

LAW COMMISSION CONSULTATION PAPER 173

PARTIAL DEFENCES TO MURDER

SUBMISSION BY

THE MANKIND INITIATIVE

27th January 2004

1. Introduction

1.1 After decades of feminist ascendancy in society, men in generally experience sex discrimination in many ways, particularly when they encounter the public services, and this includes the law. In the recent past, the Law Commission itself has been highly responsive to the agenda of radical feminist activists, who have begun to secure privileges for women (in respect of sexual and domestic violence, and family law) at the expense of men's basic human rights.

1.2 The Mankind Initiative is a registered charity (number 1089547) that has been formed as a result of this discrimination to monitor and represent the interests of men within the context of equality of opportunity for all. Our charter is concerned with equal rights across the broad spectrum of the law, education, healthcare and employment.

1.3 One stated purpose of the Consultation Paper (Paragraph 1.5) is to inform public debate. ManKind welcomes the opportunity to engage in the debate, but our submission challenges a number of erroneous assumptions made by the Law Commission, and which predetermine the outcome of the review.

2. The Reality of Domestic Violence

2.1 The ManKind Initiative offers a number of services to victims of domestic violence (men, women and their children) and these are described together with some of our other activities in our Annual Report for 2003, shown in Appendix 1. [This appendix is not available in electronic format and is not

shown on this website] We are committed to:

providing advice and assistance through our telephone helpline service;

removing gender barriers to those who seek help;

challenging gender-specific policies that are counter-productive to solving the social problem of domestic abuse;

ensuring the provision of safe-houses for all victims of domestic violence, including men and children who are abused by women; and developing perpetrator programmes for both men and women.

2.2 We are working with a number of police forces (eg providing advice to them on how to encourage men to report abuse) and we are developing links with other reputable agencies to help victims of domestic violence. As a result of our work, we have begun to build up a catalogue of experience, particularly from the perspective of men.

2.3 ManKind has carried out three surveys of male victims and has available recorded case histories of men who have been subjected to life-threatening domestic violence by women. We are prepared to make this information available to the Law Commission on request. The case histories would be provided to the Law Commission on an in-confidence basis for the purpose of this consultation only.

2.4 It is a fundamental untruth that domestic violence is something that men do to women. The figures in Table 7 of the Consultation Paper taken from the British Crime Survey (2002/03) significantly understate the true level of domestic violence committed against men by women. The Home Office Research Study 191, published in January 1999 (1) is generally recognised as the most reliable survey of domestic violence carried out in Britain. Study 191 shows that 50% of total domestic violence victims in the short-term (over 12 months) are men who suffer at the hands of women, and 40% of total domestic violence victims in the long-term (in a life-time) are men who suffer at the hands of women.

2.5 Women are also violent towards children. The NSPCC report on child abuse published in November 2000 (2) provides the facts. Their report has shown that more violence or abuse towards children is committed by mothers than by fathers. Mothers were responsible for 52% of attacks and fathers for 45%.

2.6 Thus both men and women have the capacity for violence, and the assertion that women alone are brutalised and trapped in violent relationships is false. So too is the assertion that within families only men attack the vulnerable. The plight of male victims of female domestic violence is still relatively neglected in official and public policy.

2.7 The sudden loss of control is an aspect of human nature. Most people can comprehend the psychology of it, and recognise it; because we have all (men and women) experienced the effects of anger on our personal rationality and actions. This is why provocation as a partial defence is understood and accepted by society as a defence.

2.8 We are told that the Law Commission has long considered that the law of murder is overdue for review, but that its remit is limited to a review of partial defences to murder. The brief has been further artificially limited by a minister unduly influenced by a radical feminist ideology that seeks to legitimise and further institutionalise discrimination against men.

2.9 The introduction of a pre-emptive partial defence for murder and the withdrawal of provocation (ie anger and the sudden loss of control) as a partial defence, which is one of the options considered would, in reality, have the effect of making a new partial defence available to women, whilst simultaneously denying the existing one to men. This is because the law courts (ie both judges and juries) sympathise with the vulnerable. Vulnerability is another aspect of human nature and most people understand and recognise it. As society still considers women to be vulnerable relative to men in the context of violent conduct, the pre-emptive partial defence for murder will tend to be interpreted in favour of women only.

