Dual Charging Practices in Cases of Domestic Violence:
Perpetuating (In)Equalities

by

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Abstract

Dual charging is intended to provide an equal, gender neutral approach to domestic violence by holding both violent parties liable for their behaviour. However, this practice appears to be problematic for battered women, as consideration is not given to the context or motivations behind their employment of force. In this thesis, I use a radical intersectional feminist approach to explore the issue of dual charging. By tracing the history of law reform in the area of violence against women, and examining previous research, I attempt to situate the problem of dual arrest in a broader perspective, in order to explore how the gendered impacts of domestic violence are resulting in inequalities for women in the form of dual charging.
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Chapter One:

Introduction

To be a feminist, one has to first become one. For many feminists, this involves the experience of a profound personal transformation, an experience which goes far beyond the sphere of human activity we regard as “political.” This transforming experience, which cuts across the ideological divisions of the women’s movement, is complex and multifaceted. . . (Bartky, 1990:11).

My first real exposure to feminist theory was in my fourth year of undergraduate studies. I was reluctant to register in any classes that had the word ‘woman’ in the title. I figured that there was no real need to study about women specifically, as, so I thought, we were on the same playing field as men. How wrong was I. Most of the courses I had originally chosen were full, so I decided to give the gender studies classes a try. I enrolled in Studies in Gender and Criminal Justice, as well as Women, Work and Legal Regulation in my fall semester. These courses changed my life, and the way I viewed the world. Through the passion and dedication of those professors, I learned about the realities of ‘equality’ in our society, and that feminists still had many tasks ahead before ‘equality’ was achieved, and I wanted to be one of those feminists working towards achieving our ideals. And so began my journey into the Master of Arts program in Legal Studies, and my ongoing quest to understand feminist theory.

At that time, I was not very familiar with the issues surrounding violence against women. In fact, my first real glimpse into the pervasiveness of this problem was provided through a Masters Social Work class that I was taking entitled Women, Male Violence and Social Change. This class really ‘opened up my eyes’ in terms of the
realities of violence against women in Canada, and inspired me to pursue research in this area.

**Research Focus**

I decided to conduct my thesis research on dual charging practices in cases of domestic violence because I was troubled by the concept of criminalizing women for their self-defensive behaviour. In the *Women, Male Violence and Social Change* course, we heard about and read about the practice of charging both of the people involved in an incident of domestic violence. For me, it did not follow logically that women could be punished for protecting themselves from their abuser. I wanted to learn more - why had I never heard of this practice? Was it commonly employed? What were the consequences for the women involved? I had so many questions to which I wanted to seek out answers. I could not believe something that seemed so wrong had not been explored and documented several times over, and I was excited about pursuing this issue. And so, I began my journey into the realm of domestic violence, to inquire into the issue of dual charging.

In this thesis, I explore the issue of dual charging using radical feminist theory,

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1 Locating a precise definition of what constitutes dual arrest/dual charging is a difficult feat, as both terms are used interchangeably throughout the literature. Canadian information tends to use the term dual charging (in referring to incidents when both parties are charged with domestic violence) and American research tends to use the term dual arrest. However, within their description of arrest, they also refer to arrest outcomes, such as convictions, and court sanctions, leading me to believe that their usage of dual arrest has the same meaning as dual charging. For example, in Miller's (2001) article *Women's Use of Force: Voices of Women Arrested for Domestic Violence* she refers to women "arrested on domestic violence charges and mandated to treatment programs" (2001:96). Throughout her article she utilizes the term arrest and not charge, yet she is referring to the consequences of being formally processed and charged. This leads me to believe that the usage of the term arrest refers to 'arrest on
in combination with intersectional theory and equality theory, as tools to help understand the origins and implications of this practice. Male violence against women is a gendered problem, so for me, it follows naturally that feminist theory would provide insights that would be helpful in analyzing this issue. This thesis will focus solely on dual arrest policies involving male violence against women in heterosexual relationships. The theoretical tools I have chosen have been tailored for a gender-based analysis, and while they could be adapted to explore the issue of same-sex violence, that is beyond the scope of this thesis.

**Methodology**

For women in the world, the gap between theory and practice is the gap between practice and theory. We know things with our lives, and live that knowledge, beyond what any theory has yet theorized. Women's practice of confrontation with the realities of male dominance outruns any existing theory of the possibility of consciousness or resistance (MacKinnon, 2005:23).

I began my exploration into the area of domestic violence and feminist theory with the *Sage Online Journal Database*. Initially, most of my time was spent searching for articles on dual charging in the *Journal of Violence Against Women*. I wanted to begin my research in this area with a confident knowledge of the issues that contemporary dual charging policies have created. Although there was a multitude of information on violence against women, little had been written on the issue of dual charging. However, I felt this issue was important, and so I decided to continue with my domestic violence charges' and, as such, is the same thing as dual charging. Throughout this thesis, I will be using the terms dual arrest and dual charging interchangeably, in reference to situations of domestic violence in which both parties are charged.
research in the area, knowing that the data available to me would be very limited. In order to locate a stream of feminism on which to ground my research, my next step was to revisit feminist writings relating to violence against women. As someone who had relatively little knowledge of the history of feminist law reform in the area of violence against women, it was a daunting task. I researched the historical response to violence against women over the past thirty years. I familiarized myself with the criminal justice response to domestic violence in terms of policies and practices. I revisited some of the original writings of the women’s movement courtesy of Anne Koedt’s anthology *Radical Feminism.*

Through these writings I achieved a firm understanding of the history of the women’s movement, and the importance of radical feminist thinking to the issues of domestic violence. In addition, I read many, many articles on feminism and feminist theory, and found the writings of Catharine MacKinnon, Adrienne Rich, bell hooks and, Kimberlé Crenshawe most compelling. I was drawn to their visions of feminism and equality. The work of these scholars helped me to construct a theoretical foundation from which to pursue further research.

I am relying largely on radical feminist theory in my analysis because it provides valuable insights into the area of violence against women. Radical feminists were the ones originally responsible for naming and bringing to the forefront the issue of violence against women. They built theory grounded in practice in a conscious attempt to

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2 "An Anthology of radical feminist writings from the current women’s movement. Forty-five articles ranging from the personal to the theoretical and drawn largely from the feminist annual notes" -from the cover of the text (Koedt, 1973).

3 Catharine MacKinnon (1987) credits this feminist ‘discovery’ to feminist methodology; which is premised on believing women’s accounts of sexual violence by men (5). Feminists, as she points out, do not deny the pervasiveness of male violence, nor do they ‘trivialize, minimize,
narrow the gap between practice and theory. Radical feminism acknowledged women’s lived experiences and built theory based on those experiences. As such, I believe it is extremely important to recognize their contributions to the area, and not discount their work even though it does have limitations. Radical feminism has been legitimately critiqued for its almost exclusive focus on gender. I address this shortcoming by adding intersectional theory, and equality theory to my analysis. This resulted in a (radical) feminist intersectional analysis of dual charging policies and the implications of such on women’s substantive equality.

Outline of Chapters

The second chapter, following this introductory chapter, *Theoretical Grounding: Encompassing Feminism(s)*, explores the history of feminisms, with a focus on the origins and actions of early radical feminists. Critiques of radical feminism are explored and addressed through the addition and application of intersectional theory. Equality theory and its relevance in the domestic violence realm are also examined. The third chapter, *Mandatory Charging* provides information on mandatory arrest as a precursor to dual charging. Goals, police responses, and critiques of mandatory charging are analysed. The fourth chapter, *Contemporary Dual Charging Policies and Practices*, looks at the existing research and studies on dual arrest. The fifth chapter, *Dual Charging: Invisible, Patriarchal and Unequal*, are where my critiques of dual charging (invisibility, police attitudes & sexist knowledge claims, and gender neutrality) are

or eroticize’ it (MacKinnon, 1987:6).
explored. This chapter concludes with the need for more research in the area of dual charging in order to bring visibility to this issue, and to understand the long term consequences of such a policy.
Chapter Two
Theoretical Grounding:
Encompassing Feminism(s)

Feminist politics is losing momentum because [the] feminist movement has lost clear definitions. We have those definitions. Let’s reclaim them. Let’s share them. Let’s start over . . . We can share the simple yet powerful message that feminism is a movement to end sexist oppression. Let’s start there. Let the movement begin again (hooks, 2000:6).

Introduction

Feminism has proved to be a challenge for academics and activists to define, as it is a politically and ideologically diverse concept. As Adamson, Briskin & McPhail (1988) discuss, the women’s movement (and in turn, feminism) has never been represented by a single organization; the majority of support for the movement has had “no organizational identification at all” (7). This lack of organizational unity, in combination with the diversity of the movement in terms of membership and goals, has made it difficult to locate a concise, accepted definition as to what feminism entails. Much debate has arisen over what it means to ‘do feminism’ in contemporary society. The inability to clearly define feminism, in combination with a growing backlash against feminism, has unfortunately allowed for many misinterpretations of feminist goals and

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4 While the term feminism was not introduced until the early 20th century (Jaggar, 1983:5) it is a concept that has always existed at some level. As Alison Jaggar discusses: “. . .Certainly, as long as women have been subordinated, they have resisted that subordination. Sometimes the resistance has been collective and conscious; at other times it has been solitary and only half-conscious, as when women have sought escape from their socially prescribed roles through illness, drug and alcohol addiction, and even madness” (1983:3). It is this resistance that lies at the core of feminism.
ideals to take root. These misinterpretations have led to negative connotations being associated with the concept. As Renzetti (1991) points out, while a considerable portion of the general public support gender equality (a feminist goal), they associate the terms feminism and feminists negatively, connecting these words with ‘male bashing’ and ‘man hating’ (1999:42, see also Denfield 1995, Faludi 1991, Miller-Bernal 1992 and Roiphe, 1993). However, as Ouellette (1992) points out, although many women are reluctant to identify with the feminist label, they approve of and command rights and privileges such as sexual freedom, reproductive choice, and equal pay (as cited in Hall & Rodriguez, 2003:879), which are all very much feminist, political issues. These interpretations suggest that perhaps there is a lack of understanding, and confusion as to the meanings of feminism in contemporary society.

In order to combat critiques and misinterpretations of feminism, we could benefit greatly from searching for earlier understandings of the roots and goals of feminism. I propose that we do as Rich (1979) has suggested, and engage in a process of ‘re-visioning.’ By looking to the past, we can reclaim feminism’s roots, which will provide us with a solid foundation on which to build contemporary feminist theory (hooks, 1984:17). Such a theory may provide some insights into contemporary practices that may, on the surface, appear to be the result of feminist lobbying and activism but that actually undermine women’s equality. Dual charging, the focus of this thesis, is one such policy.

5 “Re-vision[ing] - the act of looking back, of seeing with fresh eyes, of entering an old text from a new critical direction - is for women more than a chapter in cultural history; it is an act of survival” (Rich, 1979: 35)
**Feminisms**

There are a multitude of explanations in regard to the basic tenets of feminism, and many varied opinions as to what it entails, such that many people now refer to feminisms rather than a single feminism. However, during my quest for meaning, I came across four definitions that I found especially insightful in terms of describing feminism, and providing unifying features of feminism. These definitions were provided by *The Encyclopedia of Feminism*, Alison Jaggar, Dianne L. Martin and bell hooks. Incorporating facets from each of these definitions has enabled me to come to an understanding of the essentials of feminism that I am comfortable with, and that provides a helpful lens through which I can view and better understand the gendered world in which we live.

*The Encyclopedia of Feminism* describes feminism as a tool that “attempts to analyse the reasons for and dimensions of women’s oppression, and to achieve women’s liberation” (Tuttle: 1986:107). It cites Donna Hawxhurst and Sue Morrow (1984) on feminism:

> Feminism has only working definitions since it is a dynamic, constantly changing ideology with many aspects including the personal, the political and the philosophical... Feminism is a call to action. It can never be simply a belief system. Without action, feminism is merely empty rhetoric which cancels itself out (as cited in Tuttle, 1986:107).

The notion of feminism as consisting of working definitions, and maintaining a call to action are concepts that I feel are extremely important. As society evolves, so must our interpretations of feminism, and so must our devotion to action, and to creating change.

Alison Jaggar (1983:5) defines feminists as “...all those who seek, no matter on what grounds, to end women’s subordination.” She believes that an inclusive
conception of feminism will assist in helping women to ‘achieve the fullest possible liberation’ (Jaggar, 1983:5). She comments:

...some people deny the title "feminist" to those who would claim it, and some seek to bestow it on those who would reject it...I think this practice is not only sectarian but misleads us about history. Just as an inadequate theory of justice is still a conception of justice, so I would say that an inadequate feminist theory is still a conception of feminism (Jaggar, 1983:5).

I agree with Jaggar in regard to the importance of inclusion of all women who want to self-identify as feminists, especially in contemporary society, where a resurgence of the feminist movement is much needed. As she points out, seeking liberation requires redefining concepts of political philosophy (such as equality, freedom and justice (Jaggar, 1983:7), and the more women who are working towards this, the better.

Dianne L. Martin defines her version of feminism as an evolving philosophy, with many different perspectives. She describes feminism as sharing 'at least two things':

...first, a recognition of the systemic and pervasive nature of sex and gender discrimination in our society; and second, a commitment to transforming society to remove that oppression. In that sense feminism involves a political activist dimension. The "feminism" I claim identifies systemic and pervasive discrimination on the basis of class and race as well (1998:2).

A commitment to examining discrimination on the basis on gender, class, sexuality, disability and race is also part of how I define my feminism, and I believe it is integral in conducting a thorough examination of women’s oppression. All of these areas contribute to the ways women are oppressed, and therefore require analysis.

The final definition of feminism that I found insightful includes (parts of) the beliefs of Hawxhurst, Jaggar and Martin. This definition is provided by bell hooks
(1984), who states:

Feminism is a struggle to end sexist oppression. Therefore, it is necessarily a struggle to eradicate the ideology of domination that permeates Western culture on various levels as well as a commitment to reorganizing society so that the self-development of people can take precedence over imperialism, economic expansion, and material desires... A commitment to feminism so defined would demand that each individual participant acquire a political consciousness based on ideas and beliefs (1984:24).

hooks' definition of feminism is broad, and encompassing, but at the same time it is concrete and precise. It posits political consciousness as central, and stresses the importance of working towards ending sexist oppression, thus connecting consciousness with action.

Feminism is not a 'unified political ideology' (Adamson, Briskin & McPhail, 1988:9) and therefore, no one definition will encompass all the beliefs and opinions held by feminists. However, as demonstrated by the definitions above, several commonalities exist (see also Adamson, Briskin & McPhail, 1988:9). Feminists are working towards creating social change. Feminists are committed to action informed by political consciousness. Feminists believe that women are oppressed, (because of gender) and they attempt to understand the dimensions of and reasons for this oppression. Feminists believe in equality. Feminists are committed to ending sexist oppression, and achieving 'liberation.'

While there is much that unites feminisms, there are significant differences and disagreements among feminists. Opinions on political strategy, attitudes towards men, feminist goals and priorities, the importance of other forms of oppression, definitions of 'liberation,' and origins of women's oppression are some of the areas where feminisms
begin to differ (Adamson, Briskin & McPhail, 1988:9).

*Streams of Feminism*

The ‘reasons for and dimensions of’ women’s oppression are not universally agreed upon (Tuttle, 1986:107). As a result, feminism has branched out into several streams, generally categorized as: liberal feminism, socialist feminism, radical feminism, cultural feminism, and postmodern feminism. Each stream has a different focus, dependant on beliefs regarding the sources and nature of women’s oppression, and the routes to liberation. The main focus of liberal feminism is achieving equality of opportunity (Adamson, Briskin & McPhail, 1988:10). The focus of socialist feminists is the ‘abolition of class and gender’ in order to end exploitation (Tuttle: 1986:306) They reject the differentiation between the public and private spheres as a means to make women’s work in the home visible. Radical feminists focus on gender as a primary source of women’s oppression (Tuttle: 1986:267). They view the patriarchy as a main source for this oppression and tend to focus in large part on issues of violence against women. Cultural feminism focuses on the creation of a separate woman-centred culture. Cultural feminists look toward individual solutions and alternatives, instead of mass scale reforms like radical feminists (Tuttle, 1986: 73). Postmodern feminism is ‘the practise of feminisms.’ It recognizes the diversity of women’s experiences and needs, and therefore acknowledges that there is no single solution that will be adequate for all women (Fraser & Nicholson, 2006:350).

These streams of feminism are not clear cut, or mutually exclusive. Some blend into each other, and all of them share the commonalities of feminism discussed above.
Since I am examining an area involving violence against women for my thesis, I found the radical feminist analysis that I discuss in the next section the most useful in helping me to understand the issues and how we got to where we are today. Radical feminism has provided me with a starting point in theorizing about the sources of and solutions to women's oppression. But, my analysis will also draw from the other streams of feminism and will be grounded in the shared principles of feminism.

**Radical Feminism**

One of the basic tenets of radical feminism is that any woman in the world has more in common with any other woman regardless of class, race, age, ethnic group, nationality – than any woman has with any man (Sonia Johnson, 1984 as cited in Rowland & Klein, 1996:18).⁶

Radical feminism is not about reconciliation with the father. Rather it is affirming our original birth, our original source, movement, surge of living. The finding of original integrity is re-membering our Selves (Mary Daly, 1978:39).

Radical feminism is a concept that arose in the late 1960's out of the women's liberation movement. It was the first political approach to focus on women's common experience as a main concern. Radical feminists challenged 'norms' (such as marriage, reproduction, and heterosexuality) that other people viewed as axiomatic, and in the process attempted to break down the public and private divides within society (Tuttle, 1986:267).

