrest should not be considered routine. A research study of injunction cases at a London County Court in 1978 found considerable variation among judges in the attachment of powers of arrest and the granting of exclusion orders. Some judges claimed they would never allow powers of arrest or exclusion orders at all (see Ansell, 1979). The Lewis case sanctioned some degree of economy for arrest powers by confirming they could only be given in exceptional situations and then only for an initial period of three months, although an applicant could return to court to have the power renewed should danger be still 'reasonably apprehended' (Practice Note (1978) & Practice Note (Domestic Violence : Powers Of Arrest) (1981)). In Horner v Horner (1982) the husband had a history of physical violence to his wife but, because of the attachment of powers of arrest to a non-molestation order, he had ceased his physical attacks and resorted to other methods of harassment such as sending threatening letters and intercepting her whilst out walking. In this case the judge argued that because the husband's last act of violence had occurred nine months ago, the continuation of the powers of arrest for 'idiosyncratic' behaviour would be 'unjust'.

This had an effect upon the number of injunctions passed with powers of arrest. Table 24 shows a decline in the attachment of powers of arrest from 39% in 1977 to 30% of injunctions granted in 1986. Even if attached though, this would not necessarily mean that an arrest would be made. The Domestic Violence and Matrimonial
Proceedings Act 1976 and Domestic Proceedings (Magistrates Courts) Act 1978 offered no remedy for police and court reluctance to enforce injunctions (see Chapter 3). Police discretion over whether to intervene was unaltered so even when breaches occurred they still often refused to arrest violent men (see Binney, Harkell & Nixon, 1981; Farragher, 1985; Meredith, 1978; Pahl, 1982). The study by Binney, Harkell & Nixon (1981) of women living in refuges found arrests were made in only 20% of life threatening cases of violence and in only 15% of cases where severe bruising or black eyes were apparent. Farragher's observation of the Staffordshire police involvement in 26 domestic disputes confirmed the police reluctance to intervene in 'private matters' and their continued assertion that women needed time to think things over or would withdraw charges (Farragher, 1985). Fielding's research gives examples of the various rationalisations offered by individual police officers to justify their own unwillingness to prosecute. One experienced police officer employed concepts of 'community policing' to justify his policy on 'domestic' cases, arguing that, due to the racial tension in the area, it was not in the 'community's interests' to arrest a man who had chased his wife down the street with an axe threatening to chop her up. Ignoring the fact that it was the 'community' i.e. neighbours, who called out the police in the first place, and not mentioning (assuming they knew) to the woman the existence of refuges etc., the police 'settled' the dispute by confiscating the axe (see Fielding, 1988).
Tables 24 above & 25 below show the rarity of committal orders. A committal could be ordered for breach of an injunction with powers of arrest attached even if the victim did not apply. But unless the breach was 'absolutely gross' it was considered bad practice to committ without hearing the victim's view (Boylan v Boylan (1981)). Both the arrests made and the committal rate for breach of injunctions under the Domestic Violence & Matrimonial Proceedings Act 1976 have declined since 1977. In 1986 arrests were made in just 3% of all injunctions issued. This is true also of the London circuit area, despite periodic announcements by the Metropolitan police that their policies are changing. Jan Pahl's research suggests that having a power of arrest attached to an injunction might hinder a husband's willingness to attempt further assaults (Pahl, 1982). If powers of arrest could be attached to many more, or all, injunctions this would at least cut out some of the complications of committal procedure. Due to the emergency nature of committal orders the courts have recently encountered some problems over solicitors' and court officers' neglect of procedural formalities. In fact, even the Master of the Rolls has confessed that procedural formalities seem to have been invented by some courts/solicitors, the outcome being an inability to prosecute a man, proven to have been consistently violent, due to the lack of a signature on one document or lack of a staple holding together an affidavit and notice to show cause (see Lee v Walker (1985); Burrow v Iqbal (1985); Williams v Fawcett (1985); Nguyen v Phung (1985); Hussain v Hussain (1986); Wright v Jess (1987); Harmsworth v Harmsworth (1987)).
Policy on arrest and committal varies significantly from area to area. Table 25 provides a summary of injunctions under the Domestic Violence & Matrimonial Proceedings Act 1976 issued by Courts A, B & C between 1982-1985. These figures, obtained from unpublished material held by the Lord Chancellor's Department, show enormous differences between the three areas over injunctions issued with powers of arrest and actual arrests made. Court A, the busiest court of the three issued net many less injunctions under the Domestic Violence & Matrimonial Proceedings Act 1976 than the other two courts although more petitions on the basis of behaviour were applied for. Tables 20 and 21 above show that Court A was a much busier court handling 224 divorce cases for the two months 1984, cf 163 at Court B and 199 at Court C, and 293 divorce cases for the two months in 1985 cf 217 at Court B and 199 at Court C. The smaller number of injunctions issued was not due to lesser demands made by a smaller client population in Court A. More magistrates' injunctions were probably granted in this area than in Courts areas B and C. No figures from the summary court were collected due to time constraints, but Home Office figures show a higher rate of applications for magistrates' orders in Northern Court areas (Home Office Statistical Bulletin, 1986). Earlier discussions have argued a link between applications to magistrates and level of income (see Chapters 2 & 3, Finer et al, 1974.).

Bearing in mind that some women might be driven to an application for an injunction under the Domestic Violence & Matrimonial
Proceedings Act 1976 due to problems arising from the lesser protection offered by Domestic Proceedings (Magistrates' Courts) Act orders, Court A, where interviews with solicitors and court staff revealed a hardline approach demanded by one County Court judge in particular (see Part II), has a low rate of enforcement. In 1982 no powers of arrest were issued with injunctions at Court A, compared with 66% and 76% issued with powers of arrest at Courts B and C respectively. Although the attachment of powers of arrest at Court A increased to 16% of injunctions by 1985, and both rates at Courts B and C declined, B dramatically down to 26%, this rate is still far below the national average. Court A was also least likely to add powers of arrest on to already existing injunctions. Actual arrests made in the area of Court A were consistently below national average, just one man recorded as being arrested for breach of injunction during the whole four year period. Courts B and C had more variable rates on arrest, the first two years having rates much higher than the average but declining from then onwards. Variations in arrests made could be caused by a number of factors. Possibly, although unlikely, violent men in Court Area A were more likely to obey injunctions than in areas B and C. As the police have the discretion to arrest violent men on the basis of other statutory offences, or may not in fact arrest at all but merely ask him to 'accompany me to the station', it is not possible to draw positive conclusions about enforcement policies in the three court areas without further research into police and court procedures. Further discussion of these variable practices at the local level will take
### TABLE 25: Summary Of Domestic Violence and Matrimonial Proceedings Act 1976

<table>
<thead>
<tr>
<th>YEAR</th>
<th>TOTAL GRANTED</th>
<th>WITHDRAWN/REFUSED</th>
<th>WITH POWERS OF ARREST</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total A</td>
<td>B</td>
<td>C</td>
</tr>
<tr>
<td>1982</td>
<td>9575</td>
<td>70</td>
<td>116</td>
</tr>
<tr>
<td>%</td>
<td>100%</td>
<td>0.7%</td>
<td>1.2%</td>
</tr>
<tr>
<td>1983</td>
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<td>98</td>
<td>68</td>
</tr>
<tr>
<td>%</td>
<td>100%</td>
<td>0.8%</td>
<td>0.5%</td>
</tr>
<tr>
<td>1984</td>
<td>16156</td>
<td>193</td>
<td>74</td>
</tr>
<tr>
<td>%</td>
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<td>1%</td>
<td>0.4%</td>
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<td>19555</td>
<td>101</td>
<td>86</td>
</tr>
<tr>
<td>%</td>
<td>100%</td>
<td>0.5%</td>
<td>0.4%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>YEAR</th>
<th>ARREST POWERS ADDED ON</th>
<th>ARRESTS MADE</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Total A</td>
<td>B</td>
</tr>
<tr>
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<td>426</td>
<td>2</td>
</tr>
<tr>
<td>%</td>
<td>8%</td>
<td>3%</td>
</tr>
<tr>
<td>1983</td>
<td>470</td>
<td>0</td>
</tr>
<tr>
<td>%</td>
<td>6%</td>
<td>0</td>
</tr>
<tr>
<td>1984</td>
<td>537</td>
<td>1</td>
</tr>
<tr>
<td>%</td>
<td>5%</td>
<td>0.5%</td>
</tr>
<tr>
<td>1985</td>
<td>741</td>
<td>0</td>
</tr>
<tr>
<td>%</td>
<td>6%</td>
<td>0</td>
</tr>
</tbody>
</table>


NOTES ON TABLE 25:

- Courts A, B and C percentages show their proportion of cases in relation to total granted in England & Wales.
- Withdrawn/refused:
  - Work on original data held at Court A revealed a discrepancy between court and Lord Chancellor's Department figures; see comments above on page 208. Withdrawn/refused percentages as proportion of total applications shown in Lord Chancellor's Department figures.
- Arrest powers added on:
  - Percentages shown in proportion to injunctions granted without powers of arrest.
Reforms In The 1980s

Court powers to grant ex parte orders were also decreased through a series of decisions and Practice Directions. In Ansah v Ansah (1977) Morgan v Morgan (1978) and a Practice Note issued from the Family Division of the High Court in 1978, it was advised that there must be real danger of serious injury or irreparable damage to the woman or children to justify granting orders in the absence of the offender. The following quote from the above mentioned Practice Note suggests some concern that injunctions in such circumstances may not have been genuinely urgent:

The President is greatly concerned by the increasing number of applications being made ex parte in the Royal Courts of Justice for injunctions (....) An ex parte application should not be made, or granted, unless there is an immediate danger of serious injury or irreparable damage. A recent examination of ex parte applications shows that nearly 50% were unmeritorious, being made days, or even weeks, after the last incident of which complaint was made. This wastes time, causes needless expense, usually to the legal aid fund, and is unjust to respondents.

(Practice Note (Matrimonial Causes : Injunctions), 1978).

Very similar concerns about the abuse of the law were exhibited in connection with exclusion orders. The exclusion of a violent partner from the matrimonial home was arguably one of the most controversial issues concerning matrimonial injunctions faced by the courts in the late 1970s to 1980s. Powers to exclude a man from the matrimonial home also exist as part of divorce, property and
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custody matters. In recent years confusion has arisen in the courts as to the degree of overlap between principles applied in domestic violence injunction cases and those arising from cases of divorce, custody and property settlements. By 1983, the House of Lords were trying to argue that the same principles should be considered in all cases of excluding men from the home, no matter what the legislative initiative (see Richards v Richards (1983) and discussion below).

At first the courts laboured over the issue of whether or not they were empowered by the domestic violence legislation to exclude a violent man from the whole of the home at all. In B v B in 1977, the first case to be heard concerning the Domestic Violence & Matrimonial Proceedings Act 1976 at the Court of Appeal, a woman with two children applied to oust from the local authority home the man with whom she had lived for the past eleven years. The court concluded they only had powers to confine him to part of the home as he held sole tenancy. Two days later on the 23rd October in the case of Camplin v Jenkins (1978), a county court judge's decision that courts could exclude violent men from homes where their wives/partners were sole or joint tenants was over-ruled.

The third case heard was that of Davis v Johnson (1978). Eileen Meredith, a London solicitor with experience of a number of injunction cases, claims that Johnson had heard about the case of Camplin v Jenkins and only then decided to take the matter of his exclusion from his council flat to the Court of Appeal (Meredith,
A special appeal court of five judges was set up to explore what the Act meant, the rights of cohabitees, whether needs for personal protection could override property rights, whether the court could use Select Committee material as a guide to interpretation of the Act and whether the Court of Appeal could overturn its own decisions. The decision to uphold the exclusion of Johnson from the council flat of which he was the sole tenant brought an outcry that the Court of Appeal had set a precedent for a 'mistress's charter'. In this case on further appeal to the House of Lords, it was held that:

Section 1 of the Act is concerned to protect not property but human life and limb. But, while the section is not intended to confer upon unmarried women property rights in the home, it does enable the county court to suspend or restrict her family partner's property right to possession and to preserve to her a right of occupancy (which owes its origin to her being in the home as his consort and with his consent) for as long as may be thought by the court to be necessary to secure the protection of herself and the children.

(Lord Scarman, Davis v Johnson, 1978).

Yet, the over-riding of property rights in this case was clearly stated as being limited to emergency provision only. As ouster injunctions were only to be regarded as 'first aid' remedies, property rights were suspended by the courts leaving scope for permanent solutions (by way of tenancy transfer pending local authority decision or the provision of alternative accommodation) to be made later on. In Hopper v Hopper (1978) Judge Ormrod stressed the importance of clearly stating the temporary nature of injunctions:
the injunctions which are granted should be either expressly limited in some way or it should be made perfectly clear to both parties that the protection of the injunction will be withdrawn after the lapse of a reasonable time - the reasonable time being enough to enable the wife to make other arrangements for her accommodation or to take steps in the case of a married woman, to get her matrimonial status clarified, and to enable the court to exercise its power to make property adjustment orders. If this is not done this Act will become a means of oppressing some people severely.

(Ormrod, L.J. Hopper v Hopper, 1978).

In the above case Stamp L.J. reasoned that the fact that the 13 year old daughter who had a broken arm was required to sleep in uncomfortable conditions upon a camp bed could not 'possibly outweigh the undesireability of driving her stepfather out of the house at very short notice.' A Practice Note issued by Sir George Baker in 1978 recommended that courts impose time limits on injunctions and that for most cases a period of three months would suffice initially (Practice Direction (1978)). The same reasoning was adopted in Morgan v Morgan (1978). In Freeman v Collins in 1983 this time to find alternative accommodation was further limited to one month (Freeman v Collins (1983)). Although in one case of repeated assault it was held if the woman concerned had some legal right to occupy the property already by being the sole/joint tenant, perpetual or indefinite exclusion injunctions might be possible (Spencer v Camacho (1983)), courts have recently confirmed the temporary nature of exclusion orders, especially if no children are involved in the proceedings (see Waugh v Waugh (1981); Wooton v Wooton (1983)), and the fact that they must be carefully used to prevent abuse (O'Malley v O'Malley (1982)). Ousters under the Matrimonial Homes Act may
allow a longer period. In Fairweather v Kolosine (1983) an ouster was made for a period of five years without 'substantial' allegations of violence.

The difficulty in balancing decisions to oust between the need to offer effective temporary protection for women and children and the protection of individual property rights resulted in two conflicting strands of reasoning in the Court of Appeal in the 1970s (see Chapter 3). One strand followed the reasoning in Bassett v Bassett (1975) and Walker v Walker (1978) where the welfare of the children and their needs for secure accommodation was held to be the paramount concern. The other strand established by cases such as Rennick v Rennick in 1977 and Elsworth v Elsworth in 1978 argued that the reasonableness of the wife's reasons for leaving was of prime importance. In Myers v Myers (1982) there had been one incident of violence and the court decided that this was not likely to recur. However in Samson v Samson (1982) the decisions in Elsworth and Myers were severely criticised and not followed. It was held that the question of whether the wife was justified in leaving the matrimonial home was irrelevant (see also Harding v Harding (1979)).

By 1982 the academic lawyer David Bean was asserting that:

> if the wife has children and wants the husband to go he will be ordered out

(Bean, 1982, p.97.)

This child centred approach to matrimonial injunctions coincided with
a rise in women's petitions granted on the basis of unreasonable behaviour. In 1980, 42% of women's petitions were granted on the basis of unreasonable behaviour. By 1982, this figure had risen to 47%. Although the tendency of wives to allege unreasonable behaviour, as seen in the grounds on which petitions were filed in Table 18, grew more slowly from 48% of petitions filed by wives in 1980 to 51% of petitions filed by wives in 1983, there was a more rapid growth in the proportions granted to wives on this basis. This more rapid growth is most likely caused by changes in case law. Women with children desperate for some legal protection may ultimately have succeeded in getting ousters when other routes to relief had been tried and failed. In O'Brien v O'Brien (1985) the woman had an emergency order for personal protection because her husband had kicked her in the face and fractured her nose. When the order expired, the magistrates refused to extend it and Mr O'Brien returned home forcing Mrs O'Brien to leave due to fear of further violence. She then applied successfully for custody of the children and a temporary ouster order from the County Court.

Of course if the husband had custody of the children the courts might well have excluded a wife instead (see Beard v Beard (1981); Lee v Lee (1983)). In Smith v Smith (1980) the ouster case was adjourned until the custody of the children had been decided. This practice was confirmed in the case of T v T (1986). Women who left home with their children because of a husband's violence further risked being penalised by the courts for disrupting the children's
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In Re W (1983), a wife who left with her children (and who had interim custody granted her) to go into a woman's refuge had her application for an ouster refused due to the court's belief that she would not return home anyway. The custody of the children and occupation of the matrimonial home was transferred to the husband instead due to court concern that their mother's moving might further disrupt their schooling. Decisions such as Re W do little to assist battered women's attempts to leave violent men.

In the 1980s the 'fair, just and reasonable' rhetoric was applied with increasing favour to injunction and ouster cases. Mrs Miller's case in 1982 painfully highlighted that this rhetoric applied only to decisions affecting men and a proposed fettering of their rights. In Miller v Miller (1982) the wife left home with her daughter leaving her son behind with her husband in the matrimonial home. Mrs Miller began divorce proceedings and applied to oust her husband. Her application was refused on the ground that it would not be fair, just or reasonable to oust the husband from the home if a non-molestation order with powers of arrest attached was granted to protect her from further violent attacks.

In Richards v Richards in 1983 the House of Lords attempted to establish conclusively the principles which should govern the provision of matrimonial injunctions. The Richards case did not arise from an application for an ouster order under the Domestic Violence and Matrimonial Proceedings Act 1976 but judgements were
made nonetheless in reference to this act which subsequently caused considerable confusion as to the relevance of the act at all to married women (see Levin & Rae (1983)). Mrs Richards had left her husband and petitioned for a divorce on the grounds of his unreasonable behaviour. The evidence which she offered of unreasonable behaviour was said to be 'flimsy' amounting to no more than the fact that she could no longer bear to remain in the same house as him. As Mrs Richards could not secure alternative accommodation for herself and the two children, she applied for an ouster order ancillary to the divorce. The ouster was granted by the divorce court judge, even though he considered it to be unjust to turn the husband-out of the local authority home;

I think it is thoroughly unjust to turn out this father, but justice no longer seems to play any part in this branch of the law. (....) (the) house (was) provided by the public as a home for these four people, and that being so, the public interest is best met by installing the children in the home, which means in practice, installing their mother too.

(Quoted by Lord Hailsham, Richards v Richards, 1983).

The Court of Appeal confirmed the general approach on the grounds that the interests of the children were paramount. Whilst awaiting the appeal to the House of Lords, Mr and Mrs Richards came to an arrangement whereby Mrs Richards occupied the matrimonial home with the children during the week but left at the weekend so that her husband could move in to take a turn at childcare. On hearing the details of the case the House of Lords reversed the previous decisions and recommended all future ousters should be governed by
the principles derived from the Matrimonial Homes Act 1967 (later consolidated in the Matrimonial Homes Act 1983). S1(3) of the Act says that:

On an application for an ouster order under this section, the court may make such an order as it thinks just and reasonable having regard to the conduct of the parties in relation to each other and otherwise, to their respective needs and financial resources, to the needs of any children and to all the circumstances of the case.

The interests of children concerned, although an important consideration, were thus no longer of paramount concern. In making future ouster orders the courts were advised to look also at the justice of turning one partner out of the home, the financial situation and behaviour of the couple concerned and any other individual facts of the case. Lord Hailsham took issue with the suggestions that it would be in the children's interest to oust the father from the matrimonial home:

it is not necessarily in the interests of the children that either parent should be allowed to get away with and be seen to get away with capricious, arbitrary, autocratic or merely eccentric behaviour. It may well be difficult for the court to exercise control. But the difficulty is not rendered less if it is prepared to throw its hand in so readily.

(Lord Hailsham, Richards v Richards (1983)).

Lord Brandon argued that ousters should all be brought under the Matrimonial Homes Act, whether or not there was a pending suit for divorce or judicial separation, causing some confusion in solicitors practices around the country as to whether or not the Domestic
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Violence and Matrimonial Proceedings Act 1976 applied to married women wanting more than a non-molestation order (see Barnard (1983); Hamilton (1984); Levin & Rae (1983)). Ouster injunctions ancillary to divorce were abolished as all applications then needed to be made by means of an originating summons in Form 23 under the Matrimonial Homes Act. This procedure was much more complicated and lengthier, involving stating title to the land, giving the Land Registry number and details of the mortgage or other interests in the land. The procedure could include a search or involve the building society in the case (see Levin & Rae, 1984).

Since 1983 there has been a decline in all injunctions granted except those under the Domestic Violence and Matrimonial Proceedings Act (Table 23). The Richards decision probably caused more confusion than it solved. Recent cases still show signs of conflict between the requirement to be just, fair and reasonable (to men) and the importance of children's interests. In Burke v Burke (1987) Lloyd LJ reasserted the previous worries about women's use of ousters in 'marginal' cases:

"an ouster order is a very serious order to make. It (...) is a 'drastic order' and an order which should only be made in cases of real necessity. It must not be allowed to become a routine stepping stone on the road to divorce on the ground that the marriage has already broken down and the atmosphere in the matrimonial home is one of tension."

(Lloyd LJ, Burke v Burke (1987) 73).

In Summers v Summers (1986) and Wiseman v Simpson (1988) where

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allegations of violence were not included in the cases, the courts ordered re-trials on the basis that it was necessary to consider, given the fact that it was in the children's best interests to have a secure home, whether it was just, fair and reasonable to exclude one of the partners.

Housing On Relationship Breakdown.

Research by Binney, Harkell and Nixon into the destinations of women leaving refuge accomodation found that of the 84 women in the sample who left Women's Aid refuges in 1980, only 4% were living in the former matrimonial home with the partner excluded. Out of 58 women who applied for exclusion orders, only 21 actually obtained them. In the same year 13 out of the 114 local authorities argued the provisions under the Domestic Violence and Matrimonial Proceedings Act were sufficient to cope with the homelessness of battered women (Binney, Harkell & Nixon, 1981). The housing prospects for married women in owner occupied accomodation have tended to be better than for those in rented accomodation because (providing they are not too greatly in debt) they generally have more economic resources and courts have been less concerned about their ability to make a housing decision. Court decisions have strengthened women's ability to prevent husbands from expropriating all the profit from the sale of the home (see Williams v Williams (1977); Williams & Glyn's Bank Ltd v Boland (1980)). Unlike wives, cohabitees could not register a
right in an owner occupied home owned by their partners to put off potential buyers. Yet, even if a woman was left in the home after a divorce the accumulation of mortgage arrears (sometimes due to husband's refusal to pay) might lead to the sale of the house and her homelessness (Harman v Glencross (1984)). Research by Margaret Southwell into 145 post divorce property cases in one city in Northern England found little evidence for the belief that one partner on divorce remained in the matrimonial home with the children. A matrimonial home in the owner occupied sector was in fact more likely to be sold if a couple had dependent children than if they were childless. In 36% of the cases, the owner occupied home was sold and 76% of these cases concerned a mother who was the custodial parent (Southwell, 1985).

The three most important routes to housing or occupation rights involving the courts on relationship breakdown between 1977-1987 were via decisions based on the Matrimonial Homes Act, the Matrimonial Causes Act 1973 or via applications for new accomodation as an emergency case under the Housing (Homeless Persons) Act 1977 (see Chapter 3). In Chapter 3 the courts' reluctance to interfere into local authority decisions was discussed in relation to domestic violence injunctions. In Regan v Regan (1977) although the court had the power to order a tenancy transfer for a local authority tenant it declined to do so lest this cause disfavour with the authority concerned. In Spindlow v Spindlow in 1979 however the reasoning under the Domestic Violence and Matrimonial Proceedings Act
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1976 was different, Ormrod LJ maintaining that the court did have the jurisdiction to permanently exclude a violent partner from a local authority home. Subsequent statutory enactments and court decisions gave the judges the theoretical power to make the housing decision on relationship breakdown but the reluctance to become involved persisted. The Housing Act 1980, which gave increased security to local authority tenants tended to shift housing decisions towards the courts. As many local authorities by the 1980s were granting joint tenancies, by S28(3) of the Housing Act 1980 both parties would have a 'secure' status and a court order might be required to bring the local authority to a decision. The Housing Act 1980 cut the discretion of local authorities in cases of domestic violence as some felt no longer able to merely switch tenancies from the husband to the wife without a prior court decision (see Pearl, 1986).

Power to transfer tenancy from one spouse to another in cases of divorce or nullity under S7 Matrimonial Homes Act 1967 was extended to all local authority tenancies under the Matrimonial Homes and Property Act 1981. This Act gave the court the power to order the transfer on granting of a divorce, nullity or judicial separation or with leave of the court at any time thereafter. The landlord's consent was not required although s/he had the right to be heard. Section 24(1a) the Matrimonial Causes Act also empowered courts to transfer tenancies for divorced women, but here without the need for the landlord to be heard (see Chapter 3). In Rodewald v Rodewald (1977) the court held that it was possible to use S24 of the
Matrimonial Causes Act 1973 to transfer local authority tenancies. In Warwick v Warwick (1982), the spouses were joint tenants and the wife left due to violence. She obtained a non-molestation order and an exclusion order on the advice of the local authority but the ouster was revoked on appeal by the husband. The court claimed it should not be involved in the local authority's 'obscure housing policy games'. The wife had no intention of returning home so there was no point in ousting the husband. Rehousing her on welfare grounds was the authority's concern not the court's.

Fears about interfering in local authority decisions were especially acute in relation to applications under the Housing (Homeless Persons) Act 1977. For women leaving refuges, a new home will often be the only feasible answer (Binney, Harkell & Nixon, 1981). By the early 1980s it was apparent that earlier predictions the new legislation would not alter variations in local authority practice, had come true:

The Housing (Homeless Persons) Act 1977 is a major landmark in social legislation. However if the Act provides tacit acknowledgement of the fact that homelessness is attributable to the failure of successive governments to provide for housing needs it is very far from a panacea. Indeed there is a sense in which the Act, to adapt Lord Hailsham's aphorism, is nothing more or less than a gigantic confidence trick (....) (Amendments to the bill) effectively transform(ed it) from a measure which provided homeless persons with a right to accommodation into a measure which presents them with a series of obstacles which have to be successfully negotiated before that right can be claimed.

(Robson & Watchman, 1983, pp.1-2)
The categories in the legislation used to assess a housing authority's duties towards an applicant — i.e. was s/he homeless, in priority need for accommodation, not intentionally homeless and were there local connections — could all be turned into a battered woman's 'obstacles' in the housing race.

One of the first cases to come to appeal under the Act concerned the issue as to whether or not the local authority had a duty towards applicants living in women's refuges (see Williams v Cynon Valley Council (1980)). In this case the judge argued that:

It is important that refuges be seen as temporary crisis accomodation, and that women living in refuges are still homeless under the terms of the Act. If it was suggested that they were not homeless it would be necessary for voluntary organisations to issue immediate 28 days' notice when women came in so that they would be under threat of homelessness. This would be totally undesirable and would simply add stress to stress. If living in crisis accomodation took women out of the 'homeless' category then the Act was being watered down and its protection would be removed from a whole class of persons that it was set up to help and for whom it was extremely important.

(Quoted from Arden, 1985, p.38).

Binney, Harkell & Nixon (1981) found that 43% of applicants from refuges were not accepted as the responsibility of local authorities under the Housing (Homeless Persons) Act and deciding that women were 'not homeless' was the most common reason given for doing this. Presumably local authorities which partly funded refuges would not have come to the illogical conclusion that the inhabitants were not living in emergency accomodation. But even where refuges were
partly funded by local authorities, the numbers of battered women housed under the Act could be severely limited by homeless persons unit's willingness to accept them as 'homeless'. Some local authorities opt for a Catch 22 policy to assess the question of homelessness. According to the Act (now covered by the Housing Act 1985) and the Code of Guidance which serves as an aid to interpretation, a woman who has a right to occupy a house may still be technically homeless if it is 'probable' her occupation would lead to violence or threats of violence from someone already living there who is likely to carry out the threats. In R v Purbrook District Council ex parte Cadney (1985) the authority's finding that the applicant was not homeless was upheld due to the absence of evidence to show that violence could result if she did occupy the house. Many local authorities demand a high standard of proof of violence as pre-requisite for claims (Arden, 1985). Women are told they have to have an injunction as proof of violence yet if they do succeed in obtaining one they are told they no longer need housing under the Act as the injunction will protect them in their own homes (see Binney, Harkell & Nixon (1981); Homer, Leonard & Taylor (1984); Pearl, (1986)).

In R v Wandsworth London Borough Council ex parte Nimako-Bwating (1983) Woolf J endorsed the local authority's view that it was fair to assess the reasonableness of the woman's leaving and should violence have occurred (in their opinion), their duty was only to advise her to seek a court order for non-molestation or exclusion of
the husband. Women who left their husbands were not to be seen as homeless persons in their own right. Although the latest Code of Guidance suggests local authorities treat women who fear violence with sympathy, the actual practice looks like the opposite of sensitive concern:

one of the most common complaints of women approaching agencies for help was that they did not take the problem of battering seriously. Housing Departments were no exception and women often said they had been humiliated by the treatment they had received:

They had no right to treat me as they did. I came out in tears many times. The housing officer says that he hits his wife and vice versa - and that's the way of a happy marriage. (....)

Some women were told that they were not battered because they could not show visible bruising or produce evidence of assault. Some were given no reasons at all.

(Binney, Harkell & Nixon, 1981, pp. 79-80.)

Alternatively the local authority could demand some proof of priority need. Pregnant women might be asked for proof of pregnancy (doctor's note) and may not be housed until at least seven months pregnant in case they should decide to terminate the pregnancy (Carew-Jones & Watson, 1985). Single battered women are seldom recognised as vulnerable and in priority need as recommended by Paragraph 2.12 of the Code of Guidance (Austenberry & Watson (1983); Carew-Jones & Watson (1985)). In the Housing Act debates in the House of Lords the government made it plain that local authority intervention prior to custody or property settlements was undesirable (Pearl, 1986). In R v London Borough of Ealing ex parte Sidhu (1982) the woman concerned only had interim custody of
her children and the local authority said she would not be priority need until she had full custody. The appeal court held that the question of custody was irrelevant to the determination of priority need as she already had the children with her in the refuge. If the children were left at home however the courts could grant custody to the father instead (see discussion above).

Hoggett and Pearl (1987) quote unpublished research by R. Thornton at Cambridge University which shows that out of over 100 local authorities surveyed, 54% found women who left home without their children due to their partner's intolerable behaviour were found to be intentionally homeless. Intentional homelessness has been the most controversial aspect of the Housing (Homeless Persons) Act and one to which women victims of domestic violence are especially vulnerable. Yet, as Robson and Watchman note:

The courts have made it plain that a single transgression will not easily be cured and that once intentional homelessness arises it may hang like an albatross around the applicant's neck providing an excuse for refusal of permanent assistance.

(Robson & Watchman, 1983, p.6.)

The Code of Guidance says:

In the opinion of the Secretaries of State, a battered woman who has fled the marital home should never be regarded as having become homeless intentionally because it would clearly not be reasonable for her to return.

(Code of Guidance, Housing Act 1985 Part III, Paras. 2.16.)
If a woman was found to be intentionally homeless, the local authority would have no duty to provide secure accommodation. The 'failure' to use legal remedies to evict a partner, by e.g. getting an injunction, would allow the authority to call a woman intentionally homeless (see R v Eastleigh Borough Council ex parte Evans (1984); R v Wandsworth Borough Council ex parte Nimako-Boating (1983); R v Purbeck District Council ex parte Cadney (1985)). The danger for a woman in this situation is that the court might refuse to grant an ouster if it feared this would result in the husband's homelessness or suspected the council of using the court merely to clarify housing duties. In Wooton v Wooton (1984) a cohabiting woman applied to have her partner ousted and had the injunction refused on the ground that the local authority would not house the man if he was evicted but would have to house her and children. The court failed to mention that the refusal of the injunction might give the council scope to argue that, as there was no proof of violence, she might be intentionally homeless. In Thurley v Smith in 1984, the local authority told the husband that he would not be rehoused if excluded from the joint tenancy; and the wife, temporarily in a refuge, that if she applied for an ouster she would be treated as homeless even if she failed to get the order. In this case the woman obtained a three month exclusion order but it has been argued that the decision demonstrates a growing trend of authorities to press battered women into legal proceedings merely to demonstrate their willingness to find housing for themselves (Pearl, 1986). Since the case of Greenwich London Borough Council v Mc Grady (1982), local authorities
have followed a policy of granting fresh tenancies after the ouster proceedings. The Code of Guidance states this practice is unreasonable yet authorities argue only the court can show that a woman is battered and only the court can show them a way out of the tenancy securities brought in by the Housing Act 1980. Although the expert in housing law, Andrew Arden, claims local authorities are unlikely to get away with such a policy where no 'domestic remedy' exists (e.g. when women are threatened with violence therefore unable to get exclusion orders), or where other solutions have been tried and proven not to work, in the absence of a battered woman's ability to enforce the principles of the homelessness legislation (see Robson & Watson, 1983) the ball remains in the council's court. The English legal system has yet to allow the class actions used by women victims of domestic violence in the USA (see Schecter, 1982).

Ingleby's survey of divorce cases found the policy decisions of local authority housing departments could work in contradiction to the 1980s' emphasis upon 'clean break' settlements on divorce (see discussion later in this chapter). One of the clients in the survey was advised not to sell her equity in the matrimonial home to her husband otherwise she would be found to be intentionally homeless when applying under the Housing (Homeless Persons) Act (see Ingleby, 1988). Following the court decision in R v Rushmoor Borough Council ex parte Barrett (1987) tenants in local authority accommodation who sell their homes (within a given period of time) to realise equity on divorce are liable to pay the discount given them on the original
purchase. If the tenancy of the matrimonial home was merely transferred from one spouse to the other however, the discount would not need to be repaid.

Rent arrears which accrued during a violent relationship, over which the woman may have had no control, are also a common foundation for findings of intentional homelessness (Homer, Leonard & Taylor, 1984; R v London Borough of Ealing ex parte Sidhu (1982)). So is refusing an offer of accommodation, even if the woman believes it to be completely unsuitable (Binney, Harkell & Nixon, 1981). Due to the declining standards and stock of local authority housing both of these problems are likely to increase. For black women trying to leave violent relationships the council's tactic of making 'bad offers' holds an extra penalty due to the additional burden of racist attacks (see Bryan, Dadzie & Scafe, 1985).

Women trying to leave the area to escape from a violent man may still be referred back to their own neighbourhood because of the local connections provisions in the Act. The 1985 Act theoretically reduced the scope of local authorities to manipulate the local connections provisions in order to escape their housing duties. Now an authority must give reasons why they do not think a woman risks violence in the area where she formerly lived. Husband's assurances of future 'good behaviour' might be sufficient reason for an authority's refusal to accept responsibility. In the courts the local connections provisions have provided judges with the
opportunity to air their racial prejudices (see R v Hillingdon Borough Council ex parte Streeting (1980); In Re Islam (1983); de Falco, Silvestri v Crawley borough Council (1980); R v Reigate Borough Council ex parte Paris (1984)). Applicants have been advised in Powellian manner that the floodgates to British housing provisions will not open for immigrants, or even to the families of British citizens who have lived and worked here for many years. In de Falco, Silvestri v Crawley Borough Council (1980) Lord Denning advised the Italian applicants that they should have stayed where they were. In R v Bristol County Council ex parte Browne (1979) a woman who left Eire with her children due to her husband's violence applied as a homeless person in the Bristol area. She was refused housing on the ground that she had no local connection. Bristol County Council had contacted their colleagues in Eire and been advised that Mrs Browne was not at risk from further violence in her home town and they would house her there instead. The court based its assessment of risk on the barest of evidence. Mrs Browne had suffered violence in Tralee and been pursued by her husband to Limerick yet Lloyd LJ was nonetheless satisfied that she would not suffer further violence if she went home.

The Women and Housing Group recommended local authorities house both parties on relationship breakdown (Women & Housing Group, 1983). This suggestion was backed up by a Working Group for the Women's National Commission set up in 1985 to look at domestic violence legislation (Women's National Commission, 1985). Housing for both
partners would help to side-step the issues raised in the 'marginal cases' discussed above but could not be achieved without a government commitment to expand and improve the housing stock. The recent history of domestic violence injunctions and homelessness legislation has shown a shameful pattern of court and local authority evasion of both their legal and moral duties, facilitated by a growing dearth of resources and voluntarily diminished enforcement procedure.

The Reintroduction Of Conduct Into Maintenance Awards.

In 1973 Sir George Baker had announced that:

In these days of 'women's lib' there is no reason why a wife whose marriage has not lasted long, and who has no child should have a 'bread ticket for life'.

(Brady v Brady (1973)).

One feminist lawyer quipped a few years later:

because of the equality of the sexes a divorced spouse must look to the state for support.

(O'Donovan (1978) p.184.)

In the 1980s criticisms of the no fault basis of divorce and maintenance awards escalated. In October 1980 the newborn Campaign For Justice In Divorce, formed from a group of articulate and
aggrieved divorced men and their new wives blitzed the press and academic journals with their 'policy statements'. Two hundred and thirty MPs signed a motion for reform of the divorce law more or less forcing the Law Commission to become involved in the debate on maintenance principles (Smart, 1984). The Law Commission Report, 'The Financial Consequences Of Divorce', published 1981, proposed the government consider abandoning S25(1) of the Matrimonial causes Act 1973 to replace it with more realistic principles. The Commission noted how very little was known about how much maintenance was paid or whether it orders were enforced, yet they nonetheless argued that ex husbands and their second wives were being unfairly burdened by their financial liabilities to former families. Although they recommended research, as initiated by the Office of Population Censuses and Surveys, the SSRC and the EOC, they were unable to wait for these results. The evidence available at the time strongly indicated that women and children were most frequently the financial 'victims' of divorce and alimony drones were virtually non-existent (see Eekelaar & Maclean, 1983; Gibson, 1982). Research since published has shown that men on the whole 'gain' whilst women and children suffer considerable financial loses on divorce getting very little maintenance or property (Eekelaar & MacClean, 1984; Smart, 1984; Weitzman, 1986). Reform was however held to be both a necessary and feasible option to remedy the injustice divorced men experienced. The buck of responsibility for initiating reform to alleviate the problem of poverty for divorced women in one parent families was passed back to the government (see Law Commission,
The Commission wanted firm objectives to govern policy on maintenance after the proposed repeal of S25(1) to prevent arbitrary and unpredictable awards. They recommended that courts be directed to concern themselves with:

1. the priority for serving children's needs rather than those of an ex-spouse. Ex-spouses should be made aware that maintenance payments were not automatic rights for life but provisions made for their roles as carers. The courts should be more aware of the true costs of child care when making orders.

2. an ex-wife's earning capacity and the desireability of both parties to a divorce becoming self-sufficient. To encourage divorcing women to become self-sufficient courts could consider awarding maintenance for limited terms.

3. clean breaks wherever possible, although some concern was expressed that maintenance should not be merely substituted by Supplementary Benefit. The liable relative rule for Supplementary Benefit claims would anyway undermine attempts to bring 'clean breaks' by substituting state support as ex-husbands would be required to pay maintenance if they had no other obligations (see Hulley v Thompson (1981)). The Commission suggested courts should not be allowed to dismiss maintenance obligations without the woman's agreement (see Dipper v Dipper (1980)).
Rather vague recommendations were made by the Commission on the relevance of conduct to maintenance awards. Conduct should only be relevant in exceptional cases otherwise a renewed emphasis may detract from the conciliatory goals to be achieved by the law. Whilst conduct should be taken into account in these cases only the courts, through case law and examination of the facts of each case, could decide which situations were exceptional enough for it to be considered.

Chapter 2 showed how reference to conduct in maintenance proceedings always involved the wife's conduct. The husband's violent behaviour was only very rarely used to increase a wife's maintenance, and only then if it lead to injuries affecting her ability to maintain herself. Some lawyers urged a return to the 'old' system of maintenance as something which had to be earned through an ex-wife's chastity and good behaviour:

the old law (....) was in accord with human nature. It acknowledged that there were some guilty wives, and that their husbands would not wish, and society should not expect them, to maintain them. The 1969 law, as it is applied, says that there are so few guilty wives that they are not worth the effort of seeking out (.....) and that whether they like it or not their husbands must support them. It therefore appears that in 1969 the English law repealed a law of human nature.

It is difficult to think why the law should override both human nature and logic by requiring an ex-husband to subsidise his former wife's housekeeping when she is either tantamount to married to another, or enjoying herself with a succession of other men.

(Green, 1983, pp.137 & 139)
The Law Commission's report on the Financial Consequences of Divorce formed the basis of the Matrimonial and Family Proceedings Act which received Royal Assent July 12 1984. The amendments made to the bill in Parliament were minor. The Act repealed S25 of the Matrimonial Causes Act 1973 to remove the principle which required the court to place each party on divorce in as close a financial position as existed during the marriage. Section 25 had been much criticised for its impossible demands and the unjust consequences of either reducing some men's incomes to below subsistence level or imprisoning them in the event of default (see Hayes, 1983). The Act was intended to give priority to children's interests on divorce and to encourage the courts to make 'clean break' awards whenever possible. But, clean break settlements were a contradiction to settlements devised to best serve the children's interests because the welfare of the children would necessarily be based upon the welfare and level of income support for their carer, i.e. mother (see Hughes, 1984; Land, 1984; Symes, 1985). The Act was criticised by a number of academics and lawyers familiar with this area of the law for being poorly planned and based upon emotive arguments rather than hard facts (see Levin, 1984; Symes, 1985; Smart, 1984.). The proposals failed to distinguish between the different needs on divorce of childless marriages, long lasting marriages and those with dependent children (Eekelaar & MacClean, 1984; Weitzman, 1986). Clean breaks would not improve women's positions post divorce, merely remove men's financial liabilities to ex-wives and children whilst preserving, if not improving, their other rights to access, custody
and continued control. The government of the day might have been more effective in securing ex-wives financial independence if the emphasis had been shifted from encouraging divorced women to work to giving them the opportunity to do so.

Conduct could now be taken into account when making financial provisions unless it would be 'inequitable to disregard it'. Fears were expressed during the bill's debating phase that this would be in opposition to the conciliatory trend, cause additional bitterness and work to the detriment of women (see Hughes, 1984). The issue of behaviour is more commonly raised in marriages with dependent children (see previous discussion). The only case to date to discuss the issue of conduct however evaded the question of the changes brought in by the new legislation (Kyte v Kyte, 1987).

**Conciliatory Trends.**

The clean break philosophy applied to maintenance reforms in the 1980s fitted in with a whole range of reforms designed to smooth over the legal approach to marital difficulties in general - family courts, conciliation services, specially trained family lawyers, joint custody arrangements, rehabilitative maintenance (see Booth Committee (1985); Family Law Sub-Committee (1979); Finer Committee (1974); Interdepartmental Committee On Conciliation (1983); Law Commission (1981); Solicitors Family Law Association (1983)). In contrast to
expectations, it was feared that the trend away from Church based conceptions of guilt and innocence in matrimonial law since 1969 had brought more bitterness (see Wilkins, 1984). In 1983 the Booth Committee highlighted the problems in matrimonial procedure as being: bitterness between the parties, confusion, delays and difficulties in reaching conclusions and inordinate costs.

Due to the collusion bar to divorce, conciliation was an impossibility until 1971. From this time onwards some conciliatory input was taking place through the growing involvement of welfare officers. In 1970 there were welfare enquiries in 1 out of every six divorces concerning children. By 1977 this had grown to 1 out of every 5 (Wilkinson, 1981).

The 1980s conciliatory movement was sold with an almost irresistible bundle of 'new' features including:

a. a priority for children's interests and needs on relationship breakdown;

b. working with the help of a skilled yet impartial arbitrator towards a sensible consensus of the parties as to the practical consequences of the separation/divorce;

c. a shift from the adversarial approach towards an inquisitorial system with its assumed benefit of conflict diffusion;

d. better information on practical matters especially through the increased use of welfare officers to adequately assess children's needs;
e. a family court system which would be more informal and abolish the duplicity and double standard provisions inherent in the old court system;

f. specially trained judges, court staff and conciliators cognisant with the financial difficulties of low income families;

(See Eekelaar (1978); Family Law Sub-Committee (1979); Interdepartmental Committee On Conciliation Services (1983); Wilkinson (1981)). One of the most attractive features for the government of the day was the potential to use conciliation schemes as a cost cutting measure. The Royal Commission On Legal Services had pointed out the high cost of family and matrimonial cases to the Legal Aid Fund. Between 1975-6, matrimonial and family matters accounted for 87% of the legal aid bill. Between 1977-8, following the abolition of legal aid for undefended divorces, matrimonial and family cases accounted for 74% of the bill (Royal Commission On Legal Services, 1979).