3. The Over-Emphasis on Violence, and Bias Against Men

3.1 Although cruelty has long been recognised by the NSPCC as the best general term for describing the way in which adults abuse children, the law over-emphasises physical violence between adults. This counts against men because of their perceived (but not always actual) greater strength and capacity to harm women. The law does not adequately recognise the cruelty of persistent or unrelenting verbal and emotional abuse which women can use (because of their relative weakness) against men, and which may provoke a violent reaction.

3.2 The Consultation Paper gives no explanation as to why violence in intimate relationships is any more serious and deserving of special attention than any other form of violence, certainly as far as a victim of “non-domestic” violence is concerned. More specifically, the document fails to explain why physical violence is considered to be more serious than persistent or unrelenting verbal and emotional abuse. This focus on physical violence discriminates against men.

Bias Against Men

3.3 “Safety and Justice: The Government’s Proposals on Domestic Violence” (3), (the Government’s Consultation Paper on the proposed Domestic Violence, Victims and Crime Bill) published in June 2003, recognises cruelty (in the form of emotional abuse) in the context of domestic violence. In view of this admission, the removal of provocation, as a partial defence against both violence and persistent or unrelenting verbal and emotional abuse (in line with the new definition of domestic violence), would be contradictory.

3.4 Extracts from the “Criminal Statistics England and Wales, 1997” (4) show that for the six year period from 1992 to 1997 males are more likely to be convicted than females, and the conviction is more likely to be for murder than manslaughter, and sentenced to a longer term.

3.5 Research Findings No. 10 of the Home Office Research and Statistics Directorate, is entitled “Does the Criminal Justice System Treat Men and Women Differently?” (5). This study found that a higher proportion of female offenders

are cautioned for serious offences. The evidence suggests that women are less likely to be remanded in custody than men, and overall women seem more likely to receive lenient sentences, even when previous convictions are taken into account. It is notable that even though the facts are plain to see, the researchers could not bring themselves to state outright that women are more likely to receive lenient sentences. The word “seem” has to be inserted, without any statistical support for this prevarication in reporting the results of the findings. Remarkably, the response of the researchers to the obvious bias against men revealed by the figures is to conclude that “there are grounds (**albeit not fully researched**) for believing that, in a system which deals very largely with male offenders, the needs of women offenders are not always effectively addressed.”

3.6 Research Findings No. 58 of the Home Office Research and Statistics Directorate, is entitled “The Sentencing of Women: a Section 95 Publication” (6). This large scale study found that men and women stand an equal chance of going to prison for a first violent offence, but among repeat offenders, women are less likely to receive a custodial sentence. Among first and repeat offenders, women convicted of violence and drug offences are always more likely to be discharged and men more likely to be fined. Remarkably, (again) in view of the clear factual evidence of bias against men, the Home Office researchers express concern that this different treatment of women may place them at a **disadvantage**, because “skipping a step on the sentencing ladder on one occasion will lead to the imposition of an even more severe sentence in the event of a **subsequent conviction**.” This is in spite of their own analysis of the facts, which concluded that among **repeat offenders** for a violent offence, women are less likely to receive a custodial sentence. The entrenched nature of sex discrimination in the Home Office is such that research findings of a clear legal bias against men provoke concern for women.

3.7 Further, Research Findings No. 86 of the Home Office Research, Development and Statistics Directorate, is entitled “Domestic Violence” (7). This document concludes that “traditionally, women have been viewed as the main victims of domestic violence. This survey uncovered relatively similar levels of recent domestic assault for men and, women within the last year.” It then rather curiously asserts that men are not “equal victims”, because amongst other more tangible reasons (like reporting fewer injuries) men were “less upset”, and “less frightened” than the female victims. We see here the recourse to

terminology that has no place in science, because it is so ill-defined as to be meaningless. We also note that the goal-posts are being moved by the Home Office researchers on behalf of women.

3.8 The results of such Research Findings Numbers show two things. Violent women are treated more leniently than violent men and the Home Office is not concerned with this obvious institutionalised sex discrimination against men. This is a result of the demonisation of men by radical feminists. There is thus no evidence for the claim that there is systematic bias against women in the criminal justice system, as appears to have been initially and uncritically accepted in the Consultation Paper.

4. The Neglect of Male Victims

4.1 Male victimisation is seriously neglected throughout the Consultation Paper, yet there is a growing body of evidence to show that female violence towards men is a serious problem.

4.2 “Statistics on Women and the Criminal Justice System (a Home Office publication under Section 95 of the Criminal Justice Act, 1991) (2000) (8) gave the main findings from of the Home Office Research Study 191 on Domestic Violence. The results of a self-completion questionnaire for the 16 to 59 years age group showed that 4.2% of women and 4.2% of men said that they had been physically attacked by a current or former partner in the last year. The study also found that 23% of women and 15% of men in the same age group said that a current or former partner had physically assaulted them at some time in their life.

