

IN: Nousiainen Kevät, Gunnarsson Åsa, Lundström Karin & Niemi-Kiesiläinen Johanna, Responsible Selves. Women in the Nordic legal culture. Ashgate 2001 s. 353-373.

15 Women's Peace: A Criminal Law Reform in Sweden

GUDRUN NORDBORG AND JOHANNA NIEMI-KIESILÄINEN

In most societies, violent crimes against women are punished less severely than similar crimes against men. Because violent crime against women usually takes place within the family and other intimate relationships, it is considered a private matter, difficult to investigate or prove. Authorities often express their inability to intervene in cases of violence against women. Research has revealed the continuous and serious nature of typical forms of violence against women (Dobash and Dobash, 1979; Kelly, 1987; Skjørten, 1988 and 1994). Feminists have claimed that the response from the criminal justice system should be equally serious regardless of where the violence takes place. Some have even argued that violence in an intimate relationship or at home, in a place of trust and peace, should be considered a more serious crime than violence elsewhere.

In the 1990s, the Swedish government undertook a bold initiative to tackle this problem. It commissioned a review of the legislation concerning violence against women. The Commission on Violence Against Women made several proposals, the most famous of which was the enactment of a new category of crime: *breach of a woman's peace*.

The new crime forms part of a wider process in the Swedish discourses on equality. A series of studies in the early 1990s reviewed the division of power in Swedish society. One of these studies concerned power relations between men and women (SOU 1990:44).¹ Despite the relatively equal status of Swedish women, women were underrepresented according to all measures. Theoretically, historian Yvonne Hirdman has conceptualised the power relations in a societal gender system where women were attributed as having less value than men (Svensson). Later, the

Responsible Selves

government initiated several projects to promote equality, for example, in university education and the legal system. The initiative has also led to a more systematic evaluation of the effects of legislation on the relative positions of women and men.

During the 1995 United Nations' Conference on Women held in Beijing, Sweden was celebrated as the nation with the highest rate of equality in the world and Sweden has actively promoted women's human rights as a part of its developmental policy and aid. The earlier women's conferences had understood violence against women as the most obvious expression of the power imbalance between the sexes. The Beijing Declaration and Platform of Action (1995) also urged concrete action to eliminate these forms of violence. The Swedish initiatives were seen as a part of this international movement to make visible and to eradicate violence against women (SOU 1995:60, 61).

These views were reflected in the government directive to the Commission on Violence Against Women. The government directed it to work from the women's perspective (Directive 1993:88).ⁱⁱ More specifically, violence against women was seen as an expression of an imbalance in the distribution of power between men and women.

In 1995, the Commission on Violence Against Women published an extensive report entitled "Woman's Peace" (*Kvinnofrid*, SOU 1995:60) after its most important reform proposal. The Commission proposed that a new crime "breach of woman's peace" be included in the Penal Code. This new crime was primarily aimed at violence and other abuse directed at a woman in an intimate relationship with a man. The government presented a Bill for the introduction of the new crime and several other reforms concerning violence against women in 1997 (Prop. 1997/98:55). The new law came into force on July 1st, 1998.

The new crime is radical within the legal system in at least two ways. First, it is an attempt to focus more on the process created by the multiple effects of different acts than on the specific acts included. Secondly, the new crime can be defined as sex-specific in a strongly sex-neutral legal context. Both aspects challenge traditional legal principles.

The proposal was extensively discussed both in the legal community and in society at large. More than a hundred institutions, organisations and authorities gave their views on the Commission's report. The reactions differed widely.ⁱⁱⁱ While the women's organizations and, for example, the Equal Opportunities

Women's Peace

Ombudsman welcomed the proposal, we can distinguish a systematic reluctance towards it from the judicial community (Bjelle, 2000). Some lawyers have questioned the need for the new law^{iv} despite the usual reluctance of the profession to take a stand on political preferences. Practising lawyers and advocates, who of all lawyers should have the closest contact with both the perpetrators and the victims of crime, bluntly opposed the new crime.^v Sweden's Judges Association, by contrast, was conscious of the need for legal protection against such forms of outrages as described in the report. The Association, however, advocated sex-neutral language and criticised the proposals for being too difficult to implement and including risks to individual legal rights.^{vi} While the tone of the legal authorities was clear, they took up many important legal issues that were also discussed at length both in the Commission report and the subsequent government proposal.

The legal critique led to a careful reconsideration of the Commission's proposals by the government. The Bill presented to Parliament in 1997 had reconsidered the wording of the proposed newly-defined crime, "serious violation of a woman's peace", or, according to a later official translation, "gross violation of integrity". The new proposal was far less ambitious, reducing the new crime from an ambitious attempt to capture the abuse of power in domestic violence in criminal law terms to an increase of penalties. Even so, we consider the new law an important acknowledgement of the gendered, serious, continuous and damaging nature of violence against women.

In this article, we shall describe the new crime and its drafting process. We shall also discuss how this process brings to light issues about the gendered nature of legal principles and the limits of legal change.

Responsible Selves

The Legal Background

Swedish sex or gender equality has been achieved through gender-neutral legislation. Historically, sex-specific laws excluding women from access to labour and power have been changed (Nordborg and Dahlberg, 1997). Gender neutrality has also been an important goal in the reforms of criminal law since a husband's right to chastise his wife was abolished by the 1864 Penal Code. Thus, wives were given formal protection against battery. However, up until 1982, the prosecution of a battery charge required that a request be made by the wife.

