12 Criminal Law or Social Policy as Protection Against Violence

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Andrea Dworkin writes in her recent book: "[t]he problem of battery can't be solved if we don't understand that a woman in this society actually does have a right to have a home" (Dworkin, 1997, 163). Sadly enough, this article deals with the fact that it is not even enough to provide a home. The Nordic welfare states have not succeeded in abolishing domestic violence nor other forms of violence against women. While the social policies of the Nordic welfare states have promoted women's emancipation and have enabled some women to leave violent partners, these policies have proved to be inadequate to deal with many violent situations.

Feminist research has pointed out that the Nordic countries have not been eager to react to violence against women (Elman, 1996). While sexual and domestic violence had become central concerns of the feminist movement in many other western countries in the 1970s (Brownmiller, 1974; Dobash and Dobash, 1979; Pizzey, 1974; Martin, 1981), the approach in the Nordic countries has remained more subdued. Both sexual and domestic violence were recognised as social problems in the late 1970s in all the Nordic countries (Germain et al., 1978), and important programmes against violence were initiated during that period. Shelters were founded and healthcare workers were trained to diagnose and counsel victims of domestic violence and rape. Domestic violence was made a crime for public prosecution in Sweden, Norway and Denmark. Compared to other western countries, however, the extent and degree of specialisation of the services in these Nordic States has been inadequate. Many services are still offered by general healthcare and social workers, not by specialist agencies. Moreover, the phenomenon of violence against women failed to become a central tenet either in the feminist movement or in the political arena more generally.

Amy Elman has analysed this discrepancy in time in the political contexts of two countries – Sweden and the United States. According to Elman, the lower level of interest shown towards violence against women by

the feminist movement in Sweden as compared to the United States can be understood by reference to the political contexts of these two countries.

Women's representation in the political systems of these countries took different forms and partly determined which women's issues became politically noteworthy. In Sweden, women gained a place in political decision-making. The number of women members of Parliament has been relatively high; women have been active in the political parties. Recently, even the top positions in the parties have opened up to women. Women have been employed by the welfare state. They have been appointed to positions in policymaking offices and bodies, especially in the health and social welfare sector. Women's issues have been pursued through both political decision-making and administrative structures.

Success of this kind has had its price, however. According to Elman, the corporate political structure in Sweden has incorporated women's issues in general welfare policies. Attention has been paid to women's issues when they need special protection, as in the case of maternity and child care. It has been pointed out that, besides women's rights, these reforms seek to facilitate women's participation in the labour force (supply of labour) or in the advancement of children's well being. As Elman puts it, the welfare state has promoted women's rights as workers and mothers, while women as women have been invisible. The Nordic welfare states have been slow to react to rights and violations that concern women as such, independent of the roles of workers and mothers. According to Elman's study, Sweden has addressed such issues as domestic violence, sexual crimes, and sexual harassment at a later point than other western countries.

In comparison, Elman finds that, in the US, women have not found access to political parties and legislatures easy. Women's issues have been articulated by an independent feminist movement. In a political culture where a myriad of interest groups lobby their claims to the political parties and to the courts, the feminist movement has made its voice heard. Feminists have been able to pursue their interests concerning violence both through the judicial system and the political parties. Domestic violence, rape, and sexual harassment have all been recognised as important political and legal issues and the feminists have been able to press through important legal reforms and to win resources for activities for the prevention of violence against women (Dobash and Dobash, 1992).

As persuasive as I find Elman's analysis, it does appear to simplify the complex relationship between the Nordic welfare state and women's bodily

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One point of departure for this article was the difference in approaches towards domestic violence in a Nordic welfare state, Finland, as compared to the United States and the State of Wisconsin, in particular. When I started my research on domestic violence and the criminal trial in the mid-1990s, Finland was rapidly developing more effective policies to combat domestic violence as a part of comprehensive social policies. In Wisconsin, where I had the opportunity to discover a different approach, domestic violence was confronted predominantly within the criminal justice system.

I believe that an attempt to understand this difference in approach is important for the development of effective policies to combat violence against women. The different approaches reflect a more profound difference in understanding the role of law in confronting social problems. Obviously, my two examples represent two different legal regimes: a Nordic welfare state and a liberal jurisdiction. And these regimes also offer two distinct examples of how social problems are conceptualised and regulated. I will explore the ways in which the legal regime is decisive in processes of constructing a perception of domestic violence and violence against women as a social problem, what policies are chosen to confront it and what are the deficiencies of each approach.