4.3 These figures show that domestic violence is not “predominantly a matter of violence by men against women”, as erroneously stated in “Safety and Justice”, and also assumed in the Consultation Paper.

Bias Against Men in Safety and Justice

4.4 The Law Commission’s Consultation Paper also appears to have followed

uncritically the lead given by the Home Office's Consultation Paper "Safety and Justice". Unfortunately, the latter is not a sound basis to the review of partial defences. It lacked gender neutrality, made erroneous sexist assumptions, and its proposals would discriminate against men.

4.5 "Safety and Justice" claimed to be gender neutral, but many paragraphs contain gender specific statements that intentionally and unjustly present men in an unfavourable light. If 1 in 4 women and 1 in 6 men are said in "Safety and Justice" to be victims of domestic violence, then how can the "figures show that it [domestic violence] is predominantly violence by men against women". This distortion of the meaning of words in paragraph 10 is evidence of the institutional bias against men within the Home Office. So too, is the lack of help that the Government has provided for the 1 in 6 men who have experienced domestic violence. The box on page 14 of "Safety and Justice" showed that absolutely no resources are provided for these men.

4.6 Paragraph 25 of "Safety and Justice" also proposed anonymity for those who claim to be victims of domestic violence. This directly contradicts the assertion that the Government is committed to "open justice". If domestic violence is to be a criminal matter, then in the interests of "open justice" it should be tried in open court. It is remarkably inept that such anonymity should be proposed, just as secrecy is bringing discredit to our family courts. Invoking intimate sexual matters as an argument for the extension of secrecy into domestic violence cases is to demonstrate a fundamental lack of balance on the part of the Home Office. Justice and freedom are far more important issues to the individual than embarrassment, particularly in an age when sexual taboos have largely broken down and the public expression of sexuality is the norm.

4.7 Paragraph 29 of "Safety and Justice" proposes also the possibility of automatic reporting restrictions. This further contradicts the Government's claim that it seeks to defend "open justice" and "balance". The automatic restriction of reporting would have a disproportionate effect on men because false allegations could be made in secrecy and most allegations are made by women. This is sex discrimination.

4.8 Paragraph 50 of "Safety and Justice" sets out the proposal to invoke a restraining order when there is insufficient evidence to convict. This is a direct

assault on the presumption of innocence that would be wide open to abuse. It would have a disproportionate effect on men and would be a major erosion of men's human rights.

4.9 In conclusion, "Safety and Justice" is a remarkably sexist document that represents a determined institutional attack on the basic human rights of men. It is not a sound basis to the review of partial defences set out in the Law Commission's Consultation Paper, and any laws derived from its unprincipled approach could arguably be struck down by a European Court. In view of these considerations, the Law Commission should be wary of being drawn into a similar partial exercise.

4.10 Further evidence of institutionalised discrimination against men is seen in the Department for Constitutional Affairs: "A Report to the Lord Chancellor on the Question of Parental Contact in Cases where there is Domestic Violence", Final Draft, 29th February 2000 (9). The final draft of this report was sent to the Lord Chancellor and the seven members of the Children Act Sub-Committee included Mr Justice Wall (Chairman), and two partners in firms of solicitors. Yet Section 2, paragraph 2.4 reads, "similar points were made by other Respondents, [to the Consultation Paper] and it was pointed out that in our draft guidelines, number 5 referred to findings of fact in relation to domestic violence being made by the court, together with its effect on **"the child and the child's mother"**". There was no mention of the child's father. This is in spite of the fact that paragraph 2.5 of the report accepts that any definition of domestic violence should be gender neutral. There is doubt whether even the language of the final definition is gender neutral, because it appears to deny that the resident parent, over 90% of whom are mothers, can be guilty of domestic violence. However, the fact that the eminent judge and his fellow senior lawyers had to have the matter of gender neutrality pointed out to them raises very serious concerns for the legitimate interests of men.

5. The Flawed Research behind Battered Woman Syndrome (BWS)

5.1 Research and scientific rationality have become strongly embedded in

modern society as the basis to Government policy and social change. The problem is that radical feminist advocates are prepared to corrupt scientific research methods to distort facts, shape public opinion and secure privileges for women at the expense of men. This is done by asking self-selecting and unrepresentative groups of people loaded questions, using vague and subjective definitions to produce the desired results and ignoring or misrepresenting inconvenient results. They just keep asking loaded questions until they get the answers they want.