The Penal Code of 1965 made rape within marriage a crime. This reform was accepted after intense discussion and a close vote in Parliament. Interestingly, the power relation between a couple was a central theme in the discussions: it was feared that the wife would be given too much power through the reform.

The sexual revolution in the 1960s led to the enactment of the no-fault divorce in 1973. According to the Marriage Act, claiming damages for violence or other behaviour that has caused the breakdown of the marriage is no longer possible. The sexual revolution also accounts for the high rate of cohabiting couples.^{vii} Both the sexual revolution and liberal sexual mores have been recently critically assessed by feminist researchers (Nordborg, 1995), arguing that sexuality is still defined by men and from a male perspective (Bergenheim, 1992).

Among the reforms of the criminal law, gender neutrality is still an important reform goal. For example, in 1984, rape law was made sex-neutral. Instead of the former male perpetrator / female victim terminology, the law now speaks about "a person who by violence or threat which involves, or appears to the threatened person to involve an imminent danger, forces another person to have intercourse or to engage in a comparable sexual act...". The main reason for the change was to give homosexuals the same legal protection as heterosexuals. After the change, a woman may become guilty of rape too, and the newspapers widely reported one such case in the summer of 1998. According to the statistics, however, women as perpetrators are next to nil, even if accomplices are included.

In the 1970s, *Kvinnojour*, a new force within the feminist movement, was formed. Local groups organised women's shelters in almost every city during the 1980s. They formed a national organisation, the Swedish Association of Women's Shelters

Women's Peace

(*Riksorganisationen för kvinnojourer i Sverige, ROKS*) and created informal networks with female politicians at both local and national level. This movement and the researchers connected with it started to take up themes of power and the distinction between the public and the private (Gustafsson, et al., 1997).

This coalition pushed for the legal reform of 1982, which made the prosecution of assault and battery independent of the victim's wishes. Even though the reform was formally sex-neutral, the main arguments in its favour were the protection against domestic violence and the abuse of women and, also, the need for an official condemnation of domestic violence. The reform helped to publicise that domestic violence is not only a private problem, but also, a more pervasive public and social problem in Swedish society (Snare, 1983).

In 1988, victims of a sexual crime or other serious crime were given the right to a lawyer paid for by the state. A specific law on protection orders was enacted in the same year. These reforms, too, were gender-neutral, but argued for in sex-specific terms.

The Doctrine of Criminal Law and Violence Against Women

Despite several legal reforms related to violence against women, criminal law itself had remained intact. There seems to be an incompatible gap between the gender-neutral principles of criminal law and the gendered nature of violence against women that makes futile any attempts to acknowledge the special severity of these crimes.

In criminal law, as in all branches of law, we can distinguish different levels of regulation. Basically, Scandinavian criminal law is legislated law enacted by Parliament. While case law may be important in the interpretation of parliamentary acts, it is subject to the legality principle, requiring that the prerequisite of criminal law has to be precisely determined by parliamentary acts. Despite the strong emphasis on written law and the legality principle, criminal law is anchored in deeper structures of the legal system.

At a deeper level, legal decision-making is guided by legal concepts, general principles of law and methods generally accepted by the legal community (Tuori, 1999). When a basic legal construct has been accepted and internalised to such an extent that it is not, and maybe even cannot be, questioned, we can talk about doctrines

Responsible Selves

(Nousiainen, 1999). In criminal law, important elements, essential for establishing liability, are not found in written law, but, instead, are constructed as general doctrines. Nousiainen has used the word *dogma* to characterise such central concepts as guilt, intent, act and the legal subject (Nousiainen, 1999). A dogmatic structure is elaborated upon in the case law and in legal research. However, certain structures of the legal system are often implicitly assumed without questioning or even recognising them.

Feminist research has now started to look at the central concepts and dogmas of criminal law and to ask how and from what perspectives they have been constructed (Naffine, 1995; O'Donovan, 1997; Leander-Elliott, 1997). No doubt criminal law has been, and still is, dominated by male judges and professors. More importantly, though, the focus of criminal law is necessarily on the perpetrator, whose liability is assessed, and the perpetrators tend to be male actors.

At the same time, we know that men and women live different lives and have different experiences. Feminist research has shown how the two sexes are constructed to have different perceptions of personality, relations, re-sponsibility and ethics (Benhabib, 1992; Benhabib and Butler et al., 1995; Chodorow, 1989; Gilligan, 1983). We can reasonably ask whether the basic concepts of criminal law are guided by gendered perceptions of personality, action, body, power and relations between persons.

In the construction of legal doctrine, the assumed subject is the rational, featureless individual. In the doctrine of criminal law, the context of violent crime is an encounter between two such individuals who have no relevant relation to each other before or after the crime. When context is considered, it is usually to the detriment of the woman, whose consent to the deed is derived from the context (O'Donovan, 1997, 53-54). While the criminal process aims at determining guilt, the victim is not the subject, but rather the object of inquiry and evidence (Hunter and Mack, 1997). Furthermore, the concept of a criminal act is decisive in the determination of the guilt and the sanctions. The criminal act is defined in time and space as an isolated incident, all elements of which are found in the corresponding legal definition of the crime (Nousiainen, 1999; Norrie, 1993; Kelman, 1981).

Not surprisingly, the assumptions of criminal law seem not to fit in with domestic violence, nor with many other forms of violence against women. The persons involved are related to each other.