The distinction between liberal and welfare state forms (Esping-Andersen, 1990; Giddens, 1998) or civil, political and social citizenship (Marshall, 1950) have been employed by several sociological theorists of this century. Analysing the different role of law in regulating violence against women in a welfare state and a liberal state, I find the Habermasian paradigms of legal rationality and legal systems of particular interest. According to Habermas, the legal paradigms consist of the implicit knowledge of society, social actors, and legal institutions (Habermas, 1992, 473-475). While the implicit knowledge of judges has a special status, the legal paradigm encompasses the implicit knowledge of all actors, citizens, clients, the legislature, justice and administration.

My two case studies, Finland and the US (Wisconsin) give examples of what the paradigms may mean at the practical levels of legislation and policies. The United States customarily represents a liberal, if not libertarian jurisdiction. Even if Wisconsin is often considered a more progressive and

more welfare-oriented state than many other US states, it went through a Republican political era during the 1990s. The vestiges of this period can be seen both in the hardening of criminal policies which has led to an evergrowing number of prisoners and in the reforms of social policies in which Wisconsin has been a pioneering state in making social benefits dependent on the recipient's availability for the labour market. Wisconsin is one of those states which, during the past fifteen years, has developed a comprehensive policy against domestic violence (Task Force, 1991; Commission on Violence, 1997). Also, issues of sexual violence have gained considerable attention and most colleges, for example, have their own policies against sexual violence on campus.

Finland is a Nordic welfare state which has relied on the state as a provider of welfare services (Esping-Andersen, 1990). Finland has been quite late in reacting to violence against women. But in the late 1990s, Finland finally started a national programme to abolish violence against women. This programme still puts more emphasis on the social and health care services for the victims and the perpetrators than on the criminal justice measures as such.

In its approach, Finland differs from other Nordic states. The tardiness in the recognition of the problem, the focus on social and health policies, the development of state and communal policies instead of promoting feminist initiatives and the image of a strong victim have all been more pronounced in Finland than in other Nordic countries. The different role of feminist politics is particularly noteworthy. The feminist movement has pressed for reforms in Norway and feminists have been influential in formulating programmes. Also, the shelter movement and national coalition for women's emergency lines (*Kvinnojourer i Sverige*; ROKS) in Sweden are feminist in orientation. Therefore, the analysis in this chapter does not quite take into account the developments in other Nordic countries. Yet I think that my observations on the welfare state, general criminal policy, women's safety and women's role(s) as victims have some bearing on the developments in the whole Nordic area. The focus of this article is not the level of welfare and services, but rather how the role of law is conceived in each type of jurisdiction; where the Nordic countries share a common heritage (see Svensson and Introduction).

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The Criminal Justice Approach to Domestic Violence

In the liberal paradigm, private law regulates the organisation of nonpolitical economic actors that operate in a sphere disconnected from the state. The equality concept and equality ideal of the liberal state are formal and legal. As an economic actor, the individual's positive legal status as a subject is protected by law (Habermas, 1992, 477-478). Habermas discusses the legal paradigms in the context of private law which is the dominant legal sphere in a liberal state. While the liberal state avoids state intervention, welfare regulation is residual and needs based (Esping-Andersen, 1990). Often welfare regulation is also combined with a control of the recipients, and, in my example, Wisconsin, the control increased during the 1990s because the benefits were made dependent on the availability of the recipient for the labour market. Often control focused on single mothers on welfare because these women's access to the (lowpaid) labour market is more complicated than the access to the same market of men and women with no children to take care of. The feminist critique of the welfare state, well taken by Habermas, discusses the specific control the welfare state imposes on women's lives (Nousiainen). It is no wonder then that American feminists seldom consider the welfare state as an ally in their work against domestic violence. Instead, in their plight, American feminists have turned to criminal law.

In modern criminal law, the justification for punishment of crimes against persons and property is the protection of autonomy, self-determination and physical and mental integrity. At the same time, criminal law is fundamentally public law and an expression of a common policy. Criminal law sets the ultimate rules that everyone has to follow to make common life possible. The rules are established with a common policy, rather than with the wishes of an individual victim, in mind.