At the base of most claims for reform on the conciliatory line was the appeal to safeguard children's interests but how this should best be done and who was to be responsible for defining and protecting the interests was seldom clarified (Eekelaar, 1983). A DHSS commissioned research study into the helping agencies response to domestic violence cases in the 1980s found that the adverserial ethos ascribed to solicitors or court officials was rather over-rated. Borkowski, Murch and Walker found that 'gladiatorial' solicitors were not the majority and in fact solicitors tended instead to describe
their approaches as being either 'neutral' or 'partisan'. Most saw their roles as involving the provision of practical support, counselling, welfare advice as well as more strictly 'legal' duties towards their clients (Borkowski, Murch & Walker, 1983).

The conciliatory arguments in the 1980s frequently used the law relating to domestic violence against women as an example of one area requiring the (assumed) conflict diffusing tactics of the service. Strategies devised to protect women from the injustice resulting from men's violence in the home were in the conciliatory debates transformed invariably into an injustice against the culprits due to the presumed 'overshoot' effects of the legislation. Solicitors had become suspicious that injunctions and other 'protective' remedies were being abused and used for tactical reasons (see Borkowski, Murch & Walker, 1983).

after several years of marriage, virtually any spouse can assemble a list of events which, taken out of context, can be presented as unreasonable behaviour sufficient on which to found a divorce petition (....) Because two years is so long to have to wait before starting proceedings, it is common to resort to the exaggeration of commonplace behaviour, in reality perhaps no more than inconsiderate - into unreasonable behaviour, or to adultery, committed or admitted, as the pretext on which to base a petition which can be filed promptly.

(Family Law Sub-Committee, 1979, Para. 50.)

Although judges avidly demand details, they usually turn out to be as trivial as forgetting birthdays or anniversaries of the wedding itself. A man can also be accused of sins of omission by failing to tell her that he may be late home or something of that sort. Unreasonable behaviour can also include threatening her with violence. If he does happen to thump her, then it is a police matter and she will probably use it in her divorce
petition, regardless of whether she struck him first or verbally provoked him.


We are concerned by the fact that details of alleged behaviour set out in the petition (....) can at the outset of proceedings inflame tempers and enhance bitterness to the extent that prospects of conciliation and agreement can be severely threatened. We think this is a serious problem. There is still a tendency for draftsmen to plead particulars as to behaviour stretching over many years. For the most part this is unnecessary and can do irreparable harm.

(Booth Committee (1985) p.16.)

There is no effective sanction against an applicant who seeks (an ouster injunction) without proper cause. It is sometimes the case that ouster orders are sought in order to give one party an apparent tactical advantage over the other in securing the occupation of the matrimonial home for an indefinite period.

(Booth Committee (1985) pp. 38-39.)

The exercise of the jurisdiction to oust from the matrimonial home before divorce and the powers of S24 (Matrimonial Causes Act 1973) may lead one to conclude that on the breakdown of marriage the husband's property becomes the wife's for life, just as her's used to become his on marriage.

(Deech, 1984, p.257-8.)

A divorce on the ground of unreasonable behaviour could involve 'fabricated' evidence of acts which, objectively speaking, appeared non too grave in nature. However, there is no way of telling from the technical requirements what behaviour actually occurred in the relationship. Borkowski, Murch & Walker (1983) found 70 out of 96 women citing unreasonable behaviour in their petitions had experienced 'serious' violence from their husbands. In Part II the differences between women's experiences and legal descriptions in
petitions will be discussed further. Erin Pizzey and the legal academic Susan Maidment jumped on to the conciliatory bandwagon by arguing that not only the criminal law but legal intervention per se in cases of domestic violence against women was inappropriate (see Maidment, 1982; Pizzey & Shapiro, 1982).

The Booth Committee recommended conciliatory intervention as a means of diffusing the conflict in matrimonial applications and preventing the type of injustices highlighted by the Richards case. Conciliation involves a structured scheme for promoting settlements between parties and:

- assisting the parties to deal with the consequences of the established breakdown of their marriage, whether resulting in divorce or separation, by reaching agreements or giving consents or reducing the area of conflict upon custody, support, access to and education of the children, financial provision, the disposition of the matrimonial home, lawyers fees, and every other matter arising from the breakdown which calls for a decision on future arrangements.

(Interdepartmental Committee on Conciliation Services, 1983, p.2.)

By 1984 there were 50 different conciliation schemes working in England and Wales (see Wilkins, 1984). One problem with the conciliatory approach is that achieving a mutual consensus between a violent man and a woman living in fear of his violence is a virtual impossibility (Bottomley, 1984). The individualistic problem solving approach could increase the tendency of professionals to blame the victim and add to women's feelings of guilt. The schemes also offer violent men additional scope for abusing the law in order to harass
Reforms In The 1980s/4.

women, especially with allegations about the children's welfare (see Part II). The impracticality of conciliation for violent relationships was highlighted by research by Davis and Bader based upon interviews with 271 consumers of the Bristol and Newport schemes. The researchers found 52% of consumers complained of the stress caused by having to share the waiting area prior to appointment with their spouse. Conciliation became synonymous with delay. The courts in the two areas were very reluctant to try cases until a conciliation agreement had been achieved. In a number of cases, the applicants complained that they felt pressurised into agreements especially by welfare officers. Many of these agreements then did not survive — in one case the 'agreement' lasted for just one access visit. Those that worked did so either because the 'agreement' merely endorsed the status quo or because one parent had been successfully coerced into compliance (Davis & Bader, 1985).

Freeman (1979) has pointed out the problems experienced by women victims of domestic violence in the ultimate conciliatory goal of family courts elsewhere especially in the USA. The welfare and family saving ethos leads to the all too frequent conclusion of conciliators that either the husband or his environment can be 'treated' so that he can be returned to his family 'cured' and 'safe' (Freeman (1979) p.193).

Domestic Violence Against Women As A Crime.

In the 1980s feminist theory had established links between the
campaign issues concerning domestic violence against women and rape and the whole spectrum of women's experiences of sexual violence from pornography to womanslaughter (Dworkin, 1981; Edwards, 1987; Kelly, 1987; MacKinnon, 1982; Rhodes & McNeill, 1985; Stanko, 1985.). Rather than pressing for more legislation efforts were increasingly concentrated upon the implementation and enforcement of the law, especially by regulating the discretion of individuals in the police, courts or social services (by better training schemes, complaints and review procedures, etc). Calls have recently been made to shift attention on to ways of improving women's safety without increasing state control of women's lives (Stanko, 1985).

The criminal law saw some further 'equalising' initiatives in the decade 1977-1987. 'The Home Office Review of Criminal Injuries Compensation Scheme 'Report Of The Interdepartmental Working Party' (1978) looked at the exclusion of family members from the compensation scheme. They found the traditional justifications for excluding family members (problems of proof, the need to prevent fraudulent claims and the fear of floods of applicants or offenders benefiting) were unfounded and recommended reforms. In 1979 the scheme was extended to include victims of domestic violence. Of the 53 family assault cases brought to the Board's attention in the year ending March 1981, 8 were brought by men, 42 by women and 3 by children. Eighteen got awards totalling £21,653. Seven cases were withdrawn or abandoned and 28 were rejected for one or more of the following reasons : probably not eligible (1); delay in reporting (7);
applicant's conduct, character or way of life extinguished claim (4); offender not prosecuted (12); injury worth less than £500 compensation (17); offender and victim still living in same household (5) (Freeman, 1982). The seventh report of the Criminal Injuries Compensation Scheme Board holds details of four cases, two of which were refused outright. One concerned a married woman aged 20 whose husband had been imprisoned for 18 months for an assault causing her grievous bodily harm. She had her claim rejected by the Board on the ground that her behaviour at the time of the incident negated her right to complain. The couple were said to be part of a group involved in promiscuous sexual activities such as wife swapping and photography sessions of group sex. The Board held that as the wife was an 'active' participant in this she could not complain if it got out of hand. She had been attacked by her husband because she refused to imitate lesbian sex with another woman before an audience of two men. Her injuries included lacerations to the forehead and skull, bruising of the neck, head and right hip (Freeman, 1982).

As successful prosecutions under the criminal law for cases of domestic violence are relatively infrequent it would follow that the same would apply to these cases before the Board, where prosecution is generally required in the absence of a good explanation. The existence of the scheme is not widely known and the injuries required in order to qualify need to be severe. From the £500 and upwards of compensation the Board will also deduct social security and
insurance payments received as a result of the injury plus compensation gained from the criminal courts (Wasik, 1983).

Although prosecution for criminal assault cases of domestic violence may encourage the police to treat this as a crime on the same level of severity with 'stranger' attacks, equality in criminal prosecutions alone would not give victims sufficient protection. Domestic violence in many respects is more dangerous than a stranger attack as the offender has extensive knowledge of his victim and thus has an advantage in being able to pursue all manner of harassments or retributions to deter her prosecution of him or to satisfy his desire for revenge. 'Strangers' are less likely to widen violent campaigns to include threats to a victim's family, friends, neighbours, etc. Domestic violence cases would need some form of special treatment in addition to criminal law remedies. This problem was noted in the case of Szczepanski v Szczepanski in 1985. The husband breached a non-molestation order by seriously assaulting Mrs Szczepanski with a sledge hammer. The police charged him with criminal assault. At the proceedings for contempt for breach of the injunction, Mr Szczepanski was sentenced to 12 months imprisonment. Hoping to get released on bail, he appealed against the committal for contempt on the ground that the injunction case should have been adjourned until the criminal proceedings were complete. Stephen Brown LJ argued that the County Court judge was right to hear the case for contempt as the Court clearly had to enforce its powers quickly to prevent further violent behaviour.
The Criminal Law Revision Committee criticised the Offences Against
The Persons Act 1861 for being too messy and in need of
consolidation (Criminal Law Revision Committee (1980); see also Griew
(1983)). The Committee recommended the abolition of one of the
very first provisions for battered women, i.e. the provisions
concerning aggravated assaults. By 1980, a separate category for
aggravated assaults on women and male children was seen to be
unnecessary and outmoded. In their 15th Report on Sexual Offences
the Committee also made recommendations covering marital rape
(Criminal Law Revision Committee, 1983). They held to past
precedent by noting the confusions caused over the matter of consent
by the case of DPP v-Morgan (1976), yet argued that press reporting
of rape cases gave an unrealistic picture of the actual state of the
law. The report unashamedly reaffirmed many of the myths of rape –
particularly the belief that women cry rape to save their honour –
and concluded that it was just not possible to define 'consent'.
Recent cases before the courts showed the persistence of illogical
conclusions about the nature of women's consent. In the case of R v
Pigg (1982) the jury had had trouble deciding the matter of consent.
As Pigg had ambushed and raped two teenage girls telling them he was
the 'Yorkshire Ripper', it is astonishing that consent had become a
contentious issue. The Court of Appeal later held that a man is
reckless to a woman's consent if he gives no thought to her lack of
consent in circumstances where it would have been obvious she did
not consent, or he was aware of the possibility of her lack of
consent but persisted regardless. So, despite the criticisms of the
Morgan case and further legislation, rapists could still be found not guilty if they believed the victim was consenting. Rights of Women had urged the Committee to consider amending the law on rape so that emphasis was placed upon sexual intercourse which was against a woman's will. The Committee rejected this idea outright arguing that this approach would not cover cases where women had no will because they were insensible due to being drugged or drunk!

The majority of the Criminal Law Revision Committee felt, not surprisingly given their views on consent, that rape in marriage should not become a new crime. Rape of a wife was held not to be as serious as rape by a stranger because wives had had sex with their husbands many times before anyway. The Committee also felt that as many battered women did not want to leave their violent husbands the prosecution of marital rape cases would undermine the stability of their marriages. It was feared battered women might be pressurised into bringing a prosecution which they would later regret. If they succeeded in prosecution, rape as an offence could be trivialised so that the public might come to see even 'stranger' rapes as not serious. The main reason however for not making rape in marriage a crime was that women might use it as another 'bargaining counter' in divorce proceedings (Criminal Law Revision Committee, 1983). Chapter 3 showed how cases such as R v Clarke (1949); R v O'Brien (1974) and R v Steele (1976) established that husbands could not be found guilty of rape unless the wife was living apart from him and had some legal proof of separation in the
form of a decree nisi for divorce or non-molestation order. Her physical separation was not enough proof that she had revoked her consent to sexual intercourse even if she had petitioned for a divorce (R v Miller (1954)). The only concession the Criminal Law Revision Committee made on the matter of rape in marriage was to recommend a husband be charged for rape in cases where cohabitation had ceased.

The Criminal Law Revision Committee clung steadfast to the belief that the criminal law should keep out of marriage. In contrast, the provisions in the Police & Criminal Evidence Act 1984 sought to abandon centuries of conflict over whether or not wives should be compellable to give evidence against their husbands in cases of criminal assault. Under the Act wives were to become compellable witnesses for the prosecution in cases of assault on them, or sexual or physical assault on a person under 16 years old. The new provision however had little impact on the number of prosecutions brought by wives against husbands. Even with prosecution powers passing from the police to the Crown Prosecution service (under the 1985 Prosecution of Offences Act) police discretion whether or not to instigate the prosecution of offences was unhindered.

In some cases before the courts women who defended themselves against men's violent attacks were given relatively 'lenient' verdicts on the grounds of diminished responsibility, provocation or justified self-defence. In March 1984, seventeen year old Debbie Bird hit her
ex-boyfriend Darren Marder in the eye in response to his slapping her in the face and pressing her up against a wall. Mr Marder unfortunately lost his eye as a result of Debbie Bird's action although she claimed that she was only trying to defend herself and did not think at the time about the glass in her hand. She was found guilty of unlawful wounding and sentenced to nine months youth custody. On appeal her conviction was quashed the court arguing that, although it was desirable for a victim to show an unwillingness to fight before using violence in self-defence, this was not always necessary. In September 1982 a woman was put on probation for two years for shooting her violent husband (Guardian, 9 May 1985). In November 1983, Mrs Celia Ripley (after serving six months in prison) was given a suspended prison sentence of 18 months for shooting her husband after years of violent abuse from him (Guardian, 1 Nov. 1983). In September 1984, 16 year old Louise Legeman was found not guilty of the murder of her father. She had hit him with a baseball bat after he had attacked her mother with scissors and knives (Guardian 11 Sept. 1984). In 1985 Iqbal Begum was freed after serving four years imprisonment following a campaign to get her sentence of life imprisonment for murder reduced. Iqbal had killed her violent husband after he made threats to assault her three children (Guardian, 9 May 1985). In July 1986, Gillian Rendell was acquitted of the murder of a husband who had regularly beaten her up and called her a slave (The Times, 4 July 1986).
The 'lenient' sentencing of women who have killed violent husbands may be another result of the 'equalising' trend of reforms in the law, giving women who kill a greater chance to plead diminished responsibility, (see debates on premenstrual tension and diminished responsibility e.g. Allen (1983)). The following list of recent cases traced from the national press indicate that although some women might be treated 'leniently' for defending themselves after years of abuse, husbands' killings of wives for 'misdemeanours' are ranked on a similar level of severity for sentencing purposes:

George Close proved his case of diminished responsibility was caused by his wife taunting him about his sexual prowess.

(Guardian, 24 October 1983).

Stanley Dingley claimed his diminished responsibility was caused by a row which developed because his girlfriend turned off the football match on the TV.

(Guardian, 5 November 1983).

Michael Telling shot his wife three times and chopped off her head but had acted under a diminished responsibility because she had affairs with other men and women.

(Guardian, 22 June 1984).

Peter Hogg was provoked into the manslaughter of his wife and sentenced to four years imprisonment. Mrs Hogg's provocation was
having an affair, being 'domineering', 'emotional' and prone to 'tantrums'. Hogg was released from prison the following year.

(Surrey Advertiser, 8 March 1985).

Nicholas Boyce strangled his wife, cut her body into 100 pieces and scattered these in different parts of London. He was sentenced to six years imprisonment for her manslaughter executed under a diminished responsibility and provoked by his wife's nagging. Boyce's home contained a text on criminal law with sections relating to defences against murder underlined.

(Guardian, 10 October 1985).

Charles Wilson stabbed his wife to death because she teased him thereby causing his diminished responsibility. Due to his advanced age of 73 years, Wilson was placed under a 3 year probation order.

(The Times, 31 October 1985).

Albert Bowie claimed diminished responsibility resulting from his wife's taunting over his sexual prowess which caused him to strangle her with an electric flex.

(The Times, 31 October 1985).

William Wilson claimed he had been provoked by his alcoholic wife into killing her by hitting her on the head with a hammer and smothering her with a pillow. At age 70 years he was felt to be too old to go to prison and received a probation order of 2 years
for her manslaughter.


Colin Kemp was acquitted for the murder of his wife having convinced the jury that he strangled her during a nightmare.

(The Times, 3 May 1986).

In view of the court approach in recent cases of woman killing (see also Radford, 1982; Radford, 1984; Edwards, 1987) there is little evidence to suggest that the treatment of women offenders represents a new drive to irradicate gender bias.

When their own physical abuse in the marriage is proven over a long period of years, women may receive comparatively lenient sentences. But it does seem that women must experience extremes in degredation, violence and humiliation before they may be protected or defended. (....) Whilst the court on occasion may show some sympathy towards the actions of a battered wife, it is unlikely that women will be able to bring successful cases of provocation where men are adulterous.

(S. Edwards, 1987, pp.166-167.)

increased from 18% in 1976 to 27% in 1986 and 'stranger' killings increased from 18% in 1976 to 23% in 1986. Spouse killings therefore declined proportionately after the introduction of the domestic violence legislation and the creation of the refuge movement although the numbers of actual homicides increased, 17 more spouses killed in 1986 than were killed in 1976. As the rate of increase in proportional terms and in the actual numbers of spouses killed slowed down in comparison to the previous period discussed between 1969-1976 (see Chapter Three), it is probable that socio-legal policy reforms in response to the needs of women victims of domestic violence had some impact. Without the reforms, the rate of spousal homicides could have been higher. The figures for 1977 show a proportional and real drop in spousal homicides. Compared with the 1976 level, 40 less spouses were killed in 1977. Only further research could show whether this drop in domestic homicides was the result of new policy measures, or greater awareness of the law enforcers and caring professions contacted by battered women resulting from the publicity attached to the problem at the time.

Although by 1986 spouse killings again formed the largest category of homicide offences, stranger killings had become a very close second. In 1980 in fact, stranger killings amounted to 29% of all homicides compared with 23% which were spouse killings that year. (The increase in homicides in 1982 was caused by new counting rules so that the figures for 1981 and 1982 are not directly comparable). Whether or not however the increase in 'stranger' killings represents
an increased risk for women's victimisation is another matter. Home Office statistics do not break separate categories down on the basis of sex, age and relationship. Some of the increase in stranger killings resulted from the crimes of just two offenders between the years 1975-1983. From 1975-1981, Peter Sutcliffe admitted to having murdered 13 women. From 1978-1983, Dennis Nilson was found to have strangled and dismembered at least 16 young men. Some of the increased 'stranger' killings could have been the result of increased gang fights between men, increased racist violence, increased abductions and assaults upon children. Some of these would have affected women's victimisation but they would not necessarily increase the proportional rates.

In 1983 the results of first National Crime Survey were published by the Home Office (Hough & Mayhew, 1983) showing very low incidences of domestic violence and sexual assault. Domestic violence against women accounted for just 10% of the assaults recorded (Hough & Mayhew, 1983). In a workshop in London devised to assist researchers interested in using data from the survey, the Home Office team admitted the huge under-estimation of these crimes of violence against women likely to result from the methodology and the weighting system used for computerising the results (six or more assaults to one person were all counted as six) (see Hough, 1983). But, the results of the first survey gave cause for concern in the low reporting rate of violent crimes. Only 39% of woundings and 28% of sexual assaults were reported to the police. The next
National Survey found only 60% of woundings and 31% of assaults were reported (Home Office Statistical Bulletin, 1986). Maxfield's work on the Crime Survey data found women especially reporting a great deal of fear about their safety from violent assaults (Maxfield, 1984). The Home Office began to look into the problem of women's fears of violence 'on the streets'. Community studies in Leeds by Hanmer & Saunders (1984) and in Wandsworth by Radford (1987) found a high incidence of direct experience of violent assaults formed the basis of women's fears. From her research on cases of domestic violence against women handled by two London police stations in 1985, Susan Edwards estimated that the Metropolitan police received about 60,000 calls per year from battered women yet only 2% reached the courts and just 0.2% resulted in a custodial or suspended sentence (Edwards, 1986). A number of events in the 1980s - race riots, experiments in 'community policing', Home Office embarrassment over West Yorkshire police's bumbling approach to the arrest of Peter Sutcliffe, TV exposure of Thames Valley police's 'sensitive' approach to rape cases, etc. - made violence against women a 'policing issue'.

Local campaigns over police involvement in domestic violence, rape and child sexual assault cases together with the local involvement of interested individuals on police consultation committees have brought experimentation with new approaches to cases of violence against women. Some forces, e.g. Manchester, set up 'rape suites', special interview and examination rooms for victims of rape. West Yorkshire police created a special unit staffed by women constables to deal
with cases of violence against women (they did not however include domestic violence against women in their sphere of responsibility but continued to define crimes of violence against women as 'stranger attacks'). The London Metropolitan force set up two working parties to look at rape and domestic violence in 1985 and 1986 respectively. Mr Chris Smith, M.P. for Islington South and Finsbury leaked details of the Metropolitan police's confidential report on their dealings with cases of domestic violence against women in November 1986. This revealed that many police officers felt that domestic violence should not be part of their work at all. The Metropolitan force were failing to deal with about 10,000 cases of domestic violence against women per year (The Times, 1986).

In 1987 the Home Office published a booklet entitled 'Violent Crime: Police Advice For Women On How To Reduce The Risks' (Home Office, 1987). Along with the usual advice that women protect themselves from stranger attacks by parking in well lit areas etc. this booklet included, on the very last page, advice for women assaulted by their partners. Many individuals, members of organisations, community groups and members of the 'caring' professions are working on improving links with the police. These initiatives in the criminal law are still very much in their infancies so no conclusions can yet be made as to their impact upon the legal approach to cases of domestic violence against women.

The last of the five aims of the Women's Aid Federation England is:
to educate and inform the public, their media, the police, the courts, social services, and other authorities with respect to the battering of women, mindful of the fact that this is the result of the general position of women in our society.

(National Women's Aid Federation, 1977.)

It is now 135 years since the Act For The Better Prevention And Punishment Of Aggravated Assaults Upon Women And Children. In the past 135 years women have gained the right to divorce, separate and actually leave violent men and in certain cases, to take their children with them. Women's contributions to childcare, although undervalued, are formally recognised in law when courts make decisions over the division of matrimonial assets. Domestic violence against women is now recognised as a specific category of need for emergency and permanent housing provision. Only an historical study of individual women's lives could show whether or not women's experiences of domestic violence have decreased and their welfare as a result improved over the past 130 years. Prosecutions for aggravated assaults on women and children fell from 800 cases at just one London police court in 1853 to 200 in 1889 (Tomes, 1977) to 1,310 for the whole of England & Wales in 1900, to 512 in 1920-and just 25 by 1967 (see Chapters 2 & 3). A similar pattern of decline is shown for common assaults from 48,149 in England and Wales in 1900 to 32,589 in 1920, to 10,626 in 1962 and 3,551 in 1979 (see Chapters 2, 3 & 4). The decline in prosecution for assault cases has been accompanied by an increased tendency of women use to family law provisions for cases of unreasonable behaviour and violence by a partner.
The shift in consumer use of the legal provisions could lead one to conclude that 135 years of domestic violence legislation has not eradicated the problem but merely mitigated the worst effects by giving women victims some alternatives before a habit of assaults deteriorates so that life is threatened. Husbands violently dragging their wives from public places and beating them in the streets is a less frequent observation than it was 150 years ago, although many will still pass by without flinching when an adult violently assaults a child. When husband and wife were 'one person', the state did not interfere into a man's right to govern and discipline his 'private' kingdom of the family. Domestic violence against women could be publicly witnessed as a husband's 'moderate' correction. The recent cases of wife killing however show that men who strike out in order to discipline 'nagging', 'adulterous' or 'provocative' wives can still have...their acts excused as 'understandable' or 'justified'. Women who go to refuges today show the same wounds and have borne similar cruelties to their battered sisters of 135 years ago. The history of legal changes only partially answers the question as to whether domestic violence against women has declined or merely been made less criminal and increasingly hidden from 'public' view.

Part II will look at the treatment of women's needs in contemporary legal discourse and the relevance of this to the ideological practice of violence against women in the present day.
LAW & DOMESTIC VIOLENCE AGAINST WOMEN.

PART II.

The Representation Of Women Victims' Needs In Socio-Legal Discourse.
Our grandmothers were noted for their comprehensive receipt books on all subjects pertaining to Household Economy. In these days when old fashions have come into force again, and when Parliament is so frequently occupied with domestic matters, we would suggest that "The Complete Statesman," or a list of receipts for the use of both Houses would prove an invaluable manual for the use of inexperienced M.P.s, and budding legislators. We have only space to offer them two receipts taken from the above work.

1. RECEIPT FOR A GOOD ANTI-WOMAN'S SUFFRAGE SPEECH.

Take a profound insight into the intentions of Providence with regard to the sex, a great admiration for the British Constitution, and ditto for the domestic hearth. Add some vaticinations, mis-quotations and compliments to your own female relations. Throw in a sneer about petitions, if they happen to be against your views. A few personalities will also much improve the taste. Mix all together well, so that your antagonists don't exactly know where they are, and garnish with a little coarse pleasantry about the motives of the ladies who are foremost in the work.

The above must be served hot in debate, as when cold in next morning's newspapers it is rather insipid.

2. A GOOD SPEECH TO THROW OUT A MARRIED-WOMAN'S-PROPERTY-AMENDMENT BILL.

Take a tall cousin and set him in the midst for general consideration. Then have ready warm respect for the condition of marriage, in which two become one, and that one the husband. Take feminine incapacity for business, welfare of children, and responsibilities and liabilities of husbands; and arrange these at intervals, keeping the tall cousin well in view. Add texts according to taste. Serve up, to give it a relish, with some Joe Millerisms about the quarrels of married couples.

The above will suit the taste of either House.

(Englishwoman's Review, 1878, June 15.).
Crime is not something which is inherent or inevitable. Crime is quite simply that which is designated by the state to be illegal. In 1876, Susan Anthony was arrested and fined for voting. A twentieth century psychiatrist has since diagnosed her as a masculine, sexually maladjusted woman (Jones, 1980). To the crimonologists, that would explain why she became a criminal but it would not explain why voting for women was an offence. Whether we become prisoners or guards, victims or killers, lies at least as much in society as in ourselves.

Part II concerns the socio-legal adjudication of acceptable and unacceptable behaviour in marriage type relationships and the relevance of this to women's oppression. The law has been chosen as an object of study because of its role alongside the media and academic debate in creating and maintaining symbolic and representational effects. The way in which the law, media and academia differentiates and 'explains' male violence against women is the primary interest. In her discussion of racist murder, Susanne Kappeler showed how laws can be used to 'explain' such crimes and acquit the murderers. It is also possible for courts to penalise
torturers whilst simultaneously supporting their crimes. In racist regimes, even when the murderers are prosecuted, the representation of torture in the courts and press reports perpetuates the crime and torturer's pleasure in its execution (Kappeler, 1986).

By focusing on how the law explains male violence and thereby contributes to women's oppression, the researcher was concerned not to create a recipe for pessimism from a conclusion based upon an over-deterministic vision of law and society. Whilst not denying the gross experience of men's violence in many women's everyday lives, feminist critics have argued that images of women as powerless victims are themselves creations of patriarchy (Jackson & Rushton, 1982). The denial of women's power is an important element in the patriarchal oppression of women. Feminist research can challenge the representation of women as victims by showing that there are alternatives, that women can and do survive and fight back.

This research project was naturally not undertaken in isolation from the theoretical/ideological influences of contemporary social science. Critical legal theory, feminist theory, jurisprudence and the sociology of law have all had an impact upon the assumptions made and the methods employed. The study's aims supported the more general enterprise of critical legal theory. In a paper summarising the recent trends in socio-legal studies Fitzpatrick and Hunt defined the project of critical legal theory as follows:
explor(ing) the manner in which legal doctrine and legal education and practices of legal institutions work to buttress and support a pervasive system of oppressive, inegalitarian relations. Critical theory works to develop radical alternatives, and to explore and debate the role of law in the creation of social, economic and political relations that will advance human emancipation.

(Fitzpatrick & Hunt, 1987, p. 2)

The aims of Part II simply are to:

a. look at women's self-defined needs for legal intervention in situations of domestic violence;

b. examine how these are translated into legal action;

c. explore the contributions of a. & b. to the contemporary socio-legal discourse on domestic violence against women.

d. look at alternatives and ways of empowering women in law.

Language plays a crucial role in legal definition as both the spoken or the written word. In statutes, policy directives and legal texts, language defines the socio-legal relations between men and women. With language lawyers, politicians, victims and defendants are able to name some relationships 'violent.' Anthropologists, linguists and social scientists have examined the importance of language in the law. The socio-linguist O'Barr and his colleagues for instance looked at how specific forms of speech had an impact upon the perceived credibility and truthfulness of witnesses (O'Barr, 1982). Wodak, another socio-linguist, has recently examined how language, and what it was said to reveal about the class status of defendants, contributed to the outcome of cases in a Viennese courtroom dealing
with severe car accidents (Wodak, 1985). Atkinson and Drew applied the conversational analysis of ethnomethodological research to study the structure and organisation of behaviour in court (Atkinson & Drew, 1979). These studies share a common interest in how language expresses power relations - between 'experts' and 'laypersons', members of the 'law' and the 'public'. This is perhaps a moot point to anyone who has ever been to court or seen the language used in legal documents and legal texts. As Melinkoff remarked in 1963:

What better way of preserving a professional monopoly than by locking up your trade secrets in the safe of an unknown tongue.


The legal profession has safeguarded its position of power through the preservation of a precise legal language which is virtually unintelligible to lay persons. Legal language is undoubtedly very wordy, lacking in clarity, pompous and dull. With reference to the long history of conflicts over the language used in law between 'populist' and 'traditionalist' lawyers from Jeremy Bentham in 1776 onwards, O'Barr writes:

Those who argue for the preservation of the non ordinary form of legal language are more concerned with how other legal professionals will interpret the language of the law than they are with whether the public will comprehend it. Much of the courtroom dialogue is addressed 'to the record' (i.e. couched with the potential of an appeals court in mind). Legal documents are prepared according to standard form books - not because these are tried and tested for lay comprehension - but because they ensure a greater ability to predict how the courts
In formulating theoretical objectives and methodological matters, the researcher has drawn heavily from feminist work on language and the oppression of women. I am especially indebted to the work of Gill Seidel of the University of Bradford (see Seidel, 1980; Seidel, 1985a; Seidel, 1985b). The study of socio-legal discourse and domestic violence against women was built upon links with the issues raised in debates on pornography and the objectification of women as victims (see Dworkin, 1981; Kappeler, 1986; Kuhn, 1985). Feminist theorists of language, cultural representations and women's oppression have argued that the objectification of women means the simultaneous subjectification of men (see Dworkin, 1981; Spender, 1980). They have constructed a link between the representations of women (as victims, whores, playthings for men) and the creation and maintenance of male subjectivities based upon their power over women. On my reading of the work in existence few feminists rest their case upon a belief in men's conspiratorial agreement as to the victimisation of women. It is not possible to ignore the fact that as victims women may be variously represented as 'willing', 'aggressive', 'deserving' and so on as well as 'passive' or 'undeserving'.

In a useful overview of the law and the secondary assault of women victims, Klien noted (1981) that what is a 'serious' crime depends upon the relationship between victim and offender. The socially
determined gravity of an assault and the legal response to it would vary as to whether it involved a man attacking the Prime Minister, a youth 'mugging' a city commuter, a motorist assaulting a policeman, a member of the SAS killing a 'terrorist', a stranger' raping an elderly woman, a husband raping his wife, a 'client' raping a prostitute. In 1978, Russell and Rebecca Dobash argued that wives were 'appropriate' victims for domestic violence (Dobash & Dobash, 1978). Feminists have recently suggested that men's violent control of women's sexuality is an essential element in women's oppression (Barry, 1979; MacKinnon, 1982; MacKinnon, 1983). In 1984, London Rape Crisis Centre parodied police advice for women on how to avoid attacks into the following list of directives on how to avoid rape:

DON'T GO OUT WITHOUT CLOTHES - that encourages some men.
DON'T GO OUT WITH CLOTHES - any clothes will encourage some men.
DON'T GO OUT ALONE AT NIGHT - that encourages men.
DON'T GO OUT ALONE AT ANY TIME - any situation encourages some men.
DON'T GO OUT WITH A FEMALE FRIEND - some men are encouraged by numbers.
DON'T GO OUT WITH A MALE FRIEND - some male friends are capable of rape.
DON'T STAY AT HOME - intruders and relatives can both rape.
AVOID CHILDHOOD - some rapists are 'turned on' by little girls.
AVOID OLD AGE - some rapists prefer aged women.
DON'T HAVE A FATHER, GRANDFATHER, UNCLE OR BROTHER - these are relatives who most often rape young women.
DON'T HAVE NEIGHBOURS - these often rape women.
DON'T MARRY - rape is legal within marriage.
To be quite sure - DON'T EXIST.

(London Rape Crisis Centre, 1984).

Crimes against women can be legitimated just because the victims are women (see also Bland, 1984; Hollway, 1981).
Assumptions.

The methods employed in the research were based on the following assumptions about the nature of violence against women, language and the law:

Assumption 1: Domestic violence against women is linked to other violent assaults which women experience. Domestic violence, rape, sexual assault, sexual harassment, forced prostitution, incest and pornography are some of the varied strategies used by men to maintain, by force, violence or its threat, control of women's bodies and the institution of heterosexuality.

Assumption 2: Bias towards women's definitions of violence and abuse. Research has shown how crimes of violence against women and children are largely 'hidden' crimes (Dobash & Dobash, 1980; Hanmer & Saunders, 1984; Radford, 1987; Russell, 1982; Rush, 1980). There is a mismatch between what the law calls a 'crime' and women's experiences of violent assault (Kelly, 1987; Stanko, 1985). The definition of rape in law, (already mentioned in the discussion of the Morgan & Pigg cases) provides a clear example. This could be precised as the penetration of the penis into an adult female's vagina in disregard of her consent. This precised definition does not cover most of the cases of rape in marriage, which Russell's research has shown to be very prevalent (Russell, 1982). Furthermore for cases outside marriage, the assault on the victim remains even if a court decides
the offender did not commit rape because he thought she had consented. Because definitions of violent crimes are limited women can experience assaults which they are unable to categorise as 'crimes', 'rapes' which are 'like rape' but not 'proper rape' because the aggressor is an intimate who forces intercourse.

Assumption 3: Women as victims are not absent from the law.

Lord Denning's well known dicta from the 1950s that woman is: "the spoilt darling of the law and man the patient packhorse", (quoted in Smart, 1984, p.29) indicates that women are certainly not ignored by the law. Since the 19th century there has been a thriving industry amongst 'experts' to study and produce books about women. As Part I showed, women in law are more often victims than offenders, but their victimisation has often been at the forefront of reformist debates.

Assumption 4: The law is not a unified system or corporate body through which lawmakers/governments issue commands or directives. Functionalist visions of the law steered by a collective spirit or unity of wills and conceptualisations of law as a command have been rejected as unnecessarily simplistic thus not useful for explanatory purposes. The law here is seen simply as a process of definition.

Assumption 5: The definition of legal problems and their outcomes does not take place in a politically aseptic space. Professionals in the legal process have institutional sites and their own shared
'cultures' producing and maintaining values, concepts and even language. Legal institutions are male dominated, hierarchical realms of 'experts'. The government could be defined as a 'supreme speaker'. Language is one of the primary arenas in which meanings are constructed. In legal discourse some individuals are speakers and some are silent. What is left unsaid may be outside the terms of reference and made into an irrelevant consideration. It is necessary to look at who is silenced in law and how.

For writers such as Dale Spender (1980) and Robin Lakoff (1975) men's use of language to silence women is crucial. Robin Lakoff (1975) put forward the idea of a 'women's language' to explain why and how women are silenced by men. Her claims that women speak differently from men was based on her detection of their higher frequency use of:

1. hedges and bordering statements, using terms such as 'it seems like' or 'I guess I might'.
2. (super) polite forms such as 'if you don't mind', 'I'd really appreciate it'.
3. tag questions such as 'It is alright, isn't it?', which suggest a need for approval.
4. speaking in italics by using words like 'very' to accentuate or underline.
5. empty adjectives such as 'divine', 'enchanting', 'lovely', etc.
6. hyper-correct grammar and pronunciation.
7. lack of sense of humour (by this Lakoff means women miss the
point of jokes).

8. direct quotation rather than paraphrase.

9. special lexicon such as using 'magenta' to refer to a colour, a word supposedly never used by men.

10. question intonation in declarative contexts, i.e. phrasing answers to questions as questions e.g. answering 'About 3 'o'clock ?' to the question 'What time are you going out ?'

Cameron (1985) takes issue with Lakoff's conclusions about sex specific differences in language. In reference to tag questions she notes that i. women do not use more tag questions than men; ii. even if they did, it would not necessarily mean they were seeking approval since tag questions have a range of uses. Taken out of context a tag question is meaningless. The tag question '(It is alright), isn't it ?' could represent the speaker's desire for approval but it might also be used by one demanding deference or by somebody trying to coerce the listener into expressing agreement; iii. women's use of tag questions will always be explained differently from men's, since it is cultural sex stereotypes which determine the explanation of linguistic phenomena, rather than the nature of phenomena themselves (see Cameron, 1985, pp.28-56).

Subsequent work has found that both men and women use 'women's language' and, in courts, the main factors determining its use are class status and previous experience of the courtroom. O'Barr for example renamed women's language 'powerless language', women being
more prone to its use only because they are most often found in less powerful positions in society (O'Barr, 1982).

Verbal force and the denigration of what women say as less important formed the central concern of Dale Spender's book *Man Made Language* (1980). Spender also examined sexual differences in language use by observing discussion in mixed groups. Although her methods were rather impressionistic, Spender raised some interesting points about how men and women interact in academic discussion. She argued that men in academic groups did more talking and more interrupting than did women. Broadening her discussion beyond speech differences to the realm of socially relevant meanings, Spender claimed that men's control of meaning (historically created and maintained by their domination of the institutional sites of knowledge production) means that women's experiences (e.g. of matters such as sexual violence) are alienated from their expression in language. She concluded that women's use of language is limited to either agreeing with men (speaking like men and using their meanings) or remaining silent. Applying this analysis of language and power to the case of violence against women leads to the conclusion that women's experiences as victims are either hidden (as women are 'silenced') or represented in a way approved by the male monopoly of meaning (representations of violence are 'alienated' from women's true experiences).

Susanne Kappeler's work on pornography puts forward a similar conclusion:
as the authors of culture, men assume the voice, compose the picture, write the story, for themselves and other men, and about women.

(Kappeler, 1986, p.57).

Spender and Kappeler note that women are not 'silent' because they are apolitical or lack the impetus to contest meanings. The existence of feminist movements are proof that women do encode meanings based upon their own experience with which to challenge patriarchy, to such a degree that state violence is used to silence them (see Morrell, 1981).

Assumption 6: The process of definition is interactional and relational. Men do not have unchallengeable control over meanings as these cannot be 'fixed' if created through interaction. The emphasis in the following discussion will be upon the relational creation of meanings through analogies, discontinuities and differences in discourse. Discourse can be defined simply as the framework within which explanations are sought. More formally, the working definition of discourse used here refers to a linguistic unity or group of statements, constituting and delimiting a specific area of concern, governed by its own rules of formation with its own modes of distinguishing truth from falsity. Part II will look at the representation of women's self defined needs from the grass roots level in the solicitor's office upwards through the legal hierarchy. Legal texts are treated as representations of domestic violence against women. News reports, academic and feminist analyses will be
similarly examined as statements on the subject of domestic violence against women.

**Methods.**

Information was drawn from three 'levels' of interaction, reflecting varying degrees of the abstraction of experience, strategy and text. Strategic and experiential sources were limited to the information which could be obtained on pre-trial and trial procedures. The survey devotes more attention to the written rather than spoken word because women who attended court said very little so it did not seem necessary to try to persuade more to allow observation of their cases in solicitors and the court. Originally the intention had been to limit the study purely to textual representations. Through the Department of Applied Social Studies, access to county court cases was requested from the Lord Chancellor's Department. The timing for the request was unfortunate in that the Lord Chancellor's Department was about to embark upon its own review of civil justice, the Booth Committee was at work on related issues and the conciliatory wave had amplified sensitivity over the confidentiality of court records. Two other researchers at the time had just been refused access to court records. Correspondence passed between the University Department and the Lord Chancellor's Department for eight months. A number of our letters were totally ignored. When the final decision

* Carol Smart and Margaret Southwell.
was given to refuse access no reasons for this were provided and a further three letters had to be written before the Department admitted any. Access to records had been refused because of: unnecessary disruption to court staff (this later seemed an unjustified conclusion because when working on statistical records at Court A the Court Clerk urged me to take the research further and ask the Lord Chancellor for access to their case records!); the research not being in the 'public interest' because it concerned domestic violence against women; the research not being in the government's interest; the research not being in the Lord Chancellor's interest; the methods of research not being sufficiently 'objective' i.e. statistical.

Borkowski, Murch and Walker obtained access to solicitors' records on a DHSS funded project (Borkowski, Murch & Walker, 1983). Getting access to these for an independent research project is much more difficult. The restrictions solicitors had to impose to protect client confidentiality made Margaret Southwell's study difficult (see Southwell, 1985). Because of their responsibilities to clients, direct access to case records for research purposes cannot be offered by solicitors themselves. Access can only be obtained by contacting clients for their permission or by solicitors themselves drawing out information from the cases on the researcher's behalf. For the present study, neither option was viable because of the inordinate demands that would have been made on solicitors' time.
The decision to go directly to women involved in cases was not made until after other access routes had been explored. As it turned out, this approach gave far more insight into the development of cases and the pattern of women's use of the law than could be gained from the court survey.

The primary sources of information for the research in Part II were therefore:

1. interviews with women to discover how they defined their needs and experiences of the legal process.
2. a survey of women's case records obtained with their help from their solicitors.
3. 'back up' interviews with solicitors and advisers.
4. reported decisions, points of law/principle which may or may not affect directly women involved in the case in question.
5. newspaper reports of cases of husband-wife homicide and assaults collected between the years 1983-1986.
6. theoretical discussions of the problem of domestic violence against women in academic and feminist publications.

The Survey On Women's Experiences Of The Legal Process.

The qualitative nature of this part of the research project cannot be overstressed. It involved a survey of 20 women with experience of
54 legal cases, supplemented by interviews with 6 legal advisors. The relationship of the survey to the rest of the research study and the method of 'data' collection and analysis had a profound impact on the sample size. So much has been said recently on the topic of 'objectivity' in social science and the 'safety in numbers' approach to sociological surveys (see Bell & Encel, 1979) that there will be no attempt to repeat these issues here. Like other critics of orthodox methodologies, feminist researchers have challenged the view of sociological research as a one way process of 'fact' acquisition and criticised the ignorance of power relations by those using established survey techniques (see Currie & Kazi, 1987; Graham, 1983; Roberts, 1981; Stanley & Wise, 1983). There are problems for feminists who use the social survey because of the 19th century assumptions which formed the basis of its value as a research technique (Graham, 1983). Instead of being impartial or objective tools of research, surveys based upon interviews or questionnaires are always political, and sometimes unethical and exploitative. Domestic violence research raises particularly acute problems for the politics and ethics of feminist research (see Kelly, 1984; Stanko, 1987 and discussion in Chapter 9). For example, are interviewees who volunteer truly willing to cooperate if they are women living in refuges? How are women's urgent needs to keep their whereabouts and identities secret to be reconciled with putting their experiences into print? Unless the researcher resorts to 'hit and run' tactics of research (Stanko, 1987), it is impossible to retain an objectively 'pure' detachment during the interview. In an effort to curb some
of the more abusive aspects of sociological research the project aimed to conform to the following ideals:

1. Non-coercive selection of a sample:
The researcher tried to minimalise the coercive aspects of surveying by offering women choice and some control over the situation. In the USA Diana Russell had used a $10 payment for women who responded to her survey as a non-coercive method of obtaining a response (see Russell, 1982). As this option is not available to researchers supported by ESRC grants, a volunteer method was chosen instead of recruitment from known victim 'populations' as in refuges. It was hoped also that advertising for volunteers might give a greater chance to contact women not already 'labelled' members of the victim population. The twenty women were contacted through personal contact and introduction, advertising through women's groups and in the National press (only one woman responded to a newspaper advertisement which cost almost £30!). Methodological purists would not call the 20 women a 'representative sample', and no claims will be made in that respect when discussing the data. The women were exceptional by the very fact of their being volunteers. They were more likely to be articulate by identifying themselves as able to codify their responses to fit the questions covered.

The second element of choice was the option to take part in a postal, telephone or personal (i.e. face to face) survey. Questionnaires were shown or sent to women first so that they would know what
questions and topics were to be covered. (A copy of the questionnaire used can be found in the Appendix.) All but three opted for a personal interview. These three preferred the anonymity of a telephone and postal survey. Those who opted for a personal interview were given the choice of location so that their privacy of identity could be ensured if, for example, they wanted to keep personal information such as addresses secret. No names or other identifying details were recorded and only the residential region of the country at the time of interview or the assaults was noted. On completing the interview, the women were asked if they would like to read through the transcripts and were given the opportunity to correct any points. Six women agreed to provide copies of case records from solicitors and they were also asked if they would like to examine these before finally deciding whether these were to be included in the project.