Radical feminist theory and practise are predicated upon the interests and

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⁶ This statement was part of Johnson's historic campaign for the 1984 US presidency. Her platform was based on radical feminism (Rowland & Klein, 1996:18).
experiences of women. As Gail Chester (1979) points out: “Radical feminist theory is that theory that follows from practice and is impossible to develop in the absence of practice, because our theory is that practice and our practice is that theory” (as cited in Rowland & Klein, 1996: 13). Further, according to Catharine MacKinnon:

Feminism seeks to empower women on our own terms. To value what women have always done as well as to allow us to do everything else. We seek not only to be valued as who we are, but to have access to the process of the definition of value itself. In this way, our demand for access becomes also a demand for change (MacKinnon, 1987:22).

The Roots

Radical feminism has been credited as the start of women's liberation in Canada. As Adamson, Briskin & McPhail (1988) comment:

It might even be appropriate to say that in the early years of the second wave of the women's movement, most self-identified feminists were radical feminists. Radical feminism named the differences between women and men and thus made women's oppression visible (Adamson, Briskin & McPhail, 1988:11).

The core of radical feminist beliefs is that “women’s oppression was [is] the root of all systems of oppression” (Tuttle, 1986:267), and that the cause of this oppression is deeply embedded in the patriarchal structures of society. Radical feminists believe that gender distinctions (usually unquestioned due to their perceived ‘natural' nature) shape all aspects of our lives (Tuttle, 1986:267, Rowland & Klein, 1996:11). According to radical feminists, sex is the single most important factor in determining one's social

7 Adrienne Rich defines patriarchy as “...the power of the fathers: a familial-social, ideological, political system in which men—by force, direct pressure, or through ritual, tradition, law, and language, customs, etiquette, education, and the division of labor, determine what part women shall or shall not play, and in which the female is everywhere subsumed under the male” (1986: 57). Patriarchal ideologies continue to be perpetuated in contemporary society through various facets, including legal, political and religious structures.
position, values, interests, life experiences, as well as psychological and physical
constitution. Jaggar (1983) elaborates on this concept:

Radical feminists believe that the dominant male culture or patriarchy
promulgates a certain picture of social reality, a picture that is clearly colored by
male values. In this picture, male culture is portrayed as the only culture of a
given society. Different male cultures may emphasize different values but, in
general, “Men are seen as ‘day’, positive, forceful, aggressive, dominant,
objective, strong, intellectual, [sic] etc. By contrast, “the concepts, habits, skills,
art and instruments of women in any period have been different from men’s and
have been ridiculed and/or suppressed by them.” Women’s culture is denied,
and women are defined, in opposition to men, “as weak, ‘night,’ passive,
emotional, intuitive, mysterious, irresponsible... (1983:250)."

Radical feminists challenge these dominant values of male culture (Jaggar,
1983:251). They refute the definition of woman as a ‘passive, emotional, and
mysterious’ being, recognizing characteristics such as these as being associated with
individuals, not with genders. This is the reason why radical feminists wish to eradicate
notions of ‘maleness,’ and ‘femaleness.’ Eradication of maleness and femaleness
would lead to changes regarding power in society, and in turn, would help to better the

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8 Within this paragraph, Jaggar (1983) is quoting from "The Fourth World Manifesto" by
Barbara Burris et al (Pp 302 in pp. 234-239 in Anne Koedt (ed.) Radical Feminism (New York:

9 Bonnie Kreps (an early of radical feminist in Canada), in her brief to the Royal
Commission on the Status of Women Canada (June 1968) elaborated on this concept. She
commented: “We... do not believe that the oppression of women will be ended by giving them
a bigger piece of the pie, as Betty Friedan would have it. We believe that the pie itself is rotten.
We do not believe that women should be integrated into the male world so that they can be
“just as good as men.” We believe that the male world as it exists now is based on the corrupt
notion of “maleness versus femaleness,” that the oppression of women is based on this very
notion and its attendant institutions. “Separate but equal” will get us nowhere; we must
eradicate the sexual division on which our society is based. Only then do men and women
have a hope of living together as human beings” (Kreps, 1973:239). For the entire article
based on this speech, please refer to Bonnie Kreps, "Radical Feminism 1" pp. 234-239 in Anne
'situation'\textsuperscript{10} of women.

\textit{The Personal is Political}

Feminism is the first theory to emerge from those whose interests it affirms. Its message recapitulates as theory the reality it seeks to capture. As Marxist method is dialectical materialism, feminist method is consciousness-raising; the collective critical reconstitution of the meaning of women's social experience, as women live through it (MacKinnon, 1989: 83).

Radical feminism provided women with the active opportunity to become involved in the changes they wished to create. It provided women with forums in which to discuss and share their feelings of oppression, and to empower themselves. Women who were unhappy with the roles and expectations assigned to them were pro-active in vocalizing their unease through consciousness raising groups created by radical feminists. Koedt (1973) describes the process of consciousness raising as:

\ldots one in which personal experiences, when shared, are recognized as a result not of an individual's idiosyncratic history and behavior, but of the system of sex-role stereotyping. That is, they are political, not personal, questions (280).

Through the consciousness raising process many women discovered that the problems they felt were personal in nature were actually shared issues, and thus, were more accurately labelled political issues. As Koedt (1973) elaborates:

As these problems [women playing a secondary role to men] began being

\textsuperscript{10} Catharine MacKinnon describes this 'situation':

"The feminist view of women's situation comes to this: across time and space, there is too much variance in women's status, role, and treatment for it to be biological, and too little variance for it to be [be] individual. In this view, women and men appear biologically more alike and socially more different than is generally supposed. Our social treatment certainly is different -- the difference between power and powerlessness. Women's commonality, which includes our diversity, comes from our shared social position. This is our explanation of our situation" (1987:25).
discussed, it became clear what had at first been assumed to be a personal problem was in fact a social and political one. We found strong parallels between the liberation of women and the black power struggle—we were both being oppressed by similar psychological/economic dynamics. And the deeper we analyzed the problem and realized that all women suffer from this kind of oppression, the more we realized that the problem was not just confined to movement women (318).

It is from these analyses, and the consciousness-raising that grounded them, the slogan ‘the personal is political’ evolved. The personal lives and experiences of women were the impetus for political analysis and action. As with other issues such as pay equity and custody matters, this understanding of the systemic nature of women’s “personal” experiences of violence by male partners and other men has been critical to the movement and the law reforms feminists have pursued.

Radical Feminism as a Theoretical Construct

Isn’t it interesting that just as “woman” began to speak, in her own voice, of her own realities, she was told that she was naive: there was no unitary self (Bell, 1996:xvii)

Catharine MacKinnon credits radical feminists for ‘uncovering’ the various forms of sexual assault of women (by men). She affirms that feminism is premised upon believing women’s stories of sexual violence (rape, sexual harassment, prostitution, and pornography). As a result of this feminist persistence the pervasiveness of male violence against women has not been denied, trivialized, or pushed aside (MacKinnon, 1987:5). Radical feminists see the various forms of male violence against women as systemic and interrelated, connected by patterns of male dominance in society. They view sexual violation as a gendered practice, stemming from the inequalities of sex,
and of women's second class status in society (MacKinnon, 1987: 6). It follows then, that sexuality would be an integral part of feminist theory, and in women's lives. MacKinnon asserts that "sexuality is to feminism what work is to Marxism," as both areas focus on the relationship between "... that which is most one's own... as that which is most taken away..." (1987:48). Both Marxism and feminism are 'theories of power and unequal distribution' (MacKinnon, 1987:49).

MacKinnon's theory of sexuality emphasizes the social construct of patriarchal (male) power, "... defined by men, forced on women, and constitutive of the meaning of gender" (1989:128). This approach examines the subordination of women to men, a process in which sex (the sexuality of dominance and submission) is a defining factor (MacKinnon, 1989: 128). She describes the whole of social relations as being structured within these gender divisions (1987:49): "Heterosexuality is its predominant structure, gender is its social process, the family is a congealed form, sex roles are its qualities... and reproduction is a consequence" (MacKinnon, 1987:49).

MacKinnon's theory of sexuality provides a theoretical framework conducive to understanding the origins and implications associated with gender that have become so problematic in issues of violence against women. Situating the inequalities between men and women as a construct of patriarchal relations enables one to deconstruct the social meanings behind male and female, and in turn, work toward a better understanding of the lived realities of women, and the impact that the assigned social meaning of gender has on men and women. By looking at sex, and the sexuality of dominance and submission, one can situate the role of gender inequalities as a root cause of violence against women. Understanding violence as a product of gender
inequalities, allows one to see the 'situation' of women, and thus, allows one to think about how it might be changed. As MacKinnon discusses, “Feminist theory becomes a project of analyzing that situation [the sexuality of dominance and submission] in order to face it for what it is, in order to change it” (1989:128).

Radical Feminism and Violence Against Women

Radical feminists were pioneers in acknowledging the existence of and addressing the reasons behind violence against women. Radical feminists were the ones who organized rape crisis centres, shelters for battered women, and anti-pornography actions. They recognized that violence against women was a gendered injustice, and thus, worked toward creating political changes that would help to address this violence, in addition to other facets of oppression that women were facing. For me, when looking at violence against women, it makes sense to analyze gender as a foremost focus of oppression, because this is violence that is perpetuated because of gender. This examination will be complemented by an intersectional analysis, in order to consider all facets of oppression in a woman's life (race, gender, socio-economic status, and (dis)ability), and how they interact to shape women's lived realities, and experiences of violence.¹¹

Employing radical feminism in my analysis of dual charging policies in cases of domestic violence encouraged me to ‘go back to basics’ and look at the origins of feminist lobbying for change in the area of violence against women. This process

¹¹ My use of intersectional theory will be discussed further in this chapter.
allowed me to revisit the original feminist theoretical contributions that shaped the way violence against women was viewed. Applying a radical feminist analysis to the contemporary practice of dual charging sheds light on the gender issues that have been covered over by the language of domestic violence and the practice of dual charging. However, radical feminism has been subjected to legitimate critiques. I will acknowledge and address these critiques through the addition of intersectional theory and equality theory, both of which work to address and/or negate the main critiques of radical feminism.

**Critiques of Radical Feminism**

Radical feminism has been critiqued for its almost exclusive focus on gender as the primary source of women’s oppression. Critics claim that this approach does not provide an accurate portrayal of the intersecting oppressions in many women’s lives, rather, it portrays a ‘false universalism’ among women. Radical feminism has also been critiqued for being racist, and essentialist, in its attempt to unite women based on the experiences of white women. Critics argue that without an accurate portrayal of the realities of women’s lived experience (of the intersections of race, class, sexual orientation, and (dis)ability) radical feminism is inadequate in its analysis of women’s oppression.

In trying to respond to the false universalism critique, some feminist theorists added other facets of oppression to their analysis of gender. For example, an analysis of race was added to the analysis of gender, which was added to an analysis of class. In turn, this “additive” form of identity analysis has been critiqued as reflecting and
perpetuating racism. As Spelman (2001) discusses:

..attempts to bring in elements of identity other than gender, to bring in other kinds of oppression other than sexism, still have the effect of obscuring the racial and class identity of those described as ‘women,’ still make it hard to see how women not of a particular race can be included in this description (74).

Spelman describes how this additive analysis distorts black women’s experiences of oppression through failing to recognize that there are important differences within the contexts in which white women and black women experience sexism (Spelman, 2001: 80). Spelman argues that this additive form of identity analysis posits that one’s racial identity can be ‘subtracted from’ a blended racial and sexual identity,’ leaving behind an analysis of ‘women,’ retaining gender as the core of oppression. This ignores the complexities of the lived experiences of oppression that black and other racialized women face, and in turn, can marginalize them unintentionally.

Relatedly, radical feminism has been critiqued for being racist, due to its primary focus on the ‘white woman’s experience.’ Adrienne Rich has termed this tendency ‘white solipsism’ “to think, imagine, and speak as if whiteness described the world” (1979:299). She critiques white feminists for unconsciously adhering to this tendency “..a tunnel-vision which simply does not see nonwhite experience or existence as precious or significant, unless in spasmodic, impotent guilt-reflexes, which have little or no long term, continuing momentum or political usefulness” (1979: 306). This tendency led to the omission or minimization of the experiences of black women in much of the early feminist literature. As Lorde (2007) points out: “. . . differences expose all women to various forms and degrees of patriarchal oppression, some of which we share and some of which we do not. . . The oppression of women knows no
ethnic or racial boundaries, true, but that does not mean it is identical within those boundaries.”

One of the major critiques of radical feminism is that it is essentialist. Harris (1990) defines gender essentialism as “the notion that a unitary, “essential” woman’s experience can be isolated and described independently of race, class, sexual orientation and other realities of experiences” (585). She describes how this tendency privileges the voices of some, while marginalizing the voices of others (Harris, 1990:585). Accordingly, radical feminist literature focussed on the experiences of white, heterosexual middle class women as the experiences of all women, thus excluding the voices of black women, other racialized women as well as poor women, women with disabilities and lesbians.

Despite the legitimacy of these critiques of radical feminism, I believe that to dismiss radical feminism, and all its valuable insights entirely, would be a disservice to feminist theory in general. I posit that it is a task of contemporary feminists to revisit these writings, and to contextualize them, and to address these critiques through the employment of additional theories. We need to acknowledge that yes, women (black, racialized, (dis)abled, lesbian, transgendered, rich, and poor) were marginalized as a result of previous discourses, and to apologize for that. However, as Rich (1979) points out, guilt can become an excuse for inaction:

12 This excerpt was taken from Lorde’s “Letter to Mary Daly.” It was a critique of Daly’s book Gyn/Ecology, and her lack of consideration of the experiences of African women. Lorde writes: “Mary, I ask that you be aware of how this serves the destructive forces of racism and separation between women - the assumption that the herstory and myth of white women is the legitimate and sole herstory and myth of all women. . . When patriarchy dismisses us, it encourages our murderers. When radical feminist lesbian theory dismisses us, it encourages its own demise” (2007:69).
. . . guilt feelings—so easily provoked in women that they have become almost a form of social control—can also become a form of solipsism, a preoccupation with our own feelings which prevents us from ever connecting with the experience of others. Guilt feelings paralyze, but paralysis can become a convenient means of remaining passive and instrumental. If I cannot even approach you because I feel so much guilt toward you, I need never listen to what you actually have to say; I need never risk making common cause with you as two women with choices as to how we might exist and act (Rich, 1979:307).

Using radical feminism as the basis for my framework, I will address its critiques through two additional theories: intersectional theory and equality theory. Radical feminism’s focus on women’s experiences makes it very open to the inclusion of an intersectional analysis that reflects the experiences of diverse women.

**Intersectionality**

Sisterhood is powerful but sisterhood can also be misleading unless contextualized (Anthias and Yuval-Davis, 1983, 1996:98).

It is learning how to take our differences and make them strengths. For the Masters tools will never dismantle the master’s house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change (Lorde, 2007 (1984):12).

Intersectional theory was developed in the 1980’s, largely as a response to racism in the feminist movement of the 1970’s, in addition to sexism of the civil rights movement of the 50’s and 60’s (Ward, 2004: 83). Intersectional theory attempts to account for the lived realities at points of intersection that have otherwise been ignored (McCall, 2005: 1780). These points of intersection tend to reflect multiple subordinate positions. McCall describes intersectionality as “. . .the relationships among multiple dimensions and modalities of social relations and subject formations. . .” (2005:1771).
Crenshawe (1993) discusses how feminist and antiracist discourses have neglected to account for intersectional identities such as those of racialized women. Due to the intersecting realities of sexism and racism in these women's lives, they were alienated by both discourses (Crenshawe, 1991:1244). Crenshawe highlights the need to account for multiple identities/grounds when analyzing how the world is constructed (1991:1245). She comments:

Among the most troubling political consequences of the failure of anti-racist and feminist discourses to address the intersections of race and gender is the fact that, to the extent they can forward the interests of "people of color" and "women", respectively, one analysis often implicitly denies the validity of the other. The failure of feminism to interrogate race means that the resistance strategies of feminism will often replicate and reinforce the subjugation of people of color, and the failure of antiracism to interrogate patriarchy means that antiracism will frequently reproduce the subordination of women (1991: 1252).

This reinforces the importance of considering the multiple identities/forms of consciousness in one's life, and the ways in which they intersect. Multiple consciousness acknowledges that people are oppressed not only because of gender, but also because of race, class, dis(abilities), sexual orientation etcetera, and that these categories are inextricably linked (Harris, 1990: 587). As Spelman's critique pointed out, we cannot simply add in an analysis of race to one of gender, as these identities are connected. They intersect, and cannot be viewed apart, as they work together in shaping one's experience of oppression. An intersectional analysis, will provide for a more encompassing picture of the lived realities of women, and avoid the problem of white solipsism (Rich, 1979:299).

As Rich (1979) stresses, there is sameness and difference within women: we have been separated by violence, we 'dread and mistrust each other' and yet, "we
long for and are necessary to each other” (300). In creating theory on violence against women, incorporating an intersectional analysis and accounting for the differences in lived realities amongst women are important. It unites us in our struggle to end sexist oppression in all its multi-faceted complexity.

**Equality Theory**

Equality is a fundamental feminist principle, and a key concept in feminist legal theory and feminist law reform efforts. However, equality is an ambiguous concept: “...slippery, uncertain, flexible, dynamic, by definition comparative, by implication restrained” (Majury, 2002:101). Awareness of the potential and limitations within equality is important (Majury, 2002:101). Two approaches to equality, formal and substantive, have been recognized and discussed in relation to section 15, the equality provision in *Canada’s Charter of Rights and Freedoms* (Buckley, 2001:42).