Local activists and consciousness groups were an important force in the feminist movement in the 1970s when violence against women became a central concern (Dobash and Dobash, 1992). Many activists were divorced women themselves and some of them had had experiences of domestic violence (Pleck, 1987, 187). In the US, the feminist movement was able to employ legal means against domestic violence. Two class action law suits against police officers and police departments in California and New York and the *Thurman* case in Connecticut[1] successfully argued that the police and the court officials took complaints of domestic violence less seriously than

other cases of violence. In these cases, judicial arguments of discrimination and negligence in the office were used. It was argued that victims of domestic violence were discriminated against because their complaints were taken less seriously at all stages of the criminal process than other, equally serious cases of violence. These cases, together with feminist lobbying, have led to a comprehensive reform of criminal laws, laws of procedure, police practices and decisions to prosecute in most states in the US (Buzawa and Buzawa, 1992; McHardy, 1992; Crowe, Wack and Schaefer, 1996).

Since the 1970s, the criminal law has been utilised to realise specific policy goals for combatting and preventing domestic violence. Several states have nominated a task force to evaluate their laws and police, prosecution and court practices concerning violence against women (Task Force, 1991). The evaluations of these task forces have almost always been critical and led to changes in policies. In some cases, these policies are defined by law. Many states have, during the past decade, adopted "mandatory arrest" laws, which require a police officer to make an arrest when the officer has reasonable grounds to believe that domestic violence has taken place (Hanna, 1996; Hart, 1997). In many cases, the policy change has been implemented by new policy guidelines for the police or the prosecutors. Some police departments have adopted preferred arrest policies, according to which arrest is a preferred intervention in cases of domestic violence (Cohn and Sherman, 1987). Prosecution offices have developed their policies of charging in cases of domestic violence. Most progressive policies are known as "no drop prosecution" because these policies aim at prosecution even in cases in which the victim does not cooperate with the prosecutor (Gwinn and O'Dell, 1993).

Among the new programmes, services for the victims play an important role. New shelters have been established and have become the focus of the activist movement, sometimes called the shelter movement, providing for additional services to the victims (Dobash and Dobash, 1992, 63-70). Often, the shelter volunteers or staff accompany the victims to court. With the professionalisation of services, many communities have started specific victim advocacy programmes to help the victims with court formalities, to accompany them to court and to advise them of legal alternatives (Rebovich, 1996, 198; McHardy, 1992, 33; Commission on Violence, 1997).

In 1994, violence against women was recognised as a national problem when the Federal Violence Against Women Act[2] was passed. Among other things, the Act makes provision for funds for new services for victims.

As a consequence of the new policies, more cases than ever before are being processed through the court system. While imprisonment is not considered a preferred punishment except in serious cases and where repeat offenders are involved, new sentencing alternatives are being developed. The perpetrators are required to participate in treatment programmes, often as a condition of probation or a referred prosecution. The conditions of probation often include different kinds of restrictions for the perpetrator. He is not allowed to be in contact with the victim or is only allowed contact in certain situations. In addition to the perpetrators' programme, he is often obliged to undergo substance abuse treatment. After the federal Violence against Women Act (1994), the possession of guns is not allowed after a conviction for a domestic crime (concerning programmes, see Crowe, Wack and Schaefer, 1996).

Besides the criminal process, the lives of the victims and perpetrators are regulated by civil law restraining orders. Restraining orders are usually given in cases in which the perpetrator and the victim do not live together, but, it is also possible to issue a restraining order in cases where the victim and the perpetrator live together. Often restraining orders are given in situations where some contact between them is still necessary and the conditions for contact are spelt out in the order.

With these sanctions and measures, the courts have powers to regulate the perpetrator's, and often the victim's life, in a detailed manner. In the cases I observed in 1998 in the Dane County Court in Madison, Wisconsin, regulation of people's lives did take place. In plea bargains, the prosecutor and the perpetrator seldom discussed the criminal punishment (fines or probation) in the strict sense. Instead, they talked about the restrictions on the perpetrator's life that would ensue, the possession of guns, the contents of the perpetrators' programmes and their price, contact (or lack of it) with the victim, etc. In the civil law restraining order hearings, the judge had a regulatory role. The judge set the conditions for the restraining order and the procedures to be followed along with visiting rights. The judges I observed took their task seriously and often dispensed paternal advice to the parties.