Women's Peace

Their relationship is understood to be of relevance in the context.^{viii} The violent crime is not an isolated act but often just one incident in a long history of violence, which happens to come to the knowledge of the criminal justice system. The personal qualities of the perpetrator and the victim are of relevance because the former usually uses his physical strength to gain control over the woman (Skjørten, 1988 and 1994). Furthermore, the power relations between the two reflect the relationship between the sexes today in society. This societal context makes possible a situation in which the perpetrator uses violence and psychological abuse to gain control over the woman (Dobash and Dobash, 1979; SOU 1995:60, 106). Thus, instead of isolated violent acts, the relevant harm and violation are achieved by a process consisting of continuous psychological abuse and physical violence (SOU 1995:60, 102).

The recognition of domestic violence and other forms of violence against women as processes that have a lasting and damaging effect on the victim's integrity and personality was the background to the proposals of the Commission on Violence Against Women (SOU 1995:60, 22). With the new crime "gross violation of integrity" the law drafters and the Parliament aimed at a more effective criminalisation of the typical forms of violence against women and, primarily, of the violence and other abuses directed at a woman in a close relationship with a man.

*Responsible Selves***The Woman's Peace Report**

The report of the Commission on Violence Against Women included several other important proposals. Some of them were semantic. The language in the Penal Code consequently refers to the crime victim as "he". It was suggested that this terminology was an expression of a male norm and that it should be replaced by some sex-neutral expressions, viz. "he or she" and "him or her". Also, it was proposed that the specific crime, "the circumcision of women", be reworded to define the crime more appropriately as female genital mutilation. It was proposed that the definition of rape be widened to include other acts of forceful sexual exploitation than intercourse and that the protection of children in sexual crime law be strengthened. The report included a review of the criminal process and the services available for victims of sexual and domestic crime. Several proposals to improve their working practices were made. Also, the need to promote increased awareness of violence against women was emphasised. More specifically, issues of violence against women would be included in relevant educational curricula.

Most of the proposals were included in the subsequent government Bill, also called, "Woman's Peace" (*Kvinnofrid*, Prop. 1997/98:55). The reform of sexual crimes was referred for further review.

The Bill went further than the Commission's report in two respects. It proposed that buying sex from a prostitute be constituted a criminal offence. A previous commission had proposed that both the buying of and the selling sex of should be a criminalised (SOU 1995:15) but, in the Bill, the criminalisation was limited to the customer. Moreover, the proposal included a definition of sexual harassment to be added to the Act on Equality between Men and Women and provisions aimed at improving protection from sexual harassment.^{ix} The proposals were accepted by Parliament in Spring 1998. The reforms came into force on 1 July 1998.

Some proposals, however, had been changed during the drafting procedure. In particular, the new crime, "breach of a woman's peace", acquired a different nature and intent, adequately reflected in its new translation, "gross violation of integrity".

The Crime "Gross Violation of Integrity"

The Continuum of Violence

The central aim of the new law has been to develop a new and more appropriate approach to the continuum of violence so often encountered within domestic and other violence against women. By the concept of continuum of violence, Liz Kelly refers to a process of violence in which individual acts and their effects are seen in the context of power, domination and psycho-logical abuse of which they are a part.

The crime, "gross violation of integrity", is an attempt to capture this process in the criminal law and to sanction it according to the serious nature and consequences of these acts and processes. This approach makes the reform radical and unique.

The Commission on Violence Against Women considered it important that the new crime would include acts which were not offences according to the criminal law but which effectively contributed to the mental processes of abuse, violence and mental terror. As the Commission noted, the abused woman has often been subjected to behaviour for which no sanctions currently apply; for example, the man may have hidden joint possessions, such as the telephone or keys, may have forbidden her to meet friends and relatives, or may have insulted and defamed her (SOU 1995:60, 102, 300, 305). Thus, her vulnerable situation is not primarily characterised by specific acts of physical abuse. Of course, acts already deemed criminal, such as assaults and unlawful threats, would be included in the crime of breach of a woman's peace (SOU 1995:60, 22, 304). The Commission's proposal was as follows:

"[a] man, who uses violence or the threat of violence against a woman with whom he has or has had a close relationship or subjects her to other physical or psychological influence, which seriously violates her integrity and has the quality of seriously damaging her self-respect, shall be convicted for *a serious breach of a woman's peace* to imprisonment for not less than one year and not more than six years.

If a man acts as described in the first paragraph against another man, or if a woman acts so against another woman or against a man, he or she shall be convicted for *a serious breach of peace* to the same punishment."^x

Responsible Selves

The formulation of the proposed law text by the Commission mentioned, besides violence and the threat of violence, other physical and psychological influences, aimed at a lasting violation of the woman's integrity and damage to her self-respect. Interestingly, precisely the formulation of this part of the article met with vehement criticism from the judicial community and was consequently changed. For example, the Faculty of Law of Uppsala University, one of three law faculties in Sweden, was resolutely opposed to the new crime:

"The examples of crimes can hardly create sympathy towards the proposal (the so-called prohibition of meeting friends, hiding the telephone, some patterns of controlling behaviour). Reciprocal accusations of crime are likely to be very frequent in connection with divorces fraught with conflict. It is hard not to get an impression that the Commission's proposal will partly increase the problems it seeks to militate against.... Nor is it excluded that the proposed new crime will be counterproductive and generate violence: the perpetrator might as well use violence if he (she) anyhow risks being sentenced to a harsher punishment than for assault and battery. Furthermore, some very troublesome problems may well be caused by the vague construction of the time frame in the crime ("a continuous process"), and, among other problems, how should the provision on self-defence be made applicable."^{xi}

Also the Government pointed out several legal problems connected to the Commission's proposal. In particular, the construction of the new crime as a process or a continuous crime, in which acts not previously defined as crimes would be included, was not accepted.