5.2 The corruption of research by feminist ideology has attracted the attention of widely respected social commentators. They are highly critical of the way in which flawed research is being used to influence government policy and promote legal reforms that do not reflect the values of mainstream society. Some recent examples of their articles covering domestic violence and related family issues are given in Appendix 2). [This appendix is not available in electronic format and is not shown on this website] The commentators also express the incredulous and antagonistic reaction of ordinary people towards a radical feminist agenda that is leading to the demonisation and marginalisation of men.

5.3 The controversial concept of the Battered Woman has been effectively demolished by scientific studies that have been carried out properly according to the universally recognised rules of research. The paper produced by D. L. Faigman and A. J. Wright in 1997 (“The Battered Woman Syndrome in the Age of Science”) (10), and published in Volume 39:67 of the Arizona Law Review, exemplifies this.

5.4 This paper assesses the quality of the “research” carried out by Leonore Walker, which forms the basis to her book, the “*Battered Woman*”. This book was published in 1979 and introduced the working hypothesis of BWS. Faigman and Wright’s methodological critique states that BWS depends on two theories to explain why the law should be favourably disposed to female killers in certain situations, for example, when they have carried out a premeditated and intentional killing, having suffered from serious domestic violence. These are the “Cycle Theory” and “Learned Helplessness”.

5.5 According to Faigman and Wright, “the cycle theory forms the conceptual bridge that spans the time gap between the batterer’s threat of death

or serious bodily harm and the defendant's act." The cycle itself is said to have three distinct phases. A "tension building" phase erupts into an "acute battering incident", which in turn is followed by "loving contrition." The woman is then said to develop a "cumulative terror", which extends beyond the battering episodes themselves.

5.6 Learned helplessness is said to be the condition of women who have become so demoralised by domestic violence of their husband or partner that they sink into a state of psychological paralysis and become unable to take any effective action to leave an abusive relationship.

5.7 Taken together under the umbrella of BWS these two theories have been used by the defence in trials of female killers, to avoid the need to show that the women acted in self-defence (in the heat of the moment), and to explain why they did not take the option of leaving the abusive relationship.

5.8 The empirical vacuity of BWS is revealed by the following flaws in Walker's methodology, which are considered by Faigman and Wright to be blatant violations of some of the most elementary aspects of the research method.

The "cycle theory":

Walker's interview technique allowed the participants to easily guess what the researchers hoped to verify in the study.

Walker's interviewers not only knew the "correct" answers to the questions, but also reported their own estimation of whether the participants substantiated the correct outcome.

The participant's responses were not recorded.

The cycle theory was not considered within a time-frame, and this is necessary to give it legal meaning, eg in relation to self-defence, premeditation and intention to kill.

Walker did not establish any empirical relationship between the "cycle theory" and the "cumulative terror" that purportedly explains the time that

passes between the batterer's attack and the woman's response.

Walker claimed to have identified a distinct behavioural cycle, but if the "cycle theory" is to have any coherence, all three stages must occur. But Walker provides data on the occurrence of the "tension building" and "loving contrition" stages separately, so that there is little data on the proportion of women in her study who experience all three stages. From the figures produced by Walker, Faigman and Wright calculate that only about 38% of the women actually experienced the entire "cycle". Thus it is not at all clear that Walker's own study supports the "cycle theory" of violence. As is often the case with research driven by feminist ideology, the results of the study do not support the conclusions.

"learned helplessness":

From the theoretical perspective being pursued by Walker, one would predict that a battered woman suffering from learned helplessness would not assert sufficient control over their circumstances to kill the batterer.

Moreover, Walker failed to employ a control group, so none of her conclusions about the "helplessness" of her participants can be placed in any comparative context relative to other women.

Finally, the majority of women in Walker's study group did not kill anyone, so it is not obvious that the psychological profile of most battered women generalises to the relatively small number of battered women who kill.

5.9 Faigman and Wright state that BWS, first proposed in 1979 and based on the clinical observations of a single researcher, has yet to be corroborated by serious and rigorous empirical research work. They conclude in the most unequivocal terms that BWS "is a product of advocacy and not science. They go on to say that it was "designed originally to support justification claims by battered women who have killed." Walker's book is described by Faigman and Wright as "little more than a patchwork of pseudo-scientific methods employed to confirm a hypothesis that its author and participating researchers (described as

being driven by political ideology) never seriously doubted. The ideology driving the researchers was feminism.