As this description shows, the criminal justice system in the United States has the task of regulating people's lives. In cases of domestic violence, the punishment of the crime is only one of the tasks of the criminal justice system. In addition, the courts and prosecutors regulate the lives of the parties in a number of ways.

As far as I know, this functional change has not been discussed in terms of criminal law theory or the functions of criminal procedure. The change in the tasks of the criminal justice system has taken place during a period of conservative and harsh criminal policy. It may be true, as Elizabeth Pleck argues, that this kind of change in the approach to domestic violence requires a combination of feminist forces and conservative criminal policy (Pleck, 1987, 10). The harsh sentencing policy, however, seems to play a subordinate role in processing the bulk of cases. Instead, the emphasis is on the regulation of people's everyday lives.

Under the circumstances, the regulatory approach seems sensible as an alternative to hard sentences. The regulatory approach may be a logical consequence of a policy choice to confront domestic violence mainly within the criminal justice system. On the other hand, it is difficult to avoid the question as to whether far-reaching regulation of people's lives by the courts is sensible. Has the criminal justice approach decreased the level of violence? The statistical information is hardly convincing. Contemporary research has produced ambiguous results concerning the effects of different interventions, such as arrest, protection orders, and counselling on the perpetrators (Sherman et al., 1992; Buzawa and Buzawa, 1996; Crowe, Wack and Schaefer, 1996, 247-248; Ford, Reichard, Goldsmith and Regoli, 1996, 260; Stark, 1996). Victim surveys show that the US has the highest rate of violent crime in the Western world, and the rate of domestic violence is also high.

The Role of Criminal Law in a Welfare State

The Welfare State and the Emancipation of Women

The idea of the state or community pursuing certain political goals is inherent in the concept of the welfare state. According to Habermas, common to theories about social or welfare state is an implied image of society that gives perspective to the legislature, to the practical implementation of laws and to citizens (Habermas, 1992, 472). If the liberal state is characterised by its adherence to formal justice, the welfare state seeks to realise material justice. The concept of equality among people is understood to include, besides formal equality, also a material aspect.

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Indirectly, the right to education, the individual's right to social security, public housing policies, and the right to childcare have promoted women's economic independence, which has given many women the opportunity to leave an abusive husband. More directly, the free health care, including virtually cost-free abortion and other services related to prevention and reproductive health, have promoted a woman's choices regarding her body. While voluntary single motherhood seems to be quite an unpopular alternative in Finland, economic support for single mothers and child care options have made divorce an option for women in all social classes (Siim, 1993, 36).

A surprisingly high rate of domestic violence experienced by divorced women suggests that divorce is also used by women as a solution to violence. According to a recent survey, more than half of the divorced and separated women had experienced violence from their ex-partners (Heiskanen and Piispa, 1998). Like surveys in other countries, the Finnish survey shows that violence is more prevalent among cohabiting couples than among married couples (27 per cent and 21 per cent respectively during the course of their relationships). It is quite possible that cohabitation is a deliberate choice for women in strained relationships, a means to emphasise their independent position.

Criminal Policy in a Welfare State

Criminal policy has played hardly any role in countering domestic violence in Finland. In this respect, Finland differs from other Nordic countries. But a certain reluctance to resort to criminal law can be distinguished also, for example, in Sweden. This reluctance is not surprising in light of the general tendencies in criminal policy. The criminal law has had a relatively low-key role in the welfare states. Nils Jareborg, the leading Swedish criminal law scholar, defines criminal policy as encompassing all discussions and decisions that concern criminality in any sector of the society. According to him, educational, traffic, social, and housing policies, just to name a few, all

have a criminal policy aspect (Jareborg, 1995, 19-20). When social problems are encountered, general social policies should have priority and the criminal law should only be used in the last resort (Jareborg, 1995, 22-24).

The Nordic criminal law policy in the narrow sense has become known as Scandinavian neoclassicism. It has been described as rational, just, humane, and efficient by the Finnish scholars Anttila, Törnudd (1992, 13) and Lahti (1991, 261), and as defensive by Jareborg (1995, 18). Characteristically, the Scandinavian neoclassicism is sceptical of both the deprivation of liberty as a penalty and the possibility of treating offenders. The neoclassical criminology first gained recognition as a critique of the treatment ideology, which held sway in Sweden until the 1970s (Tham, 1995). Treatment ideology was never equally strong in Finland. Instead, the Finnish criminal justice system was criticised for its high incarceration rates and disproportionately hard sentences for property crimes as compared with violent crimes.