The legal critique used the principle of legality as its starting point. The legality principle, or the human and constitutional rights principle that all criminal offences shall be defined by law, is usually understood in Scandinavian countries as requiring that the prerequisite of criminal liability is precisely defined in the law text. The Commission's proposal was found to be too vague, that is, it did not define the acts that cause liability precisely enough. Consequently, a prosecutor would be unable to define the charges in a detailed way, the presentation of evidence would be problematic and, finally, *res judicata*, (*viz.*, the extent to which a conviction would cover acts perpetrated during a certain period and bar subsequent prosecution), would not be precisely defined.

Women's Peace

A further legal argument against the Commission's construction was that it was incompatible with the prevailing doctrine of self-defence (see Ruus-kanen). According to the Government proposal, "it could be argued that the woman would have the right to self-defence during the whole period covered by the prosecution" (Prop. 1997/98:55, 78). This interpretation is far from self-evident, but, in the Government's statement, we can distinguish a concern that the new crime could give battered women too broad a right to self-defence and, thus, even turn out to be risky for men.

The Government decided to reformulate the proposal. In the Government Bill, the new crime consisted of acts which, according to the Penal Code, are already criminal acts. Included are violent crimes, crimes against peace and sex crimes. Technically, the law refers to these crimes in Chapters Three, Four, and Six of the Penal Code.

According to the Bill, the newly-defined crime "serious gross violation of integrity" would be used as the basis for the conviction of a series of criminal acts. If each of these acts were to be prosecuted alone, each would be considered rather harmless. When the crime is seen in context of a series of attacks, it constitutes a serious and continuing attack on a woman's integrity. Therefore, the crime can be punished more severely.

The Impact of Continuing Violence

Both the Commission and the Government stated that domestic violence against women is specifically harmful because of the continuous pressure on and the violation of the woman's self-respect.^{xii}

Both the Commission on Violence Against Women and the Government paid considerable attention to the effects of continuing violence on the mental state and well-being of the woman. The Commission elaborated on the process through which the perpetrator gains control over the woman. A common factor in these processes was, according to the Commission, that they affect the woman's integrity and self-respect over a long period of time. The Commission spoke about a process of normalising the violence, in which the woman learns to live with and accept the violence, power and domination as a normal situation, the change of which is beyond her control (SOU 1995:60, 103, 143; Prop. 1997/98:55, 75, 79).

Responsible Selves

The effect of violence is reflected in the formulation of the new crime, emphasising that the violence in this context is an intentional act and that the use of it violates the mental state, the integrity and the self-respect of the woman.

Sex neutrality

The sex neutrality of the law was discussed repeatedly during the legislative process. The Commission report defined the crime, “serious violation of a woman’s peace” as a crime committed by a man against a woman with whom he has or has had an intimate relationship. In the second paragraph, the crime, “serious violation of peace”, was defined concerning other relationships.

The Commission argued that the new crime should reflect the reality and the fact that these crimes are frequently perpetrated by men against women they consider to be “theirs” (SOU 1995:60, 306). Furthermore, the Commission stressed that these crimes were caused by sex/gender relations and grounded on the apprehension of a woman having less value than a man.

The government proposal argues, first, that “rewriting the law from such a perspective would be almost impossible” (Prop. 1997/98:55, 83). Even if in most of the cases a man violates a woman, this argument is not strong enough to break the principle of sex neutrality in the Penal Code. Also, a sex-neutral construction makes it possible to include children (Prop. 1997/98:55, 83).

The Government was willing to allow an exception to the sex neutrality principle, but only in so far as the sex-specific formulation was used as a pedagogical example of the special harm that the crimes against a woman in an intimate relationship represent (Prop. 1997/98:55, 83; JuU 13 1997/98,17). Consequently, the article was reorganised; the gender-neutral formulation was lifted from the second paragraph to the first and the sex-specific crime inserted in the second paragraph. Even this breach of the sex neutrality principle was criticised by the most respected body of lawyers, the Law Commission (*lagrådet*), a body representing the Supreme Court Judges.^{xiii}

The change is reflected in the English translation even more than in the Swedish text. The Commission had referred to the medieval and early modern crimes against women by giving the crime the name “breach of woman’s peace” (*Kvinnofridskränkning*) (SOU 1995:60, 433). The terminology was sustained in the Swedish

Women's Peace

law text, but the official English translation is not a "breach of peace" which the Commission had used. Instead, the translation is *gross violation of integrity*.

One may argue that the change was not legally significant, but we cannot deny its political message. Instead of expressing explicitly the goal of the reform, to protect women from intimate and other continuing violence, women are only mentioned as one protected group. The final text of Chapter 4, Article 4a of the Penal Code is as follows:

"[a] person who commits criminal acts as defined in Chapters 3, 4 or 6 against another person having, or having had, a close relationship to the perpetrator shall, if the acts form a part of an element in a repeated violation of that person's integrity and suited to severely damage that person's self-confidence, shall be sentenced for *gross violation of integrity* to imprisonment for at least six months and at most six years.

If the acts described in the first paragraph were committed by a man against a woman to whom he is, or has been, married or with whom he is, or has been cohabiting under circumstances comparable to marriage, he shall be sentenced for *gross violation of a woman's integrity* to the same punishment. (Law 1998:393)"

Which Crimes are Included?