Re-reading the transcripts and case studies inevitably meant the women needed further interviews. Interviewing was a lengthy process, times varied from 2 1/2 to 12 hours per woman. Fourteen case records were photocopied in the solicitor's office always with the woman concerned present. (One woman allowed an affidavit to be read in her home, this making up the full compliment of 15 cases discussed in Chapter 6.) The copy kept for research purposes had all the names, addresses and identifying material deleted. The preservation of women's privacy was seen to be another important component of non-coercive research. Although some extracts from
case records and interviews have been reproduced to illustrate certain points in the next two chapters, all the identifying features have been changed. Extracts were selected to be as general as possible to safeguard the anonymity of the women volunteers.

2. Appropriate priorities:

Women's needs were an obvious priority. Before making contact with potential interviewees, the researcher felt obliged to find out appropriate referral agencies for women who may have needed advice/assistance. It was assumed that the researcher would have to be prepared to go beyond the 'sensitive' approach to personal involvement in some cases.

Personal involvement was inescapable during the interviewing and priorities had to undergo some painful re-evaluation. Talking about experiences of male violence is a painful matter for women. It can revive memories of an abusive relationship and bring back feelings of guilt, anger and victimisation (see Kelly, 1984). The 'public awareness' of domestic violence against women seldom takes account of the psychological effects of battering. In fact research on this subject has sometimes been most unhelpful in providing any understanding as to the actual effects on women's self-images (see Wilson, 1983). Some feminists have drawn an analogy between domestic battery and the torturer's relationship with his victim (see e.g. Dworkin, 1981; Russell, 1982). This analogy suggests that it is not the act or series of acts of violence or deprivations which are
significant in situations of domestic violence against women but the torturer's use in a power relationship of a variety of physical, sexual or mental strategies designed to control, belittle or humiliate his victim. Torture can alternate with affection, criticism with praise, deprivation with abundance, overtures of love with expressions of hate.

Some of the women interviewed complained, 'I can't believe that was me'. Being untrained in psychology, the researcher could only apply the 'common sense' interpretation that it was as if they had remembered the physical, sexual and other cruelties they had experienced but partially forgotten the psychological effects. If it is difficult during victimisation for women to express their true feelings it is even more likely that finding the words to describe the experience later on will be difficult. As it is not easy for a person experiencing a commonplace complaint such as toothache to express how they feel the problems women victims of domestic violence have are entirely understandable. With a crime that 'should not happen' victims may feel confused and unsure about their own evaluations of the events.

Kelly has pointed out how both researchers and those researched are involved in the phenomena of forgetting, minimalising and remembering experiences of victimisation (see Kelly, 1987). My own experience confirmed this finding. Whilst doing the research I found it impossible to divorce my own feelings and experience from what I
heard from the women surveyed. The forgetting, minimalising and remembering experience is qualitatively different to what social scientists call 'reflexivity'. Although I had not been battered by the man with whom I lived I had experiences of victimisation by men which were suddenly remembered along with their associated feelings of guilt. For instance, I remembered when I was 13 years old, I accepted a lift in the car of an elderly man who lived along the road from my home. During the car journey, this man kept offering to buy me sweets and to give me cream cakes for tea if I would agree to go to his house with him. At one stage he offered me money. He kept putting his arm around me while he was driving along and he touched me on the breast and crutch. He said I was a 'pretty girl'. I do not think I was frightened of him although I remember briefly thinking he might be like the 'Moors murderers' and I had to jump out of his moving car to escape because he would not stop. I felt more confused and ashamed than fearful. He kept talking about my mini skirt and silver shoes saying things like how nice the new fashions were, did my mother mind me going out 'like that' and was I a 'modern girl'. My appearance had been a matter of some dispute with my father. He said I always looked like a 'tramp' or 'cheap' because I had started to wear make up, short skirts and gaudy accessories, as was the fashion at the time. Somebody told the police and the policewoman who interviewed me reinforced my feelings that either I had misunderstood the event (he was being 'friendly' not sexually abusive) or had invited his advances by looking like a 'tramp'. News of the assault spread quickly in the neighbourhood as I lived in a
small Hampshire village where a visit from the police was a rare event. My mother heard that the man concerned (who was a popular figure in the local pub) had told 'everybody' that I had made false i.e. phantasised accusations. It was not until I had talked about this event with other women that I could begin to overcome the feelings of shame and guilt that were revived with its memory all those years later. The process of curing oneself is much more complicated if, as for the women in the survey, the victimisation has been part of an intimate relationship.

It is impossible to describe accurately the feeling of powerlessness the remembering process created for the researcher. Feelings of paranoia, anger and self-doubt were experienced alternately and the whole value of the project and its priorities called into question. I was sorely distressed at my own naivety in becoming involved in research which at the time seemed to do no more than cause women pain. As interviewing took place on a one to one basis I felt a great pressure to 'say the right things' and always felt inadequate to do so. The whole experience caused tremendous self-doubt. The reasons for my involvement in the self-centred task of academic research seemed poor justification for the distress caused. I felt that I was the torturer by bringing back women's memories of abusive relationships and guilt. Having no confidence in my ability to do the work or complete it with the responsibility it deserved, I had several crises when the only solution seemed to be giving up. In the end it was the will power and friendship of the women who helped
with the survey that kept me and the project going. If battery is about controlling women and making them powerless, then the women who survive, including those who are able to come for interviews, will have started to rebuild their strength and selfrespect. Eventually it was understood that remembering victimisation is painful but it can be overcome and might ultimately be turned into a source of empowerment (see Kelly, 1985; Stanko, 1985).

4. Fair representation:

In 1976 Elizabeth Wilson wrote a pamphlet for the National Women's Aid Federation describing the inadequacies of the current body of research (Wilson, 1976). In this she criticised Dr J. Gayford's publication of an article in The Welfare Officer magazine where he described battered women according to a typology, using vulgar, derogatory and titilatory namesakes (Wilson, 1976). Academic research usually takes much greater care over the representation of survey evidence, due to the requirements of objectivity. Because all research is political and subjective however no representation in this medium can ever be totally 'fair'. The researcher was loathe to rely upon her own (unquestioned?) subjectivity for the interpretation, analysis and presentation of information from the research. Searching through published research for help however provided little guidance. Qualitative work only rarely includes any discussion of how the data was analysed and what were taken to be 'useful' extracts for reproduction in the final report. Many researchers would be able to justify their lack of discussion of analytical
techniques on the grounds that they never intended to be 'scientific' anyway. Research is personal and fundamentally biased. But without some self-analysis surely there is potential for subjective factors in qualitative research to further 'silence' women (Graham, 1983). The researcher attempted to control this tendency by use of the ethnographer's techniques of hypothesis testing, where there is an emphasis upon questioning conclusions and searching for negative incidences.

The questionnaire used in the survey was designed to include a broad range of 'behaviour' cases and to take into account the possibility of women changing solicitors, shifting from one remedy (e.g. injunction to divorce) to another, cases being dropped or lying dormant to be revived later. This gave the questionnaire a lengthy appearance although women who had been involved in just one case were able to bypass most of the questions. When asking for volunteers the researcher included women involved in one or more of the following cases at any time between 1969 and 1985:

- a DIVORCE where cruelty was alleged.
- a DIVORCE where unreasonable behaviour was alleged.
- a DIVORCE in first 3 years of marriage on the ground of exceptional depravity.
- a JUDICIAL SEPARATION where cruelty was alleged.
- a JUDICIAL SEPARATION where unreasonable behaviour was alleged.
an INJUNCTION as part of a divorce OR under the Domestic Violence and Matrimonial Proceedings Act OR the under the Domestic Proceedings (Magistrates Courts) Act.

an order for occupation under the MATRIMONIAL HOMES ACTS.

a claim for DAMAGES FOR ASSAULT (as a civil case or to the Criminal Injuries Compensation Board) as a result of an assault by a husband, ex-husband, cohabiting or ex-cohabitant manfriend.

any other CRIMINAL or SEXUAL ASSAULT by a husband, ex-husband cohabiting or ex-cohabitant manfriend.

It is likely some cases such as actions for trespass, were excluded. By listing specific cases the researcher rather optimistically assumed that most women would know what sort of cases they had been involved in. Whilst this was generally true for women with a lot of experience of the legal process others were not at all sure. For example, they were able to say they had been involved in an injunction but did not know which sort or even whether it was brought before a magistrate or judge. For these cases it was fortunate that information the women gave on the dates and areas in the survey allowed the researcher to work out whether the injunctions had been heard at the County Courts or magistrates' courts. Although it would have been simpler to just appeal for women who had contacted a solicitor, magistrate, judge or the police for legal help/advice regards a husband or cohabitee's behaviour the listing of specific cases was in the end more fruitful. Women identified with 'key words' like 'divorce', 'injunction' and 'assault' rather than with the more general request concerning a partner's behaviour. It is possible that this feature of self-identification
is linked to the forgetting-remembering-minimalising process of survivors. Although none were traced, the listing of specific cases would not have excluded cases where a woman was involved solely because the husband had alleged her unacceptable behaviour.

The use of the questionnaire in the survey varied from a completely structured approach (as in the postal survey - only four women used the questionnaire this way and one provided supplementary information by telephone interview), to a semi-structured approach where the questions were used as prompts and for ordering the interview but the interviewee was allowed to deviate as much as desired (ten women), to an approach verging on the unstructured where, after the first few questions a good 'rapport' allowed the women to direct the structure of the interview (six women). Notes were taken during the interviews and women asked to read these and given the opportunity to correct any points. The back up interviews with solicitors and legal advisors were unstructured and notes were taken.

Textual Data.

The textual data included the case records, reported decisions, newspaper reports, theoretical and feminist writings. Because of the complexity of the textual data the work was experimental rather than founded upon tried or tested methods. A variety of techniques were borrowed from other discussions especially from socio-linguistic
discourse analysis. O'Barr's work has urged that attention be given to the inter-relationship of 'form' and 'content' in legal discourse (O'Barr, 1982). Form comprises the taken for granted, almost ritual, aspects of communication, the presentational style which may be vital to the outcome of the case. If the legal process is seen as one of interactive definition, the relevance of the socio-linguistic 'form' and 'content' to the creation of meanings cannot be ignored. An examination of stylistics however has its limitations. Style is similarly contextual, open to reinterpretation and challengeable. The technique employed here has been especially influenced by a reading of the Foucauldian techniques employed in the analysis of the trial literature concerning the mass murderer Pierre Riviere (Foucault, 1978), the concepts of agency and transition used by the socio-linguists Halliday (1978), Fowler et al (1979) & Trew (1979) and the emphasis upon coercion in discourse employed in the work of Seidel (1985a).

Analysis of the legal material posed the greatest problem because of the complexity of legal texts. Some work had recently been published by Murphy and Rawlings on the reported decisions of the House of Lords (Murphy & Rawlings, 1981 & 1982). This involved an analysis of the legitimations and rationalisations used in the texts and the way in which they were held together as 'units'. In common with this approach, the researcher had no interest in categorising 'legal rules' applied for the interpretation of cases of domestic violence against women. As law and society are inextricably linked
cases will reflect the non-legal practices and subjective beliefs of those involved more than any 'rules' or legal precedents. The experimental analysis used here involved recording the following information from the texts:

1. Precising the text as a narrative:
This was a matter of practical convenience to allow notes on the analysis to be kept separate from the texts without having to always refer back to discover what a case was about.

2. An investigation into how authors/speakers established their legitimacy to be involved in cases and the status of their claims, how they rationalised arguments and structured meanings in the text. Here the stylistics of socio-linguists had some relevance, as well as the techniques employed by Murphy and Rawlings (1981 & 1982) when looking at how speakers established their status by allying themselves to or isolating themselves from other points of view and establishing which matters were legitimate or relevant for consideration. For example, a judge could establish his competence to intervene in the legal text by pointing out the consequences e.g. by arguing that if the court does not intervene then hardship could result. Legitimacy could be established by reference to the court's teaching/disciplinary role, e.g. by noting a case concerns the admissibility of evidence in magistrates' courts. Or legitimacy could be autocratically asserted, for example by a judge forcefully
yet vaguely concluding, 'in my opinion the conclusion should never have been reached'.

3. Recording the language used in reference to behaviour. This involved noting four features: a. the descriptions of relationships (e.g. 'parents strongly emotionally involved'); b. the creation of imagery and use of metaphor (e.g. 'the couple were at war'); c. the importance of behaviour to the main 'issues' of the case, i.e. whether the behaviour was referred to as 'proof' for a previous case, whether it was relevant to the outcome of a related case, whether it was in immediate dispute as a fact in a present case, etc.; d. the differences in the descriptions of behaviour given by various 'authors' in the text, e.g. whether by a doctor or judge, wife or husband etc.

4. Recording disputes and ambiguities in the text. Noting for example struggles over meanings between counsels, wife and husband, psychiatrists and prosecutors etc. The socio-linguist Danet has argued that shifts in the use of words from e.g. 'fetus' to 'baby' can reflect successive transformations of 'reality' in the evolution of court cases (Danet, 1980).

5. The following information was tabulated for each text analysed:
   a. The actors involved in the text according to allegiances, e.g. the wife, her counsel, judge, husband etc. as For the Wife, For the Husband, Arbitrator, Expert and Allegiance Unknown. If actors in the
texts were described on the basis of multiple allegiances they were counted as multiple actors (e.g. the same doctor's evidence used to legitimate husband's and wife's case).

b. the visibility of the actors, whether the text included their claims by reference to them as speaking subjects, by removing them from active participation in the text by putting forward their claims as already said or not mentioning their claims at all (unsaid).

c. the 'truths' offered by relevant actors, for example the wife's counsel may have argued that a prior case had erred because it failed to take into account the doctor's evidence.

d. the use of active and passive language, transactive and non-transactive clauses to construct agencies as in Trew's work. Trew's approach involves basically looking at who does what to whom and whether language is used to establish direct relationships between active or passive agents/victims (see Trew, 1979). Later discussion will show that some of Trew's conclusions regards activity and passivity in discourse did not fit well with the analysis of legal texts because of the interweaving of active and passive states which takes place in these inherently ambiguous documents.

e. the outcome of the case/narrative (if any) e.g. who won or lost an appeal.

f. the reporter e.g. barrister, newspaper reporter/edition, author.

The analysis of textual material was a very lengthy process. The discussion of how the information was organised for this study is not intended to be in any sense prescriptive or scientific. Because
of the range and complexity of the material, the methods employed had to be adaptive and to some extent experimental. By clearly describing the methods employed and assumptions made it is hoped that the foundation for further work will be provided.
CHAPTER SIX.

On The Creation Of Legal Cases - Women's Experiences Of The Legal System.

Introduction.

This chapter describes: a. the interview data collected on women's experiences when seeking legal advice or assistance; b. the data obtained from the accounts of the legal process offered by legal advisors; c. the evidence obtained from case records.

The aims of Chapter 6 are to:

1. look at how women described their partners' behaviour and the grievances attributed to their relationships;
2. offer their explanations about how or why they became involved in the legal case in the first place;
3. enquire into the relevance of the legal strategy for the fulfillment of their needs at the time;
4. briefly examine the procedural and interactive features of the cases and their affect on the outcomes of cases. This will involve a discussion of the interviewees' descriptions of the coercive and the partisan features of the legal process and of matters like whether the legal process provided them with an adequate opportunity to state their grievances. The women's complaints about the
Intimidating practices sometimes associated with legal cases will be discussed as well as more positive matters such as how they defined 'good' solicitors;

5. look at how the women's grievances were transformed into the descriptions of conduct offered to the courts or particularised in legal documents;

6. examine 'appropriate' conduct for legal consideration and rationales for these.

The discussion of women's opinions on proposals for further reform and their own recommendations will be included in the last chapter of this section.

The Women Who Helped With The Survey And How They Became Involved With The Law.

Twenty women were surveyed who had experience of 54 legal cases, 32 dealt with in Court Area A (this was heavily skewed by the experience of one woman involved in cases prior to domestic violence and divorce law reform who had had a total of 13 separation orders from magistrates plus 2 criminal cases and a divorce), 9 in Court Area B and 13 in Area C. The 54 cases included: 20 divorce cases (4 on cruelty grounds, one brought on the basis of adultery and another on the fact of two years separation because the behaviour was not considered severe enough for cruelty/behaviour petitions, 14 unreasonable behaviour cases one including a matrimonial injunction);
10 injunctions (all brought under the Domestic Violence and Matrimonial Proceedings Act 1976); 1 damages action with a non-molestation order attached; 15 magistrates orders (13 separation orders on the ground of cruelty plus 2 on the basis of unreasonable behaviour); 8 cases of criminal assault.

As the survey was of a qualitative nature and designed to provide insight into women's experiences of the law it is worth mentioning some features of the sample of women who volunteered for the survey. Areas A and C had been areas for the settlement of immigrants of Asian and Afro-Carribean descent. Only one woman of Asian descent was involved in the survey and she was a resident of Area B. It is regrettable that the small sample did not include more black women volunteers. Nineteen of the women were divorced or separated from the men concerned at the time of interview. One woman volunteered for the survey on the basis of a past marriage and then became involved in legal proceedings resulting from her second husband's mental and physical abuse. Three of the women surveyed had only recently separated from their partners and still had contact with them through the access and financial arrangements for their young children. The pressures put on two of these women by their respective partners' use of the contact provided by the arrangements for the children caused them to later resume cohabitation.

Table 26 shows the ages and marital statuses of the women at the time of their initial involvement in each of the 54 cases. The
survey contained more married, divorced or separated women than cohabitees or women who had experienced violence in more casual relationships with men. The ages of the women at the time of the survey varied from 19 years old to 62 years old. 68.5% (37) of the legal cases concerned women aged between 25-35 years. The age distribution compares favourably with existing research into refuge populations which show that the three most characteristic stages in the 'life cycle' for women to leave violent men occur before children are born or any further commitments made (i.e. more or less immediately); when children begin to notice the violence and be affected by it; and when the children are independent or have left home (see Binney, Harkell & Nixon, 1981; Homer, Leonard & Taylor, 1984; Pahl, 1978).

**TABLE 26 : Ages & Marital Statuses Of Women In Cases Surveyed.**

<table>
<thead>
<tr>
<th>Age</th>
<th>Married</th>
<th>Cohabiting</th>
<th>Single</th>
<th>Divorced/Sepd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 25</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>25-35</td>
<td>13</td>
<td>6</td>
<td>-</td>
<td>18</td>
</tr>
<tr>
<td>35-45</td>
<td>7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>45+</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>26</td>
<td>7</td>
<td>2</td>
<td>19</td>
</tr>
</tbody>
</table>

The survey also showed a high proportion of women with dependent children at the time of contact with the legal profession. 89% (48) of the cases researched concerned women with dependent children. Of the remaining 11% (6 cases), 4 concerned women with grown up
children and the remaining 2 women under 25 years old who were childless.

A high proportion of the cases were brought when the women concerned were homeless, 28 occurring when women had left home because of a violent assault or threat by their partners (although this 28 includes the 13 separation orders applied for by one woman). Fifteen cases were brought by women whilst living in owner occupied homes, 9 by women from local authority tenancies and 2 by women sharing accommodation with parents.

The behaviour of partners mentioned by the women as leading up to the decision to apply for legal assistance included two cases where unreasonable behaviour formed the basis of evidence for a divorce but the women said that violence and abuse were not issues. One woman said that she had not been concerned by the husband's behaviour mentioned in her petition and had only included this in order to get a quick divorce. The second woman said that it was the mental effects of her husband treating her like a 'china doll' in a caring yet suffocating relationship that formed the basis of her allegations in the petition. The other 52 cases were the result of a mixture of physical, sexual and mental abuse which the women themselves referred to as 'violence'. The violence differed according to whether it had ill effects or whether it actually threatened life. Eleven women had experienced violence which threatened life. Six women had been
hospitalised as a result of attempts on their lives. The following list gives an indication of the type of behaviour involved:

Mental Cruelty - this was spoken of by 5 women. Two men tried to convince their partners and others that the women were mentally unstable. One man took away his partner's shoes to prevent her from leaving the house. Another took away all his partner's clothes. Humiliating treatment, such as 'sending' a woman seven times to the same shop on a cold night, was often mentioned. One woman was not permitted to sit down at all whilst in her husband's presence. He maintained this 'rule' throughout the woman's pregnancy.

Behaviour which was unkind, anti-social or coercive was spoken of by most of the women surveyed. This included the man's shouting and swearing (4 women); his going out a lot (2 women); his damage to property (3 women). Four women complained that their partners had treated them as a 'dogsbody'. Meanness with money was spoken of by 8 women. This was always linked to the man's control over money and the woman and child(ren)'s deprivation. One man gambled, others spent on luxury items for themselves (cars, consumer equipment, fashionable clothes) whilst the woman and child(ren) were too poor to eat properly and unable to pay the bills. One woman went hungry during pregnancy whilst her cohabiting partner expropriated the income she earned from two jobs. Another woman - miraculously - survived on the Child Benefit paid for one child (about £7 per week). The man's laziness was often experienced along with his meanness.
with money. Laziness was spoken of by 4 women and connected with their working very hard. Six women spoke of their partner's tendency to humiliate them in public. Drunkenness was spoken of by 9 women. This was always mentioned in relation to the violence associated with drunkenness. It was the men being violently drunk which the women feared. Seven women spoke of their partner's sexual relations with other women. Three women complained of their partners' associations with girls aged just 14 or 15 years. His jealousy or constant accusations about 'other men' was spoken of by 7 women.

Attacks and Injuries.
Five women described the behaviour mainly in terms of its effects upon them, i.e. causing distress, worry and nervous problems. The majority however spoke of specific events and acts of violence such as punching (12 women); hitting (9 women); kicking (4 women); hitting with heavy objects (3 women - these included an iron and a chair); threats (3 women); being thrown to the floor (1 woman); being grabbed by the hair (2 women); being thrown through a window (one woman); the partner banging her head against the wall (5 women). Three women spoke of having experienced physical imprisonment. One of these three had been locked in her room when the man went out or had company. He even enlisted a friend to guard her door. The man's use of sexual violence was spoken of by 6 women. These assaults included rapes with threats of violence to the woman or to others, a rape by drugging the woman so that she was insensible but
not unconscious, a rape one week after an abortion. Two of the women had suffered the most horrible anal and vaginal assaults.

These specific acts resulted in the following injuries to the women - a bleeding nose (1 woman); a broken nose (1 woman); bruising (7 women); a swollen face (2 women); injuries requiring stitches in the face (1 woman); black eyes (8 women); cut lips (1 woman). Kicking and violent assaults during pregnancy were described by 4 women. One woman had miscarried a six month fetus as a result. Two women had had their jaws fractured by their partners and one had to be hospitalised for six weeks with her face wired up. Two women had been knocked unconscious, one had been left unconscious for eleven hours without any medical attention. The survey found life threatening violence had been experienced by a high proportion of the women. The man's attempts to murder them and/or the children were spoken of by 11 women. One woman was attacked with a hammer. Four had been attacked with knives. Three subject to strangulation. Three men had almost killed their partners by vaginal/anal assaults with sharp objects.

Eleven women spoke of their partner's lack of care for or abuse of the children. This behaviour ranged from the men taking no interest in the child(ren)'s welfare, to depriving the child(ren) of adequate maintenance etc., to using violence in front of the child(ren) (sometimes using them as spectators in order to enhance the woman's suffering), to assaults upon the child(ren) as well. One child was
battered and bruised all over his body. One man hospitalised his 10 month old daughter after trying to strangle her for crying. At the age of two this child was tortured in the night by her father forcing her to stand still on one spot without falling asleep or fidgetting.

The list is shocking and distressing and not untypical of the behaviour described in the research of women who visited refuges (Binney, Harkell & Nixon, 1981; Dobash & Dobash, 1980).

Remembering the full extent of the behaviour was a problem for women who had experienced violence some years ago.

I think it is difficult to know how I felt then. Looking back is hard. I have played it down a lot. You forget, to protect yourself, what happened. I have underplayed the violence. The first marriage (1969) was bloody hell. It was so awful.

('Laura', last case 1983).

I would not want to remember it all. I am only doing it because it is important. I have found it devastating recreating the past events. I am shocked by how much I had forgotten (....) I am shocked that one of the acts of violence was when I was six months pregnant (....) and I did not want to make anything of this either at the time. I felt I must have condoned it (....) I blocked off the time when he said he would take my son away and again did not register it when I saw the file.

('Eliza', last case 1977.)

Some of the women gave explanations for their partners' actions. Men who held patriarchal ideas and violence brought on by drink were mentioned the most often (six women for each). The next most
frequent explanation was the men being 'bullies' (4 women). Jealousy was spoken of by 3 women, use of violence to obtain sexual services (2 women), the effects of drug taking, guilt over affairs with other women and use of violence to expropriate money (one woman each).

Why The Women Were Involved With The Law.

The women offered varied reasons as to why they had become involved in the cases in the first place. These have been categorised as follows:

1. Emergency contact - the police were called to prevent further damage or a death; or the solicitor would be contacted by a woman having left home in fear or following an assault. The urgent need to prevent the partner's threatened damage to property was also mentioned.

2. Own initiative - this involved some degree of planning and time for decision making. The woman would contact a solicitor or legal advisor on her own initiative seeking a final settlement such as a divorce or an injunction and/or custody arrangements (for unmarried women).

3. Orders from family/friends/doctor - the women concerned used the word 'orders' rather than the word 'advice' to refer to the pressures put on them by family, friends and, occasionally doctors. These women were experiencing such acute feelings of depression, confusion and low self esteem that they felt unable to make their own
decisions. They had been told daily that they were unable or incapable of making decisions, were reminded by their partners of their 'incompetence' to do 'simple' and 'womanly' tasks such as house and child care. (Recognition of battered women's loss of self-respect after domination and abuse partly explains why WAFE has always stressed the importance of 'self-help' in refuges). Two women in the survey had been taken to see a solicitor by their mothers. Sometimes friends, family and other persons 'in the know' (such as GPs) put whatever pressure they could on the women to end the relationship with legal assistance. This was not always immediately successful:

I saw my GP who advised me to get divorced. She congratulated me when I did. My husband said if I went to the doctor he would say I was mad and take the kids off me. If someone tells you this daily it is a big fear. The doctor knew though. It is difficult to take that advice though. If you feel really ill the advice seems useless. It took me four years to leave. You feel you are on a roundabout and there is no way off. I never went to the solicitor's as I was terrified I would be locked away and lose the kids.

('Karen', last case settled 1981.)

One GP refused to repeat a woman's prescription for tranquilisers on the ground that her husband was the patient in need of medical attention. He also advised the woman to get a divorce instead. Another doctor told a woman that her child would die if she did not leave her partner.
Pressure put on women to 'help themselves' was often extremely naïve, insensitive and counter-productive. An abused woman's close friends and family are also very vulnerable to violence or harassment should her partner suspect their involvement in her leaving home. Assistance to women was quickly withdrawn by family and friends in some cases where they had returned to their partners having previously left. Seven women were unable to turn to their family or friends as a result of their withdrawal of assistance after previous resumptions of cohabitation. Five more never had this option as they were isolated from family and friends. Three interviewees had experience of doctors' attempts to separate children from their father (by urging the woman to leave) being frustrated by social workers' efforts to bring about reconciliations.

4. Chance - this was an element in the police involvement in just two cases. One woman became involved in a criminal charge of grievous bodily harm against her husband because the police accompanied the ambulance which was called at her request. A second woman's imprisonment by her partner was discovered when the police called at the home to arrest him for other criminal activities.

5. Diversion - usually this was a tactic employed by individuals concerned not to involve themselves in the woman's difficulties. This was spoken of especially in respect of the police. Seven of the women spoke of contact with the police and five had experienced diversionary tactics. Diversion was used to channel the women
towards more 'appropriate' remedies such as divorces rather than criminal charges, a judicial separation rather than an injunction.

6. Bureaucratic demands - Part I referred to the possible link between the bureaucratic demands of housing departments and public authorities (for proof of the alleged behaviour/clarification of separate status) and women's use of the law. Five women in the survey had experience of this sort of pressure for legal clarification by local authorities insisting they apply for separation orders, injunctions or final custody settlements. Bureaucratic demands were not mentioned at all in court area A except by the woman who had been involved in the 13 separation orders prior to the 1960s reforms.

7. Welfare needs - these were related to the above. Women sought divorces or property adjustment orders to satisfy their needs for housing or maintenance for themselves and the children.

The women's needs for legal intervention can be summed up as: the need for personal protection from violence, assaults and harassment for themselves, their children, friends or relatives; welfare needs for maintenance, support and housing; the need to have legal proof in a court order; the need to protect property; and lastly, no need. The definition of needs by the women here matches the conclusions of other research (see Binney, Harkell & Nixon, 1981; Dobash & Dobash, 1980; Homer, Leonard & Taylor, 1984).
Twelve cases (involving 11 women and 12 men) represented the only legal remedy attempted by the women (although one of these women had two cases, a matrimonial injunction and a divorce, these were applied for at the same time). The remaining 42 cases were brought by just 9 women. This total is skewed as previously noted by the 13 separation orders and three other cases (total 16) brought by one woman prior to the 1960s reforms. Four out of the remaining 8 women had legal contact for more than one relationship. Making allowances then for second marriages/cohabitations and ignoring temporarily the 16 cases brought by just one woman, attempts to obtain a satisfactory and final legal outcome averaged at 2 to 3 cases per woman. This figure does not include the high number of changes women made from one solicitor to another or from one firm to another to obtain satisfaction for the same one case. Nor does it include the ancillary matters such as custody, access and financial settlements. Some women also had regular contact with the police but did not regard this as contact with the law and were unable to remember the number of times the police visited their homes. The criminal cases in the survey therefore refer to only the small proportion of cases where the police at some stage urged the women to press charges for assault. Seven of the women had experienced a 'graduation' from a failed criminal case to a divorce or an injunction or from an injunction to a divorce (if applicable). Two cases showed a different pattern. One woman tried first to obtain a divorce and failed because of her husband's resistance and determination to defend the petition. Her next contact with the law
concerned an aborted prosecution for criminal assault. After 'talking to' the husband the police urged her not to prosecute him for his attempted strangulation. She finally terminated her relationship by obtaining a judicial separation. The second woman wanted an injunction for immediate protection and did not feel able to make a final decision about her relationship at the time. The solicitor advised her injunctions were 'not much good' and said she should go for a judicial separation instead. This case was abandoned. An injunction was applied for again using a second solicitor but also abandoned as the husband was prosecuted for a criminal assault on his wife and child.

The suggestion that the women experienced a form of legal 'graduation' is supported by the amount of time taken by each woman to obtain relief during an abusive relationship. For five women, legal relief was provided almost immediately. Another two managed to complete proceedings and obtain a divorce in just 6 weeks. For the other 13 women the process of obtaining the legal outcome desired took from one to twelve years. The 'graduation' period was less for women involved with the law following divorce reform and domestic violence legislation. The two women with the most lengthy contact with the legal system regards the behaviour of their partners, 12 years and 9 years, had first contact with the law prior to the 1960s and 1970s reforms. Women with substantial resources however were able to obtain legal relief relatively quickly prior to these reforms. One case heard in 1966 took three months from
start to finish. The variations in the time taken to obtain legal relief were mostly related to material factors in the woman's relationship. Women who succeeded with just one case were either young or those physically able to leave (i.e. not imprisoned by the man), find housing and support for themselves and the children. Other reasons mentioned by the women for their lengthy involvement with the law were difficulties in finding appropriate advice (e.g. finding a 'good' solicitor, getting advice on injunctions) and their partners' persistence in disobeying/ignoring court orders or abusing the law to further their own ends. Some of the women complained bitterly about the ex-husband's/cohabitee's use of the children to continue a legal form of harassment by, for example, applying for variations over access or maintenance arrangements. One husband had tried to convince a magistrate that his wife was 'unfit' to care for the children as she had visited the Greenham Common women's peace camp.

In their discussion of 77 women who had consulted solicitors, Homer, Leonard and Taylor found a high proportion with very lengthy involvement with the law. Of the married women, 20 had their proceedings completed in 12 months, 10 in 13 - 24 months, another 13 took between 2 to over 10 years to reach a conclusion (Homer, Leonard & Taylor, 1984, p.68). The researchers concluded that:

Three main groupings apparently occur: those women who see a solicitor, start legal proceedings and complete without undue delay; those women who because of legal or domestic difficulties, or indecision, complete only after some delay, and
possibly a return visit to the refuge, but without the same period of crisis; those women who may experience several crises in relationships but finally decide to end it.

(Homer, Leonard & Taylor, 1984, p.68.)

Only six women of the 20 surveyed for this study had visited a refuge at some stage. The next section will show however that lengthy involvements with the law were problems for the majority.

The Relevance Of The Law To Need Fulfillment.

For overall satisfaction, the law provided the main remedy for 2 women, a partial remedy for 10, was considered a waste of time by 4 and actually made things worse for four others. Satisfaction was strongly linked to expectations. As one solicitor shrewdly observed:

It is hard to ask women about the value of the legal process because many of them have very high expectations. They think an injunction or a divorce will be the be all and end all and in actual fact they are not. I wonder how many women are told at the start what an injunction means.

(Solicitor, Court Area A.)

If magistrates, judges and solicitors themselves consider injunctions, divorces and other legal remedies as 'the be all and end all' it is hardly surprising many women take the same view and are disappointed. Published research to date has also noted a link between women's expectations about what the law can offer and their satisfaction with cases (see Borkowski, Murch & Walker, 1983; Pahl,
1978). Even women who eventually 'succeed' in settling their legal affairs however may have experienced a number of failures in previous encounters with the law (see Homer, Leonard & Taylor, 1984). Those who contact the police for physical protection in cases of emergency often fail to receive it (Binney, Harkell & Nixon, 1981; Pahl, 1982). Five women in the survey had experienced police use of diversionary tactics although only one expressed the view that the police were biased:

I hate the police. I felt they put the blame on me. They thought I was colluding with my first husband. I felt I had provoked it (...) it was so awful. My face was a real mess yet the police made me feel it was provocation. They made me feel like a prostitute due to his race.

('Laura', last case settled 1983).

One woman said the police had done all they could:

The police did all they could but their hands were tied.

('Una', cases pre-1969).

This woman's experiences with the law were mentioned in Chapter 2 (pages 67 and 86). The police refused to intervene when called out, apart from on the two occasions when very severe assaults took place (one on the children, the second an attempted murder of the woman). The police claimed an inability to intervene as the man held tenancy of the home. They did help, by using their discretionary arrest powers, after the council had arranged a 'technical' eviction of the husband.
The women surveyed qualified condemnation of the police by noting that some were 'good' and some 'bad':

The police wanted to bring a case. The police came to the hospital. It was a broken jaw so could have been GBH. They advised me to bring an injunction. (....) The police were very good. They waited for me to be treated at casualty and saw that I got home OK. (....) The police went to my ex-husband's house and gave him a 'roughing over'. This was two male police officers. There was no comeback over the criminal case though. They urged me to prosecute for a while in the hospital.

('Greta', last case settled 1980).

My husband was convicted for assault. He came to the house and knocked me unconscious. The police convicted him and he got done for ABH. He appealed against the sentence and lost. They asked me in court how I was. I think a lot of their sympathy was racism.

('Laura', last case settled 1983).

The police were more for him than they were for me. They just said, 'Well you must have provoked him into hitting you. You must have provoked him into knocking you around and all the rest of it. (They helped) the very first time when he put me in hospital. They said, 'You have got to get out for your own protection.' And that's the only time they've helped me. And they did go back and get my clothes for me that time. I went back there with four big coppers and that's the only time they've actually taken me out of the house. Before they'd never helped me at all, so maybe I just caught them on a good rota, you know, good policemen.

('Nell', last case settled 1980).

The police were called and they said they could not do anything unless I had an injunction and advised me to get one. (A few months ago) my husband abused and threatened me on the phone but fortunately my father was in the house when he broke in this time. Again the police were phoned but they would not intervene without an injunction. On one occasion he broke into the house and beat me up. The police were called but it took them two hours to arrive on the scene, my husband having been in the house all the time. Again an injunction was recommended. But all the solicitors said I had insufficient
evidence to obtain an injunction even under the Matrimonial Homes Act.

('Harriet', last case settled 1983).

Events and the actions of individuals other than the police played a part in some of the women's dissatisfaction with the law or decision not to continue with a particular case. Police efforts at prosecution, although hardly strong, could be undermined by a woman's treatment in the casualty department for example:

LR: *Have you any complaints about the doctor's behaviour?*

G: Incompetence. The hospital doctor X-rayed my nose. There was a whole queue of people waiting to be X-rayed and the person behind me had a broken nose. He looked in my mouth and said I had a few teeth broken. I could not talk or eat the next morning. I went to my GP, this was a woman GP, she said the jaw was OK. When I went to the dentist he diagnosed the jaw break. (....) They treated everyone like they had been involved in a brawl and this affected my feeling about going through with the prosecution.

LR: *Why was the case dropped?*

G: Two things mostly. I had just got a job and did not want it in the papers. I felt it would damage my reputation. I was so low. I thought it did not happen to middle class professionals. I felt I could have precipitated it. It was years before I realised that it was not my fault. My family knew but I had no friends. All our friends were friends of the marriage. The night of the last assault he had first run over a friend in his car. He did not prosecute the assault either. The third night after the assault my ex-husband attempted suicide. It was a catalogue of nasty incidents and I felt I could not face it.

LR: *How do you feel now about the case being dropped?*

G: I felt he was never punished. I wanted to smash his jaw so he would see how it felt.

('Greta', last case settled 1980).
Emotional pressures on the women were not just aimed at criminal cases. Five other women specifically mentioned emotional pressures, mainly from their partners, including attempted or threatened suicides. Some probation and welfare officers conspired in this by the inappropriate use of reconciling efforts.

The probation officer tried to chat me up. He tried to reconcile me with him and he had assaulted my child. I'd had letters from my husband saying he would change and he sent me threatening letters from prison and I was really scared. I felt he would get me when he came out.

('Laura', last case 1983).

The prison welfare officer tried to keep us together. A man in prison feels depressed and leans on any shoulder. The welfare officer takes his point of view and cannot see the damage he has done to his wife and family. So they try to keep the marriage together. The solicitor told the welfare officer to keep out of the divorce and not to pester me.

('Una', cases pre 1969).

Doctors, family and social workers were also mentioned:

With my second husband my solicitor said I had to get my doctor to give evidence to get an injunction but he did not want to be involved.

('Flo', last case 1986).

I lost my kids to their father. He started refusing access and saying that I was the one who was unfit and violent. His family and my family were all involved in it.

('Amanda', last case 1986).

I was not sure whether I could manage on my own. The social services said I could go back with a supervision order on (the
child) so the injunction case was dropped.

('Ivy', last case 1984).

Although overall she expressed satisfaction with the final outcome to her legal cases, lenient sentencing made things considerably worse for one woman:

He was imprisoned with a man who had killed his wife and received a five year prison sentence. After this he knew he could kill me and get away with it. He was out of prison nine days when he assaulted me again. He attempted to stab me.

('Una', cases pre 1969).

Another woman was terrorised by a cohabitee who had previously received a nine month prison sentence for the attempted murder - with a shotgun - of his first wife:

I got to the station and he found me and forced me into the car. He took me back home and took away my shoes to keep me in the house and stop me from leaving again. He then started being revoltingly nice - offering to buy me chocolates and saying he loved me. It made me feel sick. He had previously been in prison for the attempted murder with a shotgun of his former wife. I could not argue with him because he knew he could do it to me as well. He told me he could.

('Belinda', last case 1986).

Like the police, the women's success rating of solicitors depended upon whether they were 'good' or 'bad' types. Nine of the women mentioned having trouble finding a solicitor who could give them advice of any use.
The law seemed to be stacked against me. My first solicitors were incompetent and they lost my file. It makes me so angry. How could they do that? I had to get a psychiatrist's report to prove that I was OK because he (husband) then alleged my maltreatment of the kids.

('Amanda', last case 1986).

The second solicitor told me I should put up with his violence and abuse. The third solicitor was extremely unsatisfactory. She was a real bitch, a woman with a cold manner and smooth guise who agreed with everything I said but proceeded to ignore all my instructions. I think she lacked the competence to deal with the case as she pressed three times for adjournments and I needed some income to maintain the children and the house had been entirely devoid of furniture when we moved in.

('Harriet', last case 1983).

This problem of finding a solicitor who knew his/her job was also mentioned by lawyers and legal advisors:

I have noticed that many women have contacted three or four solicitors to try and get an injunction and have been told they will have to wait as they are too busy. Where would you go for a solicitor if you were not familiar with the law? I'm not sure where I'd go. I think some of them just tour the streets and end up depressed not being able to find one.

(Solicitor, Court Area A).

'Good' solicitors on the other hand got things done:

I had a woman solicitor when I went to the first solicitors'. I saw a different person each time so I had to repeat myself over and over again. I changed my solicitor and she was very good (....) On the problem with access, his solicitor sent letters to me. She was good. The others had been passing letters from one to the other. And there was pressure about the contents of the home, the furniture. I did not want their bitterness.

('Janine', last case 1980).
Other good qualities were a sympathetic manner, preventing character assassination or defending criticism of the women, speed of work and taking the time to explain things.

He (solicitor) has been working throughout for very little money. He really is exceptional. He dressed down my husband's lawyers when they brought forward their ridiculous charges. Nobody else had ever done that before.

('Harriet', last case 1983.)

Two solicitors (one a man and one a woman) were mentioned as being exceptionally good, involving themselves with the women's problems much more than required by their professional duty. They befriended the women and gave help with things such as finding a job and baby sitting.

The importance of a sympathetic approach was also mentioned in reference to judges:

Judges are not all hard. They can understand you are caring for your kids and can sympathise. I was on steriloids for arthritis and pain killers and anti-depressants. The solicitor asked me to show the magistrate the pills. She knew I had been in hospital. The magistrate was sympathetic and got me a chair. He was genuinely concerned about the illness.

('Janine', last case 1980).

I hit my husband on the head with a brick once and the judge asked about it and said I should have done it in the first 12 months of the marriage. He wished me all the best and said he hoped I would find a decent man.

('Una', pre-1969 cases).
The magistrate actually said he was on my side. He said my husband was a parasite and I should get rid of him. I had always kept the kids and house anyway. But it all falls down to the idea that men 'naturally' support women and children.


The judge listened for about five minutes, then said he'd heard enough and granted me the divorce.

('Flo', last case 1985).

Some women qualified their statements that solicitors were 'good':

The last solicitor helped me get my costs paid. He employed a private investigator and found my ex-husband. This resulted mainly through chance and luck though as he knew my ex-husband's girlfriend, which helped in finding him.

('Eliza', last case 1977).

In some ways he was on my side but he pushed me, for example, to get maintenance and things. He had stereotypical moral views about what men and women should do. It was hard fighting him not to do that.


The solicitor bullied me into talking about the violence to hurry the injunction case along. It reduced me to tears. I knew he had to do it but felt very ashamed.

('Donna', last case 1986).

When visiting a solicitors' practice one day to collect a file with one of the women involved in the survey the researcher was called into his office to discuss whether or not the study concerned professional incompetence. Access was agreed after an assurance to the contrary and a consultation with a senior partner. This concern
must have had some foundation as the interviews found some complaints. Three of the women interviewed felt that there had been some incompetence by their solicitors. Solicitors were held partly to blame for financial loss on divorce:

When I tried for divorce I wanted financial compensation and it did not work. I had three months off work with little sick pay. (....) I wanted an easy divorce and the £1,500 to be settled out of court. He (husband) agreed then changed his mind. My solicitor was crap. It went for a chambers hearing. His solicitor said things were wrong and the magistrate said we would have to come back again. My ex-husband then only offered £500. I got the divorce on the basis of two years' separation. After the experience in the magistrates' court I felt guilty myself and just wanted it over and done with. His solicitor was very good. He scared me to death and said he had lots to ask me in court.

('Greta', last case 1980).

He gave me no advice on the house which had been bought in my name. He told me to leave as I had somewhere to go and my husband stayed in the house for years before I got any money from the house.

('Eliza', last case 1977).

I was called into Mrs (solicitor)'s office to discuss the maintenance one day and told, much to my horror, that I should drop the case because my husband was claiming bankruptcy and a zero income. My husband had threatened me two months previously that, if I should attempt to claim any maintenance, he would write his own letter to pose redundancy and poverty. I warned Mrs (solicitor) about the past threat and expressed my disbelief over my husband's poverty. She lost her temper and told me I must be paranoid. The claim of bankruptcy was not checked out by the solicitor in any way.

The barrister had not even read the affidavits and the case was lost. I eventually dismissed all legal advice and decided to represent myself. It was not until the house had to be sold that I got literally dragged to see another lawyer.

('Harriet', last case 1983).
After the divorce (pre-1969) I lost four homes. I was left with nothing and had to return to work to survive.

('Flo', last case 1985).