5.10 Leonore Walker was engaged in the process of working back from the answer to achieve radical feminist outcomes. Unfortunately, in the late 1970s society was not aware of the way in which research in the social sciences was being used by ulterior motives to shape the truth. It has taken more than three decades for scientific rationality to prevail over their gatekeepers in the legal system. In short, Walker's book is considered a good example of "how not to conduct empirical research..." and BWS is "without empirical foundation." This is a damning verdict on a theory that has formed an important basis to many legal defences, and the application of this theory has probably denied justice to innocent men.

5.11 In his paper on the "Battered Woman Syndrome", January 2002 (11), J W Dixon PhD, JD, states that BWS has not been established nor accepted in the field of psychology by serious and rigorous empirical researchers. He also says that "BWS appears to be the product of legal advocacy and not science."

5.12 On "learned helplessness" Dr Dixon makes the point that learned helplessness can be induced in laboratory animals, but with laboratory animals we do not observe a sudden rousing of rage and aggression at any point in the course of their condition. "Thus BWS does not follow the known course of experimentally induced helplessness syndromes. BWS is an anomaly. It does not exist in the laboratory, and it may well not exist in the real world." Dr Dixon concludes that "women who kill should be treated by the courts with the existing laws that have served us well for so long."

5.13 In spite of the scientific world distancing itself from the discredited concept of BWS, the Consultation Paper rather perversely refers to it as though it continues to have a valid purpose in law. It is surprising and a matter of concern that no critique is offered in the Consultation Paper. It is clearly a product of the flawed methodologies and false conclusions that are a characteristic feature of research commissioned and carried out by biased advocates.

5.14 Paragraph 2.18 of the Consultation Paper asks "can any law take account of motives without being open to abuse?" Paragraph 2.19 then goes on to refer to

research on this subject carried out by Professor B Mitchell, in which the “battered spouse scenario” was placed by approximately 25% of survey participants (822 people) in the “least culpable” of categories. This means that 75% of the participants who placed battered spouses (who killed) in the more culpable categories, which will have included murder.

5.15 Furthermore, in paragraph 2.20, only approximately 15% of the survey group are said to have described the battered spouse category as “killings”, manslaughter.

5.16 In response, it has to be asked “what do these figures really mean?” The fact that 75 to 85% of the participants did not support the “battered spouse scenario” is hardly an endorsement of the Law Commission’s approach to legal reform, which is supposed to be in the interests of society as a whole.

5.17 Paragraph 2.21 says that “the response to the killing by the battered spouse was wide ranging”. This means that people do not have unified views on BWS as a legal defence. Finally, it is said that the relative gravity of the offence was determined [by the participants] in part by the presence of alternative courses of action, and by premeditation. In a nutshell, the survey participants are saying that the female killers are responsible for their actions, even if they claim to be battered. All of this adds up to support for the law on murder as it stands.

5.18 The argument draws our attention in paragraph 2.24 to the sympathetic reactions of a small study group (33 people) towards killers with a mental illness and seeks to apply the conclusion that the public do not present “especially primitive views about the way in which the criminal justice system should deal with homicide...” directly to women who claim to have killed under the duress of domestic violence. The Law Commission is making the invalid assumption that the study group would be as sympathetic towards women who claim to be battered as they would towards the mentally ill. This hypothesis was not tested.

5.19 The current research by Professor Mitchell (paragraphs 2.25 and 2.26) is looking more closely at public attitudes towards provocation and will again be based on a small study group (40 people). Such a small study will not provide a reliable indicator of public opinion about (a) what is important to ordinary people (b) what should be done about it in terms of legal reforms.

5.20 Instead, the research is drawing the attention of the study group towards particular aspects of provocation, including the female perspective. In other words, the study group is being told what is important, and the questions could lead them to the desired research outcomes, which could be anticipated from a reading of the Consultation Paper. No doubt Professor Mitchell will be aware of the pitfalls of pseudo-science, and in particular Walker's interview technique, which allowed the participants to easily guess what the researchers hoped to verify in their study.

6. The Consultation Paper

6.1 The Consultation Paper states (paragraph 1.4) that a review of the law of murder would logically begin with a consideration of the elements of murder, before considering defences to murder. This has not been done and so introduces an element of uncertainty to the proposals for partial defences to murder.