A gross violation of integrity may consist of violent crimes, such as assault and battery, of sexual crimes, and of crimes against peace as defined in Chapter 4 of Penal Code, for example, unlawful duress, unlawful threat, molestation and the violation of the privacy of the home.

Psychological maltreatment may be included as far as it is considered to be an assault according to the Penal Code, Chapter 3. To be considered an assault, psychological maltreatment has to cause damage, illness, pain, disability or unconsciousness (JuU 13 1997/98, 16). One could say that one reason for the attempt to define a new crime has been the difficulty of legally showing the causal relationship between psychological maltreatment and its consequences. When the new crime was reduced to cover only traditional criminal acts, the possibility of using it to show this causality was reduced. However, the new law widens the scope for the prosecution of assaults perpetrated by psychological maltreatment as well. It remains to be seen whether prosecutors will take advantage of this new resource.

Responsible Selves

Verbal harassment is an important weapon in creating the psychological pressure and tension often connected with domestic violence. In this context, verbal harassment usually consists of continuous name calling and berating referring to the sexual reputation and manners of the woman. In addition, in-sulting and demeaning comments on her housekeeping, looks and competence are made. Typically, some of these insults are crimes of defamation and slander according to Chapter 5 of the Penal Code.

These crimes, however, may not be included in the new crime, "gross violation of integrity". According to the Government Bill, the practical need to include these crimes is in doubt because, according to the law, they are, as a basic rule, prosecuted by the victim, not by the prosecutor (Penal Code 5:5). In this connection, it has also been argued that only crimes that directly harm the integrity of the victim should be included in the new crime (Prop. 1997/98:55, 79-80). The logic of this argumentation may become clearer if we compare it with the argumentation the Government used in the context of another proposal by the Commission relating to verbal harassment.

The Commission proposed that the law concerning the prosecution for defamation of a person's sexuality be changed. Presently, only the victim may make a charge on the grounds of such a defamation according to Swedish law. The prosecutor may bring charges for defamation of homo-sexuality. The Commission proposed that the prosecutor should be free to prosecute for other sexually defamatory insults if the victim reports the crime and prosecution is warranted by public interest (SOU 1995:60, 293). This proposal was rejected by the Government. Unlike the defamation relating to race, colour, nationality, ethnicity and religion, for which the prosecutor does have such a duty, prosecution for defamation on the ground of sexuality would protect most of the population and, therefore, would risk losing its meaning (Prop. 1997/98:55, 86). With the exception of homosexuals, no need for protection specifically on the grounds of sex or sexuality was acknowledged (Prop. 1997/98:55, 87). The logic here seems to be that if too many people, maybe even a majority, need protection, there is not enough public interest to protection (Hunter and Mack 1997, 177). Fortunately, Sweden has not used this logic regarding majorities which are discriminated against in other countries, for instance South Africa. It seems to be much more difficult to recognise discriminatory

Women's Peace

practices, such as systematic defamatory language, against women than against, for example, racial majorities.

Because the Penal Code prescribes for serious crimes, such as aggravated assault and battery, rape and kidnapping, a more severe punishment than for gross violation of integrity, these crimes are not included in the new criminal category (Prop. 1997/98:55, 131-134). According to the Code of Procedure, they may be prosecuted and convicted at the same trial. The most serious crime determines the level of the sentencing.

The practical effect of the new law is that a series of crimes is convicted as a single, more serious crime. Thus, it becomes decisive, how many crimes are necessary to constitute a new crime. The government proposal could not say anything definite about the number of acts, but emphasised that, in addition to the amount, the character of the acts is important.

The Punishment for a gross violation of integrity is at least six months and no more than six years in prison. The Commission had proposed a minimum of one year, but the government found six months sufficient (Prop. 1997/98:55, 82). It is important, of course, that the prescribed sentence is imprisonment. Many of the crimes, that are usually included under a gross violation of integrity, seldom lead to a prison sentence if they are handled in isolation from other crimes in the same context.

Evidence

During the legislative process, evidentiary problems were frequently referred to. One aim of the proposal has been a certain simplification of proof (SOU 1995:60, 304). It was stressed that domestic violence has often been going on for a long time before it comes to the attention of the judicial authorities. The victim may have difficulties in identifying individual acts of violence and in defining them by date and place.

Earlier, in the case of several batteries and rapes of a cohabiting woman (NJA 1991 s 83), the Supreme Court had adapted the position that specifications of date and place of each individual act was unnecessary in a long chain of acts. For many incidents, the victim's statement was the only evidence. According to Judge Inger Nyström's concurrent opinion, the victim's credibility regarding those incidents for which no other evidence was obtainable was supported by the consistency of those unspecified incidents with incidents for

Responsible Selves

which full evidence was available. Other factors were also taken into account in the evaluation of the evidence, *viz.*, the relationship between the perpetrator and the victim, the usual tendency to keep things secret and the continuous and repetitive nature of the violence.

Because the Commission proposed a continuous crime, one consisting of different kinds of violent and psychological maltreatment, evidence in a case would have to be presented to show the process-like nature and combined effect of the incidents (SOU 1995:60, 305-306). As the nature of the crime changed, the issues of evidence changed their nature. Instead of showing the nature of the process, the evidence of the combined effect of the specified crimes on the victim's integrity and self-respect became relevant. The Law Commission had resolutely opposed both the inclusion of previously uncriminalised acts in the new crime and the allowance of evidence of any acts other than those included in the charge of gross violation of integrity. The Law Commission stated that there should be no doubt about the effects of such repeated offences.^{xiv}

The Government, however, wanted to accept additional evidence of the nature of the crimes, but, eventually acquiesced in the Law Commission's position that evidence of something that is not a crime in itself should not be allowed. Consequently, the Government Bill argued that previous convictions or crimes previously reported to the police should also be accepted as evidence of the nature of the crime (Prop. 1997/98:55, 133).