Most of the women who had attended court said they had felt powerless and humiliated. This frustrated their attempts to get justice:

When they said I was an awful woman they all agreed. The sympathies are all with the men. They can identify with him. He stands there in his three piece suit and looks very handsome and they all confer, nod and agree that he is such a poor chap. (....) Male lawyers like to treat women as imbeciles at one moment but as highly intelligent at the next, when you should know better. Its a very patriarchal system.

('Harriet', last case 1983).

Even if the outcome of the case was that desired, women felt they had been unnecessarily put on trial themselves. This was very marked for women who had attended court for a divorce prior to the introduction of special procedure:

The law is a humiliation. They all sided with him. I was divorced eventually in 1974. The most awful thing about it is the recurrence of guilt feelings. The whole system is stacked against women. The law seemed like it was a ritual or ceremonial agreement as to how bad a wife I was. My humiliation by my husband was given a legal seal of approval.

('Sally', last case 1974).

I was petrified of going to court. It made me feel a criminal in front of the judge and everybody listening to you. I was worried if I would finally get rid of my husband and was it possible. You felt like a criminal in a witness box, yet all I wanted was to get rid of a man who tried to take my life away.

('Una', last case pre 1969).
I was nervous of being in the courtroom. I felt it was important I was shown in a good light and my character was not under-valued. I wanted it shown he was the 'baddy' not me. It was very important to become divorced so I could start life afresh with him in the background. (The court) was full of men performing like automatons. I knew I had a part to play and was glad when it was over. It was cold and emotionless. Distant. I was aware of a mystique. All the court officers were involved in a ritual which had nothing to do with me. I felt powerless. I knew I had to answer questions. It was remote even though it was your own divorce. I felt it was important though as the last hurdle in separation.

('Eliza', last case 1977).

Although the introduction of special procedure meant that women need not attend court for a divorce case, those with children or those in need of injunctions still had to go to court and recounted similar experiences:

When you go for custody it is all who looks after your kids if you go out. You feel fear that they will take your kids off you. I was in the witness box during the maintenance case from 1.40 p.m. to 4.40 p.m. They went through everything (....) Going into court is like going to the dentist. You feel you are on trial. You feel guilty. How can these people know? A violent marriage is harder to get out of than to get in. You tell the solicitor everything but it is all on one piece of paper in court and you hope they have it right.

('Janine', last case 1982).

The magistrate unnerved me. My ex-husband made me feel uncomfortable. His solicitor looked so cool. The magistrate said nothing to make me feel at ease. He questioned my solicitor and I got a feeling of disapproval and disbelief. I felt they were all on my husband's side. The broken jaw I had suffered was said to be irrelevant to the divorce case so I looked like a money grabbing female.

('Greta', last case 1980).

It is of course not just women who feel criminalised, powerless and
threatened when involved with the law or attending court. The Finer Committee had stressed the problems of formality and remoteness and criminalisation of family cases in their report of 1974 (see Chapter 3; Finer Committee, 1974). For women involved in cases of domestic violence however the feelings of fear, powerlessness and criminalisation have an increased intensity.

He had a real hold on me I was really scared. I was really frightened on all occasions I went to court. In the last case when the judge questioned my politics I was shattered. For the first case (pre 1969) I was in open court with my father and they said I was married to a sexual pervert and my father was appalled. The violence was the sexual type. It was like being on trial. I had to defend myself. I felt like a criminal. It is like a rape case - you are guilty until proved innocent.

('Laura', last case 1983).

Solicitors And Women's Needs.

Part I showed how substantive and procedural changes to the law resulted in a much broader system of legal intervention into matrimonial affairs. As the Booth Committee noted, the examination of facts in divorce petitions, especially in special procedure cases, could technically permit the selection of events unrelated to the actual grievances resulting in the breakdown of the marriage (Booth Committee, 1985). Whilst this could result in petitions alleging non-existent unreasonable behaviour the separation of the stated
facts from the women's experiences could, and does, have the opposite result by minimalising incidents of violence into just the necessary particulars. Women's levels of satisfaction with the legal process were related to how accurately solicitors represented their needs. Even those who had gained what they expected from the law made the point that lawyers' concerns and women's needs are ill matched. Solicitors, magistrates and judges were criticised for not listening to what the women said, for changing their words or even for putting words into their mouths:

'I don't think any of them believed what I said. The third solicitor created a pack of lies around my husband's sexuality.

('Laura', last case 1983).

The first lot of solicitors shunted me around and I had to repeat the complaints over and over again. It wore me out.

('Janine', last case 1980).

My solicitor had the information wrong, e.g. the dates. He looked unprepared. I had to contradict him in court. He really let me down.

('Greta', last case 1980).

Some solicitors emphasised aspects of the man's behaviour which the woman considered less important or even irrelevant.

The solicitor was more concerned about what happened to the kids, not about me. One big thing they made out of the divorce was he didn't keep me but I would rather be economically independent anyway. Most of the affidavit was concerned with the kids. What he did to me did not really matter. He hit me a few times and this was said to be unimportant. I can't remember exactly what they said about the
Kids. It was things like he never took them out, spent no time with them, they went without due to his drinking etc. It was all factual. The terms left a lot out. Putting it on paper left a lot out.

('Karen', last case 1981.)

We were good friends and I did not mind his bisexuality but the solicitors could not see this. (....) I had to lie to say he had left me but it was not like that. I was manipulated to get the divorce by playing on his bisexuality. I was asked if he had affairs. The solicitor wanted sordid details. (....) (For my first husband) (pre 1969) the sexual violence they used to make him look like a beast, not to help me.

('Laura', last case 1983).

Emphasising behaviour against the woman's wishes could be most upsetting if she had to attend court and be subject to cross examination, as in the following description of a magistrates' case:

I remember the solicitor asking me did he use foul language and I did not think he used it anymore than others. The solicitor wanted to make an issue about the use of four letter words before the kids but I felt it was the violence that was most important. (....) The second lot of solicitors I was very unhappy about and wrote to complain but was not sure where to send it. I was made into mincemeat in court. My husband's list of my behaviour was outrageous. My solicitor was not at all supportive and I felt he was not representing me properly. He did not take issue with the allegations properly. It was a very humiliating experience in court.

('Eliza', last case 1977).

Even if the woman had some freedom over the affidavit the solicitor's ideas as to what mattered influenced the details emphasised:

She wrote everything I said down and read back all the notes she had taken. For the affidavit she asked questions mainly about the sexual side of the marriage. This was OK because he wanted his own way all the time. He was tight with money and
The affidavit said I was an underpaid housekeeper. He had nights out and I never went anywhere. Solicitors have a way of wording things which can make it sound worse than it is.

('Janine', last case 1980).

Some of the women offered reasons as to why their complaints had been treated in this manner. Bias was one complaint. One solicitor was reported to be a wife and child batterer himself. One of the local judges in Court Area A was said to be a heavy consumer of pornographic material. A legal advisor, a solicitor and court staff mentioned that this particular judge was so biased against domestic violence cases that solicitors routinely phoned the court to discover his mood before deciding whether or not to proceed that day.

The findings of Borkowski, Murch & Walker (1983) give further proof that bias can be a problem amongst solicitors. From a survey of 50 solicitors they found that 38% did not consider it violent for a husband to 'shove' a wife, 14% did not think it was unreasonable for a husband to force sex and 8% did not consider it violent for a husband to threaten to wound his wife. There was a strong presumption that women victims precipitated the violence. The personality of the woman as a contributory factor to the violence was rated as a main cause by 26% of the sample cf 18% who said it was more due to a man's personality.
Some biased professionals however may pay lip service to impartiality by distancing their personal views from their clients' problems. Another suggested reason for the distortion and mis-representation of complaints was the perceived needs of solicitors to do 'law jobs' by acting as translators by putting women's complaints and needs into the precise legal language required for legal action. Their ability to do this successfully would be very dependent upon their knowledge of the area of the law in question. A number of the problems women had was due to their solicitors' misunderstanding of the law (see also Binney, Harkell & Nixon, 1981; McCann, 1983). The fact that one woman had been told (in 1981) that she had insufficient evidence to obtain an injunction against a man who persisted in breaking into the house and punching and hitting her can only be explained by the solicitor's misunderstanding or abuse of the law. The solicitors' fears that courts will not grant orders seemed to take an inordinate precedence over the women's needs for protection. On the other hand solicitors might slightly 'massage the evidence' by highlighting acts women considered less relevant or describing them in particularly damning language in order to make a 'good' case. Although it concerns a maintenance application rather than a case directly concerned with behaviour the following extract is a good example:

I will always go back to this woman solicitor because she understands more than the men. She had a friend barrister. She told me to make a list of in and outgoings for a year and not to miss out anything e.g. carpet cleaning, which I don't do. I worked it all out and we made some amendments in her office. I forgot the piano lessons for the kids. I thought the court would see this as a luxury but she said I could claim it. I listed clothing but she helped me fill in these extras. I
could not believe I would get £20 a week. She really fought for me and he only offered £4 but she said £20 was more substantial and pointed out that I had struggled with nothing for years.

('Janine', last case 1980).

'Good' solicitors may be the ones especially vulnerable to this need to put women's complaints into acceptable legal language.

Another explanation was the different procedures and requirements which existed for different courts. These would not only affect the outcome of cases but how solicitors approached them in the first place. A legal advisor working in Court Area A claimed that these local demands could result in an almost rigid formula of evidence for injunction cases consisting of black eyes, bruises, the ripping of clothes and sexual jealousy. One solicitor noted how local demands could affect regional variations even in small areas:

There are big regional variations in unreasonable behaviour in divorce and in injunctions. Some county courts have their own policies. Like Court A is easy - I can get almost anything through as unreasonable behaviour. But in Court X (10 miles away) it is terrible. You have to have a signed witness statement. Injunctions are bad there too. It depends on judges as well you see. There is a judge there who is a right beast. Like many of them, he refuses outright to ever attach powers of arrest.

(Solicitor, Court Area A).

Rivalry between solicitors could also play a part:

There are also organisational factors which will influence a case - inter-departmental jealousies etc. One solicitor could ask another for advice on a difficult point of law and not get
appropriate help for petty and personal reasons. This will affect how a case is handled for a woman.

(Legal Advisor, Court Area A.)

Six women allowed the analysis of their case records. Records of 15 cases were collected from solicitors, 8 being divorce cases (4 alleging unreasonable behaviour, 2 alleging cruelty, 1 on mixed allegations and 1 alleging adultery), 2 magistrates' cases represented by a solicitor (one for separation the other for maintenance), 4 injunctions (2 under the Domestic Violence & Matrimonial Proceedings Act 1976, 1 matrimonial injunction and 1 injunction connected with a damages action). No criminal case records could be included as these are the property of the state and the women did not have rights of access to them as witnesses. The textual information contained a combination of petitions, draft petitions, affidavits, draft affidavits, witness statements, briefs for counsel, solicitors' letters, records of interviews between solicitors, their clients and any others and notes of telephone conversations.

There were significant variations in the length of case records. Much of the paperwork being yielded by older cases, those involving disputed or unsubstantiated allegations and those where complications arose (such as inadequate legal advice or pressure to effect reconciliations). Four of the cases lacked notes or other evidence of the women's initial discussion with the solicitor. In three of these cases the women said they believed their original complaints and the allegations in the text had been well matched, allowing for
the formality of legal language. For one of the injunction cases, the woman noted that the particulars in her affidavit made her partner's behaviour appear mild compared to her experience of his abuse. As her's was an urgent case however, there was no time to build up the trust to allow her to tell the solicitor the full extent of the violence.

In 5 of the cases the 'balance' was out i.e. the affidavits placed emphasis upon some aspects of the behaviour in preference to others. three cases were described as 'underplaying' the reality of the violent relationship. In one of these cases the solicitor had transcribed word for word the woman's written complaints so it seems most likely that under-estimating the gravity of the behaviour had something to do with women's feelings of guilt associated with their victimisation. One case was described as a poor match, another embroidered events and another was said to be almost 'fabricated'.

As noted in Chapter 5, legal language is used primarily to create meanings for lawyers. Evidence of behaviour is not generally collected for the accurate representation of women's experiences but for translation into the language required for a workable legal document. Solicitors may differ in their presentation of the evidence according to their professional beliefs, their experience and personal idiosyncrasies. For example, a lawyer who proscribed to the views of the Plain English group might draft her/his legal documents in a radically different manner to one with more orthodox
views. Some of the variations found in the texts could quite feasibly be explained in terms of varied stylistic features. Descriptions of events can be bald statements of 'facts' or elaborate, narrative accounts. The following extracts from two documents drafted by different solicitors illustrate the point. The first is taken from a statement to magistrates, the second from an affidavit for divorce. Both give the same 'fact' about the husband's unemployment but the first is in a concise style, the second a more elaborate narrative:

My husband was out of work, of course, at this time but he got a job eventually.

He was out of work for two weeks during which time I kept him. We were very unhappy because of this situation. In November of 1978 he got a job as an assistant office manager with a firm of market researchers.

In its brevity, the first statement also omits any mention of the effects of the unemployment upon the couple.

Events could be described in an exceptionally wordy or elaborate manner because of the solicitor's belief that legal precision is required as in the following extract:

The defendant being aware of the precarious situation I was living in grace and favour accommodation as a result of my parents' goodwill applied constant threats to me namely that he would cause trouble at the premises; alternatively that he would cause damage to the premises; alternatively he would assault me and alternatively he would ensure that he created so much trouble that my parents would give me notice to leave the premises.
In a less legalistic language the same point could be made using 23 words instead of the above 73:

When I was living with my parents the defendant constantly threatened to assault me or cause so much trouble that I would get evicted.

Like the above extreme of legalese, the language used may be over-precise, heavily using formal words to describe events or scrupulously mentioning the tiniest details:

he punched me with his right fist on my right cheek just below my eye. This resulted in me having a "black eye" for over a week.

For the woman experiencing the assault whether the husband used his right or his left fist on her right or left eye was largely irrelevant. The details were given more concisely in the divorce petition:

Respondent struck the Petitioner in the face with his fist causing her a black eye.

Some solicitors who drafted the documents adopted a much less wordy style for describing the relevant events as though consciously guided by the desire to say only what is necessary. The more modern affidavits were far less elaborate than those created prior to the Divorce Reform Act 1969. Affidavits still however are traditionally
drafted in a narrative style whilst other documents relevant to the case will give the essential details in the much briefer sufficing style. The difference between narrative and sufficing styles is illustrated in the following extracts from a woman's affidavit and her particulars for divorce:

On June 15th my husband came to the caravan site at West Zealand where we were staying, my mother, cousin, myself and the three children. It was 10.40. p.m. He barged on the door. We were frightened and did not let him in because we were scared he would waken the children and perhaps take them away. My mother was paying the rent and she told him to go away and stop bothering us. I said I did not want to see him because he had had plenty of time to communicate with me whilst still in London and then was not a suitable time. He knew my father was not with us and he had been drinking. He persisted in barging on the door and intermittently kept kicking the sides of the caravan violently. We ignored these noises and did not provoke him to further violence. We let him take the initiative and hoped he would go away. At midnight he threatened to break in through the door, and smashed a circular glass panel in the door with his fist.

On or about 15th June 1973, the Respondent repeatedly and violently banged on the door, and kicked the sides, of a caravan, in which the Petitioner was staying so that she was put in fear, particularly so when the Respondent broke a glass panel on the said door.

Some of the files included solicitors' notes, drafts of affidavits and the women's own handwritten accounts of events. If available, solicitors often used previous cases as a basis for drafting the evidence in later cases. Many of these documents contained crossings out, additions and rewrites. Some of these crossings out and rewrites appeared to be purely grammatical, for example adding capitals between draft and final text, changing 'law school' to 'Law.
School. There were the inevitable typing errors. In one case theft of a clock worth £55 is mentioned. The second draft affidavit completed a few weeks later values the clock at £25. Words could be amended to wipe out dialectical or colloquial elements. For example, the statement 'He barged on the door' was altered to say, 'He banged on the door.

The disappearance of some material between documentary drafts could also have been the result of this being irrelevant or immaterial to later cases. For example, deleting a statement that the woman was in a situation of financial hardship because no maintenance had been paid, if maintenance was no longer an issue. Some of these points may well have been corrected as the solicitor checked details with the woman concerned.

Inserting a word or two could have been the result of a solicitor's attempt to reduce ambiguity in statements as in the following examples:

my husband came in at about 3 a.m. He had been drinking.

the Respondent returned home in the early hours of the morning in an intoxicated condition.

He came into the back bedroom and said I was going to sleep with him.

He came into the back bedroom and told me I had got to sleep with him.

he had obviously been drinking heavily.
after a heavy drinking session

in an intoxicated condition.

Some of the amendments and crossings out led to the disappearance of aspects of the men's behaviour from the record. One solicitor had crossed through several sentences in the first affidavit, erradicating the following details from the evidence: the man's efforts to get the woman to cover up for his violence by telling lies about how the injuries were caused; threatening phone calls to the wife's friend; threats to hit the wife's friends; phoning the woman at work.

A bit more information would also be added on to statements in between drafts. For example:

He struck me across the head several times with his hand.

He struck me across the head several times with his hand causing me head pains and distress.

He struck me across the head several times with his hand causing me to have head pains and to sorely distress me.

I was screaming and crying.

I was screaming and crying and was terribly upset.

Rather than adding on details, the inserts could embroider upon the original statement:

On occasions my salary has paid wages and housekeeping.

On occasions my salary had to pay wages and housekeeping.
On occasions my salary had to pay wages to my husband's employees and the remainder went on housekeeping.

On occasions he utilised her salary for the payment of wages to his employees, the remainder having to be used for housekeeping purposes.

By using appropriate emphases, inserts could introduce an element of judgement. The bald statement, 'He did not come with me' becomes the more derisive, 'my husband did not even come with me'. The extracts below show how one woman's admittance of defiance in her affidavit is made acceptable by the element of judgement introduced in the particulars of the petition:

In March of 1975 I left him. My sister in London had asked me to go for the weekend and he refused to let me go. I insisted on going and he told me not to come back. I took him at his word.

the Respondent unreasonably refused to allow the Petitioner to visit her sister and told her that if she insisted on visiting her sister, she should not return to the matrimonial home.

Some of the amendments had the effect of removing altogether the women's responsibility for events as in the following example:

As we were arguing he struck me.

As my husband was arguing he struck me.

Put together in their final context, crossings out, amendments and
rewrites could result in a description of an event which differed radically from the original act documented.

Apart from typing errors, most of the alterations were likely to be the result of solicitors' conscious efforts. The motives however need not have been sinister. Professionals would be able to justify amendments on technical grounds - to create a 'good' case, minimalise contest by narrating events as precisely as possible. Points made by the woman which were based on hearsay, unsubstantiated or hard to prove might not be included if it was believed they may be questioned. In the following example the 'hearsay' element was lost between affidavits:

I have recently been informed by a colleague of my husband that he is carrying on an association with another woman.

I had reason to believe that my husband was carrying on an association with another woman.

In another case, a woman's letter had stated that her husband had been out all night at a party and she had heard he was with another woman. The reference to the other woman was omitted from the affidavit.

Stanko's work on prosecutors' screening decisions in a New York district attorney's office provides further evidence of the importance of the relationship between women's abilities to proceed with cases
and lawyers' assessments of viability on technical and pseudotechnical grounds:

Convictions are maximised where only sound cases are brought to trial. A 'solid' case must not only be legally sufficient, but also based upon a credible complainant or victim. A victim must be credible not only in the eyes of the prosecutor but also the judge and jury (....) Credibility of the victim also pertains to the situation, and to the congruence between situation and individual.

(Stanko, 1982, pp. 237-8).

Stanko emphasises the importance of the stereotypical quality of decisions about credibility and how prosecutors assume that judges and juries will find certain kinds of victim's claims more credible and acceptable than others. The women's complaints that the solicitors emphasised one aspect of their partners' behaviour in preference to others lends support to Stanko's conclusion that women's quests for justice may often be determined more by stereotypes than by the actual harm rendered against them by assailants.

Although solicitors may stress the value of putting together 'good' cases, the transformations in the language used to describe behaviour and the events in the documents showed considerable subjective variations could exist for the assessment of 'good' cases. A solicitor's desire for a 'good' case might override the client's interests. An extreme example of this was seen when vagueness and ambiguity were deliberately pointed out by the solicitors in the
drafting of documents as though their intentions had been to maintain professional standards rather than stretch points of law to scrape through 'borderline' matters. In one case where the woman's evidence of cruelty had 'disappeared' because she had returned to her husband and thus condoned the behaviour, the brief for the magistrates' hearing was solely concerned with the defence of her allegations against the presumed charges of her husband. 'Weak' points in the woman's evidence were pointed out as follows:

the Complainant has suspected the Respondent of committing adultery and although the evidence is not very conclusive the Enquiry Agent will attend to give evidence.

When a solicitor begins with the presumption that a court hearing will concern the defence of a woman's allegations, the terms of the debate are shifted such that the victim and offender change position - she is defending herself against his allegations rather than vice versa. The outcome was the woman's behaviour, rather than the hardship caused by the man's actions, became the main topic of discussion.

After the failure of her case, the woman involved in the above case wrote a letter complaining about her solicitor's inadequate representation of her case asking him:

Why was my husband's persistent womanising not mentioned? You will reply no doubt that you couldn't pursue the matter because it wasn't proven. Where is the proof regarding my supposed 'string of lovers' and the 'drawer full of contraceptives'? These were spoken of in court as if they
were proven facts.

Expressing his sympathy to the woman over the lost case, the solicitor replied in terms which drew upon the 'just' and 'reasonable' principles of the new law on divorce:

> after hearing the facts, the Magistrates were not satisfied and however deeply about the case you feel you may consider that on reflection the blame can be apportioned to both you and your husband.

Although like shopkeepers, lawyers' livelihoods depend upon their service to customers, a point exists where professional self-interest overrides all others such that the customer is wrong.

The affidavits, statements and particulars of cases showed the frequent use of explanatory or scene setting phrases next to descriptions of violent or unreasonable acts. For example:

> The Respondent is a very jealous and possessive man and whenever I go out without him he virtually always accuses me of messing around with other men. He would often beat me and try to make me admit that I had been seeing somebody else.

During the birth of our first child the Respondent has been very uncaring and unfeeling towards me.

She told me her husband had hit her and beaten her after drinking heavily.

He had been drinking heavily and was very argumentative.
The explanatory qualification could be added between affidavits as in the following example:

Throughout the marriage he has used abusive language to me in front of the children.

Throughout the marriage when in drink he has used abusive language to me in front of the children

This type of scene setting material which commonly surrounded particular acts was found in some examples to vary for the same events between cases, different drafts of the documents and different affidavits.

Where qualifying statements were absent, the text often contained a number of references to the fact that the behaviour was 'unjustified' or 'without any provocation'. For example:

he was extremely jealous because I appeared to be enjoying myself. He called me over to him and I sat next to him. Without any provocation whatever he pushed me over.

I was very depressed and one evening in our bedroom without any justification the Respondent pushed me on to the wall and he then kicked me several times.

The facts or particulars of behaviour included in the texts as 'signs' of relationship difficulties obviously varied from case to case. The behaviour from the solicitors' cases could be loosely grouped into the following categories - drink, violence, foul language, meanness with money, unemployment, no commitment to the family, woman's
infidelity, jealousy, over zealous control, threats, verbal violence, sexual perversion, expropriation of property, effects on victims.

(Behaviour grouped under the heading 'commitment to family' was only relevant to cases where the man's own children were involved.)

With the help of scene setters and shifting context and other linguistic transformations, one specific fact of behaviour could fall into a number of the groups. For example, the fact 'husband stays out nights' could shift its meaning according to its contextual position with other evidence about drinking, adultery, lack of commitment to the family or hard work. An examination of shifting context provided further interesting examples of the extent of variation in the use of symptoms and the implicit stereotypical explanations offered of the behaviour.

A good example is provided in the extracts below which describe one violent event, a woman's eviction from the matrimonial home. The woman's affidavit described the event as follows:

Wednesday, October 15th 1972, my husband came home at 11.00 p.m. bringing with him some supper, and said that this was his last contribution to married life and if I did not like it I could leave. I asked him if he was threatening me and said that our life together was finished because of the rotten things he had done to me. He promptly came over and grabbed me violently by the upper arm, pushed me to the back door, opened it and threw me out, kicking me with his boot on the way. I fell against the wall and badly grazed and bruised my right elbow. I was screaming and crying. A neighbour opposite heard me and she and her husband came out and took me into their house. After a few minutes the neighbour went across to our house and banged on the door, my husband would not answer at first, but when he did her told her that the door was locked to me. (....)
Both our children were in bed at the time and Mr Riley later took me up to my mother's house where I stayed the night. Because of the children's age and the fact that my husband went out to work I did not think he could look after them properly and I collected them from his mother's on the 17th October and they have lived with me since.

In the woman's affidavit the salient facts are the husband's announcement; her reply; the throwing and kicking out the door; the fall; the injury; distress; the neighbour's intervention; husband's refusal to allow her entry; staying the night at her mother's and the collection of the children. The woman's affidavit situates the relevant facts in the context of another late night domestic dispute where the husband issues ultimatons. The description of the attack suggests the husband's active initiation of the violence. In the sentences used to describe the events the husband is depicted as the aggressive agent executing an attack upon the woman as victim - 'He promptly came over and grabbed me violently by the upper arm, pushed me to the back door etc.' Due to the information included in the evidence, the act is more than violence to a woman. The document points out that the children were in the house and the woman was concerned for their welfare. The attack was therefore on the mother of small children committed in their presence. The event is furthermore narrated with a degree of drama - the woman was 'screaming and crying', the neighbour 'banged on the door', the husband 'promptly came over' etc.

The neighbour who witnessed part of the event described it as follows:
On the evening of 15th October 1972, at about 11.00 p.m. I went though the lounge in front of the house to the kitchen to make some tea. Whilst in the kitchen I heard a loud scream from the back and immediately called my husband. My husband and I went out to the back and saw Mrs Smith in the street crying. We asked her what was wrong. She said, 'He's thrown me out'. She was obviously upset and confused. We took her into our house. Mrs Smith was so upset that I went over to her house with the intention of speaking to her husband. He came to the door and asked me in. I said to him that he could not be right in his head behaving like that with such a nice wife and children. He said, 'I am going to have bath now'. He then said, 'You can tell Ida that as far as she is concerned the door is locked. I told him that he could not lock his wife out and he said that he could. I then left and returned to my house. When I got back I noticed that Mrs Smith was holding her right arm and I saw that the skin had been taken off the lower part of her right arm. I asked her how she had hurt her arm and she said that she had caught her arm when her husband had thrown her out.

After a short time the phone rang and my husband gave the receiver to Mrs Smith who spoke to Mr Browne. Mrs Smith was only in a dress and it was raining and so my husband took her to her parents' in the car.

For the witness the salient features of the case were different, taking into account matters such as making the tea which were irrelevant to the woman but to which the event was linked. The only facts in common with those in the woman's affidavit were the screams, the intervention, the husband's refusal to allow the woman entry, the injury and staying the night at her mother's home. The neighbour's description uses less dramatic language. For the neighbour, the event is a one-off occurrence, something which is rarely witnessed. She makes no mention of banging on the door and merely states 'He came to the door and asked me in'. There is no mention of the woman's great concern about the children's welfare, nor of the children being in the house although it is noted she is a 'nice wife' and mother. The account of the event highlights the bizarre and
stupid features of the husband's behaviour rather than his outright brutality. When told he 'could not be right in his head behaving like that' the husband is said to have replied 'I am going to have a bath now'. Even the injury changes. The injury to the elbow described by the woman as being a bad graze and bruise is referred to as follows:

the skin had been taken off the lower part of her right arm.

The different report of the injury could imply either a more serious injury or a lessening of the damage.

The sister, who was not within earshot of the events, was involved by the husband's telephone call and the wife's visit to her mother's house to stay the night. She recounted her knowledge of the event as follows:

On 15th October 1972 I received a telephone call from Jasper at about 11.00 p.m. He said he was phoning "just to let me know" he had either "chucked" or "kicked" my sister out and that she would be wending her way up to our house. I received a second phone call at about 11.30 p.m. He said, "This is a further bulletin" and said that Mrs Smith had gone over and asked him to take the wife back but he had refused. I phoned my sister at Mrs Smith's and said that she could come to our house. My sister arrived at 12.00 midnight. She was very distressed and said that her husband had turned her out. She had a bad graze on her left arm which was obviously giving her pain. She has lived with her parents and I since.

The sister therefore mentions the husband evicting the wife from the home, the neighbours' intervention, staying the night at the mother's home and the injury to the left (rather than the right) arm. The
sister's report of the events are set within the context of the husband's admission and boasting about his violence in a phone call. The husband's behaviour here is again described as an active, unprovoked act aimed at the woman as a passive victim. The injury and the act of locking out are however only loosely linked. The affidavit states 'she had a bad graze' but the explanation for this is ambiguous as it is inferred by the context rather than explicitly stated.

The above three statements, although different, offer broad agreement when taken together that the eviction was violent and unjustified. The affidavits together concern not just an act of personal violence against a woman and the consequent harm to her well being but an unlawful and violent act of eviction which deprived her of her legal right to remain in the matrimonial home with the children. Thus, even the evidences supporting the woman's case prioritised property rights over personal protection.

On visiting the wife's solicitor's office, the husband explained the event by suggesting that the wife had fallen out of the door, hurt herself and refused to return home. Unlike the wife, he offers no corroboration and speaks with the authority awarded to a man's 'bare denial':

She went out of the door, fell and hit herself. On this occas(...three illegible words...) She screams. I had done nothing - I had just come home from work and had taken my boots off.
The fall, the screams and the coming in from work are common facts but their meaning in the husband's statement are very different from that of the wife's. For the husband, the event is self-explanatory - the wife's behaviour caused the injury. His statement offers implicit evidence of his hard working and respectable character. He plays upon and adds to the ambiguity of the wife's statement 'my husband came home at 11.00 p.m.' by saying 'I had just come home from work'. He contests her statement 'kicking me with his boot on the way' by saying 'I had just come home from work and taken my boots off'. The image he paints of a hardworking man, coming home, taking off his boots to be met by a woman who screams for apparently no reason and falls out of the door thereby inflicting injury on herself seems incredible, in fact incredulous. The statement invites the conclusion that he is either a liar or the woman is neurotic. By next offering to take the woman back into the home, the offence has the potential to totally disappear.

The ambiguity and shifting contexts of the specific statements of 'facts' concerning behaviour within and between the texts meant that whether or not an act was unacceptable was essentially an arbitrary matter. A man's drinking for instance could be used as a 'sign' of his beastliness, his lack of commitment to the family, his alcoholic sickness or be used to add further information on the woman's suffering and degradation. Alternatively, it could be used by the man as evidence of his misfortune - being 'driven to drink' - or his
membership as 'one of the lads' and being a 'moderate drinker'. The accurate representation of women's needs was found thus not to be necessarily the primary concern of solicitors. A 'good' or 'successful' case need not accurately report the problems experienced by the woman concerned. The earlier discussion of the forgetting, minimalising and remembering process (see also Chapter 5) demonstrates further that a solicitor's approach to the representation of a woman's needs can be a vital factor in her immediate and subsequent feelings of guilt and powerlessness. 'Good' cases are still ambiguous because contest is the crux of a lawyer's role. Even if contest is theoretically absent, as in the special procedure cases of divorce researched, it still plays an important part in the lawyer's work of anticipation, as seen in the attempts to irradicate linguistic ambiguities. The energies which lawyers expend when scrutinising these ambiguities give the impression that law jobs are something to do with hearing both sides of the argument, listening carefully to what both men and women say in order to produce an adjudicated and 'just' outcome. The latest trends towards more 'negotiated justice' (see Chapter 4) are an extension of this approach. The liberalistic emphasis upon individual justice prioritises an equality of opportunity between clients whose conditions are fundamentally unequal. The women's experiences discussed in this chapter have shown that the legal process can enhance the vulnerability of victims. This chapter has outlined four factors which give cause for concern:
1. The scope for oppression:
Women who experience domestic violence are vulnerable to a whole range of abuses and further oppressions from their partners when they enter the legal arena. On the basis of the survey insufficient attention was paid to the safety of women for the duration of proceedings. Insensitive treatment by the police, solicitors, magistrates and judges can add to this oppression. By refusing to become involved individuals in the legal system in effect give domestic violence against women their own tacit support. Those who deal with women victims need an understanding, tactful and skillful approach. A domineering manner, e.g. reducing women to tears because they will not 'speak up', is a rather suspect 'strategic' necessity.

2. The presumption of disbelief:
In the creation of 'watertight' cases lawyers strive to minimalise ambiguity. The case material has demonstrated that the law may enhance women victims' inequality of condition as clients by weighting their claims as victims. The tendencies of magistrates, judges and solicitors to give more weight to men's counter allegations than to women's corroborated claims could not be explained as the result of only a minority of aberrant cases. The discussion of injunction and divorce reforms in Part I demonstrated that a man's 'bare denial' of allegations was sufficient in law to offer a viable case of defence whilst a woman's allegations had to be rigorously substantiated. One of the examples discussed in this
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chapter has shown how a man's assertions can masquerade as 'facts' in debates which, at best, are only secondarily concerned with preventing violence against women. The presumption of disbelief can have the effect of shifting the emphasis from a woman's needs for protection on to her behaviour as precipitator of the attacks.

3. The use of 'acceptable' legal language:
This chapter has shown how part of solicitor's job involves translating women's experiences into acceptable legal language - whether this means clarifying her complaints for an oral hearing or codifying them into an affidavit or petition. The survey and case records revealed a great deal of variation was possible in the way this part of the legal process was approached. At one extreme the woman could have her description of events taken down verbatim and used word for word in any documentation required for the case. At another the behaviour could be distorted or made to appear more or less grave in nature. There was little need in the cases studied for solicitors to portray the behaviour as more severe than that which had actually occurred in real life. Women's feelings that a solicitor's 'putting it all down in words' somehow made the situation appear more severe could have been linked to their own perceptions of victimisation in the forgetting, minimalising and remembering process. The listing of the complaints and events may have put the pattern of behaviour into its inevitably bleak context. The failure to include some details of behaviour might similarly be due to concern for the feelings of the women involved. Citing just the
minimum of behaviour for the success of a petition is a common technique, especially in relation to divorce petitions on the basis of unreasonable behaviour. In other cases however, the women involved felt the exclusions had detrimental effects on the success of their cases. Minimalising the severity of the violence reported to the court resulted in failed injunction applications, inadequate compensation or maintenance.

4. The behaviour involved:
The women surveyed made the frequent complaint that the descriptions of behaviour and what the law considered relevant for consideration were influenced by social beliefs, prejudices and gender biased assumptions. Some feared that legal intervention was guided more by racism, paternalistic concerns for wives and mothers 'forced' out to work, the wish to persecute sexual 'deviants' or 'rough' men than by the desire to protect women as victims. Even at their lowest ebb, the women perceived the racist, sexist and class divisive features of the law.

The final chapter in Part II will take up some of these issues and tentatively examine how to empower women as victims in the legal process. It is worth noting at this stage however that the problems faced go beyond the current vogue for the removal of adverserial and overly legalistic involvement in favour of a conciliatory approach or system of negotiated justice. Whilst there are some obvious benefits in this trend, the scope for the oppression of women victims would not be affected nor would the influence of social beliefs,
prejudices and gendered assumptions upon decisions made on the basis of behaviour. The trend towards greater conciliatory imput may in fact enhance rather than reduce these problems (see Chapter 9).

The process of legal definition holds the potential to shift the terms of the debate such that women's needs as victims can become totally irrelevant. This chapter has shown that, at the extreme, the legal process can shift the ground of the debate so as to lose sight of the main reason for a woman going to the law in the first place. Chapter 7 will explore this matter further by looking at the decisions reported from the higher courts.
Over a very large area the law is indifferent to sex. It is irrelevant to most of the relationships which give rise to contractual or tortious rights and obligations, and to the greater part of the criminal law. In some contractual relationships e.g. life insurance and pension schemes, sex is a relevant factor in determining the rate of premium or contributions. It is relevant also to some aspects of the law regulating conditions of employment, and to various State-run schemes such as national insurance (....) It is not an essential determinant of the relationship in these cases because there is nothing to prevent the parties to a contract to insurance or pension schemes from agreeing that the person concerned should be treated as a man or a woman, as the case may be. (....) On the other hand, sex is clearly an essential determinant of the relationship called marriage, because it is and always has been recognised as the union of man and woman. It is the institution on which the family is built, and in which the capacity for natural heterosexual intercourse is an essential element. It has, of course, many other characteristics, of which companionship and mutual support is an important one, but the characteristics which distinguish it from all other relationships can only be met by two persons of opposite sex. There are some other relationships such as adultery, rape and gross indecency in which, by definition, the sex of the participants is an essential determinant. (....) (to assess the) heterosexual character of the relationship which is called marriage, the criteria must, in my judgement, be biological, for even the most extreme degree of transexualism in a male or the most severe hormonal imbalance which can exist in a person with male chromosones, male gonads and male genitalia cannot reproduce a person who is naturally capable of performing the essential role of a woman in marriage. In other words, the law should adopt, in the first place, the first three of the doctors' criteria, i.e. the chromosomal, gonadal and genital tests, and if all three are congruent, determine the sex for the purpose of marriage accordingly and ignore any operative intervention. (....) if a 50 year old male transexual, married and the father of children, underwent the (sex change) operation, he would then have to be regarded in law as a female, and capable of "marrying" a man ! The results would be nothing if not bizarre. I have dealt by implication, with the submission that, because the respondent is treated by society for many purposes as a woman, it is illogical to refuse to treat her as a woman for the purpose of marriage. The illogicality would only arise if marriage were substantially similar to national insurance and other social situations, but the differences are obviously fundamental. These submissions, in effect confuse sex with gender. Marriage is a relationship which depends on sex and not on gender.

(Ormrod, LJ in Corbett v Corbett (1970)).
CHAPTER SEVEN.

Law Reports And Domestic Violence Against Women.

Introduction.

This chapter is founded on the analysis of over 300 cases traced from the published law reports between 1969 to 1987 where a spouse's/cohabitee's/lover's behaviour was said to have been the initial reason for the court's involvement. The cases and materials which formed the basis for the discussion in this chapter are marked in the bibliography by way of an asterisk. The project's emphasis upon women victim's needs, rather than on specifically legal concerns required cases from different specialities of the law be included. The cases covered divorce, nullity, maintenance, injunction, custody, housing, homicide, criminal, compensation and property matters. Because of the extra amount of work they would have involved, cases which refered to the sole complaint of adultery were deliberately excluded from the survey. It was hoped that this exclusion would not have a marked impact on the discussion because some of the issues arising from adultery would be included in other cases, especially family cases making multiple allegations and homicide cases.
The case materials will be used to show how stylistic and discursive variations in the texts contributed to the outcome and final decisions. Specific examples will be given to illustrate how the relationship between the behaviour and legal intervention into cases of domestic violence against women was negotiated within the texts.

Reported Decisions As Good Policy Cases.

It is a fundamental feature of any system of law that similar cases brought before a court should be treated in the same manner. Legal systems based upon the traditions of the common law, such as the English system, allow a significant proportion of the laws to be 'judge made'. To prevent anarchic chaos resulting from variations in judicial interpretation, most common law nations have developed a doctrine of precedent, i.e. 'rules' which dictate how earlier case law should be applied. The concept of stare decisis (deriving from the common law maxim stare rationibus decidendus - keep to the decisions of past cases) is particularly powerful in orthodox English legal theory. The theory of precedent in England depends upon a chain of command (a hierarchy of courts) and precise 'rules' for analysing past cases. A court faced with cases analogous to previous disputes must follow its own and superior courts' decisions unless these have been overruled by a higher court or statute. Law reports therefore form the lawyer's tools of the trade. Case law contains the 'good'
policy cases, the precedents and principles which guide lawyers and judges in their everyday practice of legal definition.

Like the legal documents discussed in the last chapter, reported decisions are primarily lawyers writing for themselves. Whilst as texts they form part of the cultural representation and adjudication of standards of behaviour between men and women, they are not directly encountered in most people's daily lives. Although these cases are usually available in the Law Reports held in public libraries, few individuals without a legal interest will have read one single reported decision. Media accounts or personal involvement in legal cases have much more influence on most people's experiences of the law. Reported decisions do however influence the behaviour of lawyers and judges thereby affecting the outcome of cases for those involved. Reported decisions also influence definitions and decisions in 'other' social spheres. Case law is therefore relevant to both the practice of the legal adjudication of behaviour and to the social definition of 'appropriate' standards.

As the political scientist Edelman noted in his book the Symbolic Uses Of Politics in 1964:

It is precisely (the law's) ambiguity that gives lawyers, judges and administrators a political and social function, for unambiguous rules would, by definition, call neither for interpretation nor for argument as to their meaning.

(quoted in O'Barr, 1982, p.23.)
Legal principles operate in a situation of ambiguity, on cases which are at the same time similar but different. *Stare decisis* is essentially vague in the English model because there is no official test in existence for finding what part of a case is binding. If the circumstances in an earlier case do not match the present one, it can be distinguished and the need for precedent avoided. Alternatively, it can be overruled if the decision is deemed to be *per incuraeum* (basically wrong). Although legal theorists condemn the practice of distinguishing the 'undistinguishable', there is no true measure of how often this occurs, nor any guidance in the process of distinguishing as to the level of generality for interpretation.

Every case coming before the courts is unique - it has its own facts, its own special set of circumstances, its own actors in the legal drama. To extract a precedent from this detailed and specific situation, interpretation of the law must identify its general properties.

Not all parts of a 'case' constitute a principle of law. Traditional legal theory regards the binding part of the decision to be the legal principle formulated by the court in relation to the matter decided. At times however, judges may give their reasons for reaching a certain decision in a longwinded and elaborate manner. A lot of what is said in a judge's summing up will have very little value in later imitative cases. A great proportion of some decisions will be 'padding', the incantation and paraphrase of other decisions. Thus it is pointless to look for the complete formulation in the summing
The text book method of overcoming this problem involves drawing a distinction between the *ratio decidendi* and the *obiter dicta*, the binding principle and things said in passing. Dr Goodhart, a textbook firm favourite, argued that the *ratio decidendi* of a case would be best found by examining the facts themselves rather than the court’s reasoning (Zander, 1980). In *Learning The Law*, Glanville Williams uses the following example to show how this is done. Assume that in a case there are facts A, B and C. The court finds facts B and C to be material and A to be immaterial and concludes X. Thus, in future cases in which facts B and C exist, or A, B and C, the conclusion must be X. If however in a future case facts A, B, C and D exist and fact D is held to be material the first case will not be a direct authority, but may be of value as an analogy (Williams, 1978).

The lawyers' search for 'buried treasure' (Twining & Miers, 1975) is a gross oversimplification of how precedent works in practice. The discussion of past cases does not occur in a vacuum. A preoccupation with facts rather than with reasoning by analogy and contrast assumes:

1. that every case has one predetermined *ratio decidendi* for each question of law;
2. that the *ratio decidendi* can be found only by reading the case rather than looking at it in relation to a whole series;
3. that the *ratio decidendi* does not change with the passing of time.
It is most unlikely that every case has one predetermined ratio decidendi. There are a range of ratios which could compete to guide future decisions. What in reality constitutes a 'precedent' is a ratio decidendi which is picked up and later expanded upon by the courts (see the resurrection of Elmsworth v Elmsworth (1975) discussed in Chapter 3). As more and more cases are reported and decisions made on the basis of cases not reported at all 'precedents' are constantly being manufactured. Computer listings are in fact now available to assist lawyers in this task. Facts in the last analysis have little to do with the matter. In contested cases before the courts, lawyers each produce one or more precedents which their opponents will distinguish. In 1960, the legal realist Karl Llewelyn listed a total of 64 techniques for following or avoiding precedents (Llewelyn, 1960). Precedents are thus somewhat arbitrary 'rules' but they do nonetheless satisfy the demand for administrative convenience, allowing lawyers to do things the way things should be or always have been done. Even in 'family cases', where adherence to precedent is very arbitrary, the facts being infinitely variable, higher court decisions are deferred to and followed - hence the reported chaos following the Richards case (see Rae and Levin, 1983). In the 'family' law, where varying facts are emphasised at every opportunity, standard forms, themselves called 'precedents' are used for administrative convenience.

Research by Murphy and Rawlings (1981 & 1982) into decisions of the House of Lords found that these often autocratically abandoned the
requirement to follow legal rules. Legal rules and 'precedents' could be recounted at length only to be swept aside in one sentence based on little more than the autocratic assertion that a Law Lord did not consider former interpretations 'right' or did not value the consequences should they be applied to the instant case, etc. Liberal references to justice, impartiality and 'hearing both sides of a story' offer no guarantee that judgements will not be made on the basis of personal politics. In common with this approach, the discussion in this chapter will ignore the matters central to the lawyers' 'tools of the trade' reading of cases by emphasising instead their sociological features.

Reported cases are only incidentally concerned with justice for women or their protection from abuse. The cases in the law reports also include those where the victim's needs are irrelevant either because she no longer exists (as in homicide cases) or because the case revolves around another issue. Reported decisions relate to legal personalities which are abstracted from their experience as human beings. In criticism of what he sees to be 'feminist theory' Mark Cousins wrote:

> elements of legal personality do not exactly attach themselves to persons in the conventional sense at all, but rather to certain statuses which are supported by persons. Such might be 'husband' or 'wife', 'father' and 'mother'. And before it is objected that these titles are merely specialised functions of men and women, it is important to recognise that the categories can include 'spouse' or 'parent'.