6.2 Table 6 of the Consultation Paper presents misleading statistics, which significantly understate the proportion of male domestic homicide victims. The table shows male domestic homicide victims as a proportion of **male** victims (only) for all types of homicide. It also shows the percentage of female domestic homicide victims as a proportion of **female** victims (only) for all types of homicide. There is no rational basis for the selection of these parameters. The true comparison is between the percentages of male and female domestic homicide victims, as proportions of **all** domestic homicide victims ie both men and women. In other words, the proportions of male and female victims in the total study population. The proportion of male domestic homicide victims is significantly understated by Table 6, because there were a much larger number of male homicide victims (582) than female (250) in the study period. In reality the proportion of male domestic homicide victims is significantly higher. The Criminal Statistics for England and Wales (1997) indicate that men account for between 20 to 25% of domestic homicide victims, and not 5 to 9%, as misleadingly presented in Table 6.

6.3 Table 6 seems to assume that men and women live separate lives in

different worlds. Leaving to one side the motive for this clear manipulation of statistics, it is perverse to separate the sexes into exclusive categories in a study that is actually concerned with the way in which men and women relate **towards each other** at close quarters in the domestic context.

6.4 The Government's priority, reflected in the Law Commission's focus on partial defences in the context of domestic violence and homicide, is further evidence of a bias that apparently seeks to give women a privileged and unfair advantage over men under the law, and which would undermine the basic equal human rights of men.

6.5 The neglect of male victimisation that permeates the Consultation Paper is evident in paragraph 2.7. This states that "of particular importance is the significant difference between the percentages of homicides committed by male partners compared with that committed by females." As explained above (and with reference to Table 6) this difference has been exaggerated in the Consultation Paper by the obvious manipulation of statistics.

6.6 Table 7 taken from the British Crime Survey (2002/03) shows that 27% of reported incidents of domestic violence were committed against men, and this takes no account of the under-reporting that occurs as a result of cultural expectations that prevent men from admitting that they suffer violence at the hands of a wife or partner. Such pressures are greater on men than on women.

6.7 Thus, it can be argued that the interests of female killers who claim to be victims of domestic violence are not a priority, and they should not be considered in advance of a comprehensive review of the law of murder. Domestic violence should be put into its correct perspective and the circumstances of both male and female victims considered.

6.8 Paragraph 1.4 states that this review is an important project, but in reality, the pre-emptive partial defence to murder is the pre-occupation of vociferous, but small and unrepresentative pressure groups (eg Justice for Women), who are not concerned with and do not reflect the best interests of society as a whole.

6.9 The proposed Domestic Violence, Victims and Crime Bill that addresses the issue of domestic violence should not be allowed to over-influence the

programme of law reforms, which should be based on logic and rationality in the interests of the wider public, rather than victim client groups.

6.10 In paragraph 1.16 it is said that “concern has been expressed that the current law is unsatisfactory in the way that it operates in relation to... abused women who murder their partners.” A number of questions arise from this statement. Who has expressed this concern? Who do they represent and what are their motives? In making this statement without critical consideration, the Law Commission appears to have been unduly influenced by a feminist ideology that has no regard for the rights of men, and which does not represent the best interests of society.

6.11 In paragraph 1.17 the Consultation Paper states that “We also devote particular attention to the topic of abused women who kill.” Of the small number of female murder defendants each year, no evidence is brought forward to indicate (a) how many of these defendants accused their murdered husbands/partners of domestic violence, and (b) how many put forward verifiable evidence to support their accusations against their husbands/partners, who were in no position to defend their reputations in court.

6.12 No evidence is brought forward in the Consultation Paper to reliably show how many of the male victims of domestic homicide actually inflicted serious, or indeed any violence on their wives/partners. They are simply assumed to be guilty of domestic violence by the arguments repeated by the Law Commission.

6.13 The introduction of a pre-emptive partial defence for murder would introduce difficulties and confusion over the interpretation of vague and subjective definitions and there would be greater opportunities for abuse and injustice. The damage to public confidence in the law would be out of all proportion to any claimed benefits. It would also seriously undermine the protection of men (both innocent and otherwise) against pre-meditated murder by wives and partners. It would negate a fundamental human right; the right to life.

6.14 If provocation is said by the Law Commission to have “serious logical and moral flaws”, even when it is based on as simple and well understood aspect of human nature (anger and sudden loss of control), then it would be wilfully

negligent to introduce a pre-emptive partial defence for murder, based as it would be on a less well understood and often unfathomable aspect of human nature, namely the motives of the defendant.