Neoclassical ideology stresses the predictability of sanctions and the proportionality between the seriousness of the crime and the punishment (Snare, 1995, 9; Törnudd, 1995, 45; Anttila and Törnudd, 1992, 13 and 15; Lappi-Seppälä, 1992, 7). Treatment has been separated from punishment and delegated to other agencies dealing with mental health, offender adjustment and social welfare (Lappi-Seppälä, 1992, 39). The justification of the criminal justice system is found in general prevention, as opposed to deterrence and individual prevention (Anttila and Törnudd, 1992, 13). It is to be achieved indirectly by the legitimate and reasonably effective criminal justice system (Törnudd, 1995, 46; Lappi-Seppälä, 1992, 7) which ultimately communicates social values (Jareborg, 1995, 18) and aims at controlling human behaviour (Anttila and Törnudd, 1992, 13).

At first sight, there seems to be a contradiction between the role of criminal law in controlling behaviour and scepticism towards the efficacy of punishment. Jareborg, however, makes distinctions between the various functions of the different levels of the criminal law system. The effect of general prevention is only attributed to criminalisation, that is, to the acts of the legislator in declaring certain acts punishable as crimes. The two other levels, conviction and sentencing by the courts and the execution of punishments are not, and may not be, justified by the effect of prevention (Jareborg, 1995, 18-19; Victor, 1995, 78-79).

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Welfare State Criminal Law and Violence Against Women

The split between abstract criminal law and its practical application might explain why the criminal policymakers in Finland have shown relatively little interest in prosecution for domestic and sexual crime. Up until the mid-1990s, the prosecution for an assault in a private place, which, in practice, meant domestic violence, was dependent on the victim's report and request for prosecution. Until 1999, a prosecution for rape needed the request of the victim to go forward. Consequently, these provisions made the prosecution of cases of rape and domestic violence rare and, at best, occasional. Whether or not this lack of prosecution weakened the general preventive effect on assault and rape was not discussed. If general prevention follows from the fact that assault and rape are forbidden in the Criminal Code and that the criminal justice system is generally (regarding other crimes) effective, logically, it does not matter if certain types of violent acts are rarely prosecuted and seldom result in convictions.

A rather different set of considerations emerged in 1994 when rape within marriage was made a crime. The matter had already been the subject of lively debate in Parliament in the early 1970s. While several members of Parliament supported criminalisation, the majority opposed it. It was argued, for example, that prohibition was not needed because these acts were rare. It would be difficult to prove that no consent was given. The accusation could be misused for extortion. Further, criminal law was not an appropriate means for regulating the spousal relationship (Pohjonen, 1993, 50; Reg.Prop, 365/1994). Thus, the need for general prevention was not even recognised and, even if it were, it would not be effective because of difficulties in implementation.

The reliance on the preventive effect of abstract criminal law has not been consistent, however. In discussing drug offences and traffic violations, considerable attention has been paid to the detection and prosecution of these crimes. It has also been pointed out that more and more offences are committed by causing an abstract hazard, which entails no specific harm. These endangerment crimes have become common in new areas of regulation, such as environmental crime, traffic violations, general safety and drug crime (Takala, 1995, 56-57). The doctrine has pointed out that this type of criminal law aims at controlling risks (Frände, 1992, 351). These criminalisations, however, have no preventive effect if they are not enforced. Their enforcement requires control and supervision (Takala, 1995, 56-57).

Whether the criminal law is applied in practice depends on how criminal procedure is organised. Finnish law on criminal procedure has preserved its basic structure for almost three centuries, from the 1734 Code, up to a total reform in 1997.[3] If we consider the present-day Finnish criminal procedure, attention is drawn to the central position of the victim. Unlike in many other jurisdictions, the victim is treated as a party in the trial (Robberstad, 1999). The victim may present claims, demand sanctions other than those demanded by the prosecutor, present her claims for compensation, present evidence and appeal the verdict. The victim may present the claims herself or use a legal counsel. If the prosecutor drops the charges, the victim has a right to continue or initiate a trial on her own.

