

Hague Domestic Violence Forum Expert Paper #1

The definition, prevalence, and identifying features of domestic violence

Lisa Fischel-Wolovick, JD, MSW
City University of New York at John Jay
College. National Family Court Watch Project,
Board of Directors

Biography

Lisa Fischel-Wolovick, JD, MSW is an attorney who has represented battered women for thirty-five years. She is the author of numerous publications, including her recent book: *Traumatic Divorce and Separation: The impact of domestic violence and substance abuse in custody and divorce*, published by Oxford Univ. Press in 2018 and *Battered Mothers and Children in the courts: A lawyer's View*, published in the *International Journal of Applied Psychoanalytic Studies*. She also helped to organize the first Criminal Court that specialized in domestic violence in New York State. Ms. Fischel-Wolovick is currently teaching Family Violence, Child Maltreatment, and the Psychology of the Victim, at the City University of New York, in John Jay College's graduate program in Forensic Psychology. She is on the Board of the National Family Court Watch Project. Ms. Fischel-Wolovick is a frequent speaker on domestic violence, child custody, and trauma at national and international conferences and judicial trainings. Before becoming an attorney, she obtained her master's in social work and worked in medical social work, which included advocacy and counseling for battered women. She has provided consultation for attorneys, mental health professionals, and the judiciary on custody, domestic violence, and trauma.

Abstract

The family court's response to intimate partner violence has been hampered by the lack of agreement concerning the definition, prevalence, and context of such abuse. Questions remain in the legal and mental health profession as to whether men and women are violent at the same rate or whether some forms of abusive behavior are less dangerous. These fundamental disagreements about the nature, prevalence, and gendered impact of domestic violence have contributed to the current unpredictable quality of the family courts' response. This paper will address the conflicting arguments about the definition of domestic violence, the controversy over how abuse is measured, and the varying forms that coercively controlling behavior can take. Additionally, the more recent developments during the Covid-19 pandemic are of particular concern for battered women who experienced a significant increase in the severity of abuse. This recent trend of escalating violence against women on a global scale has significant implications for the courts, which are first responders to families in crisis. The following contains excerpts from the author's work in Fischel-Wolovick, L. (2018) *Traumatic Divorce and Separation: The Impact of Domestic Violence in Custody and Divorce*, New York: Oxford University Press.

Introduction

The history of conflicting definitions of domestic violence has hampered the courts' ability to identify and address the risks of harm to battered women and their children. In 2015, the Center for Disease Control and Prevention (CDC) for the United States, highlighted the problems associated with having inconsistent definitions of Intimate Partner Violence (IPV) and included emotional abuse and stalking in their definition of coercively controlling behaviors. (2015). The CDC Report of Breiding et al. (2015) concluded that the lack of agreement concerning the definition of IPV had significant consequences, hindering the ability to identify those families that were most at risk and to respond appropriately to families in crisis. In the courts this lack of definitional clarity can have enormous consequences for battered women and children. Raghavan and Cohen also acknowledged that the social sciences are deeply divided in their understanding of domestic violence. (2013).

In the US virtually all the states have established specialized courts that address family concerns, including domestic violence, support, child custody, and divorce. For the sake of clarity, I will be referring to such forums as the 'family courts'. Furthermore, because of the extensive body of literature that refers to domestic violence as a gendered crime against women, the differential impact of male violence, and this author's years of advocacy for survivors of domestic violence, this article will be referring to batterers as men.

Defining and measuring domestic violence

Our understanding of domestic violence began with an attempt to determine its prevalence. The original research on domestic violence by Gelles and Straus defined it as physical acts of aggression against another family member. (1979). A decade later, Gelles and Straus noted the difficulties in quantifying the problem of domestic violence and child abuse because of the secrecy surrounding these issues and the potential to stigmatize those who have been abused. (1990). The US National Intimate Partner and Sexual Violence Survey of 2011 found that 31.1 per cent of women had been victims of physical violence by an intimate partner during their lifetime, 19.3 per cent of women had been raped in their lifetimes, and 43.9 per cent of women had been victimized by some other form of sexual assault in their lifetime. (2011).

Given these troubling statistics, this author has noted that our understanding of domestic violence has expanded to include abuse that encroaches into multiple areas of personal life.(2018). Again, a more

expansive definition of abuse is essential to our understanding of families entering the courts particularly when there may not be a history of prior criminal prosecutions.

Domestic violence as coercive control

Dr Evan Stark, the seminal researcher in domestic violence, defined it as coercive control encompassing a constellation of behaviors utilized by batterers including physical, economic, sexual, and emotional abuse. (2007). Similarly, the Council of European Convention on Preventing and Combatting Violence Against Women and Domestic Violence, known as the Istanbul Convention (2011) also uses such a broad definition of domestic violence to include 'all acts of gender-based violence that result in ... physical, psychological, or economic harm or suffering to women, including threats of coercion or arbitrary deprivation of liberty.'