(Cousins, 1980, p.119).
Legal references to apparently asexual categories such as 'spouse' or 'parent' are often not as egalitarian as they seem. Part I showed how the Domestic Violence and Matrimonial Proceedings Act 1976 was drafted to cover 'spousal' violence, not because men were deemed to be equally victims of this type of offence but in order to pre-empt the criticisms of the men's equality lobby in Parliament. Whilst 'spouse' or 'parent' are often euphenisms for 'man' or 'woman' in the law, Cousins' essential point that the law works with abstracts rather than people is relevant. In the reported decisions traced the act or acts of behaviour which provided the original impetus for legal involvement ranged in importance from being irrelevant to holding a central position in the text such that specific facts relating to the act(s) were discussed at length. All the reported decisions were, of course, appeal cases heard in the higher courts. The cases where the original behaviour became irrelevant represented the highest level of abstraction, where parties contested 'issues' to the fullest extent. For cases where the behaviour was relevant, much of the discussion concerned whether legal intervention was justified. The remainder of the chapter describes how references to behaviour between men and women in marriage type relationships in the texts was designated a matter of concern for the law and how it was judged to be unacceptable enough to warrant legal intervention. The discussion which follows compliments and builds upon the findings of the previous chapter. Each text is seen as a site of struggle where actors in the legal drama play on ambiguities and contest the meanings of events. What is 'said' and 'unsaid' about the behaviour,
the use of language to designate it 'eccentric', 'brutal', 'uncontrolled', and so on, the selection of 'signs' of marital distress, the repetition and sequencing of evidences, play important roles in the presentation of the case for legal intervention.

Some Features Of Legal Cases.

Law reports are very complicated texts. Reported decisions contain, in varying combinations, the following categories of information:

1. The background to the case.

Individualism is crucial to English law, especially the 'family' speciality. There are different facts, different parties to a dispute and different experts involved in most cases (doctors, social workers, probation officers, forensic scientists, and so on). All the reported decisions studied reinforced the uniqueness of a case by including at some point a history of variable length or at least reference to the specific details which were recorded elsewhere. As in the case records researched stylistic variations were found in the reported decisions' references to the backgrounds of the cases. The 'bare bones' or 'skeleton' background where a 'sufficing' style was adopted to describe the history was commonly encountered. This would include information on things like the ages of the parties to the dispute, the number, ages or sexes of the children, the length of the marriage, cohabitation or relationship, a brief statement as to
its happiness and a reference to the problems or events leading up to the present case. In some of the reports, the background details were precised as the 'facts' and situated in the text before the presentation of counsels' evidences or the judgement(s). The following are typical examples of the briefer introductions:

The defendant and Christine Jane O'Brien were married on 5th October 1964; and on 10th January 1974, by a decree made in the Bristol County Court in an undefended suit, the marriage was dissolved on the ground that the defendant had behaved in such a way to his wife that she could not reasonably be expected to live with him. On these facts counsel submits that the offence of rape cannot be committed by the defendant on Mrs O'Brien until a decree absolute has been pronounced.


The parties were married on 1st April 1972 and, in the circumstances which are described in the wife's affidavit, she intended at the time of the application to take out an originating summons under S2 of the Matrimonial Causes Act 1965 for leave to present a petition for divorce, notwithstanding that three years had not expired from the date of the marriage on the ground that the case is one of exceptional hardship suffered by the wife, or exceptional depravity on the part of the husband.

The affidavit in support of the application for the injunction sets out a history of extreme physical violence by the husband towards the wife. It is not necessary for me to repeat what is in the affidavit. The violence alleged is gross and continuing, and apart from the particular legal problem to which the case gives rise, I would without hesitation grant ex parte, on the evidence as it stands, an injunction to restrain such behaviour. However, as counsel for the wife pointed out when making the application, there are authorities which cast doubt on the power of the court to grant injunctions ancilliary to proceedings under S2 of the 1965 Act.

(Finer, J in McGibbon v McGibbon (1973) at 837).

The case histories tended to be truncated when an especial need for brevity had been asserted by the particular judge. The details were
also rapidly dispensed with on the grounds of a need to protect individual privacy although, apart from where children were concerned, why some people had a right to privacy or anonymity which others lacked was never clear. In some of the decisions details could be omitted on the grounds of a stated need to safeguard the course of justice, if for example, other issues were likely to arise or were yet to be tried or decided. Other decisions merely referred to the history of the case as having been 'dealt with elsewhere', in a lower court or in chambers.

Like the affidavits studied in the solicitors' cases, the introduction to reported decisions could take the form of a pseudo-narrative, devoting two or three pages to a couple's matrimonial history, the 'facts' of an event or criminal assault and the history of legal involvement giving rise to the present dispute (e.g. R v Gittens (1984); Livingstone-Stallard v Livingstone-Stallard (1974); R v Criminal Injuries Compensation Board ex parte Staten (1972); France v France (1969)).

The background details often contained what appeared to be extraneous 'facts'. Details such as the race, age, education, social status or appearance of an individual were included in cases where they seemed to hold little relevance to any of the legal issues subsequently defined. The following are just a few examples:
the wife is an attractive woman who dresses well.

(Foley v Foley (1981)).

Both parties have strong temperaments. The husband originates from Southern Ireland, the wife from Northern Ireland.

(Bateman v Bateman (1979)).

Both the man (the respondent) and the woman (the applicant) are of West Indian origin. The woman is Jennifer Davis. She is now only 21. The man is Nehemiah Johnson. He is twice her age.

(Davis v Johnson (1978)).

The victim of the conduct (....) was Leak's wife, a slightly built young woman in her early twenties.

(R v Leak (1975)).

The husband, who is obviously a man of considerable energy and ability

(Griffiths v Griffiths (1974)).

Some of the introductory statements contained on the other hand a statement of sympathy by the judge for one, the other or both parties or some other 'scene setting' type of expression:

This is a particularly unfortunate and unhappy case. It has special features which, I would stress at the outset, in my view, distinguish it from many of the cases which have in the past come before this court.

(Phillips v Phillips (1973)).

This is a very sad case for which I think nobody is to be blamed.

(Bennett v Bennett (1969)).
The scene setters and apparently irrelevant extraneous facts could share a common function in some of the decisions by allowing the discussion to shift context or exploit defined ambiguities. A later example in this chapter will show how race, a primary matter of dispute in a High Court case, became a mere extraneous fact in the Court of Appeal. The inclusion of these extraneous facts and scene setters may have been the result of a judge/report writer's anticipated desire to reduce conflict. As the previous discussion of the legal documents revealed however ambiguity cannot be irradicated.

2. Presentation of the 'issues':

All appeal cases operate at a certain level of abstraction. The cases studied therefore contained various attempts to define the degree of abstraction between the instant and primary case. This could involve baldly stating the point(s) to be examined by the court and/or how the case was different to the original matter brought before the court. The following extracts provide concise examples:

This is an appeal by Miss or Mrs Adeoso against a judgement by his Honour Judge Willis in the Shoreditch County Court on 16th May 1980 by which he dismissed an application by her against Mr Adeoso for an injunction turning him out of a council flat which they hold as joint tenants. The case raises again the question of construction of S1(2) of the Domestic Violence and Matrimonial Proceedings Act 1976.

(Adeoso v Adeoso (1981)).

In this case the wife claimed a lump sum and agreed that her claim for periodic payments should be dismissed (discussion of previous case, matrimonial history and wife's grounds for appeal). The gravaman of the criticism of the learned judge
was that he failed to take into account or give sufficient weight to the period of cohabitation.

(Foley v Foley (1981)).

This appeal raises a surprisingly large number of points. One is of general importance to those who work in the Family Division, and indeed to any court dealing with Family Division matters. The others are peculiar to the facts of the case. I shall endeavour to deal with all the points which arise in turn.

(Dipper v Dipper (1980)).

In some cases the 'issue' was almost obscured by the lengthy case history. Or it could be presented obtusely by placing it in the context of adverserial claims such as the Crown's position versus that of the defence, or the plaintiff's versus the defendant:

The plaintiffs in this action (....) claim damages from the defendant arising out of the death of James Ian Gray. They claim that the death was caused by the negligence of the defendant. The defendant, in his turn, by third party proceedings, claims (....) an indemnity in respect of any damages.

(Gray v Barr (1970)).

The issue could be introduced through a series of negative definitions or by shifting emphases from one issue on to another as in the following example:

By a petition dated 25th November 1970, the wife sought dissolution of the marriage on the grounds of her husband's cruelty (....) She alleged that in April 1970 the husband purported to obtain a final decree of divorce (....) by talaq (talaq is an Islamic ceremony which basically involves the man saying 'I divorce you' three times) By his answer the husband (....) denied cruelty and sought dissolution under S2 (1)(b) of the Divorce Reform Act 1969. I heard and determined as a preliminary issue the question whether English law would recognise the talaq divorce (....) I decided that the divorce
could not be recognised (....) Counsel then informed me that on the information available to them there was a grave problem whether the parties had ever been legally married,

(Radwan v Radwan (1972) No. 2).

Some of the texts constructed a dispute over issues by, for example, putting forward different judges' conflicting claims about the correct matters for consideration. Lord Hailsham pointed out some disagreement between Law Lords in Richards v Richards in 1983:

I believe that all your Lordships are agreed that this appeal must be allowed. But there is a difference of opinion as to the ground. My noble and learned friend Lord Scarman is content to decide the issue on the ground that the discretionary decision of the judge can be demonstrated to be plainly wrong (....) The view of my noble and learned friend Lord Brandon is based on a proposition of law, namely that (....) the court (....) is bound to follow the principles enunciated in S1 of the Matrimonial Homes Act 1967

(Richards v Richards (1983)).

The combination of issues, issue shifts and power struggles in the texts as to the appropriate matters for consideration further heightened the ambiguity of the cases.

3. Presentation of evidences, counter evidences, allegations or counter allegations:

Again the way in which these were presented varied in style. The 'evidences' could be interwoven with the background or introductory details, emeshed with opposing evidences and allegations or a totally one sided account could be offered after a statement that this account was preferable or more reliable. The personal
characteristics of the men and women involved in a case could significantly influence the assessment of the value of evidence. Here is how Bagnall J rated the evidences of a man and woman involved in a case in 1973:

the wife alleged cruelty including a number of incidents of physical violence as well as the incident (admitted by the husband) of June 27 1969. She relied on those allegations and the husband's neglect of her as conduct conducing to her adultery and in support of her cross-prayer for divorce. She gave evidence in support of those allegations before me and was cross-examined upon them. Before adjudicating on this I must say a few words about the character of the parties and the impression they made on me.

The husband has a dominant and dominating personality; yet in contrast I think that he had periods of depression and moodiness which his illness and operation intensified and which he inflicted on others. He is a perfectionist and expected high standards; but he undoubtedly lacked the gentle touch. He saw situations in clear terms of black and white with no grey. Clearly he was capable of violence, at any rate under provocation. My impression was that, quite apart from the incident of June 1969, he would be easily provoked. With some reservation I thought him a witness of truth.

The wife is a softer personality but not lacking in determination. She knew what she wanted and how to adopt effective means of getting it. She is master of the quietly biting retort and I have no doubt that in argument, or even in discussion, she would be exasperating. Though I have some sympathy with her, having regard to the character that I have painted of the husband, I am satisfied that her allegations against him are substantially exaggerated. I am confirmed in this because I thought that as a witness she was generally less than frank, prone to prevarication and, as the saying goes, to swear by the book. I have great hesitation in accepting her evidence, except where it is admitted or corroborated.

(Harnett v Harnett (1973)).

In Qureshi v Qureshi, Sir Jocelyn Simon baldly stated that some evidence was 'preferable':

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The wife and the husband, and their present solicitors, respectively Mr Boyle and Mr Thorne, gave evidence on which I rely in setting out the facts. I preferred the evidence of the husband to that of the wife where they differed. There was little variance between the evidence of Mr Boyle and that of Mr Thorne; but I thought the latter's recollection was more vivid; and I accept his evidence as the touchstone to test the validity of all the other evidence.

(Qureshi v Qureshi (1971)).

This statement was used as a justification for basing the rest of the discussion in the text on the husband's account of the events.

In Ash v Ash, Bagnall J (again) argued that the woman's evidence was less believable than her husband's because she showed signs of lack of restraint:

The respondent's drinking habits were undoubtedly coupled with abuse of and violence towards the petitioner. I must therefore first consider the petitioner as a witness in support of the allegations that she has made. I say at once that she did not impress me. She had a penchant for self-dramatisation to an extraordinary degree. She was vague and confused, not only about the dates but about the years and sequence of the various incidents, and she lost no opportunity of exhibiting extreme malevolence towards the respondent, not only directed towards the later years of their marriage, the years of complaint, but also going back to the early days of the marriage and to the even earlier days before the marriage when they were living together as lovers.

The respondent who has conducted his own case with an engaging manner and considerable restraint also gave evidence. He exhibited similar restraint in the witness box, and was perhaps forshadowed in his answer, he was reluctant to criticise his wife.

(Ash v Ash (1972)).

In this case the reference to the wife's credibility was followed by a lengthy discussion of the husband's justifications for the assaults.
Emphasis on the manner of presentation of evidence was found to be only rarely used to support the truthfulness of a woman's allegations. One example is Dunn J's description of the evidence given by husband and wife in the case of Livingstone-Stallard v Livingstone-Stallard (1974). Matters of presentation are mentioned to add weight to the woman's 'trivial' allegations:

An indication of his attitude towards his wife was, that in the witness box, he referred to her variously as 'the girl', 'the lady' and 'Brenda Foster' which was her maiden name but not as 'my wife' or 'Brenda'. I accept her complaint that right from the very start he did criticise her over these petty things in the way she described them (....). In the witness box he spoke in a quiet carefully modulated voice; I do not believe that it was his real voice, particularly when he was angry. This was a man who was capable of controlled anger. (Livingstone-Stallard v Livingstone-Stallard (1974)).

The same effect of favourising evidence(s) could be achieved in a less direct way by interweaving evidences. This could give at the same time an impression that all the issues had been covered by a judge who was impartial and fair. In Katz v Katz (1972), for instance, the wife's, the husband's and doctor's evidences are all interwoven and interspersed with the rather opinionated comments of the judge. Presenting the 'evidence' by way of allegation and counter-allegation is a familiar technique employed when summarising cases of an adversarial nature. The following is a common example:

The husband, a company director, filed a petition in October 1964 alleging cruelty. He said that the wife was cold and indifferent and that from 1959 she sulked or nagged him, that his health suffered and that he left her for six weeks in March and April 1964 (....). Her answer denied cruelty. She said
overwork caused his ill health, that she tried to persuade him to work less hard and to take more care of himself and that was the so called nagging. She pleaded that there had been condonation (....) This he denies.

(Wilkins v Wilkins (1969)).

From the decisions analysed, especially those which went through several stages of appeal, it was noted that evidences and their manner of presentation could be radically different with the changed context of a later analysis of the case. This can be demonstrated by the use of an example from one of the cases which went through several stages of appeal.

The case of Ogden v Ogden (1969), concerned the contested allegations in a divorce cruelty case where two different conclusions as to the nature and cause of the conduct involved were arrived at by the divorce division of the High Court and by the Court of Appeal. Table 27 lists the symptoms of marital distress mentioned in the decisions from the divorce division and the Court of Appeal.

The divorce division had held that Mrs Ogden's allegations about her husband's behaviour were enough to establish a case of cruelty for divorce. The Court of Appeal overturned this decision and found that the true cause of the marital distress was the wife's adulterous association with her employer. In the Court of Appeal text, the husband's actions were explained in terms of a response to the wife's behaviour.
Not only did the Court of Appeal text use some different 'signs' of marital distress to those mentioned in the divorce division text but the importance attached to behaviour which was common to both texts differed.

**TABLE 27: Symptoms Of Marital Distress In Ogden v Ogden.**

<table>
<thead>
<tr>
<th>Factor/event mentioned as possible symptom</th>
<th>Divorce Division</th>
<th>Court of Appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>Obscene &amp; blasphemous language</td>
<td>*</td>
<td>#</td>
</tr>
<tr>
<td>Conduct in front of the children</td>
<td>*</td>
<td>#</td>
</tr>
<tr>
<td>Accusation to daughter 1</td>
<td>*</td>
<td>#</td>
</tr>
<tr>
<td>Illtreatment of daughter 2</td>
<td>*</td>
<td>#</td>
</tr>
<tr>
<td>Accusation of madness</td>
<td>*</td>
<td>#</td>
</tr>
<tr>
<td>One act of physical violence</td>
<td>*</td>
<td>#</td>
</tr>
<tr>
<td>Painful, racist aspersions</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>Cruelty to the children</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>Rows</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>Wife's illhealth</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>Associations with other men</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>Accusation of adultery</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>Contraceptives</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>Wife's leaving</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>Husband's leaving</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>Husband's offer of reconciliation</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>Wife's refusal of sex</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>Wife's refusal to give up work</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>Husband's non-payment of maintenance</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>Wife's employer visits house twice</td>
<td>#</td>
<td>#</td>
</tr>
<tr>
<td>without husband being informed</td>
<td>#</td>
<td>#</td>
</tr>
</tbody>
</table>

Reported decisions interweave ritual with technical discussions. The repetition of points in cases is one example of the more ritualistic features. In some cases surveyed this bordered on an incantation. Table 28 shows the sequential positions and repetitions of the symptoms of marital distress in the two cases.
Statements referring to Mr Ogden's cruel behaviour and its effect on Mrs Ogden (her state of depression) were scattered throughout the text in the divorce division case. The husband's offer of reconciliation was tartly dispensed with at the conclusion to the text by referring to it just twice.

<table>
<thead>
<tr>
<th>TABLE 28: Sequential Positions and Repetitions Of Significant Acts Attributed To Husband And Wife In Ogden v Ogden.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Divorce Division.</strong></td>
</tr>
<tr>
<td>Husband's jealousy cited</td>
</tr>
<tr>
<td>Other bad behaviour of husband cited</td>
</tr>
<tr>
<td>Wife's depression cited</td>
</tr>
<tr>
<td>Husband's offer of reconciliation cited</td>
</tr>
<tr>
<td><strong>Court of Appeal.</strong></td>
</tr>
<tr>
<td>Husband's bad behaviour cited</td>
</tr>
<tr>
<td>Wife's depression cited</td>
</tr>
<tr>
<td>Wife's refusal to give up work cited</td>
</tr>
<tr>
<td>Wife's refusal of reconciliation cited</td>
</tr>
<tr>
<td>Wife in company of other men cited</td>
</tr>
<tr>
<td>Other bad behaviours of wife cited</td>
</tr>
<tr>
<td>Wife's refusal of sex cited</td>
</tr>
</tbody>
</table>

In the Court of Appeal, by contrast, the allegations of Mr Ogden's cruel conduct were referred to just once in the first few sentences of the text. The effect of the conduct upon the wife, Mrs Ogden's depression, was mentioned twice, also at the very start of the text.
In the remainder of the Court of Appeal case there was a liberal scattering of references to Mrs Ogden's conduct. In the Divorce Division the wife's race and the husband's behaviour are linked in the discussion of the evidence relating to his cruelty. His remarks about Italian 'peasants', attacks on the sexual fidelity of a Roman Catholic, unwillingness to allow his wife to associate with others of her race, etc. play a key role in the debate. In the Court of Appeal however, race is dispensed with as a mere extraneous fact.

Between the two cases, the language used to describe the relevant acts and events underwent subtle alterations. The 'rows', 'furious rows', 'arguments' and 'quarrels' mentioned in the divorce division text were referred to with the generic term 'scenes' in the Court of Appeal text. 'Obscene and blasphemous language' in the divorce division text was referred to in the Court of Appeal case as the husband's 'rude or offensive remarks' or his 'nagging'. What the divorce division called his 'fits of temper', 'jealousy' and 'unjustly impugning chastity' the Court of Appeal text called the 'anxieties of a suspicious husband'. Even Mrs Ogden's illness was minimalised from 'an acute and dangerous depression' to a 'highly nervous state'. The Court of Appeal text devalued as well the importance of the evidences of the wife's key witnesses, thereby excluding them from consideration in the final decision. Without these back ups Mrs Ogden's allegations were more plausibly dispensed with as 'gross exaggerations'. 
4. Reference to other cases:

Even if they are dispensed with as being of no use, some reference to previous cases decided is an important aspect of legal definition. Other cases can help to establish the court's legitimacy in reaching decisions by giving the precedents' - 'fathers' law' - seal of approval. For lawyers previous decisions help to create the cases' meanings through their contextually assigned positions.

5. The decision(s):

This was occasionally the decision not to make a decision, to do nothing but refer the case back to another court for trial.

The Relevance Of Behaviour To The Case.

Whether or not the allegations of behaviour giving rise to a case were mentioned at all depended upon their relationship with the facts and any defined present issue(s). As noted earlier, technical 'issues' could take such a prime position that the behaviour giving rise to a case could be held to be irrelevant. The level of abstraction could be so great that the behaviour could be just background, as when an issue arises on a particular point of law 'yet to be decided'. Or, the behaviour, although relevant, might not be discussed at all beyond reference to it having occurred as in for example, the cases of R v O'Brien 1974 and R v Reid 1971 where the
acts of violence - rapes - undoubtedly happened but the discussions in both texts centred upon whether these were crimes. The amount of space devoted to the description of the behaviour involved in the case did not necessarily bear a direct relation to its relevance to the decision. The importance attached to the behaviour varied primarily in accordance with its defined relationship with the issues constructed in the case. It could thus be held to be possibly relevant, contributing to the present case (as in maintenance and conduct cases, access cases etc.) or a central feature in the case.

In divorce law there has been a trend of the removal of facts of behaviour from discussion of the primary case especially since the introduction of special procedure. Recent proposals by the Law Commission to remove the need to prove irretrievable breakdown could complete the trend if implemented. Although this may be a welcome move it should be noted that its effects will be limited because in cases of marriage dissolution issues of behaviour have really only been removed partially. For many cases they have shifted on to the matters of child care and financial provisions, where behaviour is increasingly adjudicated by welfare officers and conciliators. The increased emphasis on welfare officers' assessments of behaviour in the later cases studied reflect this trend.

Behaviour defined as, largely 'irrelevant' in a current case could nonetheless still be discussed or described at length. This was particularly so in homicide cases where a full and often grizzly
description of the killing would be reproduced followed by a judge's statement that 'the facts are not in dispute' and the real issue concerned something else, for example whether the judge at the original trial directed the jury adequately. In the recent case of Harmsworth v Harmsworth (1987), another case where acts of behaviour were described at length, it was not the behaviour which was in dispute but how adequately it was described in a committal application for breach of an injunction.

In the remainder of the chapter some of the different approaches concerning the relevance of the behaviour to the problem of intervention will be discussed. The examples will be used to demonstrate the relevance of women's needs as victims in the legal discourse on domestic violence and unreasonable behaviour. Three examples will be used to show how stylistic features, legal issues, personal stereotypes and theories about domestic violence against women and the 'appropriate' gendered behaviour of men and women all interplay to affect the outcome of a case.

Private Squabbles And Domestic Wars.

Feminists have often noted how the social creation of public vs private spheres of production contribute to women's oppression (see Delphy, 1984; Gamarnikow et al, 1983; Stang Dahl & Snare, 1978). Although the division of social responsibilities into so-called
'public' and 'private' spheres is an important factor in women's oppression it is essentially an arbitrary matter, in that there is no realm or domain which could properly be called 'private'. In liberalistic political thinking the 'private' sphere has traditionally been that area of life not included in the conventional analysis of the 'state'. In the liberal tradition, 'private' life is an unregulated haven of 'complimentary equality' between the sexes based upon a division of labour and responsibilities. Thus, if violence takes place at all it has nothing to do with material inequalities (see discussion of liberal traditions in domestic violence research in Chapter 9). By contrast, in feminist work, 'private' coercion/government is a key component of the state (see e.g. MacKinnon, 1982; 1983.). In the cases studied, legal intervention into cases of domestic violence against women was frequently posed in the context of the problem of overlapping, opposing or irreconcilable rights and interests. Children's rights vs parental rights, property vs personal protection, individual freedom (i.e. privacy) vs state intervention were commonly encountered oppositions constructed in the debates over the problem of intervention. The point at which a 'private' dispute becomes a threat to the 'public' interest is of central concern to the police, legal profession and the social services. The case of R v D reported in 1984 offers a convenient illustration of the issues of behaviour which concern the courts in public-private boundary dispute. R v D shows how by creating a false dichotomy between 'public' and 'private' spheres of life, the law differentiates domestic violence (not only that against
women, but also that against children) from other kinds of antisocial acts. As a predominantly 'private' matter domestic violence is largely unregulated by the law.

R v D contained another example of conflicting rights and interests i.e. the opposition between parental rights and children's interests. It also offers an example of a case where children's needs and interests were asserted with virtually no discussion as to what these were. The text contained minimal references to the matter of how to respond to the child's needs, debate concerning the child's rights served more to amplify the images of the conflict and irresponsibility amongst the parents, and to thereby legitimate legal intervention. The criminal prosecution concerned the father's kidnapping of his child, D, but much of the discussion in the text centered on the behaviour of D towards his wife. D had already been convicted for falsely imprisoning his wife Audrey. The violence towards Audrey was rather incidental in this case to the assault on the child but references to it, its causes and consequences form a major part of the debate. The need for legal intervention is established right at the start of the case by using incidents of behaviour to construct the scenario of the family at war. The discussion of the marriage begins:

The history of this stormy and unhappy family affair begins with the marriage of the appellant to Audrey

(R v D (1984)).
A lengthy description of the matrimonial problems, D's violent acts and the use of legal proceedings by his wife then follows. The family at war or 'locked in battle' is a familiar metaphor employed in criminal cases and custody disputes. R v D is an extreme example but many cases exist which revolve around the same issues. The behaviour involved may range from public brawling (as in R v Bird (1985)) to 'scenes' in the living room as in the Ogden case (1969) discussed previously. The common factor is that both the parties involved fuel the dispute. The offender and victim are not opposed as active vs passive. The judgements of these type of cases are packed full of references to couples 'locked in conflict', fathers 'obsessed with love' who act badly because they are trapped in a spiralling battle of matrimonial acrimony.

One noticeable feature of this scenario was the detailed reproduction of past events using militaristic analogies and terminology. Husbands were described as 'storming in' as though invading a foreign country rather than the front room, 'enlisting' accomplices or making preparations for an 'attack'. The wives hid behind a 'smokescreen' of excuses or acted like 'time bombs' thereby precipitating their husbands' 'explosive' conduct. The children were referred to as 'objects' in the 'struggle', who were 'seized' and used as 'pawns' or 'armoury' in the battle between parents. The following description of how D kidnapped his daughter, E, is an extreme example:

By the late autumn of 1978 the appellant had made, on his return at about that time to England, careful and devious
preparations to take the law into his own hands and to take E, if necessary by force, away from her mother. To assist him in this reprehensible endeavour, he enlisted the assistance of two violent men named Hunter and Aherne.

On 13 December these three men, at about 11.15 p.m. when Audrey was watching television, pushed their way into the flat where she had been living with all three children for some time. The appellant had a rope in his hand, Hunter wore a stocking mask and plastic gloves and carried a knife. He unscrewed the doorbell. Aherne had a pair of scissors and a knife.

The appellant told Audrey that he had come to take E away. She told the other two men that E was a ward of court. They were as indifferent to that as was the appellant himself. Frightened out of her wits, Audrey took E and dressed her in the presence of an even more frightened S. The appellant took her away, she showing no signs of distress as she went. Before leaving the flat in the company of Aherne, the appellant showed Audrey an article which he said was a gas bomb. It was, he said to be left with Hunter who knew how to activate it and who would, as he did for several hours, remain behind so that the appellant could have a good start on his journey before the police were informed about what was going on. Thus it was that E was taken away from her mother and afterwards by air to New Zealand.

\[ (R \text{ v } D (1984)). \]

The militaristic features of the assault, wearing masks, using explosives, guarding Audrey, are highlighted by the judge's description of the events and characters involved.

Presenting the evidence in a judgement in a particular way can make it easier for a judge to assert that both parties were equally implicated in the family war. The reported decisions differed considerably in the order of presentation of various evidences whether from the parties involved in the case or from witnesses or any experts. One text might for instance, present the woman's evidence first and then move on to the man's or vice versa. In cases where the couple were portrayed as locked in a domestic war a
common feature was the weaving together the descriptions of the couple's actions, thereby furthering the image of each aggravating the other's behaviour. Although the description of events in the extract portrays D as the active agent of aggression and Audrey and E the passive victims, interwoven with the descriptions of the husband's bad acts is the history of the wife's fight back and resistance - her repeated applications to courts in England and abroad, her flights to Eire and New Zealand to find the child he had violently removed, her removals to secret addresses, calls to the police and screams for help in the streets are recounted as part of the history of bitter matrimonial dispute. By presenting the history in this manner, it was much more plausible when cases later asserted that the conflict was 'mutual' even if evidence only of the man's violence was offered as in this case. The manner of presentation of the evidences and issues in the text in R v D had the effect of raising the authority of D's claims in relation to those corroborated and proven by his wife.

Interweaving the evidences by for example, presenting the man's and the woman's allegations as opposing claims was also one way in which the 'true issues' of the case could be broached, expert testimony or lower court findings introduced. In R v D expert testimony concludes the discussion of the man and woman's history of competing claims. The lawyers in the case were able to leave it for the probation officer to make the charge that the problems arose as a result of D and Audrey's 'mutual bitterness':

In the social enquiry report prepared for the criminal proceedings, the probation officer observed, with much justification we think:

I realise that this case is one of great complexity. moreover it is fraught with the kind of mutual bitterness and emotional conflict more often found in a matrimonial court than in one of criminal jurisdiction.

Later on the probation officer went on:

Situations like this are sadly familiar to Probation Officers writing reports for Divorce Courts. Only the very extremes of (the appellants') behaviour resulting in criminal charges and national publicity make it differ from countless other similar cases, whereby the two parties concerned become so locked in battle that eventually neither can or will move sideways....In that kind of situation, children become weapons or armoury, as they have so unhappily become in this case.

(R v D (1984)).

Where 'neither party can or will move sideways' the bitterness of the conflict allowed courts to assert it was impossible to get at the real facts of the case. The 'real facts' existed somewhere in the obscurity of 'private' life. Instead of attempting to decide just who did what, the issue was sidestepped and the question became instead 'should the court intervene and how should it do so ?' The disputed behaviour in this case served as a foundation upon which to erect issues of public importance and to negotiate the relationship between the law and the family. For judges, the invocation of matters of public importance offered scope to be as 'political' or 'apolitical' as they wished. Pondering over whether or not a case was of 'public' importance could provide both a justification for legal intervention and a safety valve against overzealous intrusion by the courts - into 'private' lives/individual freedoms, areas best covered by statutory control, etc.
As noted, none of the decisions actually spelt out what was meant by the term the 'public'. It could have meant the world outside a couple's home, the neighbours, the legal profession, the nation. The ways in which a domestic war could offend the 'public' also varied in the cases. They could be seen to offend the 'public interest' by hitting the 'public purse' - wasting resources, squandering legal aid, causing high legal costs, wasting court time. The behaviour could offend public 'morality' via the manipulation of children in a 'tug of love' for adult gain. The behaviour could have exposed the local population to danger by the use of shotguns, explosives and so on. In R v D the original trial judge seemed to have public morals and the neighbours' safety in mind when referring to the 'public':

(kidnap) charges may well be reserved for the more serious cases which go well beyond mere matrimonial conflict and impinge on the public peace and on the public conscience

(R v D (1984)).

To Watkins LJ in the Court of Appeal, the 'public' seemed to be the legal profession:

It is beyond doubt that these convictions are of outstanding importance. This is the first time in legal history, so we are told, that a father has been convicted of kidnapping his own child. If the conviction is upheld it will, so counsel for the appellant contends, create an undesirable precedent which if followed, will be an impediment to the proper administration of justice as affects family matters and an unnecessary burden on juries. Moreover, to resurrect trial on indictment for contempt is likely to have similar and unnecessary effects. Contempts for their orders, he says, should be left in the hands of judges to adjudicate on and where appropriate to punish for. Public policy and interest is affected by these convictions. Both
demand that there should not be unwelcome and unnecessary extensions of the classes of indictable crime.

(R v D (1984)).

Not only was domestic violence made 'different' to other violent crimes, whether or not prosecution was in the interests of the man, woman or child became largely incidental to the main issues of the case.

Justifications.

By contrast, in some of the cases studied the court's role was established in the texts on the basis of the defined or assumed need to intervene between parties by hearing the 'other side of the story' attached to a dispute. Here the differences between men and women could play a key role in the debates, giving full rein to social prejudices and beliefs about the 'appropriate' behaviour of either gender, especially in relation to sexuality and fidelity. Where the case included discussions of the behaviour as evidence of a fundamentally unhappy relationship - leading to an assault, relationship breakdown or diminished responsibility, etc. - the symptoms of marital distress quoted could include a whole variety of gender specific complaints concerning for example a woman's housekeeping standards, her mothercraft skills, the sexual fidelity and gratification of partners, a man's adequacy as 'breadwinner', and so on. Men's complaints about inappropriate wifely behaviour were a
common theme for allegations in their own petitions and in defence of those made by their wives. The following two extracts give concise examples:

The marriage was reasonably happy until 1957. The husband's general complaint from then onward was of neglect of himself and of the house, the house being dirty and not looked after and refusal to allow Polish guests to come to the house, and (....) he complained that from 1957 she became increasingly disinclined for sexual intercourse.

(Slon v Slon (1969)).

The husband also criticised the wife for getting drunk and making herself look cheap at a New Year's party in 1968 and as an afterthought, made some unspecified criticism of her housekeeping.

(Harnett v Harnett (1973)).

The case of Mitchell v Mitchell (1983) will be used to demonstrate how in some reported decisions, the court legitimated its role (to do nothing or to intervene) by way of the discussion of the the justifications for behaviour. Part I showed the distressing frequency of legal decisions which condoned men's violence against women on the grounds that some women 'asked for it'. Mitchell v Mitchell (1983) provides an example of how in the texts a shift could be executed between the relative positions of the victim and offender such that the victim, rather than the aggressor could be put on trial. In the Mitchell case the woman's performance as wife, mother and sexual servicer was made the most important matter of the debate.
Briefly Mitchell v Mitchell (1983) concerned a woman's petition for divorce on the basis of her husband's unreasonable behaviour. An exclusion and non-molestation order had been attached to the petition. Mr Mitchell had breached the injunction and then applied to contest the divorce 'out of time'. In Mitchell v Mitchell (1983) the court's legitimation for its intervention into the case was created on the basis of doing 'justice' to the counter-allegations and explaining the man's acts. The allegations made by the woman were as a result scrutinised and treated with the utmost scepticism or merely ignored. The main issue was defined as concerning whether or not the husband should be given the right to have his case heard. He successfully persuaded the Court of Appeal that he had reasonable grounds to believe his marriage had not irretrievably broken down and he could not contest the divorce earlier due to lack of understanding of the legal process.

At the start of the case the whole of Mrs Mitchell's particulars concerning her husband's behaviour were reproduced. The husband's behaviour was said to have included domineering his wife, timing how long she was out shopping, excessive jealousy, objections to her going out to see friends or relatives, physical assaults, screaming or swearing, threats to kill, threats of violence, 'insistence' on sexual intercourse, locking his wife out of the house, ignoring her for long periods and belittling her in front of her sister. Mrs Mitchell's allegations of violence by her husband were not discussed at all after this introduction to the case. In the rest of the text
reference was made solely to the domineering aspects of the husband's behaviour.

Domination, even violent domination, was legitimated in some of the texts if it could be argued that this had been motivated by 'love' or concern for others. In some of the cases lawyers reasoned that the domination or violent control of one member of the family was a justifiable way of saving the family as a whole! This type of argument could form part of the defence or mitigation in homicide cases. In R v Ives (1969) for example the man argued he had killed his wife by battering her over the head with an axe handle in defence of their newly born 'child. Mrs Ives was said to have suffered a sudden attack of peuperal insanity which caused her to say that she was going to 'get rid of' i.e. kill the kids. In Mitchell v Mitchell (1983) the woman's allegations of violence at the start of the decision were counterbalanced if not overwhelmed by liberal references to the husband's qualities as a 'good' father struggling to preserve family stability. His claims that he merely attempted to bring her into line with a modicum of force were by the end of the case treated as being quite understandable.

The first reference in the text to the behaviour played down Mrs Mitchell's fears by trivialising them - the original trial judge is quoted as having found that: 'To say the least they got on each other's nerves'. The next reference to behaviour refers to the husband's attempts at explanation:
He complained that he had not been represented and that the true facts of the relationship between himself and the petitioner had been distorted. He alleged that the petitioner did not look after the children properly and neglected them when she went out in the evening to enjoy herself. He alleged that he could look after the children in spite of his high blood pressure. He alleged that the petitioner was suffering from cancer, had had two serious operations in December 1980 and December 1981, and if there were recurrence, he could look after the children provided he was allowed to live in the matrimonial home. The whole trouble was, in his belief, simply that he had ordered his sister-in-law Christine out of the matrimonial home.

(Mitchell v Mitchell (1983) at 625).

It will be apparent that the quote stating Mr Mitchell's allegations does not include any reference to him having denied the use of violent or dominating behaviour. The context is instead shifted as the emphasis lies with Mr Mitchell's reasons for the behaviour and Mrs Mitchell's qualities as a wife and mother. On the next page, further references were made to Mr Mitchell's complaints, and how his attempts to maintain family stability were undermined by Mrs Mitchell's relationship with her sister:

In this affidavit (a) he described his formidable accommodation problems, (b) he described the satisfactory relationship between Leslie *the eldest son* and himself, the petitioner's inability to control him, and the fact that Leslie was missing his brothers, (c) he described friendly relations between the petitioner and himself, and continuing frequent sexual intercourse between the petitioner and himself, and continuing frequent sexual intercourse between them at his flat, (d) he described and complained of the fact that the petitioner's sister, Christine and her boyfriend, a man aged 30 were living in the matrimonial home, and that at weekends the petitioner's sister, Elaine, and her boyfriend, Paul, also slept there while the boys were in the house, (e) he described how he had seen his sister-in-law Christine as threatening his marriage and family stability, how he consulted the citizens' advice bureau and the court welfare office because of his concern before any proceedings were commenced, and as a result he evicted his
sister-in-law and the next day his wife applied for an injunction.

(Mitchell v Mitchell (1983) at 627)

Again the evidence quoted from Mr Mitchell did not provide a denial of the allegations but kept the focus of debate upon Mrs Mitchell's behaviour, her unwifely and unmotherly conduct being contrasted with his fatherly concern for family stability. The text continued with the course of explanation by next making Mr Mitchell into a victim, noting that he had not understood the legal documents given to him - i.e. the injunction and divorce papers - and he had been unable, due to hypertension, to visit the solicitor for legal advice prior to the first court appearance. Mr Mitchell was portrayed as a working class 'victim' of the legal bureaucracy, either too stupid to understand the due process (his solicitors argument), inevitably mystified by the complicated legal system (the judge's opinion) or too blinded by love or illness to comprehend that his wife was about to divorce him (conclusion offered by the welfare officer). Further reference was then made to his desire to 'save' his family:

I have never intended that the Divorce should go through undefended because I love the Petitioner and feel that our relationship has been prejudiced only by the presence of the Petitioner's sister in the Matrimonial Home and that when she lives with her new boyfriend the Petitioner will lose the influence which has driven her to bring the matter this far (....) I strenuously wish to keep my marriage together, not least for the sake of the children. The Petitioner has terminal cancer further details of which are set out in paragraph 11 of my draft answer and I fear that the children may be split up in later years if I cannot keep the family together now.

(Mitchell v Mitchell (1983) at 628).
Mr Mitchell's allegations were backed up by quotes from his solicitor that he had:

a strong answer to the allegations pleaded against him but believed on reasonable grounds that his marriage has not irretrievably broken down, so that it would be contrary to the interests of justice to deny him an opportunity of defending the suit.

(Mitchell v Mitchell (1983))

Like many of the cases read, the Mitchells' case contained a great deal of repetition of the same points as though repetition was a technique for making some evidence 'important' or one particular conclusion 'obvious'. Mr Mitchell's allegations about his wife's behaviour were so frequently repeated that when there was some brief further discussion of Mrs Mitchell's allegations, her evidence came from the perspective of a defence of her own actions:

She swore that the marriage was definitely at an end and that there was no prospect of reconciliation. In her view the respondent had had ample opportunity to deal with the papers served on him and to attend his solicitors. He did not want the marriage to end and was using every possible ploy to delay its end. She denied nearly all his allegations and gave explanations which put a quite different construction on many of the matters he relied on, including the circumstances of their continued sexual intercourse (....) She had often told (Mr Solicitor) that she had been frightened or confused and had frequently let (husband) into the house if he called there, though she did not wish him to call even for access. She told him that, if the ouster injunction was lifted, she did not see how she could live with him in any circumstances (....) he had admitted some acts of physical violence both at the hearing on 22 July and in his proposed answer (....) the Respondent had tried to wear the petitioner down to a position where she is deemed to want to continue her relationship with him (....) the waste of two sets of substantial legal aid costs (....) would be involved if the application was granted.

Mrs Mitchell's complaints about the sexual intercourse were left vague. They were not linked in the text to the allegations in her divorce petition that her husband had often 'insisted on intercourse' nor to the fact of her pelvic cancer. Mrs Mitchell in fact changed places with her husband such that she had to defend the allegations made in her original petition, rather than him having to prove he had a viable answer to the statement. The next (and last) mention of her evidence put her again on the defensive:

She contradicted the evidence given in his affidavit in support of discharge of the ouster injunction and dealt in detail with his allegation that the whole trouble had been that her sister Christine had been living in the matrimonial home. She swore that she could never live with him again and that she would have to leave the children if the injunction was discharged. She explained the problems that she and the younger children had with Leslie.

(Mitchell v Mitchell (1983) at 629).

As in the case of R v D discussed in the last section, professional testimony had been quoted to execute a shift in the topics on the agenda for discussion. In the Mitchell case the welfare officer's evidence was quoted to further devalue Mrs Mitchell's allegations and the dangers posed to her precarious health. Instead of referring to 'violence' (as in Mrs Mitchell's particulars) or even to 'unreasonable behaviour' (the judge), the welfare officer renamed the acts of behaviour 'accusations':

Mr and Mrs Mitchell have on occasions (...) seen a good deal of each other, but in the long term these visits appear to have upset rather than heal Mr and Mrs Mitchell's feelings towards each other. (...) I have the impression that Mr Mitchell deep
down does still love his wife therefore is finding it very difficult to let her go and is very bitter about the whole divorce experience. Mrs Mitchell is clear that she would like the marriage ended but on occasions - she would claim - "out of the kindness of her heart" - she does collude with Mr Mitchell's approach. (....) There is a great deal of accusation regarding each party's ability to care for the children - particularly by Mr Mitchell against Mrs Mitchell. In this welter of accusation it is difficult to establish where the truth lies.

(Mitchell v Mitchell (1983) at 630).

By the time the Appeal Court judge got round to discussing the injunction, the behaviour leading up to it had disappeared. The acts of physical violence, such as the threat to kill, were not brought in to the context of the discussion:

the ground of the ouster was not the respondents' behaviour to the petitioner but the broad ground, now known to be wrong in law, that the children's interests were paramount (....) it must also be material that sexual intercourse has continued after the separation (....) More formidable is the history of the matrimonial proceedings. It does look as if the petition for dissolution after 25 years of marriage was instigated by the decision of the petitioner to apply for an ouster injunction.

(Mitchell v Mitchell (1983))

Mrs Mitchell's vulnerable health was also trivialised by putting it in the context of her husband's allegations about her going out, she was well enough to 'enjoy herself':

The petitioner relies on her health, but she protests that she is quite well and has evidently been strong enough to persist in late nights at her disco club. She has a history of serious chronic disease, and the doctor's letter cannot give a prognosis (....) It is contended that it is not humane to prolong her anxiety and that it would be better to allow her to reach early finality in her proceedings for dissolution. There is not sufficient force in these considerations to make it just to allow the certificate to stand if the respondent has a case
which he has always wanted to present and which may well succeed.

(Mitchell v Mitchell (1983)).

Through the process of justification, the law can lend support to men's capacities to use violence to enforce sexual infidelity or avenge its loss. This has historically been a well known feature of the criminal law (see Chapter 3). A wife's adultery has historically been a special case for the category of provocation in the criminal law. Provocation and diminished responsibility may both mitigate findings of guilt and be built upon assumptions about the behaviour of a man and woman. There are of course many cases, especially in the criminal law where an offender's justifications for acts of violence will be subject to the scrutiny of prosecuting counsels. Prosecutors are prone to offer arguments that suggest that an accused's justifications for crimes are mere 'excuses'. In R v Turner (1975) for example, the accused killed his pregnant girlfriend by battering her over the head with a hammer after her supposed confessions that Turner was not the father of the child she was carrying and that she had recently been involved in prostitution. The description of the behaviour in the case ambiguously interweaved the accused's active responsibility for the offence with a more passive construction of events. Active and passive states were juxtaposed in the introduction to the judgement:

the appellant killed her by battering her about the head and face with a hammer. Fifteen blows were struck.