6.15 Paragraph 1.23 goes on to say that “in recent times, the fault lines [over provocation] have widened”. In reality, all that has happened is that vociferous advocates have been able to exert undue influence on the Criminal Justice system to elevate the interests of particular groups of people above all others.

6.16 Paragraph 1.50 asserts that “Killings by women of their partners are more likely because of abuse. But as already stated there is no evidence in either Tables 4 or 6 to show that the male victims of domestic homicide are necessarily guilty of domestic violence. The Law Commission is not in a factual position to make this assertion, which forms such an important basis to a pre-emptive partial defence to murder.

6.17 This paragraph also states emphatically that “it has to be recognised” that the partial defence of provocation reflects an “essentially male view of society”, because a time interval between a domestic violence incident and a consequent murder usually negates a partial defence of provocation. As stated, the partial defence of provocation (where there is no intention to kill) is based on an aspect of human nature that most people can comprehend and accept. This reflects the understanding of an aspect of human nature by society as a whole, and the degree of certainty that a murder was provoked.

6.18 The so-called “male view of society”, said to be evident in the partial defence of provocation, is apparent only from a very narrow and partisan feminist perspective; one that is not shared by open-minded people concerned with justice for all. Nor is it supported by official statistics of outcomes in homicide cases. The arrival of sexual politics has not changed human nature, and the Law Commission appears to be unduly responsive to radical feminist advocates who are not representative of mainstream society.

6.19 Paragraph 1.67 states that “It would be wrong to introduce special rules relating to domestic killings unless there is medical or other evidence which demonstrates a need and a proper basis on which to do so.” Others are

addressing in more detail the pseudo-“science” that has been employed to advance the interests of women at the expense of men. In particular there is the artificial construct of the “Battered Woman Syndrome”. The academic demolition of this discredited vehicle for legal activism has been summarised above.

6.20 If it is wrong to introduce special rules for domestic killings, ManKind questions the Government’s pre-occupation with this subject on behalf of female defendants, given the small number of women involved. In addition to the misplaced priorities, ManKind considers there to be no valid evidential basis to the introduction of special rules in the form of a pre-emptive partial defence for murder, specifically to assist women, and the removal of the existing provocation defence, specifically to disadvantage men.

6.21 Morality is brought into play in paragraph 4.163, which states that the current partial defence of provocation “elevates the emotion of sudden anger above the emotions of fear, despair, compassion and empathy”, and asks whether it is morally sustainable for sudden anger to found a partial defence to murder. Paragraph 4.165 goes on to say that “many would argue that it is no longer “acceptable” to kill in anger in the twenty-first century.” How can killing in delayed anger, revenge, fear or despair be any more moral? The Law Commission does not explain this apparent double standard.

6.22 The unasked question that should have been raised to balance the argument in this part of the document, is whether it is morally acceptable in the twenty-first century to introduce a partial defence to murder that allows women (in reality they are the only ones who would be considered vulnerable and thus able to use this defence) to carry out the premeditated killing of men. If this is what is proposed, then at least 50% of the population (and hopefully many more) are likely to seriously question both the representative legitimacy and judgement of the Law Commission.

6.23 The Consultation Paper as a whole and paragraph 4.173 in particular makes reference to BWS as though it is an accepted concept, when it is clearly the product of biased research commissioned by radical feminist advocates

6.24 In paragraph 4.173, it is concluded that “we [the Law Commission]

regard the law of provocation ... as **profoundly** unsatisfactory.” The emphasis is ManKind’s. On any rational reading of the Consultation Paper to this point, there is no justification for the use of the word “profoundly”. The arguments in the document simply do not support this conclusion.

6.25 Paragraph 12.7 invites consultees to “consider the matter from a moral viewpoint.” In moral terms, therefore, how can the law provide a pre-emptive partial defence for women, who carry out the premeditated and intentional killing of men, who (for the sake of argument), have actually subjected them to domestic violence, when the women:

have other practical options, eg ousters, exclusion orders, and domestic violence refuges, particularly in view of the priority given to domestic violence by the police and social services;

are often in a mutually abusive relationship, and the killing occurs simply because the women have instigated more than their usual level of violence; or women have intentionally used excessive force in retaliation?

7. ManKind’s Response to the Law Commission’s Questions

7.1 The ManKind Initiative takes the view that no changes are necessary to the law on partial defences to murder. In particular, the current partial defence of provocation is sound in principle, and reflects the values of mainstream society. A similar view can be taken of diminished responsibility.