Mueller and Tronick identified such abuse as coercive control that included a chronic pattern of intimidation and control in an intimate relationship. Similarly, these researchers found that coercive control can include, but was not limited to, physical and sexual abuse, or threats of the same. (2020)

Britain adopted Stark's model of coercive control and incorporated this into its 'cross-governmental' definition of partner abuse that recognized that such abuse was not limited to one incident but could include patterns of 'controlling, coercive, or threatening behavior.' The British government went further, to criminalize those behaviors utilized to exert coercive control over intimate partners. (Candela 2016; Domestic Violence, Crime, and Victims Amendment Act of 2012). As of the writing of this paper, Ireland, Scotland, Wales, New South Wales, Australia, Hawaii and other states in the US have also amended their criminal laws to include the charge of coercive control. This author believes that several other countries have or are about to amend their criminal laws to include the charge of coercive control.

Finally, the Istanbul Convention (2011) defined domestic violence as:

All acts of gender-based violence that result in ...physical, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty.

Are there classifications or typologies of domestic violence?

In comparison to Stark's (2007) theory of coercive control, there have been other attempts to categorize domestic violence. Johnston and Campbell (1993) studied two groups of separating families utilizing the Conflict Tactics Scale and individual interviews, identifying four subsets of family violence, including 'situational couple violence', and 'intimate partner terrorism'. These researchers argued that 'situational couple violence' was the most common but acknowledged that such violence could result in severe abuse and even at times, homicidal attacks.

Johnson's (2006) typology of domestic violence described what they referred to as a continuum, classifying many incidents of abuse as 'separation instigated' while only some abuse was viewed as coercive control. However, a critical concern was raised by Hardesty (2002) who observed that many researchers have failed to evaluate women's experience with domestic violence over a lifespan, which increases the risks of continued abuse during divorce and separation. Stark's (2006) critique of Johnson's theory of a typology of domestic violence also concluded that it failed to consider the many forms in which chronic abuse can be manifested over time, measuring instead discrete acts of abuse.

While not all abuse is the same, Kelly and Johnson's (2008) concept of typologies of domestic violence

fails to consider the short-and long-term medical and mental effects of such exposure, looking only at the circumstances of the abuse at discrete periods of time, rather than the cumulative impact. Finally, Stark's theory of coercive control accurately addresses the pervasive and myriad ways women's lives are controlled over time. An understanding of coercive control as chronic abuse, taking many different forms, allows practitioners and the family courts to accurately assess the risks of escalating abuse for battered women and their children.

Risks of separation and post-separation abuse

There is also a significant body of research on the risks of escalating abuse during separation and post-separation occurring when batterers experience this as a loss of control, requiring more severe efforts to control their victims. Kimmel described separation and post-separation periods as unpredictable, unstable, and dangerous. (2002). Significantly, in Canada, Dobash and Dobash's national survey of violence against women also found that the risk of violence increases following separation and that 41 % of such women experienced more than ten assaults, 45% of the women were physically injured, and 85% reported experiencing depression, anxiety, or related mental health problems because of the abuse. (1995).

The courts and the related risks of post-separation abuse

Later research by Hardesty and Ganong (2006) found that for battered mothers, leaving does not necessarily end the abuse, particularly when women are forced to share custody with their former partners. These researchers observed that abusers' experience separation as a direct challenge to their ability to control their partners.

Nor are the risks of post-separation abuse limited to harassment and legal threats. Carlson et al. (1999) also found that women who had children with their abusers experienced increased risks of being re-abused physically following separation. Women may be threatened, harassed, and even injured during exchanges of children before and after court-ordered visitation. Fischel-Wolovick has indicated that in some instances, batterers use their visitation to stalk their former partners. (2020).

There is a significant body of research on the harm to women following separation as abuse may escalate at this time. The research of Juodis et al. (2014) on correctional inmates indicated that homicides may be triggered by separation and that those perpetrators who were psychopathic were less likely to appear suicidal or distressed before murdering their spouses (Fischel-Wolovick, 2018).

Stark's (2007) theory of coercive control can also be used to provide an accurate understanding of the history and extent of the abuse to include economic, legal, and sexual abuse. Fischel-Wolovick has indicated that when batterers continuously return to court, filing endless motions and applications, this forces women to waste precious financial resources defending against frivolous claims. (2020) There is also a growing body of research on economic abuse. Adams et al. (2008) concluded that an overwhelming 99% of women who had been physically abused in the shelter population indicated that they also suffered from economic abuse, which included interference with employment, credit card fraud, and spending money intended for the household bills.

Coercive control and children

Bair-Merritt et al. found that children were 'silent victims' of domestic violence, and that living in such high-stress home environments causes neuroendocrine stress responses and the development of

multiple physical and mental health problems. (2013) .Thus, battered mothers have reported that fathers will target one or both children for emotional and physical abuse. Mueller and Tronick have found that infants are particularly vulnerable to such coercive control given the enormous neurological changes that occur during infancy, and that such abuse impacts their behavioral, emotional, and neurological development. (2020). Finally, a number of seminal researchers including Stark (2024) and Katz (2022) have found that children are themselves the target of coercive control, and not the secondary or inadvertent victims.