(R v Turner (1975)).
And again in the description of Turner's evidence of the event the interweaving of active and passive states made the event look more like the act of a man possessed than that of a calculating killer:

he had been very upset by what she had said. His hand came across the hammer which was down by the side of the seat and he hit her with it. "It was never on my mind", he said, "to do her any harm. I did not realise what I had in my hand. I knew it was heavy. When I realised it was a hammer I stopped.

(R v Turner (1975)).

The medical evidence in the case was quoted in support of the image of a man possessed by a 'temporary madness'. The psychiatrist described the killing as follow:

From all accounts his personality has always been that of a placid, rather quiet and passive person who is quite sensitive to the feelings of other people. He was always regarded by his family and friends as an even tempered person who is not in any way aggressive ... In general until the night of the crime he seems to have displayed remarkably good impulse control (.....) At no time has this man appeared to show any evidence of mental illness as defined by the Mental Health Act 1959. His homicidal behaviour would appear to be understandable in terms of his relationship with (the dead girlfriend) which, as I have endeavoured to outline above, was such as to make him particularly vulnerable to be overwhelmed by anger if she confirmed the accusation that had been made about her. If his statements are true that he was taken completely by surprise by her confession he would have appeared to have killed her in an explosive release of blind rage. His personality structure is consistent with someone who could behave in this way. There is no demonstrable clinical evidence to suggest that brain damage or organic disease of the brain diminished his sense of responsibility at the time he killed her, and since her death his behaviour would appear to have been consistent with someone suffering from profound grief.

(R v Turner (1975)).
In this case the Crown and the Appeal Court judge supported the view that 'outbursts of blind rage' often resulted when individuals discovered 'unexpected wantoness on the part of their loved one'. This for the court was 'common sense' and nothing to do with psychiatry. Thus, even when the claims about understandable rage were challenged, this was done in a way which did not affect the gendered assumptions upon which it was founded. What is an 'understandable' act is bound to be socially, rather than legally determined.

**Expert Or Legal Definition.**

In some of the reported decisions traced, especially the homicide cases, the lawyers seemed to virtually defer their judgement to experts. The case of *R v Lomas* (1969) for example debated the offender's responsibility for the strangulation of his wife on the basis of the pathologists' evidence on the likely period of time for which the hold on the neck was maintained. The pathologists called the strangulation a 'neck compression'. The discussion in the case was largely devoted to whether or not the pathologists' evidence could show that Lomas had maintained his hold for 30 seconds. If it could be accepted that Lomas strangled his wife by holding her by the throat for less than 30 seconds the defence argued he could not be found guilty of murder.
Boundary disputes between law and medicine will be all too familiar to anyone who reads the homicide cases which make the news. The concepts of medical science can be called upon to allow courts to reach decisions as to the mens rea of an offence, issues concerning an accused's state of mind or degree of control (see R v Ives (1969); R v Gittens (1984); R v Turner (1975)). Law and medical disputes periodically hit the headlines because of conflict over the designation of offenders as 'mad' or 'bad'. Law and medicine were in the forefront of the dispute during the trial of Peter Sutcliffe.

There must be many situations of violent or aggressive behaviour where one party to a dispute will be found to be suffering from some sort of illness. The law formally recognises the difficulties poor health can pose for a relationship's stability. The passive behaviour of the chronically sick can be grounds for a petition for divorce if the other spouse argues some adverse effects on his/her health resulted (see Thurlow v Thurlow (1975)). In non-homicide cases of active behaviour ill-health was often discussed as the sole cause of violent and aggressive behaviour rather than being possibly an effect or aggravation. In the case of White v White in 1983 for example, the woman's affidavit was quoted in the judgement as saying that the husband's refusal to take his medication led to an increase in the intensity of his abuse and violent behaviour. By promptly dropping the qualifying word 'increase' however the remainder of the judgement presented the argument that the sole cause of the man's behaviour was his refusal to take medication. By emphasising
sickness in situations of domestic violence against women the decisions shifted judicial attention away from the family or couple on to the aberrant individual. Judgement moved away from assessing the danger or justification of violent behaviour on to an assessment of the responsibility of the aggressor. In the text the behaviour was presented as a personal affliction instead of an interactional condition.

Apart from the 'passive' type, the descriptions of behaviour in reported decisions where sickness was turned into an issue typically emphasised its unpredictable and irrational nature. An example is provided by the description of violent events in the case of Re K (1985):

In the course of a friendly conversation she said something that upset him. He struck her without warning across her face with such violence that she was thrown to the floor. (....) Not long afterwards, he approached her from behind, grabbed her by the hair, pulled her to the ground and proceeded to kick her. (....) He began to abuse her in public. He punished her for some trivial offences, on one occasion by refusing to allow her to have friends to stay, on another by refusing to allow her to drive his car for a period of a year. In 1979 there was a particularly severe incident when he struck her with such violence that blood spirted from her nose on to a rug in the sitting room. (....) He refused to allow her to use the telephone and stood by it in a menacing way.

(Re K (1985) at 407 & 408).

The reported decisions varied in the manner in which the behaviour became 'odd' rather than violent over the course of the discussions. A selective presentation of witnesses' statements could lend more
emphasis to the introduction to the oddness of behaviour rather than to the dangers posed. Medical testimony, inevitably concerned with individual treatment rather than the protection of others from patients, might help execute a shift from discussions concerning the effects of 'odd' behaviour on a woman on to the man's need for medical care. Paradoxically, in some of the texts even the victim's statements about her needs for legal intervention due to the behaviour caused by a partner's illhealth could be presented as grounds for refusing intervention on her behalf.

The behaviour could be described as 'odd' without any explanation as to its cause being offered, as in the following extract:

He asked her to get his tea ready, she did not answer. After a long interval the tea appeared. (....) When he spoke to her she tended to turn her back on him and go to another room, talking and mumbling to herself (....) He finds her gazing into her looking glass making noises and laughing. Frequently there is an odd blankness

(Friday v Friday (1970) at 55).

Whilst many a woman might mumble if asked to make tea for a husband or perhaps gaze into a mirror and laugh, recited thus as events without contexts makes them appear decidedly odd. In some of the decisions the behaviour was described as being 'embarrassing' as well as 'odd':

(the wife) described a distressing history in which, in spite of the injunction, the respondent, in a quite irrational way was still coming into the house, persuading the children in the absence of their mother to let him in, and when he got in,
making a formidable nuisance of himself by abuse and eccentric
behaviour. On one occasion he became very exciteable. He
actually hit his former wife and had to be restrained from
hitting her again. Later the same day he turned up at
midnight, shouted through the letterbox making an awful noise.

(White v White (1983) at 54).

The violence was euphemistically refered to in the above extract as
the husband getting 'exciteable', the shouting through the letterbox
is an 'awful noise'. No mention was made in the case of the woman's
feelings about the behaviour, whether she was in fear or merely
'emarrassed' was left undetermined.

Physiological symptoms were frequently quoted as offering
explanations for 'eccentric' behaviour:

the husband soon began to show signs of mental illness. He had
blackouts or collapsed, was in hospital on two or three
occasions (....) the wife visited him every night but was told by
the husband and his mother to keep away. He then returned to
the matrimonial home (....) in the company of his mother and
brother but refused to let his wife make a meal for him, he
would not go to bed, and he left early next morning without
telling his wife, who eventually discovered that he had gone to
his sister. He never returned (....) Dr Powell a consultant
psychiatrist said of him, 'He appears to have a fixed, apparently
irrational (....) unreasonable belief that his wife is going to
kill or injure him.

(Brannan v Brannan (1973) at 125-6)

In some of the texts the judges' own conclusions regards the cause
of an individual's behaviour were included, in preference to or in the
absence of expert and medical evidence. In Re K (1985) for
instance, the judge, after describing the doctor's opinion on the
cause of the husband's violence as attributable to 'paranoid schizophrenia', moved on to offer his own diagnosis:

(the wife and doctor) attributed his violence to illness, a brain tumour or paranoid schizophrenia. I should add also that he was a persistent and heavy drinker and may well have suffered in his intellectual capacities and power of self control as a result.

(Re K (1985)).

Although the violent behaviour which stemmed from illhealth might have a physically discernible cause it was primarily distinguished in the texts by its effect on the offender's inability to control him/herself or function in society at large. Passive as well as active/irrational behaviour included the inability to take part in domestic or social life. Assessment of these factors showed gender variations as to what was applicable for husbands and wives. Women's inability to take part in sexual relations was frequently mentioned as evidence that they were unable to fulfill their marital and social obligations. Mrs Friday in the case quoted previously was said to be unable to do her housework or the cooking. The family ate 'poorly' because of the doctor's advice that the husband should not do the cooking himself (Friday v Friday (1970)). Mrs Thurlow was an incontinent and bedridden invalid (Thurlow v Thurlow (1975)). Both of these women were said to have ceased having sexual relations with their husbands.
In some of the decisions even the choice of victim was offered as a symptom of the disease. Discussion of the partner's illness or bizarre behaviour was not put in the context of a consideration of the possible pre-illness relations between the parties involved. Here is how the husband's decision to kill his wife in the case of White v White (1983) was described:

On 30 September (...) he was intending to kill himself by jumping from a balcony when he heard a message from God telling him not to kill himself but to kill his wife instead.

(White v White (1983)).

In R v Miller (1986) the accused's decision to kill Vicky was again a 'chance' result, the fault of delusions:

I have been going out with Vicky for three and a half years and have lived with her as man and wife, although we haven't actually got married. I have been having these voices in my head for the last year from a million people whom have told me to kill Vicky.

(R v Miller (1986)).

For the cases where the medical assessment of behaviour was made into an issue the solutions to the unhappy situation offered seldom lay with the law alone. Medical intervention was usually advised, or the court might decline to intervene on the basis of medical solutions. In cases where legal intervention was 'deferred' in favour of a medical solution the victim's level of tolerance was crucial. In the decisions researched there was a preference for non-intervention as violence and abuse from an intimate was described as
being more tolerable and less frightening than an attack by a stranger. When the peculiarity, oddness or deviance of the partner's behaviour was prioritised, assuming the victim's ability to tolerate it became a more feasible option. In some of the decisions the effects on the women were either assumed - she 'put up with' the eccentricities - or minimalised such that the behaviour was made to appear merely irritating.

The level of tolerance was based upon assumptions about what men and women should do in marital relationships and, at the extreme of subjectivity, on what the individual couple were capable of doing. The cases of unacceptable behaviour defined on the basis of an incurable sickness offered examples of how intervention could be deemed to be a possibility if the demands on the victim went beyond the requirements of duty and obligation. Men's and women's relative capacities as 'carers' are a clear example. In Thurlow v Thurlow (1975) for instance intervention to help the man divorce his incurably epileptic wife was argued to be necessary because:

This husband has consistently and courageously suffered the behaviour of the wife for substantial periods of time between 1969 to July 1972 until his powers of endurance were exhausted and his health endangered.

(Thurlow v Thurlow (1975)).

The evidence in the case offered of Mr Thurlow's going beyond the call of duty involved caring for his wife and home as well as keeping a full time job for a number of years. Whilst this would
undoubtedly be very stressful, similar standards are not applied to women (e.g. the historical standards for the provision of invalid care allowance to married women). In one case surveyed the woman was similarly given court approval for forsaking her caring task. This arose however as a result of a defined conflict between her caring 'obligations. In the case of W v L (1973) the woman's wish to continue to care for her mentally ill husband at home was interpreted as going beyond the requirements of duty and obligation. Here the woman's loyalty to the husband was judged a risk to her child. As the medical testimonies presented in the case suggested an inability of the doctors to agree on the nature of the husband's ill-health, the final, question in the case concerned:

what would a reasonable woman in her place do when faced with this wife's problem? It seems to me that a reasonable woman would say, 'my husband ought to go in for treatment and he ought to be detained until he is cured. It is too great a risk to have him home whilst the baby is so small."

(W v L (1973)).

In principle it might be argued that, due to the absence of 'fault', cases of domestic violence 'resulting' from a partner's affliction would present the least contentious grounds for legal intervention. Decisions which emphasised expert vs legal 'boundary' disputes however gave further potential for lawyers to shift the topic of debate from individual women's needs on to the 'broader issues' such that the end result, a reluctance to intervene, could be the same.
In some of the decisions concerns about welfare and justice, rather than specifically defined 'legal issues', were said to form the crux of the case. Legitimation for court intervention was thus paradoxically 'established' on the basis of non-legal issues. Some of the texts contained long tracts of discussion about previous cases which made the present case of behaviour almost subsidiary. In others legal principles, although invoked, would be swept aside as not providing adequate solutions. Lord Denning's rather arbitrary application of legal reasoning will be an obvious case in point although many more judges adopted similar approach whilst making some reference to the 'rules'.

Cases such as Davis v Johnson (1978) and Richards v Richards (1983) offer well known examples of reported decisions which revolved around the court's capacity to intervene on the basis of just principles or welfare needs. Part I showed how there were a series of decisions following the implementation of the Domestic Violence and Matrimonial Proceedings Act 1976 which concerned the 'correct' procedure for the granting and enforcement of injunctions. In some of the cases an opposition was constructed between the needs of the women for personal protection and men's rights to justice, being fully informed about what the court order meant and what would happen if he breached it (in certain cases this meant having the injunction or penal notice signed correctly or stapled on). Examples will be used
here of cases where legitimation for intervention was established on the basis of welfare needs.

During the 1970s the term 'battered women' began to appear in the decisions as a shorthand for cases involving violence of a repetitive and unprovoked nature. The descriptions of a wife batterer's actions stressed unexplained and brutal conduct:

whilst they were there the man beat her frequently. The judge said there were two instances of extreme violence of a horrifying nature. On one occasion the man threatened her with a screwdriver. He said he would kill her and dump her in the river. He kept a chopper under the bed and threatened to chop her body up and put it in the deep freeze.

(Davis v Johnson (1978)).

the wife left with the children and was walking down an alley when he attacked her either with a knife or an open cut-throat razor, inflicting on her a number of wounds one of which severed the tendons of her right hand.

(Jones v Jones (1976)).

If women had not entered refuges or already been referred to as 'battered' there might be problems in explaining why, after several years of marriage, there should be a decision to leave. One much criticised decision in the more recent texts, at times leading to a reversal of decisions, was that women could become 'used' to abuse. In Mrs Bergin's case for instance (Bergin v Bergin (1983)) the magistrates had argued that she accepted the abuse as part of her married life. In Rennick v Rennick (1978) Lord Ormrod argued that:
families of this kind do tolerate an extraordinary amount of ill behaviour remarkably well.

(Rennick v Rennick (1978)).

Decisions which began from the perspective of the court's protective guise of women emphasised the effects of the behaviour rather than its cause, justification or explanation, or the effects on the public at large. Whilst an examination of the impact of behaviour upon the victim holds the potential to allow courts to better assess and respond to her needs, emphasis upon her vulnerability has a double edge. The previous chapter has already demonstrated adequately that descriptions of the effects of behaviour and of the vulnerability of victims gives scope for the introduction of stereotypical views regarding socially 'correct' standards of behaviour for men and women. In the cases surveyed the effects and vulnerability were discussed primarily in order to establish a 'right' to the 'benefit' of legal solutions. The texts contained frequent references to the women's statuses as wives or mothers. For example:

There seems to have been a good deal of violence between the appellant and the respondent and more recently, in February, the respondent (....) made a series of assaults on her as a result of which she sustained scratching, bruising and other injuries. He also behaved in such a way as to drive her out of the flat of which she was a tenant and to deprive her temporarily of the care of the boy (....) The situation as it existed before 6th March was of such a grave character that this court ought to do all it can by way of interlocutory relief to protect the appellant and her child.

(Re W (1981)).

Paradoxically, the effects of the behaviour upon the victims could be
either described in similar terms to the grave and weighty standard or on terms which made them appear merely consequent. The individualistic focus further tended to result in discursive diversions towards the analysis of victims' powers of endurance. The amount of harm resulting from abuse or behaviour would thus vary with the couple's relative ages, abilities or disabilities, muscular strength, size and so forth. Sexual inequality, with a basis in 'natural' differences and vulnerabilities was often referred to as a relevant factor in assessing the damage done by an event. The emphasis on the woman's status as wife, mother dependent or weaker being suggested that protection from the courts had to be 'earned'. Some of the discussions drew upon physical, biological or 'sex role' differences between the parties. Motherhood and pregnancy were particularly popular cases:

the family doctor dealt with the situation in which the parties were living. He said (the son) had become very difficult to deal with and was spending a great deal of time in his bedroom, and the situation was causing the wife mental illness.

(Phillips v Phillips (1973)).

dthis unruly incident by the husband (....) caused her (....) at 1.30 in the morning, when she was in the precarious condition of 2 months pregnancy, to leave the matrimonial home

(Bergin v Bergin (1983)).

the appellant has the right, through and for the infant Cordelia, to go back to the flat and have the father excluded.

(Davis v Johnson (1978)).
Some of the decisions were rife with sympathy for wives who had tried to preserve their marriages by 'covering up' for the husband.

Legal relief as a welfare benefit was handed out rather like a means tested benefit because the emphasis on women's vulnerability (on the basis of their just deserts) gave potential for other women to be undeserving. Legal intervention on the basis of 'welfare provision' was founded upon a belief that one party would 'gain', housing, income support, protection, etc. Thus, not only would the women be required to 'earn' protection but the court would have to take care to protect against abuse of the law. Some decisions took on a policing guise by seeking out and condemning claims said to be made on the basis of 'trivia' (see e.g. Richards v Richards (1983)). At the extreme end of the 'protective' approach thus the effects of the behaviour upon the victim were not discussed at length at all. The victim instead took on the role of 'social security scrounger' by asserting 'trivial' complaints in order to profit from protective legislation.

The assessment of whether or not complaints were trivial in the cases surveyed was found only to have applied to situations arising from women's allegations. This may have been because men's allegations of their partner's behaviour were much less common than are women's, or men's complaints may be more commonly interpreted as 'true' or 'untrue' rather than made unimportant. Previous discussion has shown that it is not too difficult to trivialise allegations by
presenting the evidences in a certain fashion and using suitably ambiguous or moderate language. In Phillips v Phillips (1973) for example, only at the start of the case is it mentioned that the woman had complained about 'physical assaults'. The rest of the discussion in the text emphasises the less severe acts of behaviour. In Williams v Fawcett (1985) the discussion founded the scope for legal intervention on the basis of a conflict between the protection of women and their manipulation/abuse of this legal option in order to gain some benefit. This case had arisen from a committal for contempt of court following the man's breach of an undertaking not to molest his 'common law' wife. At the start of the text the issues are defined, none of which refers to the effects of the behaviour on the woman involved. The behaviour was primarily discussed in reference to the woman's potential to manipulate the law.

Where 'protection' was constructed as the main topic in decisions, discussion of the woman's potential for gain could override any discussion whatever on the effects of the behaviour on the women concerned. This tendency was very noticeable in the case of Richards v Richards (1983) where only Lord Scarman's judgement attempted to place the discussion of behaviour in the context of its effects on the woman concerned.

Summary.
The analysis in this chapter has not examined the legal texts for
evidence of 'objective', statistical or even majority patterns of intervention. No objective standard for legal intervention into cases of domestic violence against women could be defined as even killing is a socially negotiable power. The chapter has sought instead to look at how the distinctions between acceptable, unacceptable and even irrelevant behaviour in marriage type relationships are made into issues of concern in legal discourse, adding legitimacy to and expanding or limiting the law's powers of intervention.

The analysis of the reported decisions found that, as in the solicitors' cases, ambiguity and conflict were central features of the texts. The descriptions of the behaviour and its relevance in relation to the defined issues of the case varied considerably. The examples have shown some of the possible variations. The descriptions offered of the behaviour in a couple's relationship could for example enter the text in the context of a series of contested claims over events and their explanations/justifications, or in the context of its social, subjective or welfare implications, or on the basis of a conflict between the others (experts, doctors, etc.) involved in the legal case. An interplay between stereotypes and assumptions about domestic violence against women were often involved in the movement towards conclusions presented in the cases but evidence of blatant misogyny in legal texts was seldom found. In contrast to the material discussed in the next chapter, the legal texts only rarely discussed domestic violence against women in terms
of women inviting or 'deserving' the attack. Discussion in most of the cases surveyed which had outcomes detrimental to the women concerned centred primarily on whether or not the law could/should intervene. The women's actual experiences of abuse, the effects upon her and her present needs tended to be removed from most of the discussions. As good policy cases the decisions offered ways in which issues could be asserted and debates framed. Some of the texts contained various references to very plausible issues of justice without ever discussing the victim's needs. The cases established the need for legal mediation on the basis of textually constructed oppositions. In the case examples discussed the interventionist problem constructed in the texts sidestepped (in the majority) an examination of needs by prioritising a welter of reasonable (but arbitrary) oppositions between children's welfare and parental rights, individual freedom and state intervention, punishment and treatment, welfare for the needy and abuse by the greedy. A later discussion will take up the analysis in relation to the part played by the legal process of definition in the the secondary assault of women as victims. In the next chapter a similar sidestepping movement away from issues concerning women's needs will be discussed.
CHAPTER EIGHT.

From Bad News To Good Stories - The Representation Of Offenders And Victims In The Press.

This chapter is based on the analysis of 105 press reports of cases of domestic violence against women traced between the dates 24th October 1983 to the 7th October 1986. The reports discussed a total of 73 cases of violent assault, 57 of which were homicide cases. Seven out of the total 72 cases described women's violence towards their husbands or cohabiting manfriends. Three of these involved the women's killing of men who had battered them, where the homicides were said to have been the only way the women could save their own or their children's lives. Two cases concerned women who were said to have killed due to sexual jealousy arising from their partners associations with other women. The sixth and seventh cases described women who were said to have used dominating behaviour and violence against their partners.

The cases were collected primarily from The Guardian and The Times newspapers, these being part of the non-tabloid press where 'good' stories are supposedly sold on the basis of a balance between the accuracy of reporting and the sensationalism of the news. Although the sales of newspapers from the non-tabloid press are small when compared to the distribution figures for papers such as the Sun or
Daily Express, it was assumed that amongst the legal profession the non-tabloid news would have a wider readership.

Newspaper reports of cases of domestic violence against women are written in much less complicated and arid language than that used in the law reports studied. The style is typically a narrative, distinguished from the legal narrative of affidavit evidences by the heavy reliance upon metaphorical and descriptive language. Newspaper reports break the lawyers' rules by stressing hearsay evidence and noting at any opportunity details such as the accused's past criminality which could prejudice the trials. Press reports in the non-tabloid press however strive for the legitimacy of truth by offering reports which quote at length the various evidences offered in court and covering the disputes between defence and prosecution. Name dropping of the accused's counsel or any other experts involved is a common occurrence. For example, in the following description of Ronald Frost's suicide following his attempted murder of his wife and two children almost the whole report is in quotes pertaining to the statement made by a Chief Inspector. Name dropping occurs three times in this short piece:

"Mr Frost started to rain blows on his wife's head and at this point, Karoll, his eldest daughter entered the kitchen and Mr Frost turned his attention to her", said Chief Inspector Brian Richardson. (description of killing, police siege and suicide) Home Office pathologist Dr Keith Mant said Frost died from a gunshot wound which had entered the roof of his mouth and almost emerged through the top of his head. Mr Michael Burgess, Surrey deputy coroner, recorded a verdict of suicide.

(Guardian, 1983, October 24).
Like the reported decisions of the courts, press reports of cases of domestic violence against women are about judgement. Newspaper reports however are capable of being judgemental prior to any legal decision. They tend to pre-judge innocence or guilt and publish any evidence they are able to publish. Further, unlike law reports, the press reports allow open political statement. In the following Guardian extract, the frequent use of words like 'alleged' act as support for this liberal newspaper's regular contention that the police cannot always be believed:

In his alleged statement Backhouse told police that during the last nine years he had had sexual relations with Mrs Gillian Lippiatt, a shepherdess from a nearby farm (....) He also allegedly admitted having sexual relations with Mrs Caroline Hodkinson (....) Backhouse allegedly said, "This was not a serious relationship" (....) In the statement which debated his early family history, Backhouse is said to have described how he met and married his wife over 10 years earlier.

(Guardian, 1985, February 9).

Noticeably more political are the editorial condemnations of government policy as in the following extract where the Guardian blames the Tories for causing the distress and rage expressed by readers of the press reports on the killing of Margaret Hogg:

Captain Hogg seems to have received an almost textbook term for manslaughter by reason of provocation. Three years is at the lower end of the usual tariff but it is not a freak. What the sentence does illustrate is that homicide law which decrees that murder shall carry a mandatory life term will inevitably encourage a rather rough and ready set of sentencing principles for manslaughter. Some of these difficulties would be avoided if murder did not carry a mandatory penalty. But no Tory conference would wear such a reform, so no Tory Home Secretary
Press accounts of violent crimes differ radically from law reports as they are basically 'entertainment'. In this respect cases of domestic violence against women covered by the press are no different to other violent crimes. A large number of the wife killing cases traced from the press were reported merely as 'murders' or indistinguishable from the homicides said to have been committed in other social contexts. The cases were typically headlined succinctly as 'Murder' or 'Murder charge', the description of the arrest and other events consisting of a bald precis of the 'facts' as in the following examples:

**Murder charge.**
An antiques dealer, Wilfred Bull, aged 50, of Coggershall, Essex, was remanded in custody for a week by Witham magistrates yesterday charged with the murder of his wife Patricia, 48.

(Guardian, 1985, May 9).

**Murder remand.**
Stanley Abel, a 76 year old retired Pentecostal minister, was remanded in custody at Glasgow sheriff court yesterday accused of murdering his wife at their home in Balcarres Avenue.

(Guardian, 1985, May 11).

The brief, bald description of a murder in the cases traced always included status related biographical details such as the age and occupation of the accused. It could be that the accounts were only brief due to a lack of information at that point in the case because
this bald 'factual' style was hardly ever used for longer reports. The case already mentioned concerning Mr Frost's attempts at murder followed by suicide was one rare example traced. Another was the Sunday Times report on the killing of three women by violent men set in the context of a report on the inadequate protection offered women by the police and family law:

Mary Khelifati (....) was hacked to death with a long-bladed knife on May 8 this year. Her husband, an Algerian named Mohammed, stabbed his wife in full view of their six year old daughter Louisa and has since been jailed for life (Sunday Times, 1984, December 30).

This sort of description of an unexplained, unprovoked and far from understandable killing where the man is described as an active agent in the offence committed appeared very rarely in the press reports studied. Homicides, whether of wives or strangers, are first and foremost 'stories' in the press. These stories sell news primarily because they are titilatory or moral tales about 'ordinary folk' who committed crimes, of 'spoilt rich boys' who murdered for cash, wicked men who committed ghoulish slaughters. The following headlines illustrate the point:

wife killed after sex taunt
(George Close's killing of his wife, Guardian, 1983, October 24).

Man killed girlfriend in TV row.
(Stanley Dingley's killing of his common law wife, Guardian, 1983, November 5).
Mr Colin Gill with his wife Linda and their sons Dorian, 2, David, 9, Stephen (left) 17, and Robert, 14.
Headless body killer gets life.
(Michael Telling's killing of his wife, Guardian, 1984, June 22).

Body of man was dumped in tomb.
(Kenneth Marchant's killing of his lover's husband, The Times, 1986, October 25).

Son 'slaughtered family to inherit £436,000 estate'.
(Jeremy Bamber's killing of his mother, father, sister and two nephews, The Times, 1986, October 3).

Lecturer hid girl's bones in coffee jar.
(Samson Perera's killing of his daughter, The Times, 1986, March 6).

Nagging sister was killed.
(Daniel O'Sullivan's killing of his sister, The Times, 1986, March 1).

Murder girls sexually assaulted.

News man died from riot blows.
(Killing of David Hodge in Brixton riots, The Times, 1986, October 21).

List of errors that ended in child's death.
(Colin Evans' babysitting killing of Marie Payne, Guardian 1984, December 18).

The extraordinary event, a homicide, happening to 'ordinary' people is news in itself. The pictures printed of the offenders and victims are typically the family snapshot variety. Plate 1 shows a picture the Daily Telegraph newspaper printed on 21st August 1986 of Colin
Top: Mr. Robert Healey, his wife, Gretha, and his stepdaughter, Marie. Above: Mr. Healey yesterday at Stockport.
Gill and the family he killed before he committed suicide. The shot portrays the Gills as having the neatly dressed, middle class appearance of the ideal (large) nuclear family. The posed photograph was most likely part of an event in the family's history, possibly a celebration of the last child's birth. It must have been taken some time prior to the killings as the youngest child Dorian, is shown as a small baby and he had been aged 2 when he died. Anyone who has experienced similar family occasions where everybody poses for a memorable photograph can easily identify with the individuals in the snapshot. It is only the headline - 5 shot dead after wife met lover - which makes the image incongruous.

Plate 2 shows a similar use of the family snapshot to reinforce the paradox of the domestic murder of a 'happy' family. The two photographs were published by The Times newspaper on August 18 1985. They show Robert Healey with the wife and step-daughter whom he murdered. Healey left their bodies in a shallow grave in a Welsh woodland and then tried to fake his own suicide. His crimes were labelled 'the Reggie Perrin case' as a result of analogies the press found with the story of the character of that name played by Leonard Rossiter in a TV series. In this example, the snapshot of the happy smiling family was published alongside a typical 'criminal' image. The headline read Man is questioned in murdered family case. In the second picture Healey is shown with his head covered by his coat being rushed away from public (i.e. press) view. Instead of being smartly dressed, Healey now appears more casual, he wears no
tie and his jeans and shirt look crumpled. The two photos tend to reinforce the image of his fall from grace.

Press reports of homicide cases and violent crimes make frequent reference to status indicators when describing the offences. All the papers surveyed had a special interest in violent crimes perpetrated by white collar workers or by those employed in occupations which involved a great deal of exposure to the 'public'. This can be seen from the headlines attached to many of the press reports:

Jilted Footballer Fined After Fracas in Farncombe Pub.
(Surrey Advertiser, 1985, June 14).

Pilot 'provoked into killing wife'
(Guardian, 1985, March 7).

Fallen Champ
(Guardian, 1984, October 18).

Rugby Player In Twins Death Case
(Guardian, 1985, February 18).

In the following three cases the status becomes part of the offence because the crime is an anathema to the individual's professional vocation:

Fear of Poverty Drove Preacher To Kill His Wife
(The Times, 1985, August 24).
PC's bride killed her husband

(Guardian, 1984, November 30).

Surgeon Poisoned His Wife

(Guardian, 1984, November 30).

In their discussion of press reports of rape cases, Walby, Hay & Soothill (1983) found loss of control and victim provocation were important elements in the discussion. Beasts, fiends, unbalanced, wicked men and victims who crossed the boundaries of 'appropriate' behaviour by being familiar with the offender, dressing 'provocatively', hitching lifts and so on, were found to be common themes. All press reports of violent crimes have the common functions of titilating whilst morally congratulating the readers, shocking and stimulating readers whilst reassuring them that they are morally better. Colin Evans, for example, the killer of 4 year old Marie Payne, was at the extreme end of the shock and morality range and was mostly described as 'evil':

Mr Little (Superintendent with the Metropolitan Police) described Evans as evil and sadistic. "He lies to suit himself. He showed no emotion throughout the time I interviewed him," he said.

"I would not be happy to see that man ever again on the streets. He has an overwhelming desire for sex with young children, and who is to say that his desire will have gone away when he is 70?"

(Guardian, 1984, December 18).

A disturbing feature of the accounts of violent crimes was the unnecessarily lengthy and detailed descriptions of the killing and
dismemberment of women and children. The killing and dismemberment of the 13 year old Nilanthe by her adoptive father Samson Perera frequently reported in February and March 1986 (see The Times 1986, February 25, February 26, February 27, March 1, March 3) provides an example. The reports of this case were almost entirely composed of descriptions, in forensic quotes, of Perera's dismemberment of Nilanthe's body and the pathologists' 'work' on her remains. Judgement/justification for these sordid, detailed descriptions hung precariously on the reports' condemnations of Perera as 'evil'.

Graphic descriptions of the slow death from starvation of three year old Heidi Koseda took up a large amount of column space in the non-tabloid press in 1985 (see e.g. The Times, 1985 September 25). Here the descriptions were interwoven with the account which Nicholas Price, the killer, gave of the events reinforcing the image of him as cruel and beastly, but the crime alone could have made this point.

The objectives of press reports departed from legal considerations in that the evidences and descriptions of the trials reproduced had little to do with the outcome of the case, i.e. the sentence. The case reports seldom placed emphasis upon the use of the law to deter future crimes of violence against women. Although the link between the law and the deterrence of crimes is rather tenuous the emphasis upon these more legalistic issues and the outright condemnation of violent crimes in reports of other 'stranger' or 'terrorist' killings suggests that domestic killings are either seldom a danger to the
public or motivated by factors other than pure criminality/beastliness. The 'justice' of the stated rationales behind the sentences given, even though they may be rigorously debated in editorials, played a minor role in the reports. Many of the latter day press reports on violence against women appeared to be both pornographic celebrations of male power and public condemnations of its extremes. For women readers there is a third function, they stand as warnings about the dangers faced by a whole gender whether young, infant or old.

The reports of wife/cohabitee/lover killings differed from other accounts of homicides in the way that the crime was denied, explained or celebrated. In some of the accounts the homicide was portrayed as a mere event, something that just happened. The offence virtually disappeared because the offender's absence was manufactured by the discursive techniques employed in the report. Here is how the text covering Robert Healey's murders of Greeba, his wife, and Marie, his step-daughter described the killing of Greeba:

Mrs Healey, 40, died from skull fractures during a frenzied attack.

(Sunday Times, 1986, August 17).

In The Times' report of Frans Quirin's murder of his wife and subsequent suicide, the distancing of the offender from the crime was achieved by setting the discussion in terms of the daughter's discovery of the bodies. The headline Girl of 8 finds her parents
dead supports the representation of the deaths as mere events. The report of the case admitted Frans Quirin's responsibility for the deaths obtusely:

A girl aged eight was being comforted by relatives yesterday after finding her mother stabbed to death and her father hanging in the hallway of their home. François Quirin discovered her parents when she came downstairs for breakfast at their home (....)

In the living room, Mrs Monica, aged 36, had a stab wound in the chest and Mr Frans Quirin, her estranged husband, a postman in his 40s, was dead nearby. The police said Mrs Quirin's death was being treated as murder, but no one else was being sought in connection with the incident.

(The Times, 1986, June 9).

The following extract also divorces the offender from the victims by centering the discussion elsewhere:

3 dead in shooting at house
A man aged 72 was critically ill in a Birmingham hospital yesterday after his wife and two sons were found shot dead at their home.

Mrs Lilian Hadley, who was in her sixties, and her sons, Ronald, a disabled polio victim, aged about 40, and Keith aged 22, were found dead at their house (....) early yesterday. Her husband, Mr Ronald Hadley, was found lying on the floor by the police who broke into the house after neighbours heard shots. He had a severe gunshot wound to the head.

The police said that a shotgun was found in the house. They were not looking for anybody else in connection with the shooting. It was clearly a domestic incident.

(The Times, 1986, April 17).

A report based upon information received from the police prior to charges being made would of course necessarily take care not to refer to the suspect as the 'killer' or 'offender'. The above
descriptions of crimes however are entirely lacking offenders. The report is introduced by reference to the husband's critical condition. The deaths of Mrs Hadley and the two sons described as events. Rather than somebody having killed them, they were 'found dead' or 'found shot dead'. Although the police are quoted as saying 'It was clearly a domestic incident', any one of the Hadley family could have been the killer.

Discussing the killer's acts in passive terms was another way in which responsibility could be obscured in the texts. A case headlined Wife killed by hammer blows described Brian Harris's killing of his wife Edna as follows:

Brian Harris, aged 49, of Blackpool, pleaded guilty to killing his wife Edna, aged 47, because of diminished responsibility. She was killed by repeated blows to the head with a hammer after which Harris attempted to commit suicide.

(The Times, 1986, July 6).

Although less dramatic and more ambiguous than the preceding examples the text nonetheless puts similar emphasis upon the event as offenderless. The readers are told that Harris pleaded guilty to killing his wife not that he actually confessed. Edna Harris was 'killed by repeated blows to the head with a hammer'. There is no mention as to who was the person who yielded the blows. Further examples are provided in the following headlines and extracts:

Man accused of murder is found hanged in prison cell.
TRIANGLE OF DEATH
Radio DJ and doctor’s son who fell for the same girl... and died.

(Daily Mail, 1985, June 7).

Husband held on shooting charge
A property developer whose wife was shot outside a North London bank on Friday appeared in court at Clerkenwell with another man yesterday accused of her attempted murder.

(The Times, 1985, July 9).

In the following report (which accompanied the pictures shown in Plate 2) published in The Times August 19 1986, the same effect is achieved by shifting the focus from the killings on to the accusations against the killer:

Husband accused of family murder
Mr Robert Healey was remanded in custody until August 26 (....) charged with the murder of his wife and stepdaughter (....) he was accused of the murders of his wife, Greba, aged 40, and Marie Walker, aged 13, whose bodies were found in a shallow grave in North Wales on Friday. Reporting restrictions were not lifted.

(The Times, 1986, August 19).

In cases where the offender was directly linked to the offences, his explanation for the crime was virtually always included in the discussion. This could be based on a 'loss of control' as in the following example:

Man killed girlfriend in TV row
A football fan who stabbed his girlfriend to death because she turned off the television during the FA Cup Final Replay told the jury yesterday, "I was still in love with her when I killed her" (....) Stanley Dingley, aged 43, (....) told the jury (....) "she came in from the kitchen and turned off the TV, saying she
could not stand football."

Mrs Worley went into the bedroom and he followed her there. "I put my hand on her neck and asked her what was the matter but she just turned round and dug her teeth into my thumb".

Mr Dingley said he went to get a towel for his thumb and saw a knife in the kitchen. "I went back into the bedroom. I pulled her backwards and stabbed her three times. I lost my temper and lost control."

(Guardian, 1983, November 5).

The following two cases describe men who were said to have resorted to violence because the victims did not gratify their sexual demands:

Five life terms for murder.
A Pakistani labourer who burnt his wife and four of her family to death last June because he was not allowed to sleep with her received five life sentences at the Old Bailey yesterday.

(Guardian, 1984, March 30).

'Obsessive love' led Esher man to kidnap nurse
The passionate and obsessive love of an Esher man for a nurse led him to kidnap her when she refused to continue their affair, a court heard (....) Bolton snatched her from her flat in a nurse's home and for four days kept her imprisoned in his car driving around the South of England (....) Mr Bolton's counsel, Mr Patrick Black, told Mr Justice Bristow that Mr Bolton (....) had been passionately in love with Miss Macklin.

On one of the nights they spent together, intercourse took place several times and he said it was the 'best form of conduct of that kind he had ever experienced' (....) Miss Macklin did not want the relationship to become serious but Bolton became obsessed with her and wanted them to marry.

When the nurse refused to go out with him any more because she wanted the relationship to cool, Mr Bolton kidnapped her (....) Mr Black told the court that Mr Bolton was the type of man who became demanding in love 'sexual gratification inflamed his emotions instead of relaxing him'.

Mr Bolton had said Miss Macklin was not to blame for anything that happened. 'She is a thoroughly decent young woman' said Mr Black.

(Surrey Advertiser, 1985, May 3).
The murder followed by suicide in the next reports are classic examples of the British press's preoccupation with the 'love triangle':

Possessive man shot wife and children
(Description of killing of woman and 2 children followed by man's suicide) Jealousy over what he thought was an affair between his brother Carl, aged 22, and his wife Sharon, aged 31, was one of the causes of the tragedy (....) "The suspicions might well have been denied in evidence but there is no doubt they affected Mr Allen who was of a jealous and possessive nature" the coroner said.

(The Times, 1985, August 29).

5 shot dead after wife met lover
A former detective, Colin Gill, shot dead his wife and four sons and then killed himself after Mrs Linda Gill, 33, had returned home following a moonlight meeting with her 21-year-old lover, an inquest heard yesterday. (See Plate 1).

(Daily Telegraph, 1986, August 21).

Husband cut car's brake pipe
A rejected husband who cut the brake pipe of his rival's car after scratching the words "You're dead" across the paintwork has been given a suspended jail sentence. Colin Gill, aged 30, a British Airways engineer, was devastated by the loss of his wife, Shirley, to Mr David Thomas, a taxi driver, in late 1984, Mr John Perry, for the defence, told Oxford Crown Court yesterday.

He became extremely depressed and one night in February last year called at the house in Pitts Road (....) where Mr Thomas lived with Mrs Gill, and damaged the car.

Next morning Mrs Gill tried to drive the car to her parents' home and found the brakes were not working.

(The Times, 1986, April 8).

As in the law reports discussed in the previous chapter, drink was another reason why a man might be driven to murder:

Children killed in arson attack by drunken father
Four children died when their father set fire to their home in a
drunken rage after drinking 18 pints of Guinness and 10 brandies, Winchester Crown Court heard yesterday (....)

Mr William Denny QC, prosecuting said, 'He habitually drank heavily and when he could not hold his liquor he assaulted and threatened his wife.

(Guardian, 1985, May 15).

Drugs raised similar, although more ambiguous issues, as these could be administered without the offender's knowledge or due to his belief they would be beneficial to health:

Drug led husband to hate wife
A businessman's love for his wife turned to hate and his gentleness turned to violence after a hypnotist injected him with a drug called 'Jaffe Juice', a medical disciplinary hearing was told yesterday.

(The Times, 1986, July 30).

Killer Tried To Revive Body
After beating his common law wife to death in a row over drugs, Joseph Carlton-Armstrong, a heroin addict, made 'futile and irrational attempts' to revive the body, Judge Richard Lowry QC, said at the Old Bailey yesterday (....) Judge Lowry said years of drug abuse had eroded Carlton-Armstrong's brain and personality.

(Daily Telegraph, 1986, February 19).

There were a number of other explanations suggested in the reports.
Unexplained instability - going berserk - was one theme:

Gunman hiding in caverns
Armed police hunting a man who opened fire five times with a revolver in Dudley, West Midlands, said last night he could be hiding in underground caverns.

The man from Dudley is believed to be armed with a .25 revolver.

In the latest incident, at the Wren's Nest public house in Dudley on Sunday, a bullet passed between the heads of two women, one his wife.

Armed officers joined more than 100 policemen carrying
out house to house searches.

Superintendent Martin Burton, of West Midlands police said the gunman appeared to have gone berserk and he advised people not to approach him.

(The Times, 1986, May 27).

Killing for financial gain was another important theme:

A farmer who needed £100,000 to save his business tried to blow up his wife with a car bomb for insurance money and then murdered a neighbour as part of an elaborate cover up.

(Guardian, 1985, January 29).

Unhappy husband had two tries at killing his wife for insurance.

(Guardian, 1985, May 1).

Some of the reports portrayed offenders driven by abject despair as in the 'mercy' killing type of homicide:

Husband in mercy killing goes free

A pensioner who carried out the mercy killing of his wife after 55 years of marriage walked free from the court yesterday.

Mr Neil Butterfield QC, prosecuting, said that a year-and-a-half after his wife suffered a severe stroke which left her partially paralysed, Masters determined to put here out of her pain.

(Daily Mail, 1985, July 2).

The following case offered a similar explanation although few would rank it as euthanasia. Stanley Abel is said to have killed to protect his wife from possible hardship:

Fear of poverty drove Pentecostal minister Stanley Abel, aged 76, to kill his disabled wife (....) The court was told Abel (....) smothered his wife with a pillow believing they were destitute.
He was also terrified that because of his own health he would be unable to care for his wife, who was disabled with arthritis.

(The Times, 1985, August 24).

Self defence was discussed in most of the cases arising from women's violence towards men. Celia Ripley was quoted in the Guardian report of her trial as saying:

I had been driven out of my mind by my husband's beastly behaviour and (....) I intended to shoot him.

(Guardian, 1983, November 1).

A similar explanation was put forward in the report on Luise Legeman's killing of her father:

Luise Legeman, aged 16, (....) hit her father at least 3 times after he attacked her mother with scissors and knives in a row over the family's pet rabbit. She told police, 'I did it to stop him hitting my Mum. Then I just couldn't stop myself from hitting him because I knew if I didn't hurt him seriously he would probably kill me or my Mum.'

(Guardian, 1984, September 11).

Intervention by men to prevent a crime on women was described in one of the cases traced:

Can't take the law into your own hands, man's attacker told. A man who attacked his girlfriend's father was given a conditional discharge by Farnham magistrates on Wednesday. Magistrates heard how David Browne, 40 (....) who pleaded guilty to causing Arthur Leggett actual bodily harm, became enraged when his girlfriend told him her mother had been hit on the head with a blunt instrument by her father.

(Farnham Herald, 1986, February 7).
In some of the reports, the gender and status of offenders and victims were inextricably tied in with the explanations offered about the crimes. The following report concerns a woman's behaviour cited as particulars in her husband's divorce in 1986:

**Husband had to sleep in car**

Mr Jack Mouncey, a senior manager, was dominated in his £100,000 home by his wife, Maureen, who sometimes made him sleep in the car.