The 1997 reform of criminal procedure changed the victim's position. The trial became more adversarial in nature, with the prosecutor and the defendant as the contesting parties. Consequently, the victim lost some of her status as a party. For example, the victim is not automatically invited to each hearing. On the other hand, the victim still has the aforementioned rights to pursue her claims and has even gained certain considerable improvements in her position. The prosecutor may now present the victim's claim for compensation and the victim is relieved from taking care of it herself. In sexual crimes and cases involving serious domestic violence, the victim has a right to counsel which is paid for by the state. In other crimes, this benefit may be granted to victims with low incomes.

The Finnish criminal procedure was reformed much later than in other western countries. Like elsewhere, criminal law is understood to be a branch of public policy. For some reason, however, the rights of the victim were not reduced in favour of the prosecutor in the late nineteenth century as happened in many other countries (Robberstad, 1999). When the reform in criminal procedure was finally made in 1997, the victims' rights movements had already made the victims' voice heard and the feminist movement had taken up the position of women as victims. Consequently, the reform sustained most of the victim's rights and even brought some improvements.

This procedural setting favours victims who want to pursue their claims. Many victims of sexual crimes and domestic violence, however, lack the courage or will to charge the perpetrators. But in such crimes, the prosecutors give weight to the victim's opinion. When, in 1995 and 1999 respectively, the prosecution of assault in a private place and rape were made crimes in which the prosecutor may charge notwithstanding the victim's report and request,[4] Parliament wanted to give the victim a special dispensation to ask the

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prosecutor to drop the charges. This feature was motivated exactly by the need of a spouse as a victim to prevent a trial.[5] In practice, the prosecutors often drop the charges in domestic cases because the victim does not wish to prosecute.

In Sweden, the prosecution of rape has been the responsibility of the prosecutor since the enactment of the Criminal Code in 1965 and the prosecution of domestic assault since 1982. The Swedish law contains no special provision according to which the prosecutor should or could pay attention to the victim's wishes when the prosecutor makes a decision to prosecute in a domestic or sexual crime. Yet, in practice only 40 per cent of cases in which a police report of domestic violence against a woman is made are prosecuted. Of reported rapes, less than one-third lead to prosecution. The most common reason for failure to prosecute was lack of evidence (SOU 1995:60 B, 75-76). When the prosecutors and police officers were interviewed, it turned out that the prosecution decision, in reality, was dependent on the victim's willingness to cooperate with the criminal justice system (Eriksson, 1995). The Swedish report on violence against women (SOU 1995:60) discusses at length how the victim's willingness to stand behind her statement and leave the abuser could be supported and changed. We find here the same paradox as Minna Ruuskanen finds in the cases of women who have killed their abusive partners: had the victim been a real victim, she would have left the abuser long ago.

The relatively equal position of Nordic women is backed by cultural images of strong women. In the context of the trial, the myth appears as the image of a strong victim who can and may make decisions herself. The myth of a strong victim is contradictory, however. The ideal victim is weak, respectable, dutiful, and unknown to the offender. This picture of the ideal victim was reflected in the interviews with Swedish prosecutors and police officers. According to them, prosecution was always warranted if the victim decided to withdraw her report for fear of the perpetrator (Eriksson, 1995, 142). They also felt compassion for those victims who were dependent on the man, isolated, and scared to speak about the violence (Eriksson, 1995, 132). Paradoxically, the prosecution requires the victim's willingness to cooperate but the withdrawal of the cooperation indicates that the victim is frightened and that the case should indeed be prosecuted.

Reforms

Given the potential for political popularity that the demand for harsh sentences easily generates, the Scandinavian criminal policy has been relatively uncontroversial over the years. A rational and humane criminal policy has largely been the creation of experts: researchers, law drafting government officials, and experts in various organisations. Few of these participants have been women, and they have shared a scepticism towards criminal sanctions as a tool of social policy. Therefore, the interests of women in crime control have not gained attention (Nousiainen, 1999, 16-17).

The broad acceptance of welfare politics and a relatively low crime rate have only occasionally left room for a popular demand for harsher sentences. The politicians have usually taken the middle ground on issues of criminal policy (Victor, 1995, 18). Together with progressive social policies, neo-classical criminal policy has been quite successful in creating a safe society in which one can walk the streets of any Nordic city without fear. Until recently, organised crime has been a minor problem. The increase of traffic in and use of drugs have increased crimes against property but, for example, armed robberies are still rare. To an American observer, the sanctions may look ridiculously low. Instead of harsh sanctions, the rational and humane criminal policy has relied on a high clearance rate and high probability of sanctions as a deterrence.