Formal equality refers to “the equal (or same) treatment of individuals regardless of existing circumstances” (Buckley, 2001:42). Formal equality reflects the notion of a ‘level playing field,’ with the normative standard (or prototype) being a white, middle-class, heterosexual, Christian, able-bodied male (Majury, 2002:105). Formal legal equality holds women accountable to this male normative standard. This omits the lived realities of women’s experiences, and the ways they intersect to shape who women are and what women do. Littleton (1987) points out the ‘mathematical fallacy’

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13 Rosalie Abella (1986) points out: “Equality is thus a process— a process of constant and flexible examination, of vigilant introspection, and of aggressive open-mindedness” (as referenced in Majury, 2002:6).
inherent within this model of equality,' that "only things that are the same can ever be equal" (1282). She comments:

In legal analysis, courts routinely find women's "difference" a sufficient justification for inequality, constructing at the same time a specious "sameness" when applying phallocentric standards "equally" to men and women's different reproductive biology or economic position to yield (not surprisingly) unequal results for women (1282).

Critics of the formal equality approach feel that it fails to take into consideration the inherent biases of 'neutral' norms in society (Buckley, 2001:42). Formal equality does not account for the shaping of these norms by those in socially advantaged groups and positions of power (Buckley, 2001: 42).

In Buckley's (2001) Transforming Women's Future: A Guide to Equality Rights Theory and Action 14 Majury and Mathen outline several issues with the concept of (formal) legal equality. First, Majury and Mathen discuss that 'equality, by definition is about comparison' (53). This can be problematic, as comparing women to men perpetuates maleness as the normative standard. Second, 'equality essentializes categories' thereby privileging the experiences of one group of women over another. This critique of formal equality is the same as the critique of radical feminism, and reinforces the importance of considering how gender intersects with race, class, (dis)ability, sexual orientation etcetera.

Critiques of formal equality are very similar to those of radical feminism; both concepts have the potential to result in racism, essentialism, and inequality if not

14 This guidebook was based on presentations from the 1999 national forum Transforming Women's Future: Equality Rights in the New Century. This forum was presented by the West Coast L.E.A.F.
contextualized. Radical feminism was contextualized through the creation of intersectional theory, and the recognition that one’s sense of self is multifaceted, and that these facets (race, class, (dis)ability, and sexual orientation) combine and intersect with gender at multiple points to shape one’s experience of oppression. Formal equality, contextualized, becomes substantive equality. Formal equality does not acknowledge the nuanced differences in lived experiences between men and women, or the impact of inequality in their lives. Applying a substantive model of equality allows for an intersectional analysis into the oppressions in one’s life. Substantive equality recognizes the relationship between power and privilege in society, and provides the tools to help address the resulting inequalities.

Substantive equality requires the rectification of inequalities, and demands true, proper equality within the political, social and economic conditions of groups in society (Buckley, 2001:42). As Buckley explains, “Substantive equality requires a focus on systemic and group based inequalities. It encompasses the right to have one’s differences acknowledged and accommodated both by the law and by relevant social and institutional policies and practices” (2001:42). Substantive equality is the approach adopted by the Supreme Court of Canada in the first section 15 Charter case decision (Andrews v. Law Society of British Columbia, 1989). However, many legal scholars argue that the Court failed to live up to this commitment to substantive equality and frequently lapses back into a formal equality analysis (see for example, Gilbert & Majury, 2006).
The Guise of Gender Neutrality within Equality Discourse

The application of a formal rather than a substantive approach to equality lead to changes that might initially seem positive for women. The use of gender neutral language is one such example. Gender neutral language was introduced to depose the male referent and to indicate that gender is (should be) irrelevant. But eliminating the male pronoun did not eliminate male as the standard and the norm. Upon examination, it becomes clear that the employment of gender neutral language such as ‘family violence’ and ‘domestic violence’ actually pose a threat to women’s equality (further stressing the importance of and need for substantive equality in the area of domestic violence). This language removes women’s experiences, making inequalities invisible (Buckley, 2001:5). This erasure is similar to Rich’s concepts of color-blindness, and white solipsism although in this case, it becomes gender blindness and male solipsism. Removing gender specific terminology and replacing it with gender neutral terms erase and ignore the reality that violence against women is the pervasive problem (Buckley, 2001:5). Gender neutrality masks the gendered nature of male violence against women, giving the illusion that spousal violence is no longer a women’s issue. As Buckley (2001) points out, “if sexual violence/wife abuse are no longer a women’s issue, then male power-holders may resume control over their definition, causes and remedies” (5). This is exactly what radical feminists have been resisting from the outset. Going back to the roots of feminism helps us uncover the mis-steps that led to the creation of these misperceptions. Feminists, in their struggle to have domestic violence against women legitimated as a public issue, lobbied for domestic violence to
be treated the same as any other violent crime (MacLeod, 1987:78). Not surprisingly in hindsight, this has meant treating domestic violence as a crime against men. Perhaps it is backlash to this attempt at formal equality that has led us to the current problem of formal equality/ gender neutrality in the realm of domestic violence, currently manifesting itself through the problem of dual charging.

Formal equality promulgates a male view of reality, and erases the importance and impact of gender. Substantive equality addresses these critiques and emphasizes the reasons why gender needs to be brought back into the equation. Substantive equality maps onto an intersectional analysis, considering how the whole of one’s being is constituted by the varying degrees and convergence of the multiple oppressions in one’s life.

**Concluding Thoughts**

As, I thrust my hand deeper into the swirl of the stream—history, nightmare, accountability—I feel the current angrier and more multiform than the surface shows. There is fury here, and terror, but there is also power, power not to be had without the terror and the fury. We need to go beyond rhetoric or evasion into that place in ourselves, to feel the force of all we have been trying—without success—to skim across (Rich, 1979:310).

By incorporating definitions of feminism, with radical feminist theory, intersectional theory, and equality theory, I have a framework that will help me to conduct a feminist analysis of dual charging policies in cases of domestic violence. Reclaiming the definitions of feminisms and revisiting the origins of radical feminist

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15 These law reform efforts will be discussed in the following chapter.
theory provide me with an understanding of the ways that gender distinctions structure our lives. This understanding is crucial, as it is these structures that are made invisible and irrelevant in dual charging. Incorporating intersectional theory allows for an all encompassing analysis of dual charging, which looks to the lived realities of women, and how their experiences of class, race, (dis)ability, and gender intersect to shape their experiences of domestic violence. Finally, incorporating an equality analysis allows me to look critically at the impact that the formal equality of dual charging is having on women. In uniting these three theories, I will focus on the category of “woman” to explore the common experiences of gender, while at the same time considering and valuing differences, and exploring the ways these differences affect lived experiences. Applying an intersectional gender approach will allow me to conduct a thorough analysis of the gendered issue of dual arrest without falling into the traps of false universalism or essentialism.

As I move forward, I will keep in mind the wisdom of Cheryl Clarke (1981) who reminds us to remember to acknowledge our differences, but to move forward, and across these divisions to unite, and ‘join a common cause’ built on politics, not on race or sexual orientation (as cited in Johnson, 2005:28).
Chapter Three:

Mandatory Charging

One of the most important roles the criminal justice system plays in our society is a symbolic one, through which it reflects, and may help promote, emerging values. It also symbolizes what we as a society will tolerate, and what is beyond tolerance (MacLeod, 1987:78).

Wife assault. . . It Is a Crime

Introduction

During the late 1970's and early 1980's, the criminal justice response to spousal abuse went through many changes. These changes can be attributed to the efforts of women's groups, which were focussed on increasing awareness of the issues involving domestic violence against women (Ad Hoc Federal-Provincial-Territorial Working Group, 2008: 9; MacLeod, 1987:39). These groups identified the political nature of male violence against women, indicating the need for societal and institutional reforms in order to adequately address this problem (Denham & Gillespie, 1999:3).

These women's groups established the first crisis shelters and transition houses for battered women in Canada. These shelters helped to increase awareness regarding the issue of violence against women, and demonstrated the need for public support. At this time, there was minimal awareness (public or professional) of male

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16 A 1980's slogan from the Ontario government's public education campaign on the prevention of violence against women (As quoted in DeKeseredy & MacLeod, 1997:121).

17 These shelters were premised upon a holistic philosophy of empowerment, in which women worked together to help each other 'build lives free from violence' (MacLeod, 1994:8).
violence against women, its immensity or its prevalence (Denham and Gillespie 1999: 3). Male violence against women was seen as a private (family) problem. As such, abused women were treated individually for the psychological and emotional problems stemming from their experiences of violence (Denham and Gillespie 1999: 3). The creation of shelters gave women the opportunity to leave their abusive situations, and further, provided them with the acknowledgement that they were not alone in their experiences of male violence.

Feminist advocates recognized that violence against women was not an individual problem, but rather was symptomatic of the bigger issue of male dominance in society. The patriarchal structures of society supported and perpetuated this dominance, and relegated intimate violence to the private sphere. Feminists sought to bring the issue of domestic violence into the public sphere, and to publicly draw the connections between this violence and the patriarchy, thus challenging the traditional beliefs and practices ingrained in society. They saw equality for women as a means to address male violence against women and to break down the traditional gender roles that encoded the dominance and submission associated with the patriarchy. A main goal of feminists working in this area was to have the issue of domestic violence treated seriously, in the same manner as any other violent occurrence. They wanted the criminal justice system to recognize that wife abuse was a crime (MacLeod, 1987:79).

In the 1980’s feminists achieved some success with this endeavour, as an increased emphasis on the criminal nature of violence against women developed.
Religious groups, attorneys, police, academics, social service workers, and governments began to examine the nature of male violence against women in a manner conducive to understanding and developing more powerful solutions to the problem. Domestic violence against women was accepted as a 'legitimate social issue' (Denham & Gillespie, 1999:3). This societal recognition provided the foundation for legal reform in the area of violence against women. These reforms are an important part of the evolution of dual charging policies in cases of domestic violence. Looking at these changes provides a fuller picture as to the struggles and challenges that feminists faced in attempting to draw attention to and address the issue of male violence against women.

**Background to Mandatory Charging**

As public awareness of domestic violence against women increased during the 1980's, so did the subsequent outrage (Denham and Gillespie 1999: 3). Feminist advocacy led to an increased commitment and interest in working toward reducing / ending this violence on the part of federal and provincial governments. Public education campaigns were launched, the numbers of shelters were increased, and focus on the criminal nature of violence against women was promoted.

In May of 1982, the House of Commons ‘Standing Committee on Health, Welfare, and Social Affairs' ‘Report on Violence in the Family- Wife Battering’ was tabled. This report documented how the police were commonly instructed not to arrest a batterer unless they had witnessed the assault, or the victim’s injuries were serious
enough to warrant stitches (Ad Hoc Federal-Provincial-Territorial Working Group, 2008: 9). At that time, police intervention in domestic disputes was generally deemed inappropriate (Buzawa and Buzawa, 1996:37). Occurrences in one’s private home or with a family member were not seen as a matter for public or state intervention (Dobash & Dobash, 1979; Schneider, 1994 as quoted in Johnson, 1996:209), as they were not considered to pose a ‘serious threat to public order’ (Johnson, 1996: 209). This response to wife assault was indicative of the societal belief that domestic violence was a private matter, best left relegated to the private sphere.\footnote{18}

Following the tabling of the Report on Violence in the Family, a major shift occurred in the way domestic violence situations were to be handled. On July 8, 1982, the House of Commons passed a motion, unanimously, stating that “Parliament encourage[s] all Canadian police forces to establish a practice of having the police regularly lay charges in instances of wife beating, as they are inclined to do with any other case of common assault” (Canadian House of Commons Debates, 1982, as cited in Ad Hoc Federal-Provincial-Territorial Working Group, 2008: 9). The fact that this motion was originally greeted with “laughter and jeers” (Ad Hoc Federal-Provincial-Territorial Working Group, 2008: 9)\footnote{19} is indicative of the ongoing struggle that feminists face in having male violence against women treated seriously, and perhaps also an indication of future problems. But at the time, public outrage at the Members of

\footnote{18} The roots of this belief can be traced to patriarchal assumptions relating to men as the heads of household and his home being his castle, ingrained in society. See Anne Koedt’s anthology Radical Feminism (New York: Quandrangle/The New York Times Book Co., 1973.

\footnote{19} See also Keri Sweetman, “Male MP’s Guffaws at Wife Beating Query Enrage Female MP’s” The Ottawa Citizen (May 13, 1982).
Parliament response solidified support for the pro-arrest policy.

A week later, on July 15, 1982, the Solicitor General of Canada sent a letter to the Canadian Association of Chiefs of Police calling for their assistance in acknowledging and attending to spousal abuse matters. The Solicitor General urged police to lay charges in cases of domestic violence (Department of the Solicitor General, 1993, as cited in Ad Hoc Federal-Provincial-Territorial Working Group, 2008: 10). By 1986, directives had been issued to Crown prosecutors and police by all of the Attorneys Generals and Solicitors General (from all jurisdictions) in relation to domestic violence matters. Most of these directives stressed the importance of treating spousal abuse as a criminal matter, as well as stipulating that charges were to be laid in cases where there was probable cause that an assault had occurred. In addition, Crown policies prescribed that these cases be prosecuted (where sufficient evidence was found) 'regardless of the victim's wishes' (Ad Hoc Federal-Provincial-Territorial Working Group, 2008: 10). These policies are commonly referred to as pro-arrest or mandatory charge policies (Department of Justice Canada 2000, as cited in Ad Hoc Federal-Provincial-Territorial Working Group, 2008: 10). The main objective of these policies was to ensure that 'spousal assaults were treated as a criminal matter' (Ad Hoc Federal-Provincial-Territorial Working Group, 2008: 10).

Also, in 1986, the Canadian Advisory Council on the Status of Women (CACSW) provided several policy recommendations (Council Recommendations) for the criminal justice system in relation to male violence against women. These recommendations stressed the importance of acknowledging that assault is a crime (regardless of where it
occurs), that abuse victims have a right to keep safe from harm, and that women who want to leave abusive situations should be given assistance in achieving this end. These recommendations also placed a responsibility with each community to "do everything possible" to protect its members from violence (regardless of age, race, sex, place of incident etcetera). These feminist recommendations encouraged community involvement in long range prevention through the creation of educational programs, and they suggested that both the long and short term interests of battered women be considered in any plans for change, or proposed solutions. Further, they advised that future reforms be developed along with women's advocates and groups who work in the field (as cited in MacLeod, 1987:79).

Some of the 1986 recommendations have been adopted in policy changes, however, as MacLeod (1987) points out, many of the requests remain only partially fulfilled. She stresses the importance of reiterating these demands as a reminder of the additional changes that are needed within the criminal justice system (78). Feminist law reform in the area of violence against women has been an ongoing struggle. Contemporary feminists continue to struggle (both theoretically and practically) in their endeavours to assist women experiencing male violence.

**Mandatory Charging Policies**

The creation of mandatory charge policies documents the shifting onus of responsibility for domestic violence from the individual to the state. Holding the state accountable for women's safety through creating policies and programs to protect
women and to make abusers accountable, was a main focus for abused women’s advocates (reflected in part in the criminalization of domestic violence against women). The fact that violence against women was seen as a private matter and women were not accorded the same protections as those assaulted by a stranger, was a motivating factor in the advocacy for and implementation of mandatory charge initiatives. Mandatory charge policies were intended to remedy this issue, and to improve the way the criminal justice system addressed situations of domestic violence. These policies were meant to ensure that male violence against women was treated as a serious criminal matter.

Goals of Mandatory Arrest

Mandatory charging protocols were developed to create a standard for police responses, as they removed the use of discretion from police officers (Berk & Loseke, 1990-1991 as cited in Buzawa & Buzawa, 1996: 155). Mandatory charge policies were supposed to ‘increase the number of charges laid’, and result in more ‘successful prosecution’ of domestic violence cases (Johnson, 1996: 210). Requiring police officers to lay charges when they were called to a scene (where there was probable cause that a domestic violence incident had occurred) demonstrated the serious nature of wife assault, and indicated that these occurrences would be taken seriously. Mandatory policies were expected to encourage women to telephone the police if they were involved in a violent domestic dispute.

Mandatory charge policies were intended to ‘guarantee immediate criminal justice
protection' for women involved in domestic disputes (Johnson, 1996:210). Before the advent of pro-arrest policies, women had to bring charges against their abusers personally, which was a concern for many due to the risk of increased/further violence. As a result, charges were only laid if the offence was very serious, or if there were police/ additional witnesses to the offence (Johnson, 1996:211). With the creation of mandatory arrest policies, the state was now held accountable for women’s safety, through the requirement that the police arrest the abuser in situations of domestic violence, thereby, ‘maximizing victim safety’ (Dasgupta, 2002:1365).

There are several “benefits” that have been directly attributed to the implementation of mandatory charge policies. First, it is said that there is a psychological benefit for abused women with the advent of these policies. Mandatory charge policies assert that male violence against women is ‘legally and morally wrong’ and this pronouncement is important to the women who have been abused, as well as to society (Johnson, 1996: 211, Miller, 2000:289). Second, the threat of exposure and arrest is meant to act as a deterrent to abusers. As Dutton et al (1992) elaborate, arrest publicizes a man’s violence, which may increase social pressures for him to stop this behaviour (as referenced in Johnson, 1996: 211).

In addition, it is thought that mandatory charge policies help to clarify police roles by providing guidance in addressing domestic violence incidences. The policies led to additional police training (National Criminal Justice Association, 1985 as referenced in Miller, 2000:289), and the expectation of a decrease in police injuries (Loving, 1980 as referenced in Miller, 2000:289). I have put benefits in quotations, as many of the results that have been attributed as a benefit can also be seen as a drawback (this will be discussed further in the chapter).
Further, eliminating police discretion and requiring police to lay charges in incidences where it is probable that a domestic violence incident has occurred should contribute to a more equitable legal system, as incidences of domestic violence are now being addressed in the same manner as any other incident of violence (Buel, 1988:22 as cited in Miller, 2000: 289). Moreover, it is thought that strong police action would lead to strong follow through by other facets of the criminal justice system (Miller, 2000:289).