Mrs Mouncey, aged 54, a teacher, took the view that he was "really a working class boy who had made good and should be kept in his place" a divorce judge said yesterday.

For Mr Mouncey, aged 56, Northern England district manager for Ford, being kept in his place meant being locked out on occasions; sleeping on the living room couch; never being allowed to use an upstairs bathroom or lavatory and not being cooked for.

(The Times, 1986, February 14).

The report is about a very common occurrence, a divorce alleging unreasonable behaviour but had the 'facts' been alleged by a woman against a man, it is unlikely that The Times would have printed it as a good story. Injunction and divorce hearings resulting from life threatening acts of behaviour take place every day, some concerning £100,000 houses, yet they are not reported in the national press. Although her behaviour could well have been very distressing to Mr Mouncey, Mrs Mouncey used no physical violence in her 'domination'. 'Not being cooked for' is a complaint only men are able to make about wives. The report interweaves Mrs Mouncey's references to her husband's working class origins with statements about his present status - a senior manager, his £100,000 home, Northern England
district manager for Ford. The readers are merely told that Mrs Mouncey was a 'teacher' and it is noticeably not her or even jointly her, £100,000 home. The extract creates and assumes gender stereotypes about appropriate behaviour for men and women of a certain status that will be shared with the readers.

The Times report of Gloria Hewitt's killing of her husband stretches the gender valued motivations for the crime to the limit by making an incident over a 'carpet' the impetus for battering her husband to death:

A woman killed her husband and then tried to kill herself because she was terrified of moving home, a judge at the Central Criminal Court was told yesterday. The court heard that Mrs Gloria Hewitt, aged 65, and her husband, Jim could not face the prospect of leaving their council flat although it was in a terrible state (....) A minor problem over a carpet proved the "last straw" for Mrs Hewitt... She battered her husband to death with a hammer and killed their blind pet dog before taking a drugs overdose which proved to be not fatal.

(The Times, 1986, September 27).

The heroic type of murder was one of the extreme cases where gendered behaviour was crucial to the reports. Representations of wife killings as 'heroic' events are undoubtedly the 'best' newspaper stories because so much column space is devoted to the details of these crimes. 'Heroic' murderers of women attract cult type followings which perpetuate the glorification of the violent crimes, sometimes for centuries (see Cameron & Frazer, 1987; Cameron, 1988). The creation of a woman killing as a heroic event offers some, if not
all, men the chance to be heroes. These crimes are turned into celebrations of the expression of men's power through the strategic use of violence against women, celebrations of the law and legal actors, forensic experts or prosecutors who hunted for and 'trapped' a cunning man by exploiting his oversight of one 'fatal' clue. The 'heroic' killings celebrated therefore not only men's sexual power but also their brain power.

Press accounts of two cases with common features, the killings of Margaret Hogg and Monika Telling, will be discussed and contrasted to show how the 'heroic' murders offered male readers the chance to both congratulate themselves and put women in their place.

The Killing Of Margaret Hogg.

Mrs Margaret Hogg was probably killed as a result of her husband, Peter's, strangulation of her in 1976. Peter Hogg then drove to the Lake District and threw her body into Wast Water. Mrs Hogg's body had been spotted by a local sub-aqua club's divers who pointed it out in 1984 as a 'strange parcel' to the police, at the time searching the lake for the body of a French student. Hogg was charged with the murder of his wife eight years after the offence.

The national and local press coverage of the trial revolved around three issues: Hogg's status, the disposal of the body and Margaret
Hogg's behaviour. By the end of the trial Peter Hogg had become a national hero and Margaret Hogg an 'erring piece of humanity' deserving to die.

The first report of the case was an ITV newsflash released on March 5 1984:

The husband of a woman whose body was found in a Cumbrian lake 8 years after she disappeared has been charged with her murder.

Peter Hogg, 56, will appear before Guildford magistrates tomorrow morning, Surrey police said. Mrs Hogg, 44, a mother of two, of Cranleigh Surrey, was found in Wast Water 5 days ago. Her body trussed in a carpet and weighted down with concrete was found by divers searching for a French student who is still missing.

The report is written from the perspective of the offender, Hogg being charged with murder. This first statement contains the only direct reference to Margaret Hogg as a 'mother of two'. In subsequent reports of the case Peter Hogg takes on the role of parent, being a 'father to his sons'. Despite the brevity of the press release, space is found for a description of Margaret Hogg's body being 'trussed in a carpet and weighted down with concrete'. Later reports added further details about Margaret Hogg's body.

The next report of the case appeared exactly a year later. On March 5 1985 the Guardian published a 6 by 6 inch photograph of Peter Hogg with his 'girlfriend', ex-housekeeper Rosemary Steel, by his side. In the photograph Hogg was 'smartly' dressed in a dark suit with a dark tie, covered by an expensive looking sombre overcoat. He looked like
any well dressed male city commuter. Mrs Steel was shown smiling pleasantly at the photographer/onlooker/reader, her head slightly inclined to the left side in the manner of women royalty. She was holding on to Hogg's arm. The photo was headlined wedding ring 'helped trap pilot who dumped dead wife in lake'. The discussion below the photograph expanded upon the three matters, introduced by the headline, of Hogg's status, the body disposal and the clues. Hogg's status and status in relation to his wife is liberally referred to throughout the report. As well as the headline's reference to a 'pilot' the discussion stated:

An airline pilot, Peter Hogg, overlooked two key factors when he dumped his wife's body in Wast Water.

Hogg strangled his air hostess wife, Margaret.

Captain Hogg, aged 56, of Cranleigh, Surrey, denies murdering his wife.

Less explicit references to his status were made when describing the events after the crimes:

He arranged an appointment with his son David's headmaster and drove the 130 miles to the school at Taunton.

Hogg belonged to the class of men who send their boys to boarding schools miles away from home. Mrs Hogg was lower status, an air hostess, not a pilot. Her death was said to have followed a 'row about her lover':
Mrs Hogg was having an affair with Mr Graham Ryan, whom she met ten years after marrying Hogg in 1963.

The description of the killing of Margaret Hogg was written from Hogg's perspective, giving readers the chance to change places with him in fantasy if so desired. Rather than just say that Hogg strangled Margaret the account read:

"During the row which followed, Hogg lost control, "got his wife by the throat, and squeezed hard until she stopped squirming."

The phrase 'until she stopped squirming' suggests Hogg killed a maggot rather than his wife. The suggestion of Mrs Hogg's subhumanity was added to in the description of the disposal of the body when Hogg was said to have 'tipped the macabre bundle into the lake'. At least three quarters of this report were devoted to Hogg's disposal of the body. The prosecuting QC was reported to have argued:

he organised the disposal of his wife's body with "clinical efficiency and skill".

Evidence of Mr Hogg's 'skill' was added in the following extract:

The day before his wife died Hogg "began to put an alibi together to disguise his real plan for the disposal of her body", said Mr Hacking. He arranged an appointment with his son David's headmaster and drove the 130 miles to the school at Taunton with his wife's body in the boot. Also in the car was an inflatable dinghy with a concrete block with a hole in it.

Assuming everyone would think he was spending the night at Taunton, he drove 325 miles north to Wast Water, arriving at midnight.

He inflated the dinghy, put in the body, a parcel of blood
stained clothing and a concrete block, and rowed out the the middle of the lake. He attached the body and parcel to the concrete with rope flex and wire, then tipped "the macabre bundle" into the lake.

He drove the night to Taunton - a round trip of 1,000 miles - collected David for his half-term holiday, and returned to Cranleigh.

(Guardian, 1985, March 5).

Hogg's 'disposal' of his wife was described as an ordeal, a carefully planned attempt to evade prosecution, rather than a 'cold and calculating plot'. The 1,000 mile round trip in one night is extraordinary. Hogg's 'control' was apparently so well restored that he could turn up at the school the next day and collect his son as though he had slept peacefully all night. The case began to look more like an Agatha Christie novel than a horrible murder. Like Agatha Christie's super-sleuths, the readers of the report were given similar information on the details of the crime and the offender's oversights:

Hogg (....) overlooked two things which lead to her identification - he wrapped her in plastic sheets containing the name and address of a Guildford firm, and forgot to remove her wedding ring.

(Guardian, 1985, March 5).

Two days later on March 7 the Guardian's report emphasised aspects of Mrs Hogg's character and behaviour which influenced the airline pilot's ability to maintain control:

Pilot 'provoked into killing wife'
An airline pilot, Peter Hogg, said yesterday that he was provoked into strangling his unfaithful wife, Margaret (....) "I
was out of control of the situation" he told Mr Anthony Hacking, QC, prosecuting (.....).

"The law recognises that within every human being lie the fires of emotion, and you can provoke a human being just so far" Mr Black (defending counsel) said.

Hogg had been provoked for years by the "unfaithful and bad" behaviour of his wife - a "piece of erring humanity".

(Guardian, 1985, March 7).

The second description of the events at the time of the crime contained in this report put forward Hogg's claim that he had initially resorted to violence in self-defence:

On the day Mrs Hogg died, she returned home after seeing her lover, Mr Graham Ryan, Hogg said on oath.

He told her it was "quite ridiculous" to run two cars, one of which was only used to meet Mr Ryan, and he was cancelling the insurance. Her furious reaction was to come at him "very violently" Hogg said.

"She was shouting and, when she got to me, she scratched my face and kicked me in the crutch, the testicles. It was extraordinarily painful. I hit her on the forehead because she ducked.

She started at me again, punching, kicking and shouting and screaming", said Hogg. During the tussle that followed, he grabbed her round the neck and lost control, he said.

(Guardian, 1985, March 7).

The description of the events here made the crime 'understandable'. Hogg had been physically as well as psychologically attacked.

The Guardian headline on March 8 1985 gave the first reference to the case's media tag:

'Lady in the Lake' jury out today
The jury in the Old Bailey 'Lady in the Lake' trial will retire to consider its verdict this morning.
Peter Hogg, aged 57, of Cranleigh, Surrey, denies
murdering his wife Margaret, whose body was found in Wast Water in Cumbria.

(Guardian, 1985, March 8)

Case tags such as the 'Yorkshire Ripper', 'Lady in the Lake' killer, 'Boston strangler' etc. are not created in the reported decisions of the courts. In reported decisions these were in fact seldom mentioned. It is not known whether the 'Lady in the Lake' tag arose in the tabloid or non-tabloid press, on TV or radio news. After this date however, the tag was always attached to the reports of the case.

The local press on that same day also picked up the Lady in the Lake tag. The Surrey Advertiser report shared the Guardian's preoccupation with the three matters of Hogg's status, the disposal of the body and Margaret Hogg's character. A huge 12 by 8 inch photograph of Hogg was published which portrayed him as 'one of the lads'. Plate 3 shows a genial middle aged man, seated in a comfy armchair with an open book on his lap. He is casually dressed and looks relaxed. He could be at home about to read to his 'children' or relaxing in a staff room at work or tucked into the corner of a local pub. He certainly does not look like he is in the place where he actually was at the time i.e. prison. He is surrounded by the sort of paraphernalia found in pubs or men's workplace rest rooms. On the shelf beside him is a bottle of alcoholic drink. His casual dress could be classless but the headline above the picture reminds the readers of his status - Pilot on trial for murder. The picture
shows Hogg as an ordinary man who killed his wife. The two reports on either side of the picture Husband recalls taunts and Lover tells of waiting in vain put forward Hogg's claims that Margaret was a violent and badly behaved woman. Mrs Hogg is referred to liberally as 'emotional', 'impulsive' and 'theatrical':

Mr Graham Ryan of Banstead told of his torrid affair with the woman who had "chased" him since they met. He described their passionate and tempestuous affair during which he said she was the driver and he the passenger (.....) In a soft tone Peter Hogg gave evidence watched by his son David, his daughter-in-law who often wept, and his girlfriend Mrs Rosemary Steel (.....) He spoke of the years of "humiliation and embarrassment" when his wife flaunted her lover by talking about him in front of their friends. He said there were numerous quarrels. During one she had thrown shoes, a mustard pot and scratched him all over his face and then broken his finger, said Mr Hogg.

He spoke of her taunts, when she told him her affair with Mr Ryan was on and then off "I never knew what to believe".

(Surrey Advertiser, 1985, March 8).

The report of Mr Ryan's evidence confirms Hogg's case that his wife was prone to tantrums and had a dominating manner:

(Ryan) described Margaret Hogg as having "an amazing magnetic personality" and said they were in love with each other but admitted she liked her own way and was dominant.

She would fly into an emotional tantrum become hysterical and sometimes even violent said Mr Ryan. He said she was theatrical and dramatic and it was never easy to know if she was telling the truth (.....) Mr Ryan said he tried to be discreet during their three and a half year affair but he said he would not be surprised if Mrs Hogg had told her friends all about it.

He described in court how he would take his wife on holiday and Mrs Hogg would turn up too, booking in to a hotel or a holiday camp just a few miles down the road.

"There was nothing I could do to prevent this" said Mr Ryan. "I didn't particularly like it as I wanted to be with my family."

(Surrey Advertiser, 1985, March 8).
Margaret Hogg was criticised by her husband for not acting like a wife ought and criticised by her lover for not conforming to the usual standards of a mistress's discretion. Her part in the quarrels was described as one sided aggression, as unprovoked and violent attacks on her husband. Margaret Hogg's 'theatrical' and 'impulsive' behaviour was opposed in the reports to her husband's calmness, control and 'soft tone'. Even when the prosecuting counsel described the killing, Peter Hogg was said to have 'sat impassively in the Old Bailey dock'.

The description of the killing here also cast it in the context of a defence against Mrs Hogg's violence (she came at him 'like a tiger'):

she came at him from across the room. "She was shouting, scratching my face and kicked me in the crutch, the testicles, it was extraordinarily painful .... He said he had punched her and his signet ring had cut her forehead.

This was the second time in their marriage he had hit her. After a tussle on the bed when she was kicking and screaming "I got hold of her around the neck and then I lost control. I just wanted to stop the noise and shouting."

(Surrey Advertiser, 1985, March 8).

None of the press reports on the crime refer to the possibility that the attack on Mrs Hogg prior to the strangulation was in itself so severe her continued punching and kicking may have been in defence of her life. Scattered references in the reports to her 'lying in a pool of blood', her 'profusely bleeding head' having to be wrapped in plastic and Hogg's scrubbing the bedroom floorboards, bathing and
disposal of clothes to get rid of blood stains could suggest that the
wound he inflicted on her forehead with his signet ring was severe.

Hogg argued that he quickly regained his control and was thus able
to cope with the situation after the killing:

He said he had released his hold when she stopped moving.
"One eye didn't look normal, she slumped to the floor. I was
appalled at what had occurred. I thought I had killed her. I
did nothing for a minute or two, but it was a surprisingly quick
interval before I was able to think clearly and realise the
predicament."

He said his first thoughts were "What is going to happen
to the children."

(Surrey Advertiser, 1985, March 8).

Following another lengthy description of the disposal of Mrs Hogg's
body (described as a 'grizzly parcel on midnight lake trip' and a
'strange package') the prosecuting counsel's question that the jury
should consider whether Hogg was 'cold and calculating' was raised
for the first time. On hearing Hogg express regret the prosecuting
counsel:

alleged Mr Hogg's only regret was, "That you didn't get away
with it."

(Surrey Advertiser, 1985, March 8).

This comment by the counsel is not elaborated in the report and is
never raised by the Guardian at all. On March 11th the Guardian
report linked Hogg's story with that of the experts who 'trapped' him.
In this report Hogg was ascribed a number of the features of a
Peter Hogg as a Court Line pilot in 1974, right, and at work in the window cleaning business he ran before the trial.
modern day hero - professional skills and status=airline pilot; quick and calm wit=disposal of the body; good father=he covered up his offence to protect his sons; romantic qualities=Lady in the Lake killer; decent hardworking character=he cleaned windows rather than claim dole and built up a 'thriving business'. Beneath two pictures of Hogg - before and after Margaret's death (see Plate 4) - the report included life history evidence that Hogg was a real life hero:

Hogg was in the news 11 years ago when he was a pilot for Court Line, the holiday firm, and made a 'moonlit flight' from Canada with 400 passengers and crew after the airline went bust.

When he heard of the failure, he decided that as the Canadian authorities might try to impound the aircraft, he should get out quickly.

(Guardian, 1985, March 11)

The report also referred to the 'two mistakes (which) helped trap him':

The plastic sheeting had the name Guildford printed on it, directing police attention to the South East, and he left his wife's wedding ring on her finger. Inside the band was the inscription "Margaret 15-11-63 Peter" - their names and the wedding date - which finally clinched identification.

(Guardian, 1985, March 11).

The description of the discovery of Hogg's crime contrasted his careful planning with the forensic power of the law. His discovery looked like it was due to his oversight or just 'bad luck'.

In the last few paragraphs of the report the idea of his 'bad luck' was expanded on so that he became a man with his life ruined:
With the collapse of the airline Court Line in 1974, Peter Hogg (above) became the darling of the nation.

He did a moonlight flit from Canada in a Tri-Star after the airline's sudden collapse, which prevented 385 passengers from being stranded there.

"I enjoyed the publicity I received then. I'm not enjoying the publicity I am getting now," he said ruefully during the trial.
The decision to dispose of the body was based on his love for his two sons, who were his life. Hogg "an extremely able pilot" had lost his job and £90,000, his salary over the last three years of his service.

There was only old age ahead of him, with very little chance of earning more money, said Mr Black.

(Guardian, 1985, March 11).

Hogg had changed places with his wife as victim.

The local press that weekend also published Hogg's account of his victimisation and financial loss. Hogg was reported to have said to a local reporter:

"I have lost a well paid job and my career in flying is probably finished. I have paid a 'fine' of more than £100,000"

(Surrey Advertiser, 1985, March 15).

His bad luck was here made into a headline:

I felt no relief only regret that it had been found after all these years.
"I had the most awful shock when the police arrived. I hadn't seen any reports of a body being found or the articles in the Press asking for information about the wedding ring." Peter Hogg denied he had any feelings of relief that his secret which had lain at the bottom of Wast Water had at last been discovered. "No I felt no relief, only regret that it had been found after all these years. Some people say it was bad luck. I believe it was bloody awful luck." But he admits even if he had known the police suspected him he would not have made a run for it. "How could I, there is still my son Geoffrey."

(Surrey Advertiser, 1985, March 15.)

Hogg's 'children' were then aged 19 and 16 years. A photograph of Hogg was again printed (Plate 5). Once more this shows the genial,
smiling middle aged man. This time he appears to be standing at the bar of the local pub. It could be anyone's local and he could be any man's drinking chum. Underneath the text refers to his heroism and hints at his victimisation by the press.

Reports from the trial judge, the Cranleigh vicar and Hogg's housekeeper/lover all offer the same conclusion that Hogg was an 'ordinary' middle class man who should never have been punished:

"What you did was out of character" - judge
Sentencing him to three years imprisonment Judge Thomas Pigot said this was the least he could properly give for this type of offence (...) I am satisfied what you did was entirely out of character.

(Surrey Advertiser, 1985, March 15).

We are all sinners says Rector
One of Cranleigh's clergymen spoke out this week about the Lady in the Lake case which rocked the village. "We ought to get things into context and realise we are all sinners."

(Surrey Advertiser, 1985, March 15).

I'll stand by him
Rosemary Steel, the woman who has been Peter Hogg's companion for the past two years says she will stand by him. As she busied herself with the chores at (Hogg's house) on Monday she spoke of her shock and amazement at some of the publicity which had followed the trial "The man I know is a gentle, loving, shy man", she said, adding her only concern now was to look after the home and Peter Hogg's youngest son, Geoffrey (16).

(Surrey Advertiser, 1985, March 15).

A spate of letters to the local and national press, mostly from women, complained of the heroic representation of Hogg and the
'lenient' sentence he received. The criticisms gave men and the press another chance to put women in their place. The local press later referred to letters of protest from women readers as 'a torrent of abuse' but all were extremely polite rather than abusive. Letters from men complained that women were also leniently sentenced, as in the homicide cases involving pre-menstrual tension, as though this had escaped the notice of other readers. One woman effected a role swap and took on the job of 'putting women in their place' for herself, asserting that women who criticised the case were hypocrites or sexual prudes who complained of 'headaches' to avoid going to bed with men (Surrey Advertiser, 1985, March 29). The Guardian rounded off its report of the case with the editorial mentioned at the start of the chapter, where the fault for lenient sentencing was laid at the feet of the Tories (Guardian, 1985, March 11). Headlining the piece Death and The Airline Pilot the editorial also noted the:

male bias in the ground rules and assumptions pervading criminal cases where sex and domestic violence are central issues. Captain Hogg's defence (....) was that his wife had been unfaithful to him. Her sexual behaviour was put forward as the provocation for killing her. (....) The judge, who like all Old Bailey judges, is also a man, accepted that Captain Hogg was a good father, even though large parts of Hogg's behaviour exceeded what is commonly regarded as good fatherhood. And much of the coverage of the case has similarly lacked a sense of outrage.

(Guardian, 1985, March 11).

For the 'quality' press the case was sealed with a judgement - it was more than entertaining:
the case is more than entertainment. It touches on some dark aspect of contemporary Britain.

(Guardian, 1985, March 11).

In the local press the story had a 'happy ending':

Lady in the Lake killer Free
Lady in the lake killer Peter Hogg was released from prison this week into the arms of a woman he met through the Surrey Advertiser.

The 58 year old former airline pilot was met by 36 year old Marie-Christine Pinoul, the French born woman who defended him through this paper's letter columns.

Mrs Pinoul, who ousted former girlfriend Mrs Rosemary Steele from Mr Hogg's home (...) last year was outside North Eye Open Prison near Bexhill, Sussex, when he left 15 months after being sentenced to four years for the manslaughter of his unfaithful wife Margaret.

Her trussed up body was found in Wast Water, in the Lake District, weighed down by a concrete block.

'Hypocrites'
Mrs Pinoul, of Godalming, defended the man she had never met against a torrent of abuse from women after the trial. She called those who criticised the leniency of his sentence 'hypocrites'.

After corresponding with him for several months, the couple met and Mrs Pinoul moved into the family home.

(Surrey Advertiser, 1986, June 27).

The Killing Of Monika Telling.

Mrs Monika Telling was shot and killed by her husband Michael in 1983. Five months after the killing, Telling dumped Monika's body in bracken near the Exe valley, hacked off her head which he took away and locked in the boot of his car. Monika's body was found two days later and Telling was charged with her murder,
The press reports of Michael Telling's killing of his wife Monika stressed features which were common to the reports of Peter Hogg's crime. Like Hogg, Telling's status was an important topic of discussion. Gruesome details of the disposal of the body alongside references to clever forensic scientists were similarly matters of importance. The case was awarded the tag the 'headless body killing'.

As in the Hogg case, much of the discussion in the reports on the killing of Monika Telling concerned her behaviour and qualities as a wife. Like Peter Hogg, Michael Telling, according to press reports, had killed a woman who almost deserved to die. Michael Telling however was sentenced to life imprisonment for his crime. Telling differed from Hogg in that he, rather than his crime, offended men. Various signposts in the reports point to how and where Telling 'failed' as a man.

The first reference traced concerning the killing started from the evidence presented at the trial itself. Whether this late entry to the case was the result of a sudden lifting of reporting restrictions or the non-tabloid press's oversight of a 'good' story is not clear. However, the first report opened the discussion with a judgement of Monika Telling's behaviour. The headline read Girl Student Tells of Sex With Monika Telling. The discussion opened with reference to Monika Telling's sexual activities before her death:

Monika Telling made love to a girl student only days before she was killed by her husband, the 'headless corpse' murder trial was told yesterday.

Julie Chamberlain, aged 21, said the sex session took
place in the Telling's marriage bed at the couple's Buckinghamshire home in March 1983.

(Guardian, 1984, June 22).

Most of the report concerned Monika's sexual practices, cannabis smoking and drug taking. The discussion of Monika's sex life refers frequently to her lesbianism and to specific acts of intercourse as 'sex sessions', where a girl student 'ended up in bed after getting high on cannabis'. The report left judgement as to whether Monika was a lesbian or bisexual undecided. She was referred to as lesbian but another part of the report mentioned that:

(Monika) taunted him about her affairs with men and women.

(Guardian, 1984, June 22).

Quotes from Chamberlain's woman lover, Miss Mayers, put Michael Telling in the victim role:

Mrs Telling had an addiction to cocaine and cruelly embarrassed her husband, calling him a "little rich kid" and criticising his lack of sexual prowess. "I saw this happen more than once (....) she liked to wind him up and humiliate him.

(Guardian, 1984, June 22).

The following day the emphasis in the report shifted dramatically on to the expert evidence of a Broadmoor psychiatrist. The report was a complete contrast to that of the previous day because here Telling's criminal intent, rather than Monika's behaviour was discussed. The piece was headlined Telling 'calculating killer' jury told. The
language used to describe Telling's crime stressed his pre-planned and calculating approach - he 'dealt with the killing of his wife' rather than 'killed his wife'; he 'calculated' a 'cover up', 'arranged small matters like cleaning the carpets in the house, installing a fresh air unit in the cellar, and engaging a private detective to look for his wife'. The discussion of the psychiatrist's evidence split the decision to murder from the method thereby enhancing the element of calculation in the plan:

he decided to murder her. Later he decided on the method.

(Guardian, 1984, June 22).

Monika's sexual 'taunts' (no longer her lesbianism) were referred to but they were included with other taunts and set in the context of what Telling had said:

Dr Hamilton said that Telling told him in an interview that he finally decided to shoot his wife on the evening before her death. He said that he killed her because she taunted him over his sexual prowess and his mental problems.

(Guardian, 1984, June 23).

The mention of Telling's status made in the report treated it as an incidental matter, something hardly worth mentioning:

The prosecution alleges that Telling, the 34 year old second cousin of Lord Vestey, murdered his wife.

(Guardian, 1984, June 23).
Michael Telling: wanted to bury the body in a graveyard in Devon. When he decided that none was suitable he left the corpse amid the bracken by the side of the river Exe.

Monika Telling: taunted and abused husband

SHOTGUN VICTIM: Telling's 27-year-old wife Monika whose headless body was discovered in Devon.
On June 30 the case was given extensive coverage. Pictures of the accused and the murdered woman were published for the first time (Plate 6). In the Hogg case the victim was 'faceless' whilst images of the 'genial' offender were frequently published. In the Telling case the images of the beautiful victim are contrasted with uninviting images of the offender. The pictures published showed two of Monika Telling and one of Michael Telling. The images of Monika showed a young, good looking woman with some of the 'exotic' features attributed to women in TV commercials. In one picture Monika was shown wearing a neck choker which held large flowers, possibly orchids. She wore heavy make up. In the second photo she was shown wearing what looked like embroidered gypsy style clothing with an open necked blouse. Her hair was slightly tussled and she again wore heavy make up, emphasising her eyes and giving them an 'oriental' appearance. The picture of Michael Telling was a complete contrast to the images of Peter Hogg. He was shown through the window of a car, wearing 'smart' casual clothes. He looked as though he was about to be driven away from public view, an uninviting image opposed to the fatherly/chummy images connected to the reports on the crime committed by Peter Hogg.

Four articles that day described the case at length. In the first, Telling's status formed the main topic of discussion. His status as relative to Lord Vestey was here put forward as both explanation for his bizarre behaviour and justification for the need to use the law to punish him.
The jury of five women and seven men had earlier heard of Telling's loveless childhood as the son of a violent, aggressive and alcoholic father.

As a grown man Telling of Cambourne House, West Wycombe, Bucks, had been able to indulge his sometimes bizarre wishes. As a second cousin to the multi-millionaire Lord Vestey he was a beneficiary of the Vestey Trust from which he received a monthly allowance.

(Guardian, 1984, June 30).

Being 'able to indulge himself' explained why he had married the now 'bisexual' Monika:

Telling met his second wife, Monika, when he went to America to buy a motorcycle. The marriage lasted 17 months.

(Guardian, 1984, June 30).

Monika's criticisms of Telling's sexual adequacy in this report were used both to back up the discussion of his inadequacy as a man, as well as add to the assassination of her character. What had been referred to as criticism of his sexual 'prowess' was then interchanged with abuse over his sexual 'inadequacies'.

Even descriptions of the disposal of Monika's body were quoted to reinforce the portrayal of his behaviour as 'bizarre' rather than ghoulish or clever:

After he killed her Telling moved her body around the house for a week before placing it in a half built sauna in the grounds. In mid-summer last year, five months after her death, he dumped the corpse on the edge of Exeter Forest in Devon.

(Guardian, 1984, June 30).
The readers were also told 'he kept her head when he dumped the corpse'.

A further three articles published that day added more 'signs' of Telling's eccentricity. One recounted Telling's family history and was headlined Deprived boy was pampered with cash. The second described the murder and was headlined husband gaoled for killing. The third discussed Monika's Telling's activities as evidence of Michael Telling's bad choice of a wife. Monika's 'obituary' was headlined a brief bizarre life in fast lane. All three articles were under a generic headline which read Judge gives 'disturbed child' Michael Telling a life sentence for wife's manslaughter in 'headless body' trial.

The Guardian offered symptoms of Telling's bizarre behaviour on the basis of information about his wealthy family background. The family history was set in the context of both a critique of the class system and of Michael Telling's failure to conform to it. Telling's unhappy childhood was written in the form of a curriculum vitae:

As a child, Michael Telling was more susceptible to colds and flu than other boys, and generally less robust. However, he was still packed off to boarding school at an early age, and badly bullied by fellow pupils. When he reacted by stealing, starting fires and playing truant he was beaten by staff.

He was expelled twice and eventually went to a special school for maladjusted children, as well as becoming an inmate at a mental hospital.

When at home he was confined to parts of the house away
from the rest of the family, and raised by nannies and governesses.

The jury was told that Telling's father was violent, aggressive and an alcoholic.

He took to running naked into the road and lying down in front of oncoming traffic. He also threatened his mother with knives, wrecked rooms, stole, bit a relative on the arm, and smashed a milk bottle over the head of a local vicar's daughter. By the age of nine he was drinking sherry and smoking heavily.

(Guardian, 1984, June 30).

Having recounted his history as an abused and disturbed child, the report then moved on to quote various acts committed in his adult life as symptoms of his inability to 'face his responsibilities' and the continued indulgence of 'his childish whims'. Some of his 'whims', removed from their context in the report were not very different from those of any rich man:

He spent a fortune on expensive cars, motorcycles, guns and stereo equipment, and took holidays in Monte Carlo, America and Australia.

(Guardian, 1984, June 30).

Two other quotations supported the claim that he had a tendency to step out of his class position. He worked:

Although he did not need to work, Telling took a series of mundane jobs in a restaurant, a deli and factories and washed cars for a rental company.

(Guardian, 1984, June 30).

He could not spell correctly:
The court was forced to adjourn for 10 minutes after a distraught Telling had scribbled a strangely worded and misspelt note to his counsel. It read, "You get Mum away from this awful trial or I will get up and let the bloody prosoquter (sic) hear what I think off.'

Other 'signs' of his immaturity as an adult quoted included his jealousy of his child:

Their son Matthew was born the following year. Telling could not stand the competition for his wife's affections, and 18 months later he went to America to buy a Harley Davidson motorcycle. There he met Monika.

(Guardian, 1984, June 30).

His marriage to Monika was also linked in the report to his 'failure' in adult life:

Monika Telling was a Californian beauty who had set her heart on becoming a model. Her habits included carrying a gun and a vibrator in her handbag, drinking benedictine and orange at breakfast and using cocaine, heroin and marijuana.

She often joined naked party guests plunging into a whirlpool bath on her lawn at home, while her husband sat on the sidelines, drinking. She also boasted to him of her male and female lovers and publicly decried his sexual prowess.

Telling also claimed that Monika refused to have sex with him on their honeymoon night, banned sex with him for the last seven months of her life, tried to run him down in a car, and attacked him with a whip.

Telling sought love, but Monika, who drove a Pontiac Firebird, only wanted his money.

(Guardian, 1984, June 30).

His appearance and behaviour at the trial were emphasised in terms of the eccentric features:
Inside Exeter's No. 2 court, the chubby faced, balding defendant, dressed in a Savile Row pinstripe suit, sipped water from a green mug or plastic cup and sifted through reams of documents in a Marks and Spencer's carrier bag.

He paid rapt attention, sending streams of notes to his lawyers, and only rarely showed signs of emotion.

Once was early in the trial, when his mother (....) was giving evidence about her son's disturbed childhood (....) On another occasion Telling was clearly moved by the unexpected appearance of an old schoolfellow from 25 years ago (....) In a further show of affection Michael Telling wrote a note sending his love to Mrs Susan Bright, a divorcee. She was called to give evidence about their affair, which took place while his wife's body was in the sauna outside.

(Guardian, 1984, June 30).

Telling's behaviour in court was described very differently to that of Peter Hogg. Both men had shown little emotion during their trials yet the image of Hogg suggested a calm and controlled approach (his 'soft tone' etc). The descriptions of Telling's lack of emotion in the report do not suggest that he was controlled (He sent 'streams of notes', 'sifted through reams of documents') but rather that he was incapable of 'normal' emotions.

The trial judge described Telling as having:

matured very little from a profoundly disturbed boy with little or no real ability to control his emotions or impulses.

(Guardian, 1984, June 30).

In this comment fault for the immature personality rests partly with Telling himself. It is expected that he should, in adult life, be able to mature emotionally.
Like Peter Hogg, Telling made preparations for the disposal of his wife's body in order to cover up the crime. Unlike Hogg, Telling's preparations were discussed as further evidence of his inadequacy. Instead of being treated as 'clever' or even 'devious' preparations they were recounted as signs of Telling's almost bumbling inability to make up his mind:

Telling shot (....) his American wife after she had taunted him about her sexual exploits with men and women. He moved her body around the house for a week or so, calling in occasionally to kiss and talk to the corpse as it lay on a camp bed, then put it in a half built sauna in the grounds of their home (....) In his search for somewhere to dispose of the body, he paid several visits to local graveyards but dismissed them all as unsuitable. Then after five months he decided to take the body to Devon (....) In late Summer 1983 he hired a van, disguising the purpose of his visit by pretending he was going on a camping weekend (....) He again tried a few graveyards, but a hot spell had made the ground too hard to dig. In desperation he took the body to a disused public viewing area overlooking the Exe valley and dumped it among the bracken.

Before leaving Telling chopped off Monika's head with an axe and took it away, leaving behind a chunk of hair and a few teeth. He said later that it was because he could not bear to be completely parted from her (....) A team of Devon detectives (....) found the dead woman's skull locked in the boot of a Mini in Telling's garage.

(Guardian, 1984, June 30).

The description of events made a stark contrast to that applied to Hogg's crime. Telling's rejection of cemeteries was not recounted in a manner which suggested his control of the situation. His keeping the body in the house was discussed more in terms of his desire to be near Monika, and only secondarily as evidence of his wish to avoid prosecution.
Like Hogg, Telling left 'clues', which were potentially more elusive. Monika wore a 'distinctive Moroccan T-shirt' and:

'dental tests revealed that the victim had suffered a gum disorder. Monika had recently undergone an operation for a gum infection.

(Guardian, 1984, June 30).

Unlike Hogg who had been 'trapped' by the forensic experts, the discovery of Telling's crime was a more mundane affair:

Monika was just one of dozens of missing young women who vaguely fitted the description gleaned from the remains. As a result of the widespread enquiries, police managed to clear up nearly 70 other missing persons cases.

(Guardian, 1984, June 30).

Telling's crime was not made into an heroic event so he was small fry in the hunt between the law and offenders. Although much of the reports discussed Monika's behaviour as a wife and gave Telling the 'justification' for his crime, the heroic crime depends upon a man being a 'proper' man. Telling never reached the manhood demanded of his position. He was sentenced to life imprisonment for the manslaughter of his wife Monika. His first wife and his mother were reported to have been 'delighted' with the verdict. His counsel George Carman QC said:

This verdict is important for Michael Telling, to his son Matthew and to his family.

(Guardian, 1984, June 30).
Justice Sheldon claimed the life sentence would:

leave it to those responsible for your custody to decide if and when it would be safe and proper to release you.

(Guardian, 1984, June 30).

The reports on the two cases were first and foremost about men who had killed with 'justification'. The entertainment value of the reports emphasised the mistakes of one man and the stupidity of another, not the horror of the crimes they committed on the two women.

**Summary.**

The cases described in this chapter raise a number of issues for consideration in this study of the secondary assault of women as victims, particularly:

1. the range of meanings about crimes of violence against women offered by press representations;
2. the possible effects of the above on readers.

As a conclusion to the chapter, these social implications of the press reports will be discussed.

A number of different meanings could be attributed to the reports researched. For example, they might be interpreted as fascinating/gory/titilating news items, in the same category as the
tales of personal tragedy which flow prolific from the press. They could be seen to be 'moral' tales advising readers about the boundaries of correct behaviour for men and women, the limits of endurance, human suffering or the powers to discipline. They might offer a sort of Robin Hood assessment (especially for Guardian readers ?) of the faults and failures of the British class system. The sparring between offenders and scientific experts or those in authority, is another possibility. The copious forensic quotes and details of cat-and-mouse hunts between offender and the law were very dominant features of the cases researched. The description of the events and details of dismemberments in the texts might offer readers the opportunity to change places with the perpetrators, to fantasise their own involvement in the crimes. On the other hand they may be seen as tales of the intense suffering of ordinary people, exposure of which repulses or angers readers. The texts thus gave scope for a range of possible meanings, many of which were contradictory.

The press reports, like legal discourse, separated 'domestics' from other violent crimes by way of the denial, explanation or justification of the events. Some of the violent crimes and wife killing cases were explained on the basis of inadequate gendered behaviour, e.g. Mrs Hogg's domineering behaviour. The construction of sexual stereotypes however is a feature of press reports of violent crimes committed in other contexts. In the following report
for example the traditional charge that women 'nag' was cited as 'justification' for a man's killing of his sister:

**Nagging sister was killed**

A shy, gentle man killed his sister, a religious fanatic, after enduring 20 years of nagging, Sir James Miskin, QC, Recorder of London, was told at the Central Criminal Court yesterday. Daniel O'Sullivan never answered back until his self-control finally snapped one August morning, Mrs Barbara Mills for the prosecution said. He pushed his sister, Bridget, aged 63, to the ground and put his foot on her throat, killing her.

(The Times, 1986, March 1).

The murder is described as an active aggression against Bridget the victim but, in this case, there is no attempt to construct a link with his sexuality.

In the style of pornography, the reports of the crimes by Telling and Hogg by contrast were drafted as men's fantasies about violence against women. They stressed the parts played by powerful, rich, clever men who gave women 'what they deserved'. The pornographic undercurrent in the lengthy descriptions of the killings and mutilations of the two women was thinly disguised by the pathologists and forensic experts quotes. Whilst dismemberment seems to be an expanding preoccupation in the press, the reports set these firmly in the context of the construction of mythical images of the women victims - the bisexual Monika Telling, the lesbian Monika Telling, Monika Telling the sadistic sexual experimenter, the sexually 'aggressive' and 'dominating' Margaret Hogg. The same
stereotypical images have been found in pornographic portrayals of women's sexuality (see Dworkin, 1981).

The sexualisation of violent crimes is not limited to cases of wife or even woman killing. In their study of 'cultural' representations of homicides from the 19th century onwards, Cameron and Frazer note how homosexual and child murders (e.g. as by Brady and Hindley) have similarly become sexualised (Cameron and Frazer, 1987). They argue that the impact of these sexual murders goes beyond misogyny, into the area of the creation and maintenance of the institution of heterosexuality. Some interesting points are made about the relationship between sexuality, science and its pseudo-scientific derivatives. The existence of forensic and pathological science would obviously make the double dismemberment of women victims (i.e. in crime and text) that much easier by providing newspaper editors with gruesome descriptions in parentheses. The suggestion that the science of 'sexology' had an active part to play in the creation of a specific category of sexual murders is less convincing however. Cameron and Frazer suggest that there exists a specific category of sexual killings (hence the book title The Lust To Kill) which are distinct from wife killings. Sexual killings are defined as:

compulsive and depersonalised (....) the motifs of desire and irrationality are expressed in a form both mysterious and grotesque.

(Cameron & Frazer, 1987, p. 17.)
Wife killings are said to arise instead:

from the couples' individual circumstances; the strains and problems of cohabitation, the stress and frustration of sexual passion.

(Cameron & Frazer, 1987, p. 16).

Wife killings thus involve victim precipitated relationship problems whilst lust killings are more like sexual frenzies.

The discussions in this chapter and the preceding one would suggest that the distinction between sexual and wife killings is not very helpful. The division seems to be founded on an attempt to separate sex/lust from sexuality/power. The Telling case demonstrated that representations of wife killings as irrational and grotesque do occur. Victim precipitation (inviting, deserving attacks, etc.) is also a feature of 'lust' crimes, e.g. as in the reports of the killings by Peter Sutcliffe where 'good' victims were separated from prostitutes. There may have been very little difference in Telling's pattern of returning to his wife's body and Sutcliffe's occasional repeat visits to victims.

Hogg's heroism was clearly different to Telling and Sutcliffe's. Whilst some readers of the press reports may have been fascinated by Sutcliffe's crimes, some seem to have admired them (see Ward Jouve, 1986), no serious suggestion was made that he was wrongfully in court.
The reports of crimes of violence against women reveal a confusing interplay between gender based sexual stereotypes and the norms of heterosexuality. Rather than being less sexual than 'lust' killings, it is possible that wife killings have potential to be more 'heroic', having the highest degree of correspondence between gender based sexual stereotypes and the norms of heterosexuality.

Alongside personal experience, textual representations of crimes of violence against women will have some influence on how the problem is perceived, the words we possess to describe its effects or with which to assess viable preventive strategies. Newspaper coverage of homicides and violent crimes may be the only information many people have about the workings of the law. There are however big differences between the law reports and newspaper reports of homicide cases. The last chapter showed that the heroic killer barely exists in law reports. This does not mean of course that 'heroic' killers never appear in the courts. Hogg's crime was described as an almost classic case of provocation. For the legal profession it was a mundane event, unexceptional and uninteresting. The relationship between representation, stereotype and practice is not a neat correspondence.

Recent debates on pornography as violence against women have raised questions about the relationship between cultural representations of women as sex objects and the practice of violent crimes (see Cameron & Frazer, 1987; Coward, 1982; Dworkin, 1981; Kappeler, 1986.). The
idea that media 'myths' can come into being to be tried out in the real lives of consumers may have some foundation in women's experiences (see e.g. Russell's discussion of the practice of pornography in women's relationships, 1982) but it is not a total explanation of the relationship between pornographic images and crimes of sexual violence. The processes of stereotyping and elevating abstract 'types' into orthodoxies of practice are much more complicated than straightforward copy-catting. Representations, stereotypes and orthodoxies of practice are furthermore open to challenge and resistance. The final chapter in the study aims to move away from description and criticism of the secondary assault of women in socio-legal discourse to look at possibilities for empowering women as victims.
Academic Discourse And The Abuse Of Women.

Academic interest in domestic violence against women has seen an expansion following the campaigns arising from the battered women's movement and the establishment of refuges since the 1970s. This chapter represents a summary, rather than an overview by reviewing three themes in academic discussion - justification, explanation and challenge. The final part of the chapter will conclude with a presentation of some possibilities for the empowerment of women victims who become involved in the law.

Justification

Academic discourse on domestic violence against women shows some features which are common to legal and media discussions on the subject of domestic violence against women. Emphasis is not primarily with women victim's needs but often instead with justifying or explaining the acts of the aggressor. As in press and law reports, academic discussions have sometimes placed both responsibility and cure for the crime solely on a belief in a physiological cause. Psychiatric discussions are particularly prone to the assertion of biological proofs. Some have stressed
biologically derived sexual differences which leave little hope for women's empowerment beyond intervention by medical science to make them more like men. Anthony Storr, for example, published a book entitled Human Aggression in 1968 where he drew upon the Freudian concept of Thanatos, the death instinct, to argue that aggression, like sexuality, was an 'innate drive' (Storr, 1968, p. 33). Storr sought to make the point that aggression had its good qualities. By stressing the good qualities of the aggressive instinct, his book consisted largely of a celebration of the 'heroic' and violent sexuality attributed to men. Examples of how aggression could have 'positive' effects were given in women's defence of their children, the child's 'mastering' his environment and man's defence of territory as in warmaking. Storr constructed a link between sexuality and aggression by asserting that the physiological states of the human body were the same in sexual and aggressive arousal, hence the reason quarrelling couples often ended up in bed (Storr, 1968, p. 34).

As a 'drive', aggression was said to be connected with the male sex hormones, and, because women 'lacked' on Storr's analysis, this made them less aggressive, less competitive, less intelligent and more likely victims than men - Storr asserted that most women fantasised about being raped by King Kong, (Storr, 1968, p.62). On the basis of this conceptualisation of a predominantly biological aggression, Storr made domestic violence against women women's fault. The causes of the problem were:

- sado-masochism (the over-masculine and over-feminine biological types who got sexual pleasure from violent abuse
as either victim or offender.)

- women's masochism (the 'nagging' wife was cited as an example of this by inviting attacks with her verbal provocations, Storr, 1968, p. 95.)

- women's over-aggression (such that men and women became rivals for active-passive roles, Storr, 1968, p. 92).