Protective measures

The use of Batterers' Intervention Programs (BIPs) has created a false sense of security for the courts. Gondolf, a well-known researcher in domestic violence and the personality traits of abusers, has raised concerns about the use of such programs. (1997). He noted that incidents of violence may occur as much as a year or more apart making it difficult to assess the effectiveness of BIPs in the short-term. Edleson, a renowned scholar and mental health treatment provider, questioned whether batterers simply employed other forms of abuse after they completed such programs. (2017) Babcock et al. found that BIPs ranged broadly in duration from twelve to fifty-two weeks and used a variety of treatment modalities making it difficult to compare and determine long-term effectiveness. (2003). This finding was also confirmed by Cheng et al. (2021).

As a result, the lack of empirical support for such programs creates a false sense of safety and security for prosecutors, judges, custody evaluators, and visitation supervisors. It is not uncommon for judges and forensic custody evaluators to rely upon an abusive parent's completion of a BIP as justification for ordering or recommending extensive unsupervised overnight visitation, joint, and even sole custody of the children without any reliable assurance of the family's safety.

There is no one-size-fits-all treatment approach to such a wide range of individuals who abuse their spouses and children. While researchers agree that batterers share similar personality traits of manipulation and entitlement, there is no single diagnostic category for batterers. Some offenders may present with mental health difficulties, a substance abuse history, or a combination of all these factors. Individual batterers may have a history of criminal behavior, while others have significant employment and academic backgrounds. Batterers come from all cultures and backgrounds. Researchers have argued that more study is needed on the types of men who batter to better understand whether and how they will respond to treatment. It is also important that any such research should include interviews of victims and other family members to determine the effectiveness of such programs.

The overwhelmed court systems have looked beyond litigation to find alternate ways to resolve the issues of custody and visitation. Thus, the courts frequently refer families to mediation. Mediation is premised on the concept that self-determination and autonomous decision-making will bring about a fair and reasonable result in the form of a negotiated agreement. (Fischel-Wolovick 2018) However, mediation requires a level playing field in which both sides have equal power. Similarly, Frieze and McHugh in an earlier study found that even one incident of physical abuse many years before created an imbalance of power. (1992).

Domestic violence and Covid-19

The pandemic highlighted the vulnerability of battered mothers. During the lockdown and resulting isolation of the Covid-19 pandemic, the initial reports of domestic violence were anecdotal. In a recent

study of domestic violence during this time, Jetelina et al. (2020) learned that while 54 per cent of the women indicated that the level of their victimization remained the same, 17 per cent reported an increase in physical and sexual abuse.

Similarly, the research of Nix and Richards (2021) reviewed calls to law enforcement related to domestic violence, during the stay-at-home orders. These researchers found that there was a significant spike in calls to the police immediately following the lockdown. Additionally, many women were unable to work during this time. The research has indicated that this could result in a loss of financial independence, increased isolation, and vulnerability (Sanders, 2015). While the research of Nix and Richards (2021) found that the number of calls for police assistance decreased when the lockdown orders were ended, it is important that we do not underestimate the gendered impact of such isolation and financial devastation on women.

The experience of battered women during emergencies is not unprecedented or even unpredictable. Peterman et al. (2020) found that '... natural disasters, civil unrest, virus outbreaks, and economic uncertainty has led to increased family violence in the past'. Nor was the United States alone in experiencing this spike in severe domestic violence experienced by many women. The United Nations report on Covid-19 and ending violence against women and girls (United Nations Entity for Gender Equality and the Empowerment of Women, 2020), overwhelmingly found increased reports of domestic violence in Argentina, Canada, Cyprus, France, Germany, Singapore, Spain, and the United Kingdom. Responding to this global crisis, the United Nations Secretary-General António Guterres, acknowledged this 'terrible outbreak of violence'. Stoianova et al. (2020) found that Covid-19 was a 'catalyst for domestic violence around the world', citing the rising rates documented in the Ukraine, and the need for humanitarian efforts to protect women's rights. Such humanitarian efforts to protect women and children must include a court response that provides vigilant protections.

Conclusion and recommendations

The family courts approach to allegations of domestic violence are hampered by the existence of competing definitions of domestic violence that frequently fail to take into consideration the vast body of research on the risks of separation and post-separation abuse. Given the conditions of the COVID-19 pandemic and its world-wide impact on battered women, it is essential that the courts use the broader definition of coercive control to allow for the identification of chronic abuse of women and children.

Additionally, the courts should only utilize programs that can be empirically evaluated as many researchers have concluded that programs such as BIPs provide the courts, mental health and legal professionals with a false sense of security and cannot be relied upon to ensure the safety of battered women and their children. Finally, all efforts to protect battered women and their children should include a careful assessment of the chronic risks, reflecting an understanding of domestic violence as coercive control.

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FILiA Hague Mothers

[FiLiA Hague Mothers](#) is a MVAWG project. Our overarching aim is to end the injustices created by The Hague Convention on the Civil Aspects of International Child Abduction, specifically for mothers and children who are victims of domestic abuse.