Mandatory arrest policies also remove the onus of responsibility from the abused woman and place it onto the police. This can provide women with what MacLeod (1987) refers to as a ‘safety net;' the ‘I did not press charges, the police did' response to the angry perpetrator.21

Despite laudable goals, mandatory arrest policies have caused some new problems and exacerbated some old ones.

**Critiques of Mandatory Charging**

Regardless of the motives of those using or seeking new crime control methods, the end result is similar: status quo power relations and distinctions based on race, class, age and gender are preserved and reinforced (Martin, 2002: 356, see also Cole et al., 1995, Martin, 1998)

Feminists do not agree on the importance/ soundness of mandatory arrest policies. Sparks (1997) sees this as a reflection of the ambivalence with which feminists

21 As will be discussed in the ensuing paragraphs, this “safety net” has proven to have many holes.
regard the police. Battered women’s advocates want to hold the police accountable for protecting citizens, however, they recognize that the police often “. . .exercise their power in ways that reinforce the disadvantages already experienced by women, and in ways that reinforce the disadvantages experienced by members of poor and minority communities” (Chambliss, 1995, Florida Supreme Court, 1990, as cited in Sparks, 1997: 36). Mandatory arrest policies provide a powerful example of police behaviour in domestic violence situations, both in terms of under-reacting (by not arresting anyone) and more recently, over-reacting (and arresting both parties as part of a dual arrest). The critiques of mandatory arrest relating to the problems of police attitudes, the unintended consequences of power and privilege, and the critique of (over) reliance on the criminal justice system will provide tools to conduct an analysis of dual charging policies in cases of domestic violence.

_Critique of Police Attitudes and its Patriarchal Subculture_

Such developments [zero tolerance laws on spousal assault] underline the perils of good intentions: in a culture of punitiveness reforms will be heard in ways that reinforce rather than challenge dominant cultural themes; they will strengthen hegemonic not counter-hegemonic practices and beliefs (Snider, 2003: 369).

Mandatory charging initiatives attempt to “. . .force [a] change in behaviour without necessarily changing officer attitudes” (Buzawa & Buzawa, 1996:155). In the absence of attitudinal change, there will be resistance to policy change. Sparks questions the cooperation of the police in implementing a policy created to reduce the power men have over women, considering the predominance of men on the force (1997:36). She comments:
As agents of social control, police have some degree of autonomy in how they exercise their power. They can abuse their power both by failing to act in some situations and over-reacting in other situations (Sparks, 1997: 37).

Police officers viewed their primary role in domestic violence disputes as ‘calming the people involved down,’ and ‘restoring order.’ When this was done, they viewed their job as complete (Jaffe, Hastings, Reitzel, and Austin, 1993 as quoted in Johnson, 1996:210). With the creation of mandatory arrest policies, the role of police officers intervening in domestic violence situations was expanded. Restoring order was no longer a sufficient police response; it was expected that the police would take action and arrest the abuser. More follow through from the officers was expected.

Police workers are socialized into a culture that does not place high value on ‘social work type roles’ (Bard & Zarker, 1974; Harris, 1973 as cited in Buzawa & Buzawa, 1996:38). In order to be accepted by other police officers, new police officers must become ‘one of the boys’ and accept the ‘occupational code’ which includes such tasks as safeguarding other officers, and abiding with the group consensus as to the definition of a serious crime (Stanko, 1989, as referenced in Buzawa & Buzawa, 1996:38). Further, as Stanko (1989) points out, within the police subculture, they judge each other on their competence involving ‘crime fighting tasks’ such as arresting recognized criminals. Successful intervention in domestic violence situations is not particularly valued (as cited in Buzawa & Buzawa, 1996:38). Rather, common police opinions are that domestic violence calls do not constitute ‘real police work’ (Buzawa & Buzawa, 1996:38). Thus, the nature of the response to a domestic violence call becomes perfunctory, and “...dominated by the officer’s overriding goal — to extricate
themselves from dangerous and unpleasant duties with as little cost as possible and to reinvolve themselves with “real” policework as soon as possible” (Buzawa & Buzawa, 1996:38).

As Rigakos’ (1995) research has indicated, the patriarchal subculture of the police directly affects their decision making process in regards to arrest. Adherence to traditional gender based roles, such as the good mother/housekeeper, are conservative beliefs about women commonly held by police officers (Hatty (1989) as referenced in Rigakos, 1995: 236). Failure to fit this gender stereotype renders a victim ‘undeserving of protection’ (Hatty, 1989) and relegates such women as “rubbish” (Smith & Grey, 1983 as referenced in Rigakos, 1995: 236), thus making police less likely to make an arrest in incidents involving women who do not conform to gender stereotypes.

Mandatory arrest is intended to remove discretion regarding arrest, but Rigakos’ research indicates that this is not necessarily the case. He argues “the occupational culture of the police leads to exaggerated patriarchal notions of women, marriage, and family that are conservative; blame the victim; point the finger at other institutions; foster images of women as manipulative; and produce a fictitious narrative of battered women” (Rigakos, 1995: 227). Rigakos links the police decision making process to the

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problems concerning the subcultural mores of police culture, and then to the broader societal structure that operates under patriarchal regimes (1995: 227).

Other perceptions of battered women held by police officers are that they are ‘reluctant witnesses.’ This results in domestics not being considered a “good pinch” for officers (Stanko, 1989 as referenced in Rigakos, 1995:239) who are instead left with feelings of betrayal by an ‘ungrateful woman’ (Ferraro, 1989 in Rigakos, 1995: 239). This can lead to feelings of resentment against battered women for officers. One of the male corporals commented:

I’ve been doing this for some 26 years and I’ve had thousands and thousands. The ones where there is actual violence on an ongoing basis, you charge, go to court, and the women don’t show. After a while it’s like “don’t cry wolf if you’re not prepared to go through with it” (Rigakos, 1995: 239).

The continuing impact of patriarchal ideologies in relation to violence against women is one of the many reasons I selected a radical feminist and intersectional approach. Radical feminists drew attention to the patriarchal structures in society and worked toward eradicating these concepts of gender roles. Their work is unfinished, and the fight to continue to deconstruct these notions of what is appropriately masculine and feminine needs to continue in order to combat these interpretations of women involved in domestic violence. How can we expect women to be treated equally within a subculture that considers them either passive and motherly, or manipulative and undeserving?
Critique of Power and Privilege: The Unintended Consequences of Mandatory Arrest

There have been many unintended consequences for victims of domestic violence as a result of mandatory charging policies (Crosbie, 1995, Rajah et al., 2006:897, Miller, 2000; Dasgupta, 2002; Ferraro, 2002; Hirshel & Buzawa, 2002, McMahon & Pence, 2003). Miller (2000) discusses how these policies may exacerbate an already difficult problem. She draws attention to the inconsistent research findings on whether mandatory arrest policies achieve any of their intended goals - that is whether or not they increase (appropriate) charges laid, maximize victim safety, hold abusers accountable or reduce incidences of male violence against women (281). As already pointed out, mandatory arrest policies may not determine an officer’s decision to arrest as a result of the stereotypes ingrained within the police subculture (Rigakos, 1995). As Ferraro (1989) points out, police often thwart these policies due to stereotypical beliefs about battered women, inconveniences of case processing, or discontent with the limiting of their discretion (as referenced in Miller, 2001:1342).

MacLeod (1987) cautions against the portrayal of battered women as a homogenous group (which is what mandatory arrest policies are based upon). This colorblindness/lack of consideration for differences among the victims neglects the special issues of Aboriginal, rural, disabled, or young women, which can further contribute to racism/white solipism and further inequalities within the criminal justice system. The experiences of white women in violent relationships are different than

As Crosbie (1995) points out, research supporting mandatory charge initiatives has operated from the perspective of white women’s experiences with police intervention (Crosbie, 1995:69).
those of racialized women, for example, and thus the consequences of the violence are also different. Culture, class, and ability intersect with gender shaping a woman’s experience of violence. Mandatory arrest provisions do not account for these differences in lived experiences, thus, having the potential to dis-empower and disproportionately affect those groups of women who need assistance the most.

Miller (2001) draws attention to the unique problems faced by racialized women and women of a lower socio-economic status as a result of mandatory arrest provisions. For immigrant women, arresting the breadwinner can deprive them and their children of immigrant status, and can lead to deportation (Martin & Mosher, 1995; Pratt, 1995, Snider, 1998:10). For racialized women, mandatory arrest means greater surveillance which means greater vulnerability to ‘racist police and judicial authorities’ (Snider, 1998:10).

Miller posits that racialized women, and women of a lower-socioeconomic status may be more likely to call the police for help, which could result in higher arrest rates for men from this group (Hirshel, & Pesackis, as referenced in Miller, 2001:1342). On the other side, she posits that African-American women may be less likely to call the police due to the perception that the system treats non-white men more severely (Rasche, 1995, as referenced in Miller, 2001:1342) and poor women may be less likely to call due to fear of loss of income from an employed spouse (Iovanni & Miller, 2001, as cited in Miller, 2001:1343). Further, as Rigakos points out, most “undeserving” households are those consisting of people of a lower socio-economic status (1995:234), which leads to further questions about the effects that mandatory charging, are having on racialized,
Aboriginal women, according to a study done by the Ontario Native Women's Association in Thunder Bay (1989) endure 30-40 beatings before they call the police, if they call at all (Mclvor & Nahane, 1998:67). Mclvor & Nahane point out that beatings are commonplace, and 'almost universally ignored by the police' (67). They draw attention to the minimal communication between Aboriginal women living with violent partners and the police, who only occasionally visit isolated Aboriginal communities, thus rendering mandatory arrest policies inoperative for these women.

A further issue with mandatory charging policies is that women may be unaware of the consequences of telephoning the police. Often they are simply looking for immediate protection or to teach their abuser a lesson, or in need of transportation to a shelter. Many were unprepared for long term follow through by the criminal justice system (MacLeod, 1987:80). When a woman contacts the police in regard to a domestic dispute, there is a removal of the decision making process from the victim in regard to whether or not they wish to proceed with charges (Buzawa & Buzawa, 1993, Rajah et al., 2006: 898). Women who are denied decision making in relation to charges brought against their spouse may become disillusioned with the criminal justice response, and be discouraged from telephoning the police again (Buzawa, Austin, Bannon & Jackson, 1992; Ford, 1991 as cited in Rajah et al, 2006:899). Women who are aware of the dual charging possibility, may become even less likely to telephone the police when experiencing violence.

Snider (1998) emphasizes the fact that many violent crimes go unreported,
especially in areas where racialized and poor women live, as a result of the knowledge that calling the police will increase their oppression and their surveillance by the state (6, see also Rodgers, 1994, Dutton, 1984, Ontario, 1982). This reinforces the notion that mandatory arrest policies cause greater surveillance and criminalization of those who “...fit hegemonic definitions of ‘the criminal’, those whose lives are easiest to scrutinize and those least able to resist intrusions” (Snider, 1998:10). In a complex circle of unintended consequences, racialized women (minority and Aboriginal) and women of a lower socio-economic status become more likely to be charged as part of a dual arrest, and to face contempt of court charges, while they also have the fewest resources to be able to leave abusive partners, and to resist state action (MacLeod, 1995, as cited in Snider, 1998:10). E. Assata Wright (2002) points out:

...mandatory arrest policy is particularly problematic for Black women because...they are more likely to fight back and protect themselves when being abused. In cases where a woman hits her abuser, she can be arrested along with her attacker (as quoted in Worcester, 2002: 1398).

Dual arrest is one more (unintended) consequence of mandatory arrest provisions.

**Critique of (Over) Reliance on the Criminal Justice System**

...state power ... simultaneously empowers and disempowers women (Naranch, 1997:33).

In the 1980's, feminists advocated for consistent intervention by the justice system when women reported domestic violence incidences, as well as the public recognition that wife abuse was a crime. These feminists emphasized the social and
political nature of domestic violence against women, and stressed the importance of intervention by the justice system “...that the justice system should use whatever means were available to ensure that women who are abused receive the protection they need...” (DeKeseredy & MacLeod, 1997: 119). These feminists believed that employing the justice system would make a forceful assertion that ‘violence against women is unacceptable’ (DeKeseredy & MacLeod, 1997: 119).

Feminists never envisioned or intended for the justice response to become the primary approach in addressing domestic violence against women (DeKeseredy & MacLeod, 1997: 120). The long term feminist goal was to ‘transform social values and institutions’ (Currie, 1993 as cited in DeKeseredy & MacLeod, 1997: 120). The ‘feminist alliance’ with the justice system was/is a cause for concern to many feminists. As Snider points out:

...policies mandating arrest and punishment do not provide practical solutions to the real-life problems of women. They do not ameliorate the day to day realities of battering, rape, and assault, and frequently they increase stress by adding a public level of suffering, at the hands of the criminal justice system, to what is endured at home (1994, 2008:181).

Snider supports the critiques of other feminist scholars, that the zero tolerance provisions/mandatory arrest directives of the criminal law have resulted in intensified surveillance of women previously victimized by poverty, racism and violence, thus resulting in the increased vulnerability for those whom the directives were intended to assist (2008:182).

Snider discusses how the criminal justice system was never intended to better the lives of women or empower them (2008: 182). As Majury (2002) points out, feminist
engagement with criminal law has been a ‘largely reactive measure, and not a proactive action’ (127). She asks critically, why we have turned to criminal law for assistance?

....And that is the question– for what? What do we want(expect) from law in this context? Why do we turn to one of the most patriarchal of our institutions (law) in its most patriarchal form (criminal law)? What are we seeking? .... (Majury 2002:127).

This concern is consistent with more general feminist critiques of law. As Melina Buckley points out, clear laws and feminist legal victories do not always result in ‘genuine and effective equality’ for women (Buckley, 2001: 4). Pincus (2009) posits (in relation to equality issues) “power can be exercised to prevent demands or initiatives that threaten an existing order” (152). Similarly, power can be exercised to deflect or redirect initiatives that are seen as potential threats to the existing order.

Majury reminds feminists to be critical in our engagement with criminal law. She questions whether or not a ‘feminist vision of criminal law’ is even possible, or if it is a paradox, but at the same time, she recognizes the importance of continuing to participate, as disengagement would result in the abandonment of women, both victims and accused, who will continue to be subjects of and subject to the criminal law (Majury, 2002: 127).

These are important questions for all feminists involved in legal reform, particularly in the area of criminal law. In continually asking, what is the purpose in seeking reform, I believe we can continue to hold our feminist ideals and goals, and not

24 She suggests possible reasons for this engagement: protection, revenge, acknowledgement of violence against women as a social issue, deterrence, and prevention as possible goals (2002:127).
forget the importance of the changes we have set out to create, and continue the search for equality, and the pursuit of transformation of the patriarchal institutions that continue to oppress. Given the feminist critiques of mandatory charging, we should perhaps not be surprised by a shift to charging both the man and the woman involved in a domestic violence situation. Dual charging may well be an inevitable, if unintended, consequence of mandatory charging.
Chapter Four:

Contemporary Dual Charging Policies and Practices

... a hit is not a hit is not a hit (Ostoff, 2002:15)

...And despite all we do not know about intimate violence, we do know that it is *gendered* (Renzetti, 1999:45).

*Introduction*

Researchers, abused women’s advocates and service providers have documented the trend of women being charged (both solely and dually) in situations involving domestic violence in the United States and Canada (Pollack, Battaglia & Allspach, 2005: 1, see also McMahon & Pence, 2003; Miller 2001; Martin,1997; Hirshel & Buzawa, 2002, Dasgupta, 2001). The research that has been done in this area suggests that dual arrest rates increased after the implementation of mandatory arrest polices and that these rates vary greatly across different geographical locations (Hirshel & Buzawa, 2002:1450). In Ontario, researchers noted that dual charging rates (as well the rates for women being charged solely) increased with the creation of the domestic violence courts in 1996-1997. They determined that the creation of these courts triggered a more rigid application of mandatory charging policies, which led to the increase in dual arrests (Pollack, Battaglia & Allspach, 2005).

Lawyers, judges and police argue that “. . .women, like men, must be held accountable for their behaviour. . .prosecuting women who have used violence against an intimate partner represents a gender neutral application of the law” (Renzetti, 1999: 51)
49). Feminist research in this area suggests otherwise (see Renzetti, 1999; McMahon & Pence, 2003; Miller, 2001; Miller & Meloy, 2006; Hirshel & Buzawa, 2002; Worcester, 2002). There is concern over the disproportionate effects that dual charging is having on women. Battered women's advocates question the appropriateness of judicial responses and law enforcement actions in relation to women who have used force against their partners (Dasgupta, 2002:1366). The decontextualization of women's experiences of violence (inherent within dual charging), along with the application of a 'male normative standard' are resulting in an unequal application of the law (Renzetti, 1999:49). And as Renzetti points out “The outcome will be-- indeed, already is – gendered injustice” (1999:49).

Studies/Existing Research on Dual Arrest

In this chapter I examine all of the studies that have been conducted to date on dual arrest in Canada and the United States. These studies provide the information on which I will base my discussion of dual arrest procedures in the ensuing chapter. While much of the work to date on dual charging has been piecemeal, (employing a small sample in a select area), this research constitutes all of the information that is currently available.

There are seven studies that I will examine, six of which are American, and one Canadian. The first three studies investigate the incidence and prevalence of dual arrest in the United States (Martin, 1997; Frye, Haviland & Rajah, 2007; Hirshel, Buzawa, Pattavina et al, 2007). The next three studies examine the criminal justice responses to
women who are arrested for domestic violence (Miller, 2001; Miller & Meloy, 2006; Finn & Bettis, 2006). The final study is a Canadian study that explores the unintended consequences of mandatory arrest policies in Toronto (Pollack, Battaglia & Allspach, 2005).