Storr's general theme will echo the press headlines and legal debates. Whilst psychiatrists such as Storr argued a case for men's aggression as a biological inevitability few psychiatrists would argue that criminal assaults and homicides are 'healthy' features of a society. Research on the basis of clinical practice with male offenders formed an important part of psychiatric debate. In 1974, Faulk published findings from his clinical appraisal of 23 men imprisoned for violent assaults on their wives. Faulk claimed that nine of his sample had been involved with women who, due to their own behaviour, had a major impact on their victimisation (Faulk, 1974). The victim blaming theme based upon clinical findings has been consistently asserted in discussions of domestic violence against women. For example, David Riley and Harry Cohen, psychologists employed by the New Zealand Justice Department, published a paper in the academic journals which discussed the 'psychodynamics' of one patient's wife murder and attributed its cause to the offender's rejection by both his wife and his mother. The offender's relief from the rejection by the wife could only be attained through her destruction:
He was humiliated and degraded by her extra-marital liaisons - his last recollection prior to the offence was her saying, "I've fucked every one of your friends" - and he attacked in defence against his own feelings of worthlessness and shame and also attempted to wrest by force that which he had felt deprived of for so long. The extremely clumsy uncoordinated nature of the killing (he had trained and served in the army as a commando), coupled with the emotions giving rise to his actions were not adult ones, but rather repressed feelings from an infantile level (.....) a year prior to the offence (the offender) had become impotent, a symptom which was associated with the deterioration of his marital relationship. Relief from this was only achieved after retrieval of the feelings he experienced at the time of the killing. The significance of this feature of his pathology and his subsequent attainment of full sexual functioning is explained by reference to the therapeutic material concerned with the offence.


Toch's writings, also based on a sample of violent prisoners, similarly linked the victim's role in the creation of the violent event in a pattern of reciprocal threat and attack, such that violence could be habit forming (Toch, 1969). Toch put forward a catharsis theory of violent behaviour as well where the violent event was viewed as a form of explosion following an accumulation of tensions, although he argued this was less common. Toch introduced social factors into his model. Violence was a resource used mainly by individuals who were 'prone to violence' due to their lack of verbal and social skills. It could thus be open to remedial attempts on the individual level by identifying the 'violence prone', and on a collective level by making non-violent resources available. Many latter day myths about domestic violence against women have been constructed on the basis of clinical assertion.
Most of the research from clinical practice was so dogged by the individualistic vision of the therapeutic philosophy that understanding of the women's needs rarely advanced beyond a questioning of why they did not merely walk out of abusive relationships, hence the inordinate importance attached to female masochism. The clinical studies show no interest in women's oppressed position in society. The clinical studies seek the solution to the problem in the identification and treatment of the aggressor. The emphases on women's own qualities as victim and precipitator of the attacks (see Faulk, 1974, Gayford, 1976) poses particular problems. Research by Flitcraft, Stark and Frazier shows that victim provocation theories have an impact beyond academic debate influencing medicine's treatment of women victim's as 'neurotic' rather than abused (Flitcraft, Stark & Frazier, 1979). This affected markedly the treatment they received.

**Explanation.**

Erin Pizzey and Jeff Shapiro expanded their own theory about the violence prone. Pizzey and Shapiro became staunch defenders of a pseudo-Freudian masochistic-sadistic theory of domestic violence yet they did not give it the support of tacit condonation and aimed instead to remedy the problem with the aid of medical intervention (Pizzey & Shapiro, 1981). Their argument drew upon assertions about female masochism made in psychiatric debates (e.g. Menninger,
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1942; Storr, 1974; Toch, 1969). Pizzey and Shapiro's methods however give little evidence of any attempt at scientific validation much of their impressionistic discussion being based on Pizzey's coercive 'therapy sessions' with the most abused and psychologically harmed women victims who visited the Chiswick hostel (these women were said to be 5% of the refuge population and were described by Pizzey as the 'dregs'). The book contained the most distressing extracts from Pizzey's 'therapy' sessions with the women's small children where she appears to have effectively bullied them into 'confessions' about having watched their parents in the act of sexual intercourse. Aside from publishing lewd and sensational extracts from the lives of grossly abused women and children, Pizzey & Shapiro's interest appeared to have been with explaining why women 'stay' with or return to violent men. The explanation they offered was founded upon biological difference. The reasons why some men grow into batterers and some women into victims were said to be primarily due to a physical addiction to adrenalin or cortisone (this addiction could even be created in the womb). Without any substantiation from medical trials, it was argued that these 'flight' and 'fright' hormones could addict men to violent aggression and women to masochistic victimisation. For a battered woman the addiction to pain was supposed to activate the pleasure centres of the brain so that only in conditions of extreme violence would she be able to orgasm. As in the clinical studies, violent, aggressive sexuality is an important factor in this analysis. But like the Victorian surgeons who urged women undergo mutilating operations to
curb their sexually derived 'hysteria', Pizzey and Shapiro recommend women be given remedial hormone therapy.

The explanations of domestic violence against women in psychological discourse are essentially of two varieties - drive models and social learning theories. A. Mitchell of the University of London founded his discussion of family violence between the two, basing much of the argument upon biological differences between the sexes (drives, body size, etc.), the experiments conducted upon seagulls, rats and rhesus monkeys to discover their territorial habits, and the argument that 'men' are a product of nature and nurture. For Mitchell, 'men' have a genetic propensity to be violent but have to learn how to be so. He offered an algebraic equation to illustrate the main features of violent events:

The Analysis Of A Violent Incident.

Each violent incident in a family can be thought of as a violent episode in the human drama of that family. (....) Various individuals with differing propensities to violent behaviour interact with each other in a potentially provocative situation, and the outcome depends on the nature of the confrontation. This can be expressed in a simple algebraic formula:

\[ I + S = R \]

where \( I \) = the individuals concerned,
\( S \) = the confronting stimulus,
\( R \) = the response or outcome.

This basic algebraic formula can now be further expanded to allow for the complexities of the human drama being looked at:

\[ [I \ (Pv) + S \ (p.t.f.)] \Lv = R \]

where \( I \ (Pv) \) = the individuals concerned with their varying propensity to be violent,
S (p.t.f.)T = the stimulus of provocation, threat and frustration, occurring at a particular time (T),
L = recognition that the human interaction takes place in a given locality (L) which either potentiates
or dampens down a violent response.

(Mitchell, 1978).

Domestic violence against women was explained by Mitchell therefore on the basis of a mixture of theory, assertion and experimental finding, as being the result of:

- lack of territorial space in modern society causing inward turning aggression;
- a bad mix of personality types, 'obsessive husbands' and 'hysterical wives', aggressive women;
- personal tension.

Mitchell's discussion of territoriality is based upon the direct analogy between twentieth century human society and the social structures of primates, birds and rats. The only explanation offered for crimes of domestic violence against women in rural villages or, as in Michael Telling's case, in country mansions rests on the assertion that some individuals require more territorial space. Like most academic theorists concerned predominantly with the individual aberrations of clinical practice, Mitchell glosses over the relationship between individual act of violence by men and the group violence executed on women. Despite the emphasis upon learned aggression, what is judged to be 'provocation' or 'frustration' are largely social, gendered, issues. Mitchell himself classified a
husband hitting a 'nagging' wife as legitimate violence. Some of his 'theory' was little more than old fashioned sexism:

Women may be just as violent but in less physical ways, by spite, by nagging, by neglect and by what is loosely called "mental cruelty".


Social learning theorists tend to place more stress upon the possibility of changing things. If a problem is socially learned it can, after all be unlearned, primarily by attacking its creation in nurture. P. D. Scott argued that domestic violence against women was no different in many respects than other types of 'social deviance' (Scott, 1974). Battering men according to Scott were part of a violent subculture which perpetuated the problem of 'failed adaptation'.

In her work based upon interviews with 100 women drawn from clinical practice, Leonore Walker also emphasised an explanation on the basis of the mixture of sociological and psychological variables (Walker, 1977). Walker criticised the assertions made by her colleagues in the field regards abused women's masochistic tendencies and the biologically reductionist arguments based upon drives and innate aggression. Walker argued that as men learn violence, battered women learn to be 'helpless'. Drawing upon Seligman's experiments in the late 1960s, where dogs and new born rats were tortured with
electric shocks in order to test their reactions to repetitive violence, Walker argued that, like the animals in the 'experiments', men, or more commonly women, could learn to be 'helpless'. Walker argued that battered women could be 'over-socialised' into passivity before even starting their relationships, they were unable to leave violent men because they truly believed it is impossible to escape:

The sex role socialisation process may be responsible for the learned helplessness behaviour seen in adult women, specifically battered women. They learn that their voluntary responses really don't make that much difference in what happens to them (.....) Like Seligman's dogs, they need to be shown the way out repeatedly before change is possible.


It may be impossible to argue women have to be shown out repeatedly if their attempts to obtain relief are so often frustrated. Whilst 25% of the women Walker interviewed were abused as children, 75% had what she called a 'dresden doll' upbringing in which they learned to be passive. Walker described three stages in violent events - tension, violence and loving forgiveness - as contributing to women's beliefs that they must try to preserve their marriages due to the belief that their husbands might change.

Walker's arguments kept the focus upon women's role in violent relationships at the same time as rejecting the orthodox claims that stressed female masochism etc. She differs from her colleagues in that her main aim is to emphasise the effects of violent behaviour upon the women concerned, not primarily 'explain' men's role as
offenders. Walker has acted as expert witness in battered women's legal cases in the USA.

Sociological Discussions.

In the discussions from clinical practice, domestic violence against women was described as either personally gratifying for the offender, or deviant. Sociological discussions have attempted to address the possibility that domestic violence against women is not deviant but socially acceptable. Researchers such as Steinmetz, Straus and Gelles (1980) take the view that violence against women can only be explained on the basis of social factors. They take issue with the emphasis upon sado-masochistic or drive oriented interpretations. Steinmetz, Straus and Gelles tend in fact to drop the sexuality/violence hot potato altogether. They have consistently argued that, by themselves, sexual relations and violence against women offer an inadequate explanation (Steinmetz, Straus & Gelles, 1980; Gelles, 1980). The American sociologist Goode put forward the idea that force and violence could be seen to be resources (Goode, 1971). Goode argued that all social systems rest upon some degree of force or its threat. Children were socialised into its use and this would vary from culture to culture. Goode in fact argued that not only 'mothers' but also Catholics and Jews would be more tolerant of aggression aimed at them due to their cultural differences. For Goode, the more resources a person has, the more force s/he can use
although s/he will not need in fact to use them so much. Violence was used mainly by the powerless as a last resort. On this analysis violent men would tend again to be those with low job prestige and low incomes.

Murray Straus's 'General Systems' theory attempted to account for violence in the home on the basis of a purposive, goal, seeking, adaptive system. Violence was argued to be system 'output' rather than individual pathology. The system could have positive feedback creating an upward spiral of violence and 'negative feedback' reducing it (Gelles, 1980). As part of a research team, Steinmetz, Straus and Gelles similarly argued a social function for domestic violence against women. They rejected interpretations of domestic violence as predominantly working class phenomena, the result of mental illness and catharsis. Explanation was sought in terms of a multivariate resource model where resource lack (money, etc.) lead to frustration and violence. Straus, Steinmetz and Gelles drew upon their survey of 'interspousal' violence amongst 2,143 couples and link the multivariate resource model to factors such as the intergenerational 'transmission' of violence, socio-economic status (affecting women's ability to leave etc.), stress (job loss, poverty etc.). They used a scale called the Conflict Tactics Scale to measure 'interspousal' violence amongst 2,143 couples. The magnitude of the sample and the rigorously scientific modes of analysis has resulted, as Pagelow points out, in a situation where:
general recognition is given to Straus, Gelles or Steinmetz as the leading experts on this form of violence.

(Pagelow, 1981, p.25.)

Gelles', Straus' and Steinmetz's results showed the widespread nature of the problem of domestic violence but had a number of inconsistent results which arose from problems with the scale. The research totally excluded sexual violence and its threat and furthermore classified the acts on wholly 'objective' lines which neglected to record the actual damage done to the victims. A light push by a small person may be less damaging than a strong push by a heavy one. The scale furthermore did not distinguish violence used in defense from that used in attack. The results showed that 28% of the sample reported violence having occurred at some time during the course of their marriages. Men and women were said to have obtained 'equal' scores in their use of violence but controversy over this point continued amongst the researchers for several years (see Gelles, 1980). Women's use of 'verbal aggression' was ranked as equal to men's scores of physical violence. Steinmetz, Straus and Gelles' framework assumes domestic violence is a 'complicated' problem requiring further research.

Challenge.

Feminist discussions of domestic violence against women begin from the perspective of a challenge. The starting point for many
feminists discussions of violence against women has been with an attack upon the 'myths' surrounding the problem. Like other researchers, feminists have taken issue with and challenged stereotypical assumptions about domestic violence against women - that it is a 'private' matter, a problem which only occurs when individuals are mentally ill, drunk, working class or stressed. The question 'why don't women leave', which preoccupied the clinical discussions, was turned on its head by the research based upon interviews with women in refuges to read 'what prevents them from leaving' (see Binney, Harkell & Nixon, 1981; Dobash & Dobash, 1980; Eason, 19882; Homer, Leonard & Taylor, 1984;). These surveys, which aimed to allow the women to 'speak', showed that most women do try to leave time and time again but are prevented from doing so by lack of advice, resources, housing or financial support. For many women dependence upon individual men or upon the state is the only choice available. In the absence of state support there may be no escape. Marriage saving and non-interventionist ideologies are emphasised in these studies as explaining why it is so difficult for women to leave violent relationships. In the study by Binney, Harkell and Nixon (1981) 70% of the sample of 636 women had approached between 4 and 13 different sources to obtain help or advice on leaving. A total of 3,090 agency consultations had been made but half of these were rated by the women as being of no use.

In 1980 Russell and Rebecca Dobash published the findings of their research into domestic violence against women based upon historical
discussion, statistical research upon court and police records and interviews with women victims drawn from the refuge population in Scotland. On the basis of this work, Dobash and Dobash found 25% of violent crime reported to the police and courts was wife assault. They urged for a broadening of theoretical debate claiming it was impossible to understand domestic violence against women unless discussions were set in the context of men's patriarchal domination of women. In this and their subsequent work they challenged institutional support for the abuse of women given by the caring professions and the law (Dobash & Dobash, 1977; 1980; 1982).

Writers such as Brownmiller (1975) and Medea & Thompson (1974) identified the contribution of male sexual violence to the maintenance of patriarchy throughout history and under capitalism. As in the psychiatric discussions, sexuality, aggression and violence are argued to be linked as the primary component of masculinity in a number of societies. 'Normal' heterosexual intercourse and rape are joined on a continuum which differs rather in degree than quality. Brownmiller employed some of the principles of biological determinism, comparing men and women to apes but arguing that men prey on women as well as protect them. Femininity, socially constructed as the complement of masculinity, not only undermines women's capacity for sexual and social self-determination but also increases their physical and psychological vulnerability to attack. Expanding the discussion to the law the failure of men and the law to give women legal redress could be argued to be part of 'male terrorism', a secondary
assault. As fear and threat are seen to be as important as the actual use of violent assault, these writers execute a shift in the debate from 'drive bursting' sexual violence. The concern is with power and the domination of women, not violence as an aberrant act.

In the 1980s feminist descriptions explored ideological and cultural practices and the part these played in maintaining the abuse of women. Heterosexuality, monogamy, motherhood, the public/private dichotomy were held to contribute to male supremacy and capitalist patriarchy. Judicial and professional responses to wife battering said to deny, excuse or justify male violence and attribute blame instead to the victims and sometimes even to the feminist movement. Recent work links all forms of male violence against women with other abuses and exploitations and the underlying struggle by men to retain and reinforce their dominant position as a group over women. On this analysis patriarchal social relations rely on different modes of exerting power and control over women under different socio-historical conditions (see Young & Harris, 1978). The sexualisation of the relationship between men and women became a major form of social control over them. Rich (1981) and Barry (1979) argued that heterosexuality should be studied as a political institution. Although feminist discussions link sexuality and violence, violence is argued to be socially produced and socially legitimated rather than biologically driven by innate male factors. Catherine MacKinnon claimed that sexuality was the primary social sphere of male power (MacKinnon, 1982 & 1983). She argued that sexual violence and
heterosexuality were an 'eroticisation of dominance'. Sexuality cannot be separated from power but the power is fundamental. MacKinnon's state is an institutionalised agency of male control over women and women's sexuality. The law holds up male rights and interests at the same time as claiming to be objective, abstract and neutral in the adjudication of its cases. Feminist struggles with the law need therefore to involve not only the pragmatic implementation of amendments but a critique of the manner in which the law 'objectively' supports violence against women.

Empowerment.

How is it possible to empower women in a legal system which 'objectively', 'reasonably' and 'fairly' justifies, explains and mystifies violence against women whilst the press celebrates the deed? The struggle for women's empowerment will not be easy. As struggles against socially constructed relations between men and women, women's struggles against domestic violence will necessarily continue on a number of levels - providing alternative strategies of intervention (rape crisis centres, refuges, etc), campaigning for better legal and economic provisions, education, etc. It is perhaps trite to point out that the law alone will not bring women equality, especially if legal energies are expended on creating the very relations of sexual dominance feminism seeks to 'eradicate' (see Tong, 1984). Only a combination of theoretical work, political action and
attempts at social change can women's oppression be understood and eventually overcome. Ultimately one aim of the battered women's movement must be to remove the need for women's contact with the law. The requirement that women negotiate a personal freedom from domestic violence is an anathema to a just society. The experiences of the women surveyed, along with the results of other peoples' research (Binney, Harkell & Nixon, 1981; Dobash & Dobash, 1980; Homer, Leonard & Taylor, 1984) showed that in their attempts to obtain legal satisfaction women victims of domestic violence are frequently frustrated, delayed and diverted. Others went to court merely to placate the whims of public bodies such as housing authorities. With more adequate enforcement, welfare and housing provision the numbers of women having to contact the law could be cut. One practical remedy would be to attach powers of arrest to all injunctions. There is no viable reason for not attaching powers of arrest to all injunctions. The provision of emergency protection for women is inadequate.

I think the police should be more helpful. The police should be more on the woman's side than on the man's. And I think there should be more refuges open.

(Nell).

More refuges and a commitment of the police to enforcement and intervention would improve provision for emergency protection. Refuges offer protection, information, support and the opportunity for women to make decisions for themselves. Government commitment to
the funding of a larger independent network of Womens Aid refuges is needed. More readily available information on remedies, automatic legal aid for injunction cases and training for solicitors could remove some of women's frustration in the law.

Although there are contradictions and problems in the use of legal remedies few but the most ardent believers in a 'withering away' of state control would argue that the need for legal intervention will totally disappear. The empowerment of women in the law is dependent upon the redistribution of control over the legal process. Struggles with the law which attempt to challenge the institution of heterosexuality, by e.g. removing the rape in marriage bar, are important concerns. Bringing more women into the law could have beneficial effects. A number of the women surveyed claimed women solicitors were more understanding and better able to represent their needs. Although some argued that women solicitors and police officers could be just as bad as the men. Women in male dominated professions may have to become better men than men to survive. There would undoubtedly be dramatic changes if the legal profession were more representative of sex, race and class differences. On the interpersonal level many women found talking to men about their experiences of violence very difficult. Solicitors' use of women legal executives in busy practices could help women overcome their feelings of guilt and fear.

Having more female solicitors and judges may be better but the whole thing about putting the victim on trial should be
abolished. If you didn't have to go to court it would be better. I'm sure no one believes you. You have to prove everything to solicitors as well. It is too complicated and they do not explain things - you have to ask.

(Laura).

The women expressed opinions on how the legal procedures could better represent their needs. The representation of women's needs in legal discourse is neither a straightforward nor an impartial matter.

They should change the way they handle it. Solicitors should be less forceful. They try and push you into doing the case their way.

(Karen).

Verbatim drafting, rereading and explanation would allow women more control. Some of the women expressed the opinion that a less adverserial approach, allowing women to put their own cases, a family court in an informal and special building would improve matters:

It would be better if it was possible to have things settled in a special building rather than a court. Somewhere more relaxed where they could talk to you before you go in and prepare you for it. So you could have more time and not feel you're on a conveyor belt. They either whip you in and out or its long and drawn out.

(Janine).

The women's emphasis upon informality however did not necessarily mean they would opt for a conciliatory settlement. The conciliatory trend was agreed to in principle by most of the women, mainly due to its informality and emphasis upon individuals talking things through...
with an arbitrator. Some women had experiences of conciliatory intervention which led them to conclude that it was as bad as, if not worse than adversarial neglect.

Conciliation may have helped but I am doubtful that he would have bothered to go to such a scheme. He would not cooperate. It depends on how reasonable the man concerned is.

(Eliza).

Conciliation should not go on. It is really bad. More informality in court would help but it is only cosmetic. It would not stop them putting the victim on trial. Middle class judges are so out of touch. How can they understand what a working class woman feels?

(Laura)

I can't think of anything worse than sitting with a conciliator. It would have put pressure on me. I would feel I am wrong, I should try harder.

(Karen).

The conciliation service in this area is run by old fuddies. (My husband) misused this system and his lawyers cited things the service had said about the marriage which were false.

(Harriet).

Unless the way in which domestic violence against women is explained, justified and made a secondary concern is challenged, whether administered by conciliators or judges, the law will have little impact upon the empowerment of women. An emphasis upon the effects of the decision upon the woman should be a primary concern. At present references to the effects are nearly always second place. The successes of the refuge movement show that the empowerment of
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women victims is more likely to result when their needs are prioritised rather than through the reforms of what is already available (see Schecter, 1982). There are other areas where challenges can be made.

We need financial reform for women before divorce. If women had rights to property and income before the breakdown there would be no problems on divorce. Women have no rights at all at present during the marriage. The only other solution would be for women not to have children and that is not a very nice prognosis.

(Harriet).

In redistributing control it is necessary to ensure that the state does not merely take over control as the influence of legal men or husband's declines. State intervention should be used to redistribute power back to women not regulate or replace male control.

Women's feelings need to be respected. The law sees women as of no value, as property. It needs to value people for themselves - focus on people's feelings. Not like a legal machine dealing with spoils and property.

(Eliza).

Change may not be rapid but one woman surveyed who had taken 12 years to find a legal remedy in protection of her life pointed out, things are better than they were.
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*P v P (1970) 3 All ER 659.
*P v P (1978) 3 All ER 70.
*P v W (1984) 1 All ER 866.
*Peart v Stewart (1983) 1 All ER 859 HL.
*Perrini v Perrini (1979) 2 All Er 323.
*Pettit v Pettit (1969) 2 All ER 385.
*Phillips v Phillips (1973) 2 All ER 423.
Porter v Porter (1969) 3 All ER 640.


Practice Direction (1969) 1 All ER 377.

Practice Direction (1969) 2 All ER 573.

Practice Direction (1969) 2 All ER 1024.

Practice Direction (1970) 1 All ER 557.

Practice Direction (1970) 3 All ER 1023.

Practice Direction (1971) 1 All ER 893.

Practice Direction (1971) 1 All ER 894.

Practice Direction (1971) 1 All ER 895.

Practice Direction (1971) 1 All ER 896.

Practice Direction (1971) 3 All ER 1367.

Practice Direction (1972) 1 All ER 1056.

Practice Direction (1972) 2 All ER 1360.

Practice Direction (1973) 1 All ER 1056.

Practice Direction (1973) 3 All ER 224.

Practice Direction (1973) 3 All ER 1182.

Practice Direction (1974) 2 All ER 1119.

Practice Direction (1974) 2 All ER 1120.

Practice Direction (1975) 3 All ER 432.

Practice Direction (1975) 3 All ER 957.

Practice Direction (1977) 1 All ER 844.

Practice Direction (1977) 1 All ER 845.

Practice Direction (1977) 3 All ER 122.

Practice Note <Matrimonial Causes : Injunctions> (1978) 1 WLR 925.

Practice Direction (1978) 1 WLR 1123.
#Practice Direction (1979) 2 All ER 150.
#Practice Direction (1980) 1 All ER 288.
#Practice Direction (1980) 1 All ER 784.
#Practice Direction (1980) 1 All ER 1040.
#Practice Note (Domestic Violence : Powers Of Arrest) (1981)1 WLR 27.
#Practice Direction (1983) 2 All ER 1088.
#Practice Direction (1984) 1 All ER 684.
#Practice Direction (1984) 1 All ER 783.
#Practice Direction (1984) 1 All ER 827.
#Practice Direction (1984) 2 All ER 256.
#Friday v Friday (1970) 3 All ER 554.
Priest v Priest (1981) 131 NLJ 734.
#Puttick v Attorney General (1979) 3 All ER 403.
#Quazi v Quazi (1979) 3 All ER 424.
#Quazi v Quazi (1979) 3 All ER 879.
#Quin c Quin (1969) 3 All ER 1212.
#Qureshi Qureshi (1971) 1 All ER 325.
#R v Allamby (1974) 3 All ER 126.
#R v Bird (1985) 2 All ER 513.
#R v Brown (1972) 2 All ER 1328.
#R v Calheam (1985) 2 All ER 266.
#R v CICB ex parte Staten (1972) 1 All ER 1034.
R v Clarke (1949) 2 All ER 448.
#R v Cogan & Leak (1975) 2 All ER 1059.
#R v Cooper (1969) 3 All ER 118.
#R v D (1984) 1 All ER 574.
*R v Davies (1975) 1 All ER 890.
*R v Deacon (1973) 2 All ER 1145.
*R v Flack (1969) 2 All ER 784.
R v Hillingdon Borough Council ex parte Streeting (1980) 3 All ER 413.
*R v Hyam (1973) 3 All ER 842.
*R v Ives (1969) 3 All ER 470.
R v Jackson (1891) 1 Q.B. 671.
*R v Lipman (1969) 3 All ER 410.
*R v Lomas (1969) 1 All ER 920.
*R v London Borough of Hounslow ex parte Pizzey (1977) 1 All ER 305.
R v Miller (1954) 2 QB 282.
*R v Miller (1986) 3 All ER 119.
R v Moore (1954) 2 All ER 189.
*R v Morgan (1975) 1 All ER 8.
*R v O'Brien (1974) 3 All ER 663.
*R v Owen (1976) 3 All ER 239.
R v Pigg (1982) 2 All ER 591.
R v Purbeck District Council ex parte Cadney (1985) 17 HLR 534.
*R v Reid (1972) 2 All ER 1350.
*R v Richards (1973) 3 All ER 1088.
R. v Rushmoor Borough Council ex parte Barnett (1987) 1 All ER 353.
*R v Solanke (1969) 3 All ER 1383.

*R v Saunders (1986) 3 All ER 327.
*R v Saunders (1987) 2 All ER 973.
*R v Spratt (1980) 2 All ER 269.

*R v Turner (1975) 1 All ER 70.
*R v Walker (1969) 1 All ER 767.


*R v Wilkinson (1980) 1 All ER 288.

*Radwan v Radwan (1972) 3 All ER 967.
*Radwan v Radwan (1972) 3 All ER 1026.
*Ratten v Reginam (1971) 3 All ER 801.
*Razelos v Razelos (1969) 3 All ER 929.
*Razelos v Razelos (1970) 1 All ER 386.
*Re A (1970) 3 All ER 184.

Re Cochrane (1840) 8 Dow PC 630.
*Re D (1976) 2 All ER 342.
*Re D (1977) 1 All ER 145.
*Re F (1970) 1 All ER 344.
*Re F (1976) 1 All ER 417.
*Re Giles (1971) 3 All ER 1141.
*Re K (1983) 1 All ER 403.
*Re R (1983) 2 All ER 929.
*Re Royse (1985) 3 All ER 339.
*Re S (1977) 3 All ER 671.
Re Shanahan (1971) 3 All ER 873.

Re W (1979) 3 All ER 154.


Regan v Regan (1977) 1 All ER 428.

Rennick v Rennick (1978) 1 All ER 817.

Richards v Richards (1983) 2 All ER 807.

Richards v Richards (1983) 3 WLR 173 HL.

Roberts v Dorset County Council (1970) 75 LGR 462.

Robinson v Robinson (1965) P. 39.

Robinson v Robinson (1965) P. 192.

Robinson v Robinson (1983) 1 All ER 391.

Rodewald v Rodewald (1977) 2 All ER 609.

Rogers v Rogers (1974) 2 All ER 361.


Rowe v Rowe (1979) 2 All ER 1123.

Ruddell v Ruddell (1967) 111 SJ 497.

Rule v Rule (1971) 3 All ER 1368.


Saunders v Saunders (1947)


Shaw v Shaw (1979) 3 All ER 1.

Shinh v Shinh (1977) 1 All ER 97.

Simmons v Pizzey (1977) 2 All ER 432.

Smallwood v Smallwood (1861) 164 E.R. 1050
*Smethurst v Smethurst (1978) Fam 52.
Softley v Softley (1975) 5 Fam. Law 22.
Spicer v Spicer (1954) 1 W.L.R. 1051.
*Spill v Spill (1972) 3 All ER 9.
Squire v Squire (1949) P.51 (CA)
*Stewart v Stewart (1973) Fam. 21.
*Stewart v Stewart (1974) 2 All ER 795.
*Stringfellow v Stringfellow (1976) 2 All ER 539.
*Tarr v Tarr (1971) P. 162.
*Taylor v Taylor (1970) 2 All ER 609.
*Tee v Tee (1973) 3 All ER 1105.
*Temple v Temple (1976) 3 All ER 12.
*Thompson v Thompson (1975) 2 All ER 208.
*Thorne v Thorne (1979) 3 All ER 164.
*Thurlow v Thurlow (1975) 2 All ER 979 *(1976) Fam 32.
Usmar v Usmar (1949) P.1.
Vaughan v Vaughan (1953) 1 QB 762.
*Vaughan v Vaughan (1973) 3 All ER 449.
*Vye v Vye (1969) 2 All ER 29.
*W v W (1970) 1 All ER 1157.
*Wachtel v Wachtel (1973) 1 All ER 113.
*Wachtel v Wachtel (1973) 1 All E.R. 829 CA.
*Walker v Walker (1978) 1 WLR 533.
*Walton v the Queen (1978) 1 All ER 542.
Waring v Waring (1813) 2 Hag Con 152.
*Watts v Waller (1972) 3 All ER 25.
Waugh v Waugh (1981)
*West v West (1978) Fam 1.
*Wheatley v LB Waltham Forest (1979) 2 All ER 289.
*White v White (1983) 2 All ER 51 CA.
Whysall v Whysall (1960) P.52.
*Widdowson v Widdowson (1985) 5 FLR 871.
*Wilkins v Wilkins (1969) 2 All ER 463.
*Williams v Fawcett (1985) 1 WLR 501.
*Williams & Glyns Bank Ltd v Boland (1980) 2 All ER 408 HL.
Williams v Williams (1963) 2 All ER 994.
Williams v Williams (1977) 1 All ER 28 CA.

*Wilson v Wilson (1971) 1 All ER 465.


*Wiseman v Simpson (1988) 1 All ER 245

Wooton v Wooton (1985) 5 FLR 871.

*Wright v Jess (1987) 2 All ER 1067

Wright v Wright (1960) P 85 CA.

*Wright v Wright (1970) 3 All ER 209.
Women and law questionnaire.

NOTES.

PLEASE READ BEFORE STARTING QUESTIONNAIRE.

1. Aim:

The questionnaire aims to obtain information of women's experiences of the law in cases of behaviour in marriage and cohabitation. It is part of a study of the recent history of legal change and reform in family and criminal law. The questionnaire is for women who have experienced one or more of the following legal cases at any time between 1969 and the present day:

- a divorce petition where cruelty grounds (or cruelty plus other grounds) was alleged.
- a DIVORCE where unreasonable behaviour was alleged.
- a DIVORCE within 3 years due to a partner's exceptional depravity.
- a JUDICIAL SEPERATION where cruelty grounds (or cruelty plus other grounds) was alleged.
- a JUDICIAL SEPERATION where unreasonable behaviour (or behaviour plus other grounds) was alleged.
- an INJUNCTION (ouster, exclusion, non-molestation, re-entry) as part of a divorce OR under the Domestic Violence Act OR under the Domestic Proceedings (Magistrates Court) Act.
- an order for occupation under the MATRIMONIAL HOMES ACTS.
- a claim for DAMAGES FOR ASSAULT (as a civil case or to the Criminal Injuries Compensation Board) as a result of an assault upon you by a husband, ex-husband, cohabiting or ex-cohabitant manfriend.
- an ASSAULT upon you under the Offences Against the Person Act by a husband, ex-husband, cohabiting or ex-cohabitant manfriend.
- any other CRIMINAL or SEXUAL ASSAULT upon you by a husband, ex-husband, cohabiting or ex-cohabitant manfriend.

PLEASE NOTE THAT 'ALLEGED' MEANS ALL CASES WHERE THIS WAS CITED EVEN IF YOU CHANGED THE PLEA TO OTHER GROUNDS OR LOST OR DROPPED THE CASE.

2. Anonymity:

Many of the questions here are personal so it is important that you do not include your name, address or any other information which could identify you or anyone else. When you have finished the questionnaire please check that you have not included any names, addresses or other information which would reveal your identity.
The questionnaire is part of a serious (one woman) research project at the University of Bradford. Any information which you provide will be treated with sympathy and will remain confidential. The information from questionnaires will be used for the benefit of women who become involved in legal cases.

If you would rather give a personal interview than fill out forms, time and place can be arranged by phoning Bradford (0274) 733465 Ext. 354.

3. Filling in the questionnaire:

Please print (or type) your answers clearly.

The questionnaire will take on average 30 minutes to complete, but this varies. It could take longer if you have been involved in a number of legal cases. If you have been involved in more than one case (e.g. a number of injunctions, an injunction and a divorce, etc.), please could you provide information on each case on separate questionnaire forms, marking them "NUMBER 1", "2", "3", etc., according to the order in which you experienced them.

Please return your completed questionnaire(s) to:

Lorraine Radford,
Dept. of Applied Social Studies,
University of Bradford,
Richmond Road,
Bradford 7,
West Yorks.

An SAE is attached to the questionnaire for your use.

If you are presently experiencing violence or need help/advice with your relationship with a man, the following groups can put you in contact with people who can help:

- Bradford Women's Centre - Phone Bradford 736156
- Women's Aid Federation - Phone 01 - 251 6429
- Rights of Women - Phone 01 - 278 6349
1. What is your age? ............................................. years.

2. Do you have any children? Yes [ ] No [ ] Tick box
   How many and how old? .............................................

3. In what year did you begin the legal proceeding? 19........

4. Where you at the time of the case:
   Married to the man [ ]
   Divorced from him [ ]
   His 'common law wife' [ ]
   His girlfriend [ ]
   His ex-girlfriend [ ]
   Living apart from the man [ ]

5. Was the case:
   a divorce [ ]
   a judicial separation [ ]
   an injunction [ ]
   an order under the Matrimonial Homes Act [ ]
   a claim for damages in assault [ ]
   an assault under the Offences Against the Person [ ]
   another case of criminal or sexual assault [ ]

6. 1. Was it on the grounds of:
   Exceptional depravity [ ]
   Cruelty [ ]
   Cruelty plus other grounds [ ]
   Unreasonable behaviour [ ]
   Unreasonable behaviour plus other grounds [ ]
6. ii. Was it:

- Defended [ ] ☑
- Undefended [ ]
- Special procedure [ ]

GO TO QN. 12.

7. i. Was the injunction:

- Ancillary to divorce [ ]
- Under the Domestic Violence Act [ ]
- Under the Domestic Proceedings (Magistrates Court) act [ ]

ii. Did the order cover:

- You alone [ ]
- You and the children [ ]

iii. Was it any of the following:

- An emergency or expedited application [ ]
- Heard ex parte (without the man) [ ]
- To include powers of arrest [ ]

iv. Was it an order for:

- Non-molestation [ ]... go to qn 12
- Exclusion/ouster (from house) [ ]
- Non-molestation plus exclusion/ouster [ ]... GO TO QN
- Re-entry [ ]

8. i. Was your home:

- Owner occupied [ ]
- Local authority (council) [ ]
- Private rented [ ]
- Shared parents/friends/relatives [ ]
- Mobile home/houseboat [ ]
Was it registered in:

Your husband/manfriend's name □
Your name □
Joint names □
Don't know □

Was it a:

Civil case □
Claim to the Criminal Injuries Compensation Board □

Under which section of the Act was the case brought?

Section ..........

Was it brought by:

You □
The police □

What sort of case was it you were involved in?

..........................

Was it going to be heard in:

Magistrates court □
Crown court □
Either □

GO TO QN. 12
12. i. Do you have in your possession any copies of the following legal documents relating to your case:

- The petition/summons/application/complaint
- Your affidavit
- Your husband/manfriend's affidavit
- Affidavit(s) by witness(es)
- Doctor's report for hearing
- Welfare report
- Letters written by your husband/manfriend/others which were used as evidence in court

None of these (If none, go to qn. 13)

ii. Please would you copy word for word on the attached sheets of paper all of these documents or the parts of them which relate to the behaviour complained of.

MAKE SURE YOU LEAVE OUT NAMES AND ADDRESSES OR OTHER IDENTIFICATIONS.

If you have copies of any affidavits, these are particularly important to the research. It may be quicker, if you are able, to photocopy the documents providing you black out beforehand names, addresses and other identification. The costs of photocopying will be reimbursed to you or donated to a charity of your choice. Please send the bill in a separate envelope or telephone me directly.

When you have finished this section, go to qn. 14.

If you possess some of these documents but do not want to provide this information, please continue with the questionnaire at qn. 13.

13. Could you please give details below of the exact nature of the legal proceedings, the grounds on which they were brought, how the solicitors and legal workers described the behaviour complained of, how they described the result of the behaviour and any adverse effects on your health, well-being or state of mind.

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(Continue on separate sheet)
14. Do you feel the solicitor/law officer's description of the behaviour matched your complaints and feelings about the relationship with your husband/manfriend?

[ ] Perfectly  [ ] Adequately  [ ] Fairly well  [ ] Only partly  [ ] Badly  [ ] Not at all

15. What were your main grievances about the relationship with your husband/manfriend?

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16. What caused you to become involved in the legal case in the first instance?

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17. How long did the legal proceedings take from start (going to see a solicitor or offence occurring) to finish?

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18. How would you rate the way the following dealt with your case?

<table>
<thead>
<tr>
<th>Tick boxes</th>
<th>On my side</th>
<th>Excellent</th>
<th>Fairly</th>
<th>Not well</th>
<th>Bad</th>
<th>Biased</th>
<th>No contact/can't rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td></td>
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<tr>
<td>Solicitor</td>
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<tr>
<td>Magistrate</td>
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<tr>
<td>Judge</td>
<td></td>
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<tr>
<td>CICB staff</td>
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</tr>
</tbody>
</table>
18. ii. If you have any complaints about the service provided by one or more of the above, please specify them below:

 iii. If you are satisfied/pleased with the service provided by one or more of the above, please specify the reasons below:

19. i. Was a doctor involved in your legal case as provider of evidence? 

      Yes □       No □ (if No go to qn.20)

   ii. Was s/he a:

       GP □  Hospital doctor/consultant □

       Psychiatrist □  Attached to the police □

   iii. Please describe below what part s/he/they played in the case and the nature of evidence offered, how they described the behaviour concerned in the case:

   (continue on separate sheet if necessary)
19. iv. How would you rate the way the doctor dealt with your case?

- On my side □
- Excellent □
- Fairly □
- Not well □
- Bad □
- Biased □
- Can't rate □

□ Tick

V. If you have any complaints about the doctor's behaviour, please specify them below:

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vi. If you are satisfied/pleased with the doctor's behaviour, please specify the reasons below:

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.................................................................................................................................
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20. i. Was a welfare officer and/or social worker involved in your case as provider of evidence?

□ Yes □ No □

(if No go to qn. 21)

ii. Were you able to see a copy of her/his report?

□ Yes □ No □

□ None made □

□ Tick

iii. Please describe below what part s/he/they played in the case and the nature of evidence offered:

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20. iv. If a welfare report and/or social work report was made, do you feel it described your complaints and feelings about the relationship with your husband/manfriend:

<table>
<thead>
<tr>
<th>Tick</th>
<th>Welfare report</th>
<th>Social work report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perfectly</td>
<td></td>
<td></td>
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<tr>
<td>Adequately</td>
<td></td>
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<tr>
<td>Fairly well</td>
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<tr>
<td>Only partly</td>
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<td></td>
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<tr>
<td>Badly</td>
<td></td>
<td></td>
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<tr>
<td>Not at all</td>
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</tbody>
</table>

v. Do you feel it helped your case?

No [ ] Yes [ ] In what way?

vi. How would you rate the social worker and/or welfare officer dealt with your case?

<table>
<thead>
<tr>
<th>Tick</th>
<th>Welfare officer</th>
<th>Social worker</th>
</tr>
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<tbody>
<tr>
<td>On my side</td>
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<tr>
<td>Excellent</td>
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<tr>
<td>Fairly</td>
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<tr>
<td>Not well</td>
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<td>Badly</td>
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<tr>
<td>Biased</td>
<td></td>
<td></td>
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<tr>
<td>Can't rate</td>
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</tbody>
</table>

vii. If you have any complaints about the social worker and/or welfare officer's behaviour, please specify them below:

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20. viii. If you are satisfied/pleased with the social worker and/or welfare officer's behaviour, please specify the reasons below:

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21. i. Was a probation officer involved on your legal case?

Yes □ No □ (if no go to qn. 22)

ii. Was s/he involved by nature of:

Your being on probation □

His/her matrimonial interests □

Other reason □

iii. Did s/he take part in the case on:

a professional basis □

an advisory/support basis □

iv. Please describe below what part s/he played in the case and the nature of the evidence offered (if any).

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v. If the probation officer made a report for the court, do you feel it described your complaints and feelings about the relationship with your husband/manfriend:

Perfectly □ Adequately □ Fairly well □

Only partly □ Badly □ Not at all □
21. vi. Do you feel his/her advice helped your case?

Yes ☐   ✔Tick   No ☐

vii. How would you rate the way the probation officer dealt with your case?

✔Tick

On my side ☐   Excellent ☐   Fairly ☐
Not well ☐   Bad ☐   Biased ☐   Can't rate ☐

viii. If you have any complaints about the way the probation officer behaved, please specify them below:

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ix. If you are pleased/satisfied with the way the probation officer acted, please write your reasons below:

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22. i. Were there any witnesses involved in your case?

Yes ☐   No ☐   (if no go to qn.23)

ii. Who were they? (DO NOT GIVE PERSONAL NAMES. IT IS O.K. TO WRITE 'neighbour', 'bystander', friend', etc.).

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iii. Please say below how they became involved:

..................................................................................
..................................................................................
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22. iv. Was it necessary to subpoena [insert name]?

Yes ☐ No ☐

v. Please describe below what part s/he/they played in the case and the nature of evidence offered:

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23. ii. Was the case heard in: 

[ ] Tick 

Open court [ ] Chambers [ ]

iii. Did you have anybody with you when you attended court, apart from your solicitor?

[ ] No [ ] Yes [ ] Who?

iv. Please describe below how you felt about the court experience:


v. Please describe below how you remember the atmosphere, comfort and general environment of the courtroom/chambers and court area:


24. What was the outcome of the legal proceeding?

[ ] Case won (go to qn. 27) [ ] Case lost (go to qn. 25)

[ ] Case dropped (go to qn. 25) [ ] Case altered (go to qn. 26)
25. i. Why was the case lost/dropped?

ii. How do you feel about the case being lost/dropped and were there any consequences?

Please go to qn.28

26. Why was the case altered?

If you switched to proceedings which are also relevant to the research, please fill in a second questionnaire after finishing this one.

Please go to qn.28

27. Please describe what you feel were the main factors in the success of your case:
28. How would you assess the value of the legal proceedings in helping you to overcome your grievances at the time? 

Main remedy □ Partial remedy □

Waste of time □ Other □ please specify......................

29. Do you feel reforms are needed for cases like your's?

No □ (if No go to qn.30)

Yes □ What needs to be done?..............................

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30. It has been suggested that:

the CRIMINAL LAW could be made more sensitive towards victims if the police were specially trained, there were separate complaints and prosecution procedures from the police, there were special local schemes to help victims of crime and new schemes which show the lawbreakers the damage they have done by introducing them to victims or making them do tasks to help victims and repay some of the damage they have done.

the FAMILY LAW could be made more sensitive by replacing the present courts (magistrates, county and high court) with just one special court for family cases where the staff would be specially trained; making conciliation schemes compulsory (where the man and woman talk about the main money and legal problems and make agreements with the help of a counsellor before actually getting the law involved); and introducing safeguards to prevent conflict by e.g. referring everyone who wants an injunction to the conciliation service first.

What do you think about these suggestions?

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31. Please use this space (and overleaf if needed) to add anything
31. you would like to say about how the law has treated you which the questionnaire has not covered.

CHECKLIST.

HAVE YOU: 

removed all names, addresses and other identification?

answered all the relevant questions?

included any extra answer sheets in the envelope for posting?

included any photocopies in the envelope for posting?

numbered any additional questionnaires?

THANKYOU for completing the questionnaire.

Lorraine Radford, Dept. of Applied Social Studies, University of Bradford, Richmond Road, Bradford 7, West Yorks.