The Law in Practice

The law concerning the gross violation of integrity has been in force since 1 July 1998. The first cases were decided in September 1998. By the end of 1999, about 70 cases had been decided by the courts.

The first case in the Swedish Supreme Court was decided on 19 March 1999 (NJA 1999 s 102). In this case, the perpetrator, who had been previously twice convicted of battering the same woman, was prosecuted for a gross violation of integrity consisting of four instances of batteries, one of them committed before the law came into force. Both the District Court and the Court of Appeal convicted for gross violation of integrity.

Women's Peace

By a majority of four to one, the Supreme Court dismissed the charge of gross violation of integrity and convicted him to eight months imprisonment for four incidents of batteries. The majority argued that the formulation of the law made it necessary that, in addition to the act for which the person was prosecuted, there had to be evidence of at least one additional harmful action. The act of additional harm could be a previous conviction, a police report that had led to fines or a decision by the prosecutor not to charge. In this case, however, the previous convictions could not be used as evidence of additional harm because the acts were committed before the new law came into force.

One can read a very strong interpretation of the legality principle in this reasoning. The additional requirement of a conviction or of at least a reported crime may turn out to be problematic from another legal angle, however. The principle of *ne bis in idem* effectively forbids double prosecution for a crime.

The four justices in the majority were not unanimous in their elaborations. Two of them gave concurrent separate opinions. Chief Justice Torkel Gregow wanted to consider former acts, committed before the new law came into force, as evidence of the nature of the acts. Yet, even if the three actual acts of battering were rather severe and there were the four former instances of batteries, “[i]t has not been such a systematic and qualified offence by [the man] that these acts can be seen as a part of a repeated insult on [the woman’s] integrity. These acts therefore shall, in my opinion, even if they have been aimed to seriously harm [the woman’s] self-respect be judged as battery”.^{xv} One can only wonder what would constitute such a systematic and qualified offence that Chief Justice Gregow would convict for gross violation of integrity.

The dissenting judge, Torgny Håstad, would have convicted on the basis of the new crime. According to him, the instances of battery that took place before the 1 July 1998 showed that later acts were part of a process that violated the woman’s integrity: “[t]he three cases of battery in July and September 1998, none of which is less serious, must be seen as aimed at seriously violating [the woman’s] self-respect. For these acts therefore the accused shall be convicted for gross violation of integrity”.^{xvi}

The decision of the Supreme Court decelerated the flow of these cases in the judicial system. During the first year and a half, 1,000 police reports on gross violations against integrity were made. Reports came in at a rate of 120 per month between November

Responsible Selves

1998 and February 1999. Since March 1999, when the decision was handed down, the rate has been approximately 50 per month.

About one-tenth of the reports led to prosecution for gross violation of integrity. Another ten per cent for other crimes, such as battery and assault. Either the police or the prosecutor had discontinued investigation in approximately 40 per cent of the reported cases, mostly for a lack of evidence. Another 40 per cent of the cases were still under investigation at the end of 1999.^{xvii}

Also, the number of convictions slowed down after the Supreme Court decision. Only twelve convictions were passed after the decision. Convictions for the gross violation of integrity included, on average, four crimes. In many cases, the defendant was also convicted for other crimes, such as aggravated assault, at the same trial. The most common crime included in convictions for gross violation of integrity was battery. About 80 per cent of defendants were sentenced to prison. The length of the sentence on average was 14 months.^{xviii} All perpetrators were men. There were no known cases where the victims were children.

After intense discussion, the decision of the Supreme Court led to a semantic change in the law that should also make it possible to consider a series of criminal acts to be gross violations of integrity, without evidence of additional harmful acts.^{xix} According to the preliminary reports following the change of law, the number of reports to the police seems to be on the rise.

Conclusion

The Swedish legal reform no doubt is a unique and ambitious attempt to capture the process-like nature of domestic violence in criminal law terms. The number of police reports which came immediately after the law became effective shows that women have a need for this new form of protection.

The new crime, "gross violation of integrity", is part of a larger project, the ultimate aim of which is to work against and even eliminate violence against women. To achieve these aims, discussion about and an increase in the general consciousness of violence is essential. The new law and the resultant discussion have already remarkably increased the knowledge of violence against women in the Swedish legal community.

Women's Peace

The contribution to the enactment of the law by the lawyer community was ambiguous. Pressure to start a review of the violence against women came from Parliament. In 1992, the Government decided to nominate a committee to review existing legislation. The members of the Committee were appointed by the Ministry of Health and Social Affairs. Obviously, it was not easy to ensure the co-operation of the legal profession because it took almost one year before the two Ministries, the Ministry of Health and Social Affairs and the Ministry of Justice, could agree on the members of the Committee. In the end, however, the legal profession was well-represented on the Committee, whereas, for example, the women's organisations were not. It was important to select impartial experts for the Committee to ensure a balanced and credible report (Bjelle, 2000).