**Dual Arrest in Connecticut (Martin, 1997)**

Margaret Martin (1997) conducted the first study on dual arrest (Hirshel & Buzawa, 2002: 1450). Her research suggests that the practice of arresting both parties involved in a domestic violence incident (a dual arrest) increased after mandatory and presumptive arrest policies were implemented in 1987. Martin (1997) views dual arrest as an unintended consequence of these policies, and believes that dual arrest challenges the goals of effectiveness and fairness, the intended outcomes of mandatory arrest (Martin, 1997:140).

The main goals of Martin’s research were to describe the characteristics of those involved in a dual arrest (including histories of violence), understand why a dual arrest (and not a single arrest) occurred, and to understand the meanings behind and causes of dual arrest (with a special emphasis on female defendants). She hypothesized that dual arrest might arise in several scenarios: joint violence between both parties, when women employ self-defence strategies, or as part of prosecutorial or police response (Martin, 1997: 146).

Martin’s study consisted of all the family violence cases in Connecticut from January to June of 1988. Her study commenced three months after the implementation
of mandatory arrest policies. There were 4138 cases disposed, 448 of which became the sample for her research (a stratified sample was employed). 134 dual arrest incidents were studied and were compared to the other 314 single arrest occurrences. From this sample, 90 cases (21 dual arrests, 69 single arrests) were selected randomly and additional contextual information was obtained from court and prosecutorial records. Data from the court, prosecutors, and police files was matched in order to determine results (Martin, 1997: 147).

Martin’s findings reported that 33% of adult domestic violence incidents involved dual arrest, as opposed to the 18% that the state of Connecticut reported for the time period under review. Martin does not provide reasons for this discrepancy, other than to explain her methodology:

...[her] study, by excluding nonintimate family violence, such as child abuse and elderly abuse cases from the estimates, and by weighting the stratified samples to estimate the population, found that 33% of the adult intimate family violence arrests involved dual arrest over the study period (1997: 147).

This suggests that the state of Connecticut employed a different method of statistical analysis in reaching their numbers on dual arrests, and that perhaps the percentage of dual arrests was minimized by the inclusion of all types of family violence (and not just domestic violence incidents between romantically involved couples) in their analysis. This issue of the invisibility or minimization of dual arrest in domestic violence incidents through inadequate or non-existent data collection will be explored in the discussion section.
Martin's research found that the typical defendant involved in a dual arrest was white (75%), unmarried (68%) and around 30 years of age (Martin, 1997:147). Dual arrest defendants were more likely to co-habit, be in a long term relationship (around 6 years) and have children together (56%) (Martin, 1997:148).

The most common scenario for dual arrest involved physical violence (not property damage or verbal abuse) and most involved beating or hitting; few involved the use of a weapon, and less that 1% included serious physical harm (Martin, 1997:148). The most common charges in a dual arrest were disorderly conduct, and breach of peace, and the least common were assault, criminal trespass, criminal mischief and threatening (Martin, 1997: 149). Martin drew attention to the fact that in over half the cases (53%) alcohol or drugs were involved at the time of the incident (Martin, 1997:148). Women involved in dual arrest cases were more likely to have a previous history of victimization, and no prior family violence arrests (151). Men involved in dual arrest incidents were less likely to have histories of victimization, but more likely to have been previously arrested for domestic violence and other crimes (Martin: 1997: 151).

Martin discovered that dual arrest cases seldom involved punitive sanctions. The majority (81%) of cases received a *nolle prosequi* sanction, which meant there would be no current court action, but, the case could be reopened within a thirteen month period if another offense should occur (Martin, 1997: 149). 7% of the cases were dismissed, likely either a summary dismissal, or upon the successful completion of a program

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25 Of the sample of dual arrest cases Martin analyzed, 6 cases involved same-sex couples. Due to the differing dynamics of same sex relationships, I have decided to exclude an analysis of same sex battering within my research.
dealing with family violence issues (diversion program for first time offenders). Out of all
the dual arrest cases Martin (1997) studied, only 12% resulted in conviction, with either
a fine, conditional discharge, or rehabilitative type sanction (150). Less than 1%
received incarceration as a sanction (149). Martin (1997) points out that the women
involved in dual arrests shared similar demographic characteristics as their partners,
and that the courts ‘treated the cases similarly’ (150).

Martin found that dual arrest strategies are not uniformly employed by police
departments, and not uniformly processed by the courts (1997: 151). She postulates
that the disparity in dual arrest rates may be attributed to police practices that
‘encourage, or do not discourage arrest’ (153). Dual arrest rates in specific areas may
be a result of the reluctance of officers to exercise discretion in domestic violence
cases, resulting in over-enforcement of the law (or in some cases under-
enforcement). She also found that some prosecutors endorse the practice of dual
arrest, actively encouraging police to bring in both parties (152).

Martin’s research on dual charging provides a much needed glimpse into the
issue. Her study, however, focuses solely on dual arrest in one specific state. It is
necessary to look at dual arrest in other states, to see if her results are duplicated. This
bring us to our next study, which examines dual arrest in New York City.

26 Over-enforcement in terms of failing to exercise discretion and arresting both parties
involved in a domestic violence situation, or under-enforcement in terms of failing to abide by
mandatory charging policies/directives and failing to arrest either one of the parties involved.
Between July 1, 1998 and June 30, 2000, Frye, Haviland, and Rajah (2007) conducted a study on dual arrest and other unintended consequences of mandatory arrest in New York City. Mandatory arrest policies were implemented in 1994 in New York City, with the passing of the *Family Protection and Domestic Violence Intervention Act* (Frye, Haviland & Rajah, 2007:397). The study obtained data from the Family Violence Project Helpline (FVP) of the Urban Justice Centre (UJC). The goal of this study was to perform an “exploratory analysis of data collected from domestic violence victims who called a legal problem “helpline” (Frye, Haviland & Rajah, 2007: 387).

During this time period, approximately 1685 calls were received from victims of domestic violence, of which 422 cases were opened for continuing advocacy. The sample employed for this study was further narrowed down to 183 cases in which the main issue was the police response (Frye, Haviland & Rajah, 2007: 399).

99.5% of the 183 callers to the helpline were women, with the majority being Latina (32%) or of Black/African American (34%) descent. 18% of the callers were white, 4% were classified as Asian or other, and 13% were classified as unknown (Frye, Haviland & Rajah, 2007:401). The racial background of the partners was primarily Latino and African American (62%), 17% were white, 6% Asian or other, and 15% unknown. Over half of the callers had experienced prior incidents of abuse, with almost a quarter (24%) having active orders of protection (401). 43% of callers had been threatened with weapons (including fists and feet, firearms, and blunt objects). In 17% of the cases, the perpetrators had substance abuse problems (401).
Haviland (1999) organized the sample cases according to the arrest outcome initially described by the victim to the helpline: 'no arrest' (27%), 'unwanted arrest' (5%) 'dual arrest,' (9%) and 'retaliatory arrest' (24%). No arrest referred to situations where an arrest should have been made, but was not. An unwanted arrest described a scenario where an arrest occurred where the victim did not want it to happen. A dual arrest occurred when the victim was arrested with her partner at the same time or shortly thereafter from conduct relating to a specific incident. A retaliatory arrest occurred when the caller's partner had them arrested for a separate incident. (The researchers document that this type of arrest was typically based on false or exaggerated complaints after efforts of the caller to protect herself or her children). The remaining 35% of cases were classified as “too little information” in which the victim lacked information about the police response or had questions about options or safety concerns (Haviland, 1999 as cited in Frye, Haviland & Rajah, 2007:400).

The researchers used SPSS to calculate the associations between arrest outcomes as compared to variables such as race, income, location, and socio-economic status. Partner characteristics such as drug and alcohol abuse, and stalking, were also considered, as well as the employment of a weapon during the assault, and previous histories of domestic violence incidents (Frye, Haviland & Rajah, 2007:399). Frye, Haviland & Rajah saw socioeconomic factors as closely related to dual arrests, and

27 Although the initial classifications were made by the advocate who answered the first telephone call, each case was further examined by an attorney, Haviland, who was also a researcher for this study (Frye, Haviland & Rajah, 2007:399).

28 A computer program used for statistical analysis. SPSS stands for Statistical Package for the Social Sciences.
retaliatory arrests. The callers to the FVP helpline were mostly low income: 44% having a household income of less than $30 000, 14% having a household income of $30 000 - $50 000, and 19% receiving social assistance. Only one household was making more than $50 000 (401). While the information obtained suggests a correlation between low income and dual arrest, information about income was lacking for 40% of callers, so any conclusions based on this income data are very tentative. In cases where an arrest should have been made but was not, it was probable that the people involved were receiving social assistance (Frye, Haviland & Rajah, 2007: 401). The correlations between arrest and income need further exploration. In cases where no arrests were made, researchers found that the parties involved were more likely to be Latino/Latina. This suggests a correlation between race and arrest.

Haviland conducted a case by case review of the dual arrests involved in this sample in order to conduct a primary physical aggressor analysis. She found that in 60% of these cases there was information that pointed to a primary aggressor. As she points out, this information could have prevented victim arrests. In a similar case by case analysis of retaliatory arrest, the researchers found that probable cause would not have been found in 57% of the cases if the police officers had looked into histories of violence. In these retaliatory arrest cases neither party was injured, and in almost half of these cases (48%) one of the parties had a history of victimization (403). This points to the importance of examining histories of victimization and abuse in order to determine the primary aggressor, and thereby possibly reduce incidences of victim arrests.

The fact that the research collected was from helpline advocates, and based on
callers’ self reports raises significant potential for inaccuracies. The authors of this study recognize the limitations of a study based on helpline information, however, they note that the data derived from this source is one of the few sources of information on dual arrest in New York City. There are no published statistics on dual arrest rates, or rates of women arrested for incidences of domestic violence in this area (Frye, Haviland & Rajah, 2007: 405). The authors also acknowledge that their results are not generalizeable, due to the small sample in a particular locale, New York (Frye, Haviland & Rajah, 2007: 405).

Frye, Haviland & Rajah (2007) conclude that there is a problem with victim arrests in domestic violence cases. They suggest that further training and supervision are required for officers who respond to domestic violence calls. They believe that further training will provide a more consistent approach to addressing domestic violence situations, and in turn, has the potential to minimize the impacts on women with documented histories as victims, of violence (404). They stress the importance of advocates in making the situation better for domestic violence victims, and further, the importance of ‘identifying and addressing the systemic roots of the problem’ of dual arrest in order to reduce its prevalence.

_Dual Arrest in the United States of America_ (Hirshel, Buzawa, Pattavina, Faggiani & Reuland, 2007)

This project was the first large scale examination of dual arrest in cases of domestic violence (Hirshel, Buzawa, Pattavina, Faggiani & Reuland, 2007: xxii). The goal of this project was to “...examine the prevalence, context, and consequences of
dual arrest [in the United States of America] in intimate partner violence cases in a broader context” (Hirshel, Buzawa, Pattavina, Faggiani & Reuland, 2007: i) The authors employed a two prong method. First, they compared dual arrest in cases of domestic violence with that of dual arrest in non-intimate violence situations (in order to determine if dual arrest was a problem unique to intimate partner violence). Second, they analyzed the correlations between ‘incident specific factors’ in domestic violence cases and the officer’s decision to arrest, not arrest, or arrest both parties (Hirshel, Buzawa, Pattavina et al, 2007: ii)

Two phases of data collection occurred during this project. In the first phase, data from all the assault and intimidation cases from the year 2000 was collected and analyzed in 2819 contributing jurisdictions across 19 states.29 7 of these states had mandatory arrest provisions in place, 4 had preferred arrest provisions, and 7 had discretionary arrest provisions in place (Hirshel, Buzawa, Pattavina et al., 2007:18). 8 of these states also had primary aggressor statutes in place (Hirshel, Buzawa, Pattavina et al., 2007: 29).30 This data was obtained from the National Incident-Based Reporting System (NIBRS) database. The second phase of data collection involved further research on a subset of the information from the NIBRS; it involved examining the

29 The 19 states were Arkansas, Colorado, Connecticut, Idaho, Iowa, Kentucky, Massachusetts, Michigan, Nebraska, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, and West Virginia (Hirshel, Buzawa, Pattavina et al., 2007: 38).

30 Mandatory arrest laws require officers to make an arrest when there is probable cause that an assault has occurred. Preferred arrest policies encourage officers to arrest when there is probable cause. Discretionary arrest statutes provide that an officer ‘may’ arrest in certain circumstances when there is probable cause (Hirshel, Buzawa, Pattavina et al., 2007: 16-21). Primary aggressor provisions direct police to consider histories of domestic violence, possibility of future injury and self-defensive behaviour (Hirshel, Buzawa, Pattavina et al., 2007: 29).
domestic violence cases from 25 police departments over four different states during the same year, 2000 (Hirshel, Buzawa, Pattavina et al, 2007: ii).

The research for phase one produced 577,862 incidents of assault (from 2,819 jurisdictions in 19 states). These incidents involved 650,849 victims, 622,258 offenders and 235,690 arrests (Hirshel, Buzawa, Pattavina et al, 2007: iii). Dual arrest cases were determined using a multi-step process of statistical analysis. The first level of analysis was the incident, and the second level of analysis was the agency. Independent variables employed were agency characteristics (in relation to the policing institution), legal context (state arrest laws), incident characteristics (severity, employment of a weapon, etcetera) and victim/offender demographics (age, sex, race, etcetera) (Hirshel, Buzawa, Pattavina et al, 2007: iii).

The results showed that 57.3% of the 650,849 victims were female, with 71.6% of them being of Caucasian descent, 27.6% Black, and the remaining 0.8% classified as other. The average age of the victims was 29.2 (Hirshel, Buzawa, Pattavina et al, 2007:46). 75% of the offenders were male, with 65% of that group being white, and 34% black (leaving 0.6% classified as other) (Hirshel, Buzawa, Pattavina et al, 2007: 53). The average age of the offenders was 29.3.

During phase one, Hirshel et al. determined that 37% of all the assault incidents resulted in arrest, with 1.3% resulting in a dual arrest. Dual arrest rates in intimate partner violence cases were slightly higher overall, at 1.9% (Hirshel, Buzawa, Pattavina et al, 2007: 167). Arrest rates were higher in states with mandatory arrest provisions

31 The four states were Connecticut, Virginia, Tennessee and Idaho (Hirshel, 2008:9).
than in states with discretionary arrest provisions. Further, they found that mandatory arrest policies increased the likelihood of dual arrests in all types of relationships (Hirshel, Buzawa, Pattavina et al, 2007: 167). In terms of victim/offender characteristics, they found that females and males had the same likelihood of being arrested in cases of intimate domestic violence if the circumstances were similar, and that race impacted on the likelihood of arrest, with officers being more likely (60%) to arrest if the offender was white (Hirshel, Buzawa, Pattavina et al., 2007:168).

The findings of phase two determined that arrest was more likely in cases of intimate partner violence (Hirshel, Buzawa, Pattavina et al, 2007: 170). The likelihood of arrest increased if an offender remained at the scene, if there was an injury to the victim, if children were present, or if the incident happened in a ‘core city’ ( Hirshel, Buzawa, Pattavina et al, 2007: ix). The researchers found that less than half (43%) of the arrests led to convictions (Hirshel, 2008:11), with convictions of non-whites being more likely than convictions of whites (Hirshel, Buzawa, Pattavina et al, 2007:175). They noted that substance abuse was not correlated directly with arrest or conviction, but was closely linked to re-offending, thus stressing the importance of police documentation of substance abuse in reports, and of the association between drug and alcohol abuse and domestic violence (Hirshel, Buzawa, Pattavina et al, 2007:176).

Limitations acknowledged by the researchers were that the data employed was solely ‘official data’ and therefore did not encompass information from the victims. They also drew attention to the under-representation of jurisdictions from the western states

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32 The Information from the NIBRS contained data from 19 states and 2810 jurisdictions (Hirshel, 2008:6; Hirshel, Buzawa, Pattavina et al, 2007: iii). Given that there are 50 states in
and to the poor quality of certain data elements from particular states (which led to the exclusion of certain jurisdictions during the second phase of research) (Hirshel, Buzawa, Pattavina et al 2007: 177)

The researchers concluded that mandatory arrest provisions increase the likelihood of arrest in all three types of relationship categories (intimate partner, non-intimate domestic and acquaintance). However, they did not find that dual arrest is occurring as often as other (‘more limited’) studies have suggested. With an overall dual arrest rate of 1.3% for all relationship categories (1.9% for intimate partner domestic violence) they found that dual arrest rates were much lower than previously thought (Hirshel, Buzawa, Pattavina et al, 2007: 172).

Their data indicates that officers perform their duties without consideration given to ‘extra-legal characteristics of the sex of the involved parties’ (Hirshel, Buzawa, Pattavina et al, 2007:174), thus finding that males and females are equally likely to be arrested. They concluded that officers’ reluctance to arrest minorities as opposed to whites may stem from the belief that violence among minorities is normative behaviour (see Black’s 1976 theory) (175).

This study was the first large scale study of its kind. The findings’ suggestion that men and women are equally likely to be arrested is surprising given the history of domestic violence, formerly known as wife abuse, as a gendered offence. This brings us to our next study, a study on women arrested for domestic violence.

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America, information was missing from many areas.