Somethat surprisingly, Finland was pressed to pay attention to violence against women by the international human rights discourse. Like other Nordic countries, Finland has been proud of its human rights record. Lately, Finland has joined other Nordic countries in the pursuit of human rights in its foreign policy. In the Finnish discourse, human rights are easily understood as something 'out there', the concern of foreign policy or refugee admission (Human Rights and Finland's Foreign Policy, 1998).

Violence against women has become an issue of international law during the past ten years in a process that has taken place in the CEDAW committee, UN women's conferences and in the Vienna Conference on Human Rights in 1993. The process culminated in the Women's Conference in Peking (1995) accepting a Plan of Action for the eradication of violence against women. In addition to condemning these practices, the Plan of Action requires states to take concrete action. In Finland, the impact has been notable. Soon after the conference, the government accepted an equality plan which, for the first time, included provisions concerning violence against women.

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Within the social sector, a national project to eliminate violence against women was set up. The programme is intended to add to general knowledge about domestic violence and to develop services and treatment for both the victims and the perpetrators. A few successful men's programmes have been set up. The services within the health care and social sector have been evaluated and development projects instigated.

As a legal policy measure, a law on restraining orders was finally passed in 1998. According to the law, the police or the victim of violence or the threat of violence may seek a restraining order from the court.[6] Full proof of prior violence is not necessary but the applicant has to show probable cause. In the first year (1999), more than 500 orders were sought.

The success of any policy against domestic violence is difficult to measure because better protection often only makes the scale of the problem more visible. As a part of the national plan against violence towards women, a targeted victim survey was made, which showed that about one quarter of married or cohabiting women had been victims of violence by their spouses or cohabiting partners during the relationship and one-tenth of them had been victims during the last year (Heiskanen and Piispa, 1998). This result does not radically differ from results that have been obtained in, for example, Canada (Johnson, 1996) and is a few percentage points lower than the one reported for the US (Straus, Gelles and Steinmetz, 1980).

According to the study, the Finnish women were not eager to seek help for their victimisation. Only one quarter of the victims had sought help in any agency, such as a health care centre, police, church, or shelter. Help was sought more seldom than, for example, in Canada or Wisconsin.[7] In several cases violence had been ongoing for a long time. One quarter of those victimised during the last year had been victims of domestic violence for ten years (Heiskanen and Piispa, 1998). It is clear that these women cannot be helped unless a more active criminal policy against domestic violence is developed.

Conclusion

In this article, I have described two approaches to violence against women. In a liberal legal regime, violence against women was approached almost entirely within the criminal justice system. This approach boldly confronted domestic violence and, within it, a number of intervention techniques were

developed. Disillusioned with the ability of the penal sanctions to eradicate domestic violence, the criminal justice system seemed to regulate people's lives in many ways, without knowing if it makes a difference.

The welfare state approach was found to be loath to recognise the problem of domestic violence. When it finally did, victims and perpetrators were offered treatment, not a message of right and wrong. On the other hand, the welfare state was found to support women's emancipation and opportunities to leave a violent relationship.

Neither approach can boast of any success in eradicating violence against women. Therefore, it is worth considering new approaches.

If we think that violence against women is a consequence of women's relative lack of power in society, emancipation of women is a necessary condition for an effective approach. Women need education, work, own money, home, social security, health care and child care so as not to become dependent upon violent men. But, these changes alone are not enough. Whenever violence occurs, it has to be stopped, the woman's safety has to be taken seriously and the perpetrator has to take the responsibility for his actions. With regard to the woman's safety, police intervention is often necessary, and it is important to develop services for the victims. It is also necessary to make clear that violence is not accepted by society, notwithstanding the wishes of an individual victim. It is very hard for me to think of any other means than the criminal justice system to make this message clear. I am not, however, convinced that the criminal justice system in the US that processes thousands of cases all the time is the most effective in making the message clear. Rather, criminal sanctions might be more efficient when they are rarely applied and when they are truly shaming.

Braithwaite and Daly have proposed a new community-based approach to confront domestic violence. According to their proposal, integrative shaming is produced in a process in which people important to the perpetrator and the victim are brought together to acknowledge the problem and participate in the follow-up. Their new concept of community is disconnected from the local neighbourhood and consists instead of people who care about the victim or the perpetrator.