The lawyer community, however, did not consider the report to be balanced and credible. Indeed, the legal community vehemently opposed the original proposal by the Commission. They did not, however, endeavour to write detailed and well-argued legal opinions for inclusion into the report. Rather, the opinions we have referred to were short and prejudicial. The Faculty of Law in Uppsala found the report of four hundred pages plus two hundred pages of annexes worth only four pages of commentary. The Association of Judges wrote two pages and the Bar Association five lines. But they did change the proposal and, as we have seen, the law differs notably from the first proposal made by the Commission on Violence Against Women.

No doubt, the concern expressed by the legal community about the legality and accuracy of the proposed wording was warranted. The consequences of this critique are interesting, however. Why did the critique lead to the abandonment of the attempt to include the process-like nature of violence against women in the new crime? Why did the criticism not lead to elaborations on the wording and to a discussion about how this process could be included so that the requirements of legality would be fulfilled?

As the law now stands, the new crime prescribes more severe sanctions for crimes that have already been sanctioned according to the Swedish Penal Code. As feminists, we may ask whether this result is what we really wanted. This question is particularly striking in the Scandinavian context, where a liberal criminal policy has generally been successful. Severe sanctions have hardly ever been the political goals of the feminist movement. Rather, women have

Responsible Selves

demanded that laws be enforced with the same rigour when the victims are women as when the victims are men.

The first convictions for gross violation of integrity have included rather serious crimes, mostly batteries. In the absence of the new crime, most of these serious crimes would have been handled by the criminal justice system as batteries. The number of police reports for batteries even decreased to some extent after the new law came into force. The sentences for gross violation of integrity have not been higher than sentences for repeated batteries generally are.^{xx}

The most important contribution of the new gross violation of integrity crime might be, thus, that it brings the serious nature of violence against women to light. Crimes that otherwise would not be taken seriously by the police, prosecutors or the courts because they are harmless or private^{xxi} now are seen in their context. The serious nature of violence is revealed.

Notes**References***Official Documents*

Prop. 1997/98:55 *Kvinnofrid* (Woman's Peace).

Prop. 1998/99:145 Ändring av fridskränkingsbrotten (Amendment of the Peace Crime).

SOU 1990:44 Demokrati och Makt i Sverige.

SOU 1995:60 *Kvinnofrid* (Woman's Peace).

SOU 1995:15 Könshandeln.

JuU 13 1997/98: Justitieutskottets betänkande. *Kvinnofrid*.

Ds 1996:28 Remissammanställning *Kvinnofrid*.

Accountants of the Parliament, Report 1998/99:9 *Organisationsförändringar inom rätts-väsendet* (Changes within the Organisation of the Legal System).

BRÅ-raport 2000:11, Grov kvinnofridskränkning. Brottsförebyggande rådet. National Council for Crime Prevention (BRÅ).

Literature

Women's Peace

- Benhabib, Sheyla (1992), *Situating the Self. Gender, Community and Postmodernism*, Polity Press, London.
- Benhabib, Sheyla, Butler, Judith, Cornell, Drucilla and Frazer, Nancy (1995), *Feminist Contentions. A Philosophical Exchange*, Routledge, NY.
- Bergenheim, Åsa (1992), 'Sexualitetens manliga ansikte', *Kvinnovetenskaplig tidskrift* nr 4/1992, pp. 33-43.
- Bjelle, Britta (2000), 'Arbete och strategier för kvinnofrid' (The work and strategies for Woman's Peace), in Gudrun Nordborg et al. (eds), *Strategier och kontrakt för ekonomi och kärlek*. Rapport från det 10:de Nordiska KvinnoJuristmötet. (Strategies and contracts on economy and love. Report from the 10th Nordic Meeting for Female Lawyers) lustus, Uppsala, pp. 89-96.
- Chodorow, Nancy (1989), *Feminism and Psychoanalytic Theory*, Yale University Press, New Haven.
- Dahl, Tove Stang (1993), 'Equal Status and Birth Law', in Anne Hellum (ed), *Birth Law*, Scandinavian University Press, pp. 1-29.
- Dobash, R. Emerson and Dobash, Russel (1979), *Violence against Wives. A Case Against Patriarchy*, The Free Press, New York.
- Gilligan, Carol (1983), *In a Different Voice*, Harvard University Press.
- Gustafsson, Gunnel (ed) (1997), *Towards a New Democratic Order? Women's Organizing in Sweden in the 1990s*, Publica, Stockholm.
- Hunter, Rosemary and Mack, Kathy (1997), 'Exclusion and silence: procedure and evidence', in Naffine and Owens (eds), *Sexing the subject of law*, Sweet & Maxwell, Sydney.
- Kelman, Mark (1981), 'Interpretative Construction in the Substantive Criminal Law', *Stanford Law Review*, pp. 591-673.
- Kelly, Liz (1987), 'The Continuum of Sexual Violence', in Jalna Hanmer and M. Maynard (eds), *Women, Violence and Social Control*, MacMillan, London.
- Leander-Elliott, Ian (1997), 'Passion and insurrection in the law of sexual provocation', in Ngaire Naffine and Rosemary Owens (eds), *Sexing the subject of law*, Sweet & Maxwell, Sydney, pp. 149-170.
- Lundberg, Magnus (1999), 'Först fort dit och sen snabbt som fan därifrån – strategier för utdefiniering av kvinnomisshandelsärenden' (Get there quick and then get away as fast as hell – strategies in order to avoid that violence against women are becoming legal matters), *Nordisk Socialt Arbeid* (Nordic Social Work) No. 2, pp. 83-89.
- Naffine, Ngaire (1990), *Law and the Sexes: Explorations in Feminist Jurisprudence*, Allen and Unwin, NSW.
- Naffine, Ngaire (1995), *Gender, crime and feminism*, Aldershot, Dartmouth.
- Norborg, Gudrun (1995), 'Konstruktioner av moderskap och faderskap' (Constructions of Motherhood and Fatherhood), in Gudrun Nordborg (ed), *13 kvinnoperspektiv på rätten* (Thirteen Women's Perspectives on Law), pp. 135-167.
- Nordborg, Gudrun and Dahlberg, Anita (1997), 'Developing Law and Gender Perspectives', in Per Sevastic (ed), *Legal Assistance to Developing Countries*, Norstedts Juridik AB, Kluwer Law International, pp. 158-188.
- Norrie, Alan (1993), *Crime, Reason and History. A Critical Introduction to Criminal Law*, Weidenfeld and Nicolson, London.
- Nourse, Victoria, (1996), 'Passion's Progress: Modern Law Reform and the Provocation Defense', *106 Yale Law Review* 1996-97, pp. 1331-1448.