33 Although beyond the scope of my research, it is important to note that Hirshel, Buzawa, Pattavina et al (2007) document that police officers are much more likely to arrest both parties as part of a dual charge with an incident involving a same sex couple (173). This is an issue which requires further research.
Responses of Criminal Justice Professionals to Women Arrested for Domestic Violence
(Miller, 2001)

Miller (2001) explored the increasing phenomenon of women being arrested for domestic violence either solely, or as part of a dual charge. This research was conducted across the three counties in Delaware (New Castle, Sussex, and Kent), in which pro arrest policies \(^{34}\) were in place. Interviews were conducted with 37 social service providers and criminal justice professionals who had experience with the issue of women being arrested in domestic violence incidences (Miller, 2001: 1350). Respondents included probation officers, public defenders, family court advocates, treatment providers, social workers, police officers, case workers, victim service workers, and directors of battered women’s shelters. Interviews were between one and three hours long, and reinterviews were conducted in situations where clarification was needed, or further issues developed (Miller, 2001: 1350). Through these interviews, Miller sought to: “explore how criminal justice professionals and social service providers respond to women in domestic violence incidents and what role, if any, their actions play in the implementation of criminal justice policy” (Miller, 2001: 1351). Three major themes emerged from her interviews: ‘women’s violence,’ ‘men and backlash,’ and ‘experiences with the criminal justice system.’

In relation to the first theme, ‘women’s violence,’ none of the respondents (of the 37 interviewed) felt that women’s violence was increasing. Rather, they believed that the

\(^{34}\) Pro arrest policies are different than mandatory arrest provisions. Pro-arrest policy “allows police to retain discretion in misdemeanor cases as long as their decision not to arrest is fully documented” (Miller, 2001: 1371).
increase in the number of women arrested in domestic violence situations could be attributed to policy changes that dictated police should make arrests, instead of utilizing discretion to handle these situations differently (Miller, 2001: 1353). Shelter workers and probation officers were aware of their clients’ histories of victimization, and they believed that instead of ignoring women’s violent reactions like they had previously, police now focussed on the violent incident, and not the context of the act (Miller, 2001: 1351). The majority of respondents disagreed with the notion of mutual violence, believing that women’s motivations for using violence differ greatly from those of men. They explained for example, that women’s employment of force is not part of the ‘power-control dynamic’ that is associated with battering (Miller, 2001: 1353). The respondents felt that women did not possess the same type of power men had in relationships. For example, the men were not fearful for their lives, and the women did not control their partner’s freedom. Despite the recognition of these gender differences, some respondents (mainly police officers, and victim services workers who work closely with the police) felt that, regardless of the circumstances, if women commit a crime “they should be arrested, the same as a man. We shouldn’t differentiate just because she’s a female” (victim services worker, as referenced in Miller, 2001:1353). Other respondents held the belief that women should be punished for their violent behaviour, as long as context was considered, and self defensive action was differentiated from aggressive violence (Miller, 2001:1354).

Probation officers indicated that the women who used force appeared to be “at the end of their rope” and that their use of violence was indicative of frustration, or was a self defensive response. They discussed how alcohol and drug abuse was a problem for
many of these women; it appeared that many women self medicated to cope with their situation or to temporarily escape the reality of it (Miller, 2001: 1353).

The second theme presented in the study, ‘men and backlash’, refers to the ways that the criminal justice system lends itself to manipulation by offenders who were familiar with its workings. The respondents believed that there was a greater willingness on the part of men today to call the police to report a female partner’s violent act against them (Miller, 2001:1354). Schwartz (1987) reported that men called the police more frequently when experiencing heterosexual partner abuse than women did when experiencing abuse (reported in the National Crime Survey results from 1973-1982 in the U.S.,as cited in Miller, 2001: 1354). National data, consistent with the data from Delaware, suggests that the increase in women arrested for using domestic violence against their male partners is indicative of “men’s greater awareness of how to use the criminal justice system to their advantage” (Miller, 2001: 1354). This suggests that dual charging is producing further inequality for women. As Miller comments “this lack of protection from the police angers and confuses women, who feel they have no redress because they are novices in negotiating the system” (2001:1356). The respondents in Miller’s study provided examples of the threatening/ manipulative behaviours they observed, or were told about: self-inflicting wounds, being the first one to call the police in order to ‘proactively define the situation,’ or ‘challenging a women’s right to trial’ (by suggesting she will lose her children if she goes to jail) (Miller, 2001: 1354). All of the treatment providers commented that one of the most common forms of advice they heard in batterer treatment groups for men was to “get to the phone first” (Miller, 201: 1355).
Respondents were concerned by these incidents of backlash. They agreed that men have become adept in manipulating the criminal justice system and use their awareness of its internal workings to manipulate women, especially in regard to child custody issues, and self-inflicting wounds.

Miller’s third theme of ‘experiences with the criminal justice system’ relates to the respondents’ concerns about the behaviour of the police, case processing and legal decision making (Miller, 2001:1357). Respondents from all three counties found that mandatory and pro arrest policies resulted in dual arrests. Further they felt that by arresting both parties as part of a dual arrest, the police were taking the ‘easy way out,’ leaving decisions regarding charging to the Attorney General (Miller, 2001: 1357). A second reason articulated by the respondents was that police felt overburdened by the paperwork requirements of domestic violence cases, leaving them less in touch with the inner workings and intricacies of domestic violence situations. It is a mandatory requirement that the police document every domestic violence call, regardless of the victim/offender dynamics. Domestic violence calls include brother and sister violence, husband and wife violence, neighbour and neighbour violence etcetera (Miller, 2001: 1357). Police officers’ fear of liability was suggested as one reason for this practice. In addition, one respondent suggested that police action (in making a dual arrest) might be motivated in part, by a desire to help the victims so they could receive criminal justice assistance (Miller, 2001:1359).

The respondents took note of women’s lack of familiarity with the court process, their limited knowledge of options and alternatives, and their lack of power during the
process (Miller, 2001:1360). The respondents discussed that women were encouraged to plead guilty without knowledge of the consequences (loss of employment opportunities, welfare benefits, and/or housing etcetera) of their decision. Women were pressured to plead guilty in exchange for receiving the first offender program as a sentence. This program placed them on probation, and required their attendance at a treatment program (Miller, 2001:1361). Respondents (excluding prosecutors and public defenders) felt that the prosecutors and defenders capitalized on women’s confusion and encouraged them to make decisions which expedited the processing of the case, which benefited the needs of the system to address these cases in a timely fashion (Miller, 2001: 1361). They also commented on their belief that lawyers ‘strong-armed’ the women into pleading guilty in exchange for ‘an ideal opportunity' with the female offender program. A victim service worker in Northern Delaware commented:

The women hear about this wonderful offender’s program where you go to treatment and you are on probation for a year and then your charges will be expunged off your record, so they agree to the program, but they just don’t have a clear understanding of what they are agreeing to (in Miller 2001:1362).

Shelter workers, victims services workers and treatment workers believe that women would end up in a better position if they went to court and employed a self defence explanation. One shelter director commented: “At least three quarters of the time if they had taken it on to trial, they could have gotten out of the charge and been found not guilty” (Miller, 2001: 1362).

Miller (2001) concluded that dual arrest may be an equal application of arrest policy, but, is only paying ‘lip service' to true equality, as it renders invisible the differences between male and female use of violence (1369).
Dual arrest ignores histories of victimization, and re-victimizes women by failing to understand the circumstances of their actions (Miller 2001:1368). Miller’s research findings suggest that the majority of social service providers and criminal justice professionals believe that women who use violence in intimate relationships should not be treated according to the male batterer paradigm. Miller draws attention to the fact that these policies may be resulting in more severe sentences for women, particularly women of a lower socio-economic status, and racialized women, due to language obstacles, lack of resources, and as a result of racism (1368). Miller believes that “only when the entire gamut of women’s experiences is considered will the ambiguous continuum of victim and offender be better understood” (1369).

_Treatment Groups for Female Offenders_ (Miller & Meloy, 2006)\(^35\)

Miller & Meloy (2006) explored the experiences and perceptions of women arrested for domestic violence who were enrolled in one of three domestic violence treatment programs in one state.\(^36\) Three separate groups ran each week at different times and locations in order to increase access. Six months of these treatment programs were observed, beginning in February 2000, and ending in August 2000 (Miller

\(^35\) This research was done by Susan L. Miller, the same author as the preceding study. In the previous study she spoke with social service workers, and criminal justice professionals to explore the issue of women being arrested for domestic violence. In this study, she continues to explore this issue by speaking directly with women involved in domestic violence situations.

\(^36\) Throughout the study, the authors refer to the location as ‘one state.’ They do not disclose the name of this state. The state has three counties, but permission for this study was only granted in two counties.
During the time of this study, 95 women were involved across the programs. The weekly group size fluctuated between 5 and 11 women (Miller & Meloy, 2006: 96). 2 of the women were Latina, 6 did not provide information on their racial backgrounds, 29 were African American, and the majority of participants, 58 were white. Most of the women had children, and many had drug or alcohol dependency issues.

The Female Offender Program (FOP) utilised a feminist philosophy aimed at empowering women. The female facilitators held women accountable for their violence, emphasizing that their employment of force was a choice. They raised issues and promoted discussion intended to encourage self realization. The facilitators were reluctant to use labels such as victim or offender, instead choosing to focus on ‘accountability, choices, and options.’ They leave the designation of victim or offender for each individual to decide upon (Miller & Meloy, 2006: 97). Information on support services, and answers to legal questions were provided by the facilitators. They attempted to contextualize women’s use of force and the criminal justice responses without excusing the violence, or ignoring the fact that the law had been broken. On the goals of the FOP, one of the facilitators ‘Mary,’ commented:

We [the counselling agency] want the fighting stopped. That’s why we have this class. You have the power, the only person you can control is yourself. You can’t control your partner. . . . You can control your own behaviour. You make choices. If you’re in an unhealthy relationship, then you need to get out because you can’t fix it, you can only fix yourself. Who are you? Are you the person who has been doing the abusing? Or are you a victim who has fought back? Or are you a woman who is violent to everyone? (Miller & Meloy, 2006: 97).

The facilitators of the FOP had the option of terminating a woman’s participation in the FOP if she did not abide by the conditions of the program. They also had the
ability to extend a woman's participation beyond the 12 weeks if they felt that more time was needed in order to 'fully absorb the curriculum' (Miller & Meloy, 2006: 97).

Recordings from the group sessions were made, and then later transcribed and analysed. Miller and Meloy stressed the importance of listening to the stories of these women in order to provide the context for understanding issues related to policy implementation and development (2006: 96). Based on these transcriptions, Miller & Meloy categorized women’s employment of violence into three categories: 'generalized violent behaviour,' 'frustration response behaviour,' and 'defensive behaviour.'

The first category, generalized violent behaviour, encompassed violence employed between family members, strangers, intimate partners, etcetera. It accounted for 5% of the women enrolled in the FOP. The female perpetrators of this type of violent behaviour did not employ power and control as a mechanism for their violence (as a batterer does). These women did not control or influence anyone's behaviour, nor did they intimidate or cause fear in their victims. Miller & Meloy found that women who used violence in this group did so in reaction to an immediate incident, with insignificant consequences (2006:100). An example of this is Tyra’s story. Tyra was separated from her husband at the time of her episode. She also had a problem with substance abuse. Tyra described her husband as 'a workaholic who was emotionally distant,' but not abusive. She had no history of victimization. Tyra told her facilitators in the FOP:

I went out partying and never came home and my husband was a little upset, and I threatened him

Facilitator: You threatened him? What did you threaten him with?
Tyra: “That I was gonna get somebody to come there and kill him. I didn’t strike him or nothin’. But he called the cops. The next day, they came to my work. I ended up with a year probation, this program and drug counselling (Miller & Meloy, 2006: 99).

The second category was the frustration (“at the end of their rope”) response, which accounted for 30% of women in the program. Many of these women had histories of domestic abuse (being abused, and using violence against their abusers), and employed violence when they felt nothing else would stop their partners’ violent conduct. These women differed from the first group as they employed violence as a response to abuse from their partners. However, once again, the employment of violent behaviour by these women did nothing to change their experiences of abuse in their relationships (Miller & Meloy, 2006: 101). They had not gained any power by utilising force. These women used violence because they felt they had no other options. As a result of the violence they experienced they felt frustrated, and used violence as a response to conflict.

The final category described by Miller & Meloy as viewed in the FOP was ‘defensive behaviour,’ which accounted for 65% of the women (2006:102). Women who employed defensive behaviour were typically trying to escape during a violent incident or to leave before their partner used violence. Oftentimes, the women were not able to leave, and they used violence as a reaction to the partner’s initiation of force (2006:103).

Miller & Meloy (2006) concluded that women being mandated to batterer treatment programs was “one unintended side effect of relying too heavily on the criminal justice system to be the primary answer to domestic violence” (104, see also
Miller, 2001, Osthoff, 2002, and Mills, 1999). They pointed out that the gender neutrality intended in these arrest policies may be resulting in a ‘gendered injustice’ (Renzetti 1999) as women who are not batterers are being arrested under this male batterer paradigm (Miller & Meloy, 2006:104). Mandating women to batterer treatment programs (designed to address the issues of power and control in male battering) can be seen a consequence of the backlash to feminist gains that brought domestic violence out into the public sphere, and required that domestic violence be treated the same as any other violent crime.

Miller & Meloy (2006) concluded that a ‘one size fits all’ approach to women who use violence is an inadequate response to women’s use of force, as it fails to differentiate between batterers and victims. They posited that much reflection is needed in regard to ‘appropriateness and (mis)applications’ of domestic violence policies (Miller & Meloy, 2006: 108). Implementing polices that fail to account for the lived realities and experiences of women can increase the marginalization felt by victims of abuse. Women’s use of force needs to be examined intersectionally, and in context, in order to address and respond to it appropriately (Miller & Meloy, 2006: 109).

Police Officers’ Justifications for Using Dual Arrest (Finn & Bettis 2006)

In this study, Finn & Bettis (2006) explored police rationales for using dual arrests in cases of domestic violence in North Georgia. The goal of their study was to “enhance our understanding of the justifications or rationales provided by officers to engage in dual arrests in a state that has a preferred arrest law with language that instructs police to
identify the primary aggressor” (Finn & Bettis, 2006:276).

A subsample of 24 officers (of the 257 Georgia police officers) both novice and experienced, between the ages of 18 and 52, participated in this study. The method for this study consisted of asking the officers questions about a script that the researchers created that typified the situation where a dual arrest would occur. Several versions of the script were used. Within the scripts, the presence of injuries varied for the wife, and the behaviour of the couple varied between antagonistic and conciliatory toward each other after talking with the police. A constant throughout the scripts was a lack of injuries for the husband (Finn & Bettis, 2006:276).

The police officers were asked questions about how they would respond to one of these scenarios (they were randomly assigned to read one script). Findings indicated that two major factors influenced an officer’s decision of whether or not to arrest both parties: “legal issues,” and “positive benefits from the criminal justice system involvement for parties” (Finn & Bettis, 2006: 281). Decisions to arrest both parties were often made if the officers felt there was serious danger to one or both of the parties if intervention did not occur, or if they felt the Family Violence Act was violated, thus requiring an arrest. The officer’s perception that the parties could benefit from arrest, from either receiving counselling, or professional help, also influenced their decision to arrest.

Conclusions made by the authors were that the Family Violence Act (1991) in Georgia guided police action for arrest (with a preferred arrest policy, and primary aggressor provisions), but that officers failed to investigate fully incidents where counter claims were made, thus rendering these provisions ineffective in reducing inappropriate
dual arrests (283). Finn & Bettis (2006) described the legal requirements that officers were to consider in the decision making process of whether or not to arrest: the severity of injury, risk of future violence, prior violence and acts of self defence in cases where counter claims are made (in order to identify the primary aggressor). Finn & Bettis (2006) determined that these requirements were not carefully weighed by officers in the decision making process. Reducing the risk of further violence was the primary concern for these officers in deciding to arrest. The possibility of self defence was not even raised as a consideration by the officers. The authors concluded that the directives of police departments greatly influence an officer’s (in)action. They suggest further scrutiny of officer behaviour, and an increase in required documentation in cases of dual arrest as possible solutions. These requirements may force officers to thoroughly investigate domestic violence incidents, and in turn, reduce the use of dual arrests (Finn & Bettis, 2006:284).

Women Arrested for Domestic Violence in Toronto (Pollack, Battaglia & Allspach (2005))

Pollack, Battaglia & Allspach (2005) found that the implementation of mandatory arrest policies in Ontario has led to an increase in women being arrested in incidences of domestic violence. Initially, the increase in arrests was resulting from dual arrests, but this shifted to an increase in women being solely arrested (Elizabeth Fry Society of

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37 This study provides the sole source of data on dual arrest in Canada, and the data within this study is minimal. The problem of the invisibility of dual arrest will be discussed in the ensuing chapter.
Building upon previous research in the area,\textsuperscript{38} the researchers asked several key questions in relation to women's employment of violence. The goal of their research was to "...understand the context in which women's force occurs within domestic violence situations and to provide policy recommendations to enhance the criminal justice response to this group of women" (Pollack, Battaglia & Allspach, 2005: 3).

Data was collected for this study through individual interviews with 19 women who were either involved in a dual arrest or arrested solely in a heterosexual domestic violence situation. 6 of the women involved in this study were charged in a dual arrest and thirteen were arrested solely. 53% were women of colour, and 89% of the respondents had children (Pollack, Battaglia & Allspach, 2005: 2). The average age of the women was 38.4 years old.