With their new community concept, Braithwaite and Daly avoid some of the criticism levelled against attempts to solve social problems by sending them to the community at large. Still, I find it problematic. Even the new concept of community presupposes that the participants share common values, act in good faith and are prepared to intervene. If some of the

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1 Cases in Oakland, CA,
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participants fail to act in good faith, the leader of the process should be able to make a judgment of their lack of good faith. In real cases of domestic violence, one sees far too often people who cheat, threaten, act strategically, have control over witnesses, fear speak up the truth or protect the perpetrator for other reasons. It is very difficult to see how these problems could be confronted in the new community approach where "important" people would be partial by definition.

From a Nordic point of view, the concept of community needs some elaboration. In one sense, the Nordic countries are communitarian. People share many common values and have a strong sense of solidarity. On the other hand, these societies do not much rely on private initiative in communal life. Instead, most societal functions are organised by the state and institutional communal structures. Therefore, a proposal to rely on private persons in matters involving criminal acts would be somewhat unfamiliar.

In my opinion, however, Braithwaite and Daly's proposal is welcome in that it combines communitarian structures with the workings of a criminal justice system. The starting point in dealing with crimes has to be within the criminal justice system, which is responsible for the safety of the victims and places the responsibility on the perpetrators. Criminal sanctions need to be used, but, it is equally important to pay attention to the integrative functions and to the future safety of the victims. Therefore, programmes, treatments and follow-up are needed, and, naturally, the responsibility for organising these aspects falls on the social sector. At the same time, social work can help the victim with housing, social security, employment, problems with children, etc. It is important, however, that batterer's programmes and follow-up are connected to the criminal justice system. Also, the new community should and can indeed come to the help of the parties. In Finland, the perpetrator's programmes sometimes require that any agreement between the victim and the perpetrator is also signed by two other people, one close relative or friend from each side. Other forms of integrative shaming and community control can be found. They cannot, however, replace welfare or criminal justice, but rather offer the kind of sophisticated cooperation that is called for.

Notes

1 Cases in Oakland, CA, (*Scott* v. *Hart* 1977) and New York (*Bruno, et al.* v. *Codd, et al.* 396 *N.Y. 2d Supp.* 974, 1977) ended in settlements. The decisions finding these claims

admissible were highly critical of the police practices described in the testimonies of battered wives.

The most influential case was *Thurman* v. *City of Torrington* (595 *F. Supp.* 1521 D. Conn. 1984) in which the jury awarded the plaintiff over two million dollars in damages for flagrant negligence in police actions that failed to protect Mrs. Thurman from the violence of her ex-husband.

2 Crime Control and Law Enforcement Act, Publ.L. No 103-322, 108 Stat. 1796.

3 Code of Criminal Procedure (Lag om rättegång i brottmål) 11.7.1997/689.

4 Amendments of Criminal Code (19.12.1889) Chapter 21 Crimes Against Life and Health 21.4.1995/578 and Chapter 20 Sexual Crimes 24.7.1998/563.

5 This view is expressed in the reform Bill for the sexual crimes in 1997. Reg.Prop. 6/1997, 162.

When crimes against life and health were reformed in 1995, the Government Bill proposed that the victim's opinion would not be decisive in the prosecution of the assaults and batteries. Reg.Prop. 94/1993, 100. The Parliament, however, did not accept this. Committee of the Parliament LaVM 22/1994, 14.

6 In the United States, the term "protection order" usually refers to an order given in criminal proceedings, prohibiting the accused from contact with the victim. An order prohibiting or restricting contact may be issued in civil proceedings. Civil restraining orders are usually called injunctions or restriction orders.

The Finnish and Swedish protection orders are sought according to the laws on criminal procedure and the evidence in support of such orders is collected by the police. The order may, however, be granted notwithstanding any criminal procedure aimed at the punishment of the alleged battery or assault.

7 In Finland, the police register over 2,000 cases of domestic violence a year. In Wisconsin, the authorities record over 30,000 cases a year (Yearbook of Justice Statistics 1998, Domestic Violence Incidence Report 1998). These two jurisdictions have about the same population: five million. In Sweden, a country with a population of nine million, the police received 10,500 complaints in 1992. It is impossible to say how much, if any, of this difference is due to a real difference in the level of violence. It is quite possible that different intervention policies account for much of the disparities.

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