Responsible Selves

- Nousiainen, Kevät (1999), 'Equalizing Images? Gendered Imagery in Criminal Law', in Lars D. Eriksson and Samuli Hurri (eds), *Dialectic of Law and Reality*, Readings in Finnish Legal Theory.
- O'Donovan, Katherine (1997), 'With sense, consent, or just a con? legal subjects in the discourse of autonomy', in Ngaire Naffine and Rosemary Owens (eds), *Sexing the subject of law*, Sweet & Maxwell, Sydney, pp. 47-64.
- Skjørten, Kristin (1988), *Når makt blir vold. En analyse av seksualisert vold i parforhold*, KS-serie nr. 4, Institutt for kriminologi og strafferett, Oslo.
- Skjørten, Kristin (1994), *Voldsbilder i hverdagen: om menns forståelse afkvinnemisshandling*, Pax Forlag, Oslo.
- Snare, Annika (1983), 'Den private volden: Om hustrumishandling', in Cecilie Hoigård and Annika Snare (eds), *Kvinnens Skyld. En nordisk antologi i kriminologi*, Pax Forlag, Oslo.
- Svensson, Eva-Maria (1999), *Genus och Rätt*, lustus, Uppsala.
- Tuori, Kaarlo (1999), 'Från ideologikritik till kritiska positivism', *Retfærd* 85, pp. 5-18.
- Trost, Jan (1993), *Familjen i Sverige*, Liber.

Women's Peace

-
- i¹ In Chapter 3 of the report, *Våld och makt*, Yvonne Hirdman discussed the division of power between men and women.
- ii² According to the government directive on equality 1994 (Dir 1994:124), all legislative commissions should reflect and describe the effects of their proposals on men and women, respectively. In practice, many commissions have dismissed this directive.
- iii³ A summary of the written opinions is published as Ds 1996:28.
- iv⁴ For example, the Law Faculty at Uppsala University first questioned the importance of the Commission's proposals as compared to other societal problems. Needless to say, it is quite exceptional that a law faculty takes a position concerning political priorities. The Faculty of Law, Uppsala University 1995-11-24, Dnr 5039/95.
- v⁵ *Sveriges Advokatsamfund*, representing solicitors and barristers, Act R 674/1995, 1995-12-01.
- vi⁶ Sweden's Judges Association (*Sveriges Domareförbund*) 1995-11-17.
- vii⁷ It is estimated that about one-quarter of couples are cohabiting, Trost, 1993.
- viii⁸ According to a study by Victoria Nourse (1996), the courts are inclined to consider the relationship between a male perpetrator and a female victim as relevant notwithstanding the nature of the relationship. Whenever the perpetrators defined the women as "theirs" (ex-girlfriends, girlfriends etc.), the courts were inclined to allow themselves to be swayed by the use of the possessive attribute.
- ix⁹ The Commission had discussed sexual harassment but proposed a special study on the subject.
- x¹⁰ Translation GN and JNK.
- xi¹¹ *Supra* note 4. Translation GN.
- xii¹² The legislation had so far made it possible to take some of these circumstances into account in the gradation of the crimes, "assault and battery" as aggravated (JuU 13 1997/98, 15).
- xiii¹³ The opinion of the Law Commission (*Lagrådets yttrande*) 19.1.1998 published in Prop. 1997/98:55, 205. At the time the Law Commission had three members, two Supreme Court Judges and one Judge of the Supreme Administrative Court. Two of the members were women.
- xiv¹⁴ Law Commission (see, *supra*, note 13) in Prop. 1997/98:55, 207-208.
- xv¹⁵ NJA 1999 s.102 p. 110 Translation GN.
- xvi¹⁶ NJA 1999 s. 102 p. 112. Translation GN.
- xvii¹⁷ BRÅ-raport 2000:11, 22.
- xviii¹⁸ BRÅ-raport 2000:11, 30, Brottsförebyggande Rådet, May 27, 1999.
- xix¹⁹ Prop. 1998/1999:145, Law SFS 1999:845, effective 1 January 2000.
- xx²⁰ BRÅ-raport 2000:11, 41.
- xxi²¹ At the same time the Accountants of the Parliament presented a darker picture (Report 1998/99:9). In general the quality of investigations of criminal cases was criticised; bad inquiries and negligent investigation meant that many persons who should have been convicted were free of sentence and that many cases were unnecessarily delayed. An essay in the journal *Nordic Social Work* reporting research on the police is following a critical line concerning violence against women specifically, which is marked in its title "Get there quick and then get away as fast as hell" (Lundberg, 1999).