Individual interviews/focus group interviews were conducted with 9 Crown Attorneys from the Domestic Violence Courts. Crown Attorneys were asked about their decision making process in deciding to proceed with or withdraw charges, their sentencing considerations, and the challenges they faced in addressing the dichotomy of

\textsuperscript{38} Pollack, Battaglia & Allspach (2005) reference this previous research as precipitating their study. The previous research indicates: 1) Women's use of force is often an act of self defense (Finn et al, 2004; McMahon & Pence, 2003). 2) Charging abused women with domestic violence increases their risk for further abuse (Das Gupta, 2001; Hirshel & Buzawa, 2002; Martin, 1997). 3) The legal definition of abuse is too narrow and fails to encompass the effects of power and control that a batterer has over his/her victim (Hirshel & Buzawa, 2002; McMahon & Pence, 2003; Miller, 2001). 4) Increased knowledge of the criminal justice system allows men to manipulate the system for their benefit and use it against their partners (Bohmer, Brandt, Bronson & Hartnett, 2002). 5) Serious consequences arise for women who are criminalized as a result of their violent responses (Chesney-Lind, 2002; Das Gupta, 2001) As referenced in Pollack, Battaglia & Allspach, 2005:2).
these female victim/offenders. The women who were charged in cases of domestic violence were asked about the context of their relationship (with their partner), the incident that precipitated their arrest, their experiences with the police/justice system, and the consequences they experienced as a result of their criminalization (Pollack, Battaglia, & Allspach, 2005: 4).

Four primary findings were revealed through this study: that women who were arrested were living with abusive men, that the gender neutrality of mandatory charge policies negated the context in which the woman’s violence was employed, that criminalizing women’s use of self-defensive force leads to emotional and socio-economic consequences, and that criminalizing women’s self-defensive behaviour can increase their vulnerability to abuse (Pollack, Battaglia, & Allspach, 2005: 5). 39

The first key finding was described as “women’s use of force occurs within the context of woman abuse” (Pollack, Battaglia & Allspach, 2005: 5). 90% of the women interviewed described histories of emotional, sexual and physical abuse in their current relationships (with the person they were charged of using violence against). Many of these women described their partners as controlling, and abusive, resulting in feelings of isolation and degradation for these women (Pollack, Battaglia, & Allspach, 2005: 6). The women indicated that their partners often reinforced stereotypical gender roles, expecting the household to be maintained and traditional gender roles to be adhered to (caregiver, for example). They also indicated that they felt isolated from family and friends due to their partners’ abusive behaviour. Without hesitation, these women

39 No breakdown was given differentiating the experiences of women arrested solely or arrested as part of a dual arrest.
acknowledged their employment of violence, describing their actions as attempts to protect themselves from their partners' abuse.

The second finding was that the criminal justice system fails to situate women's use of force in the context of an abusive relationship where the male partner is the primary aggressor (The finding was titled: “The response of the police and the courts: the problem of a gender neutral mandatory charge policy” Pollack, Battaglia & Allspach, 2005:8). The researchers attributed this problem to the incident based nature of criminal law, which isolates incidents of domestic violence instead of looking at them in context and applying a gender based analysis (Pollack, Battaglia & Allspach, 2005:8). 53% of the male partners of the women involved in the study had a criminal record, yet, in situations where injuries were visible for both parties involved, there was disinclination to examine woman's employment of force in context. Several of the Crowns expressed the 'assault is an assault' sentiment, and the belief that punishment should be applied accordingly (Pollack, Battaglia & Allspach, 2005:8). The failure to look at the full context of the incident enables men to better negotiate the system. Several of the respondents described their partners' manipulation of the criminal justice system: from self-inflicting injuries, to calling the police first to portray her as the primary aggressor, to accusing her of assaulting him first etcetera. The researchers commented on the dis-empowerment that occurs when women are not given the opportunity to contextualize their use of force. All of the women interviewed commented on how they felt the criminal justice system did not provide them with a real opportunity to 'tell their side of the story' (Pollack, Battaglia & Allspach, 2005: 10).
The women viewed their experiences with police and the courts as 'gender biased and disempowering' (Pollack, Battaglia & Allspach, 2005: 13). In cases of dual arrest they felt that they were treated more harshly than the men were. They were frustrated with their label as batterer/offender without being given the chance to explain their circumstances, and the context of the abuse. In addition, women of colour charged with domestic violence, described “culturally biased and discriminatory statements” from police officers, for example, persistent inquiries about their ethnic origin (13). The Crown Attorneys admitted that there are racist ideologies, and perceptions (racialized and immigrant women are more prone to commit violence) ingrained in our legal system.

The third finding revolved around the “consequences of criminalizing women’s self-protective responses” (Pollack, Battaglia & Allspach, 2005:14). A serious consequence of the mother’s arrest was its effect on her children. Women placed in custody feared for the safety of their children, worrying about leaving the children in the care of their abusive partner out of fear they might be harmed, manipulated or not properly taken care of (Pollack, Battaglia & Allspach, 2005: 16). Serious economic consequences were described by women as a result of their arrest: some lost their jobs, and some had difficulty seeking employment due to their criminal record. Emotional consequences, such as depression, alcohol and drug abuse, and feelings of isolation, were common experiences described by women as a result of being charged and jailed (Pollack, Battaglia & Allspach, 2005: 19).

Related factors such as wanting to return home to their children, and a lack of finances to go to trial contributed to the pressures these women faced to plead guilty.
They were offered two options within the domestic violence court process, the early intervention process and the coordinated prosecution stream. The early intervention process is intended for those who had never been involved in a domestic violence situation before (first time offenders). In order to be eligible for this process, there had to be no serious harm inflicted, and no weapons employed in the incident. In this process, the participant pleads guilty to the offence, and is required to attend the Partner Response Program (PAR). With the Coordinated Prosecution stream, the participant chooses not to plead guilty, (or is ineligible for the early intervention process) and proceeds to trial (Pollack, Battaglia & Allspach, 2005: 12). Lack of financial resources to hire a lawyer, the absence of the opportunity to tell their side of the story, the desire to return home to their children, and pressures from their partners were factors influencing women to plead guilty (Pollack, Battaglia & Allspach, 2005:5). One woman, Renee, elaborated:

Overall, I didn’t get to say my side of the story to anybody, honestly, from my point of view. I didn’t get to give them my version, ’cause everybody has their own stake. Duty counsel is not there to hear my side, they’re just there to hurry up and get me out. So they can get the next person in. That helped me to say, “forget it, I don’t wanna be in this courtroom any more” (Pollack, Battaglia & Allspach, 2005:5).

This suggests extreme pressure for women to plead guilty and take the early intervention route. It also suggests extreme frustration experienced by these women at the hands of the justice system.

The fourth finding was that “criminalizing abused women for domestic violence increases their vulnerability to subsequent abuse” (Pollack, Battaglia & Allspach,
The respondents described how they won't fight back anymore for fear of being charged again. They also expressed reluctance to call the police again in situations of violence.

The researchers concluded that domestic violence policy needs to take into account all forms of gendered power (physical, psychological, and economic) in order to appropriately and adequately respond to women's use of force in domestic violence situations. They also stressed the importance for a context based approach instead of gender neutrality in order to address the issue of women's use of force. Gender neutrality obscures the realities of women, and gender, and does not consider the motivations behind the use of force, or the dynamics of the relationship. Pollack, Battaglia & Allspach (2005) concluded that the incident based approach of the criminal justice system, combined with the gender neutral approach of charging policies, needs to be addressed to in order to improve the criminal justice response to women who use force in cases of domestic violence (Pollack, Battaglia & Allspach, 2005: 24).

**Conclusions**

The lack of statistics, combined with the lack of a precise, consistent definition of dual arrest points to the issue of invisibility of dual arrest, which in turn points to the larger issue of the invisibility of gender within the domestic violence realm. The limited studies disclose that the gender neutral approach taken in dual charging does not account for the context of women's use of force, or histories of victimization, nor does it recognize the detrimental consequences of criminalizing a victim's use of force. The
studies point to patriarchal notions (of the family) as contributing to a police officer's decision making process in making an arrest. This reflects the systemic nature of the issues inherent within dual charging: male and female gender roles (and socialization), and the social and political implications of such. These issues of invisibility, gender neutrality, and police attitudes in the context of dual charging will be explored in the following chapter.
Chapter Five:

Dual Charging: Invisible, Patriarchal and Unequal

... we need to ask not merely what knowledge claims are made, and by whom, but also how and why certain claims are celebrated while others, equally or even better supported, are ignored. Why, in the late twentieth century, did it suddenly seem “sensible” to assume that men and women are equally violent? (Minaker & Snider, 2006:771).

Introduction

Dual charging is intended to promote a gender neutral application of the law by holding both violent parties responsible for their actions. However, as the studies point out, dual arrest is resulting in further inequalities for women. Dual charging fails to consider the circumstances behind a woman’s use of force, and ignores her history of victimization (Miller 2001:1368), in addition to holding her accountable to a ‘male normative standard’ (Renzetti, 1999:49). Without consideration given to these factors, equality cannot be achieved.

The studies on dual charging discussed in chapter four raised critiques relating to the issues of invisibility, police attitudes & sexist knowledge claims, and gender neutrality. Applying a radical intersectional feminist analysis to dual charging and the issues disclosed by the studies will provide a more comprehensive understanding of the inequalities perpetuated by dual charging.
Applying a Radical Intersectional Feminist Analysis

There has been an almost conspiratorial silence about discussing women’s violence toward men (Shupe, Stacey and Hazelwood, 1987:46 as referenced in Dasgupta, 2002:1368).

Feminist theory explores the ‘extensive problem of gender and sex discrimination in society, and focuses on removing that oppression and transforming society’ (Martin, 1998:2). Feminist theory is premised on the recognition of the inequities that pervasive discrimination (based on sex, race, class and disability) causes, and how those inequities affect women. A feminist analysis examines the role of sexist knowledge claims inherent within patriarchal structures, and analyses how (invisible) gender distinctions structure our lives and normalize gendered inequities. Violence against women is a gendered issue; it follows that to understand the systemic issues inherent in dual charging a feminist analysis would be employed.

As Worcester (2002) reminds us, violence (perpetrated by and unto men and/or women) is situated within a social, economic and historical context, where men and women have ‘different roles, opportunities and social power’ (1391). Insights from radical feminism tell us that socially ascribed gender roles are still predominant in contemporary society, and that these roles still have an effect on one’s sense of self. As Dasgupta points out, gendered cultural norms have a gendered impact on one’s perception of his/her own violence (Dasgupta, 2002: 1377). Women recognize their self-defensive behaviour as “. . a violation of their socially prescribed gender role and readily confess to their transgressions” (Dasgupta, 2002:1377, see also Dasgupta 1999, Dobash, Dobash, Cavanaugh & Lewis, 1988; Vivian & Langhinrichsen-Rohling, 1990).
Men, however, downplay their violence against their partners, and/or lay fault with the victim. This behaviour reflects a 'greater sense of entitlement' to this violent behaviour than their female companions (Brown, 1987; Faith, 1993 as cited in Dasgupta 2002: 1378). The exacerbated combination of women's tendency to overstate the violence of their actions and men's tendency to minimize their acts of violence raises serious questions about the appropriateness of dual charging.

Radical feminists were cognizant of the implications of these gendered stereotypes, and were ahead of their time in their attempts to eradicate notions of maleness and femaleness. We need to challenge the stereotypes we as a society adhere to in terms of maleness and femaleness, as only then can we start to break down the patriarchal ideologies that inform them. As Worcester (2002) points out "...domestic violence is an extreme example of gender inequality" (1400). In attributing characteristics to people, not genders, we can work toward eliminating patriarchal notions of what constitutes the appropriate woman and man, and hopefully in turn, eradicate some of the sexist behaviours that contribute to male violence against women.

It becomes especially important to examine the violence within the context of gender and societal inequalities (Worcester, 2002: 1391) in order to understand what is occurring and why. If we situate contemporary women's use of violence in the context of history, patriarchy, culture and economy, we will get a fuller and more intersectional understanding of the active oppressions in a woman's life. From there we may be able to theorize possible alternatives to arrest that might address women's feelings of isolation, blameworthiness and coercion. By employing an intersectional analysis to the lives of
battered women in relation to their use of force, we can analyse the ways power and privilege (or lack thereof) combine to shape their reality, providing a multifaceted analysis of the factors that directly (or indirectly) influence their (violent) behaviour. As Dasgupta (2002) points out:

The research clearly indicates that women who assault their heterosexual partners are distinct from men who engage in battering behaviours as most of the women are victims of ongoing abuse . . . the research suggests that men's and women's violence toward heterosexual partners is historically, culturally, motivationally, and situationally dissimilar from each other (Dasgupta, 2002:1377).

A radical intersectional feminist examination of women's use of force prepares us to move beyond the studies to a more comprehensive analysis of dual charging, and the effects that it is having on women.

**Moving Beyond the Studies**

The studies provide some information on the scenarios in which dual arrests may arise, and the correlations between arrest and race, class, and socioeconomic status (Finn & Bettis, 2006; Frye, Haviland & Rajah, 2007; Martin, 1997; Pollack, Allspach & Battaglia, 2005). They also raise questions about the reasons women employ force in incidents of domestic violence (such as defensive behaviour), and the effects of their criminalization (that is treating them as batterers and proceeding against them as such) (Pollack, Battaglia & Allspach, 2005; Miller, 2001; Miller & Meloy, 2006).

The studies draw our attention to issues with the application of police discretion and the ambiguity and lack of consistency of dual charging practices across North America (Martin, 1997; Hirshel, Buzawa, Pattavina et al 2007). Statistics on dual
charging vary greatly across states, due to differing requirements regarding police documentation, and differing definitions of what constitutes a dual arrest (for example— a neighbour versus neighbour incident, versus a husband and wife incident) (Martin, 1997; Frye, Haviland & Rajah, 2007; Hirshel, Buzawa, Pattavina et al, 2007; Finn & Bettis 2006).

What these studies do not tell us is why it ‘suddenly became sensible to assume that men and women are equally violent’ (Minaker & Snider, 2006:711). Decades of feminist research document the gendered nature of domestic violence; to separate gender from the violence at this point runs counter to a large body of long standing research. Feminists experienced significant resistance when they pushed domestic violence out of the private realm and demanded that it be treated in the same manner as other crimes of violence. The current backlash of formal equality, that in domestic violence situations is taking the form of dual charging, may be a delayed response to the activism and demands of earlier radical feminists.\(^40\) Or perhaps dual charging is a consequence of the removal of police discretion that accompanied mandatory arrest provisions. Dual charging may be the inevitable response of a patriarchal system required to treat domestic violence in the same manner as other violent crimes.

\(^{40}\) Worcester (2002) points out: “Backlash against a movement is always a sign of how successful a movement has been. No one would be talking about whether women are as violent as men if there had not been more than 25 years of organizing against violence against women; establishing shelters, anti-domestic violence programs, and support groups; working to get the criminal justice system to hold perpetrators accountable; and developing coordinated community responses to domestic violence” (1396).
Critique of Invisibility

As noted in the conclusion to chapter four, the lack of information, in terms of prevalence and documentation, on dual charging renders this issue largely invisible. There is almost no documentation of dual charging in Canada and the United States documentation that is available is extremely limited.

Dual Charging: A Canadian Problem?

Most of the research on dual charging is from the United States of America, with minimal information on dual arrest in Canada. The only source of information that provides us with a glimpse into the problem of dual charging in Canada is the one (2005) study done by Pollack, Battaglia & Allspach, which focuses of the unintended effects of mandatory arrest in Toronto.

There is no information on dual charging in any of the current publications from Statistics Canada. In fact, the 2009 report Family Violence in Canada: A Statistical Profile failed to mention dual charging at all in its reference to the nearly 40 200 incidents of spousal violence in 1997 (Statistics Canada, 2009:24). There was also no mention of dual arrests in the 2009 Statistics Canada report Trends in Police-Reported Serious Assault (Dauvergne, 2009).

This rather large gap raises the question of whether or not dual arrest is actually a problem in Canada. I propose two possible explanations for the lack of Canadian statistical information: one, that dual arrest does not exist or at least is not a problem in Canada, or, two, we do not document dual arrests as several American states do. I am
of the opinion that the second option is more likely, based in part on anecdotal
information,\textsuperscript{41} and in part on Canada’s proximity to the United States (and the type of
close knit ‘brother/sister’ relationship Canada has with the United States). Criminal law
in Canada and the United States has similar goals, policies and procedures.\textsuperscript{42} There
are also similarities in police attitudes and subculture between the two countries.\textsuperscript{43}
These issues, combined with the research from Pollack et al. (2005), render it likely that
dual arrest is a phenomenon in Canada similar to that in the United States. However,
this is clearly an area where further research is urgently needed.

\textit{Issues of Statistical Information}

The data that is available on dual charging is limited, inconsistent, and not always
from a statistically reliable source. American studies on dual arrest provide statistical
information on the prevalence and occurrence of dual charging. However, this
information, usually limited to a specific location, is not always consistent. Through her

\textsuperscript{41} An Ottawa police officer was a guest speaker in my social work class in 2007. He
showed us a quarterly report consisting of domestic violence statistics in Ottawa from April to
June of 2006. The report stated 4 males and 6 females were charged as part of a dual arrest
(of the 343 incidents of domestic violence in which charges were laid). (SOWK 5301 Notes,
2007). While 10 out of 343 charges is a low number, it does indicate that dual charges are
being laid. Further, a shelter worker that I talked to on the telephone told me that ‘dual charging
was such a trend right now’ that if they turned away women from the shelter who were in
conflict with the law the ‘shelters would be empty’ (Call made to Ottawa Battered Women’s
Shelter on Feb 2, 2010).

\textsuperscript{42} Mandatory arrest provisions are an example of these shared policies and procedures.

\textsuperscript{43} Rigakos’ (1998) study of policing and the non-enforcement of protection orders in
Delta, B.C. is an example of these similarities. His findings on patriarchal attitudes within the
police subculture are similar to those of American researchers such as Martin (1997) and
research, Martin found the rate of dual charging in Connecticut to be 33%. The state of Connecticut's reported rate was 18% (147). Possible differences in methods of data collection, time frames, and definitions of what constitutes dual arrest could account for the discrepancies in the data.\textsuperscript{44} Martin's research raises the possibility that even when the state does explicitly record data on dual charging, the practice is seriously under-reported or reported in a way that minimizes its occurrence.

Frye, Haviland & Rajah's (2007) study on dual arrests in New York City raises the issue of statistically reliable sources. Due to the lack of resources for statistical information on dual arrests, they utilized data from a domestic violence help line. Speaking directly with victims allows for an intersectional analysis of the oppressions in their lived experiences, and an understanding of how oppressions shape their reality and their experience of violence. Such a method is consistent with a radical feminist approach that promotes the importance of women's lived experiences as the analytic starting point. Access to the victims' stories provides a much deeper and fuller understanding of the motives and contexts that contribute to women's participation in acts of violence. However, using a help line to try to gather statistical information on dual arrest has the potential to be misleading, as it is highly subjective and does not include other important contextual factors. Reliance on data from a helpline may give rise to skepticism about the significance of the issue and the problem it presents.

Finn & Bettis (2006) point out the problematic nature of accurate data collection on dual charging in the United States, as not every jurisdiction is obligated to report

\textsuperscript{44} See infra page147.
occurrences of dual arrest (272). The lack of differentiation between single and dual arrests, in combination with the incorporation of dual arrests in non-intimate violence situations, makes it impossible for one to obtain an accurate picture as to the nature and occurrence of dual arrests in domestic violence situations.

Dual charging in domestic violence situations is largely invisible; gender has become invisible. Domestic violence has come to be framed in gender neutral terms, subjected to a formal equality analysis. The formal equality/gender neutral approach applied in dual arrests obscures the lived realities of women. This is compounded by the incident based approach of the criminal justice system which decontextualizes the parties' actions and behaviours. Women's histories of victimization, and the differing rationales behind their use of force are seen as irrelevant or are not seen at all. As Minaker and Snider (2006) point out:

When categories such as class, race and gender do not appear in the actuarial charts and table of “experts” they tend to disappear from discourse as well, or they are dismissed as yesterday’s knowledge: outdated, obsolete, out of synch with modern sensibilities. Or, most serious of all, they are translated into languages that actually legitimize increased oppression (768).

The failure to consider the ways that various factors in one’s life intersect to shape experiences of violence actually contributes to oppression and inequality. The shift in terminology from violence against women to domestic violence is an example of how gender neutrality has reframed the discussion so that practices such as dual charging are perceived as appropriate as practices of equality. However, in order to have ‘equality’ within the domestic violence approach, the socially ascribed meanings of gender would need to be the same for both sexes. This is definitely not the case.
Instead power inequities between the sexes reinforce gendered social inequities and violence against women (Worcester, 2002:1400). Under the guise of gender neutrality, all of these differences are rendered invisible, leading to the invisibility of the practice of dual charging.

**Critique of Police Attitudes & Sexist Knowledge Claims**

Police action cannot by itself stem the tide of violence against women. It can, however, stop perpetuating and reproducing it. To do so would require breaking its links with other aspects of social life that maintain and perpetuate women's subordination. Police protection within the context of male domination does not and cannot promise women autonomy (Stanko, 1989:67 as referenced in Sparks, 1997:35).

Mandatory arrest policies are intended to guide and limit officers' use of discretion in the arrest making process, thereby resulting in higher arrest rates, and a more satisfactory police response. Dual charging can be viewed as a powerful example of police over-reacting to such a policy by arresting both parties involved in a domestic violence incident. While the result may be increased arrest rates, this is not the result feminists sought when they argued for mandatory arrest in domestic violence situations. The increase has instead created additional hardships and problems for women. The mandatory arrest policy that feminists fought for was intended to address police assumptions that domestic violence was a private matter that did not warrant the intervention of the criminal law. At least in some cases, police have gone to the opposite extreme of criminalizing women who are the victims of domestic violence. In effect, this brings the issue full circle to once again make the violence against women invisible.
Police Attitudes

When police respond to a domestic violence incident, they are required to assess the facts regarding the commission of the assault. However, for the most part, police are not able to examine the connections between aggression and control within the couple’s relationship. Rather, they take action with a ‘fleeting snapshot’ of the dynamics of the couple’s relationship, which may or may not be an accurate portrayal (Hirshel & Buzawa, 2002:1457). Based on this snapshot, officers decide whether or not to ‘enforce the victim-offender dichotomy’ and designate the person with the more serious injury as the victim, or refrain from taking action because they can not determine who the victim is, or arrest both parties (Hirshel & Buzawa, 2002: 1458). The decision making process employed by the officer may lead to an over, or under application of a mandatory arrest policy.

Notions of domestic violence as belonging to the private sphere are still adhered to within police subculture. If there is no perceived ‘public wrong’ it should not be deemed a police issue (Rigakos, 1995:234). Domestic violence continues to be seen as a private matter and police are reluctant to intervene. Gender role stereotypes (which produce ‘fictitious narratives of battered women’) are prevalent within the police subculture (Rigakos, 1995: 227). Rigakos argues that police occupational culture contributes to negative images of battered women- as “liars, manipulators, and unreliable witnesses” and that these images, combined with conservative attitudes regarding marriage and opinions about violence at home (a private issue), lead to officers’ excusing men’s violent behaviour (234). Rigakos describes the pressing need
of some officers to ‘preserve the family unit’ thus excusing violent behaviour, or justifying
the behaviour by blaming women (and justifying the rationales of the batterer)
(1995:237). These police attitudes contribute to the likelihood of dual arrest in the face
of mandatory arrest policies for domestic violence situations.

_Sexist Knowledge Claims_

Knowledge claims and expertise always work to the advantage of some and the
detriment of others, strengthening some parties and interests while weakening
others. Those with power to set institutional agendas, with superior economic,
political, social and moral capital, are therefore able to reinforce and promote
certain sets of knowledges while ignoring, ridiculing or attacking others (Snider,

Patriarchal stereotypes of battered women adhered to by police officers are
furthering the inequalities experienced by women involved in domestic violence
situations. These misconstrued notions are symptomatic of the need to reinsert gender
into the analysis of domestic violence. In order to combat patriarchal assumptions, we
need to acknowledge their existence and address them. Ignoring these assumptions,
and instituting ‘formal equality’ approaches perpetuate the inequalities faced by women.
Reinserting gender into the analysis of domestic violence would make the gender
distinctions that structure our lives more visible, and would disclose the gendered effects
of domestic violence. Such an analysis should make it much more difficult for police
officers to lay dual charges.

_Dual charging applies a ‘one size fits all’ (Pollack, Battaglia & Allspach, 2005)_
approach to domestic violence that ignores the power and control elements that
characterize battering. This is contrary to the research that explains the quantitative and qualitative differences between men and women's use of force. As the studies indicate, battered women who use force in intimate relationships are generally not batterers, and their rationales for using force are mainly self defensive (see Miller, 2001; Miller & Meloy, 2006; Pollack, Battaglia & Allspach, 2005). As documented in the various studies, many battered women have histories of victimization, and they use force as a ‘frustration response’ or a last ditch effort to make the abuse stop (Miller, 2001). Men typically use force to exert power and control over their victim. This type of force is not commonly employed by women (Dasgupta, 2002: 1376, see also Miller, 2001; Miller & Meloy, 2006). The failure to consider the context of the violent act, and the history of victimization, within the context of dual charging results in unequal application of the law (Renzetti, 1999:49). Nor does the ‘one size fits all’ approach recognize other power imbalances (relating to race, class and (dis)ability) that may be operating in the relationship or in the police response to the situation. An intersectional analysis requires that these factors be considered.

Critique of Gender Neutrality

Anti-feminist backlash made it probable that officials of criminal justice and their political masters would act quickly on any differences that appeared to benefit women, or to ‘let her off easy.’ Add in therapeutic knowledge claims from the ‘psy’ disciplines, claims which rationalize incarceration as humanitarian intervention (for ‘her own good’), claims which resonate with dominant cultural themes valorizing health and individual responsibility, and the drug addicted, demonized female criminal was born (Snider, 2003:369).
The application of a formal equality model which requires "the equal (or same) treatment of individuals regardless of existing circumstances" (Buckley, 2001:42) to domestic violence is a form of anti-feminist backlash. Dual charging contravenes decades of feminist research that documents the gendered and political nature of violence against women. Violence against women is bigger than an individual problem— it is symptomatic of the issue of male dominance in contemporary society. Domestic violence is, by nature, gendered. To arrest a battered women along with her abuser ignores this systemic issue of male dominance and the role that this domination plays in intimate heterosexual relationships. In employing a formal equality model, dual charging perpetuates inequality by ignoring the context of domestic violence incidents.

In order to achieve equality, systemic inequalities faced by women need to be acknowledged and accommodated through the law and social institutions (Buckley, 2001:42). This would mean a context based, gendered analysis of domestic violence that would enable women to tell of their experiences of violence. The women arrested for domestic violence in Toronto felt the criminal justice system did not allow them to tell their side of the story, and explain the context of the incident. This failure to contextualize the violent occurrence leads to an incomplete understanding of the reasons behind women's employment of force. Without that vital information, the gender neutral approach is re-enforced and women's substantive equality is jeopardized.
Consequences of Dual Arrest Policies

A major concern regarding dual arrest is the potential for harm that arises for victims of battering, who are predominately women (Hirshel & Buzawa, 2002:1458). Arresting women who use force in self-defence to escape their batterer is inappropriate and highly problematic. Arrest reinforces the isolation, and the intimidation, and the blaming behaviours of their batterers. It is, in essence, revictimizing the woman. Women are unlikely to turn to the criminal justice system for assistance if they know they are at risk of themselves being arrested. Domestic violence is in danger of being relocated back to the private realm, where people do not talk about it or acknowledge its existence.

The studies indicated that when women are arrested as part of a dual charge (or arrested solely) in cases of domestic violence, their victim identity is challenged, resulting in many unintended consequences (Rajah et al, 2006:898). They may lose access to the services dependant on victim status, such as the right to short-term housing in a battered women’s shelter, or transportation to a safe location away from their abuser. Further, they risk losing the ability to participate in victim empowerment and assistance programs because of their criminalization, and may be faced with a restraining order (Hirshel & Buzawa, 2002: 1459).

This issue of access to victim services for women charged in domestic violence situations has not been researched in Canada. To get a sense of whether this might be

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45 For the complete power and control wheel of physical and sexual violence, see appendix 1 of Pence, Ellen & Paymar, Michael, Education Groups for Men Who Batter: The Duluth Model (New York: Springer Publishing Company, 1993)
an issue in Canada, I called four local Ottawa battered women's shelters to determine if the United States situation was also happening in Canada. The responses were all the same: they do not turn away women who have been criminalized. In fact, one shelter worker said that dual arrest was such a trend right now, that if they were to turn away criminalized women the shelters would be empty. While this was a heartening response, shelters are only one example of victim services. Whether or not criminalized women in Canada have access to victim empowerment programs and other services provided by the state is another issue. Dual charging eliminates a woman's status as a victim and may well render her ineligible for these services. Further research into this area is required.

Issues such as loss of employment, financial problems, and loss of custody of their children may also result from arrest (Hirshel & Buzawa, 2002: 1459). Further, having been arrested, the victim may be hesitant to call the police again to report abuse if they continue to be victimized, or if the violence escalates (Hirshel & Buzawa, 2002: 1459, see also Dasgupta, 2002, Miller, 2001). Some scholars suggest that women's violent behaviour toward their partners may actually 'increase their vulnerability rather than their safety' (Bachman & Carmody, 1994, Bowker, 1983; Feld & Straus, 1989; Gelles & Straus, 1988; Straus, 1980 as discussed in Dasgupta, 2002:1372). The social costs of male violence against women have repercussions that reach far beyond the act of violence. Greater use of force by women is one such cost. Women who face regular abuse may feel that employing violence is the only response left to them. This

46 I contacted Harmony House, Interval House, Chrysalis House and Oshki Kizis Lodge on February 2, 2010.
employment of female violence can lead to “extreme guilt” which is a heavy burden for many women. Research on women’s violence in intimate relationships suggests that there is a direct linkage between the victimization they experience as a result of their partner’s violence, intimidation and coercion, and the violence that they themselves employ (Dasgupta, 2002:1372).

The Violent Woman?

Context, histories of victimization, power and control are important considerations in addressing women’s employment of force in domestic violence situations. A full analysis would no doubt indicate that not all women who engage in acts of violence have histories of victimization and that not all are in abusive relationships and responding to an abusive partner. Some women use force out of anger, or frustration; some may be exerting power and control and may be engaging in acts of violence more typical of male batterers (Miller & Meloy, 2006).

Arrest and a criminal charge may be appropriate responses for a small minority of women in domestic violence situations who do engage in generalized violent behaviour. The Miller & Meloy study (2006) documented that women who engaged in generalized violent behaviour in domestic violence situations represented only 5% of the women in the Female Offender Program (2006:100). Much more research needs to be done on these women in order for us to have a better understanding of the nature of their violent behaviours and the motives behind it. However, at present, the gender neutral/formal equality approach to domestic violence makes it extremely difficult to determine who the
women are who do engage in generalized violent behaviour and instead treats all women’s acts of violence as the same.

Where Do We Go From Here?

The issue of dual charging in Canada requires more research. The lack of statistical information makes it impossible to know the extent and nature of this problem. More research needs to be done directly with the women involved in dual arrests in order to bring visibility to this issue. As Harriet Taylor (1869, 1970) stated:

[W]e may safely assert that the knowledge which men can acquire of women, even as they have been and are, without reference to what they might be, is wretchedly imperfect and superficial, and will always be so, until women themselves have told all they have to tell (cited in Lahey, 1986:520).

Research is needed on if and why Canadian police officers are dual charging. We know that patriarchal assumptions are still prevalent within the criminal justice system, and that socially prescribed notions of what constitutes male and female play a role in officers’ decisions to arrest (see Rigakos, 1995). But what other factors are motivating this practice? Are misinterpretations of mandatory arrest provisions to blame? Is dual arrest the easiest solution to employ when confronted with a domestic violence situation where both parties have used force? Is the ‘assault is assault’ mentality prevailing here? Are officers unable to distinguish between who is the abuser and who is the victim? Primary aggressor provisions might assist police in determining whom to arrest and deter them from the easier response of dual charging. Finn & Bettis (2006), propose more stringent guidelines for police in terms of paperwork justifying why a dual arrest, or no
arrest was the chosen response. Accountability may be a key to reducing the incidence of dual arrest. Further police training in regard to the power and control dynamics inherent in battering could also be beneficial. As Osthoff (2002) points out:

I hear daily about police officers, prosecutors, and advocates whose actions appear to be premised on the notion that, if a woman used violence against her partner, she is a batterer (Osthoff, 2002:1527).

As feminists know, using force against a partner does not make a batterer. The power and control elements behind one’s use of force are what make a batterer. More data on officer perceptions of dual arrest in domestic violence situations is crucial to deconstructing and understanding the problem of dual arrest in Canada.

Further study is also needed on women who use violence. Are Miller & Meloy’s (2006) categories of violent women accurate and appropriate? Are they applicable in Canada? Would these categories be useful in helping us to understand Canadian women’s employment of force?

Conclusions

By taking ownership of the tasks of researching and theorizing women’s use of violence, feminists can at once lay bare women’s strengths and women’s suffering, a process I think will both empower women and harness the backlash (Renzetti, 1999: 52).

The issue of dual charging has brought the issue of women’s use of force into the open. This is an issue that has been typically shied away from by feminists. Renzetti (1999) credits this reluctance to delve into this issue to fear: fear that the
acknowledgement that women do engage in acts of violence will be misappropriated and ‘used against women’ (51). It was feared that the recognition of women’s violence could trivialize the problem of domestic violence against women (Shupe et al, 1987 as referenced in Dasgupta, 2002:1369), and as this thesis has demonstrated, to a certain extent it has. However, feminist reluctance to engage in the discussion has also contributed to the antifeminist backlash that is occurring in contemporary society. Fears are not discussed and assumptions are not challenged. A predominant belief of this backlash is that women and men are equally violent, but women are not held responsible for their actions (Renzetti, 1999:42). Proponents of this backlash also claim that male victims have been minimized by the feminist movement (Miller & Meloy, 2006:92). This backlash contributed to the removal of “women” from the violence against women analysis. Now, instead of violence against women, terms such as intimate partner violence, family violence and domestic violence are employed. These terms erase the gendered nature of abuse, and the prevalent problem of violence against women.

Feminists seem to get a few steps forward and then face major setbacks in regard to achieving equality. Dual charging appears to be a result of the backlash to women’s equality gains. The creation of battered women’s shelters, and recognition of domestic violence against women as a public problem were huge gains for women, and a threat to the patriarchal structures in society. When feminists lobbied for domestic violence to be treated in the same manner as any other violent crime, they achieved success. And now, that success is being turned against women. Dual charging is equality with a vengeance - You want equality? We’ll give you equality! And the violence
against women continues.

Renzetti (1999) encourages feminists to build a theory of women's violence, and to 'own the issue' in order to empower women and combat the backlash (51). In order to combat this feminist backlash, and work toward achieving substantive equality, I propose we go back to basics. Re-educate those who are willing to listen to the tenets, goals and ideas of feminism. Reclaim the earlier notions of radical feminism that sought to free us from our socially prescribed gender roles. Draw attention to all the domestic violence against women incidents occurring in contemporary society all over the world, and all the devastating effects this violence is having. Encourage engagement with the criminal justice system, but at the same time recognize its limitations, and seek to find alternative methods of assisting women experiencing violence. And finally, continue to research and explore the changing approaches to domestic violence and continue to try to improve the quality of life for women experiencing violence all over the world.
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