Conclusions

8.1 ManKind questions the true objectives of those who seek to change the law on partial defences to murder. Their motivation appears not to be greater justice under the law for all, but to gain unfair privileges for certain groups of people. They assert (incorrectly) that women accused of domestic homicide are treated more harshly than men accused of the same crime. Writing to the Times in 1993 (12), Christopher Nutall (at that time Director of Research and Statistics at the Home Office) said the following:

- “I have analysed the facts behind the 1,071 such killings which took place between 1983 and 1991...”
- “More than 90% of those accused of domestic killing, whether male or female, were indicted for murder. At the trial, 22% of the women but only 5% of the men were acquitted of all charges.”
- “At the trial, of those found guilty of unlawful domestic killing, 81% of the women were found guilty of the lesser charge of manslaughter, whereas only 62% of the men were.”
- “As for differences in sentencing those found guilty of domestic homicide: between 1989 and 1991, 73% of men convicted of manslaughter received a prison sentence compared with only 29% of women.”
- “The average sentence length for men found guilty of manslaughter was 56 months; for women it was 47 months. And 59% of women were sentenced to either probation or a suspended sentence compared with 12% of men.”

8.2 Together with the evidence from the Home Office Research Findings quoted above, it is obvious that women accused of domestic homicide are treated more leniently than men accused of the same crime. The bias is against men.

8.3 The Law Commission’s desired outcome is clearly signalled in the Consultation Paper, which is effectively advocating a pre-emptive partial defence for murder and at the same time the withdrawal of provocation.

8.4 This would in effect deny men access to the partial defence of provocation because it is “immoral” to accept killing in anger or jealousy, whilst at the same time offering a new pre-emptive partial defence to women because it is apparently moral for them to kill out of fear and despair. The Law Commission does not explain this apparent double standard, which is based on sexist assumptions about the perceived different emotional reactions of men and women. Neither does it explain how premeditated killing can possibly be

“Moral”.

8.5 A pre-emptive partial defence to murder would be difficult to define in terms of objective criteria, and wide open to abuse by those who intentionally kill in delayed anger and revenge, or in malice. It could become a blanket excuse for murder. In an age when the legal establishment has set its face against capital punishment, a pre-emptive partial defence appears to be a charter for “citizen executions”.

8.6 Paragraph 1.66 of the Consultation Paper states that “It is obvious that the criminal law ought not to have a gender bias”. In spite of this, the Consultation Paper is not gender neutral. On the contrary, it appears to be unduly influenced by radical feminist ideology. Throughout the document there is the unwritten and unchallenged assumption that accusations of domestic violence made by female defendants are true. There is a lack of emphasis on the need for evidence to prove the accusations of domestic violence made by female killers about their deceased husbands and partners. In the absence of the need for such proof, a pre-emptive partial defence could become a licence to kill.

8.7 Similarly (and in view of the practical options available), victims of domestic violence who kill should have to prove that there was no way out of the abusive relationship.

8.8 Furthermore, in view of the evidence for female violence towards men summarised above, male victimisation is seriously neglected throughout the Consultation Paper, as is the issue of domestic homicides within same-sex relationships. If it is “obvious that the criminal law ought not to have a gender bias”, then the interests of these groups should also be given careful consideration. After all, the law has to be applied to everyone, and not just female killers.

8.9 Accordingly ManKind takes the view that:

The Law Commission’s conclusion that they “regard the law of provocation ... as **profoundly** unsatisfactory” is not supported by the arguments in the Consultation Paper. The current partial defences of provocation and the concept of diminished responsibility are sound in

principle, and reflect the true values of mainstream society.

- .. A pre-emptive partial defence would increase the current bias against men in the treatment of domestic homicide.
- .. In today's society, the abusive behaviour of a victim should never be regarded as a partial justification for a domestic killing. Such justification is not, in fact, the morality of mainstream society in the twenty-first century.
- .. Domestic violence should be put into its correct perspective. The interests of the relatively few female killers who claim to be victims of domestic violence are not a priority, and they should not be specifically considered in advance of a general review of the law of murder.
- .. The law does not adequately recognise the cruelty of verbal and emotional abuse, which can also provoke a violent reaction, and the exclusive focus on physical violence has the effect of discriminating against men.

The Mankind Initiative

27th January 2004

References

1. Home Office Research Study 191. 1999
2. NSPCC report on child abuse published in November 2000
3. "Safety and Justice", the Government's Consultation Paper on Domestic Violence. June 2003

4. “Criminal Statistics England and Wales, 1997” (Cm 4162)
5. Research Findings No. 10 of the Home Office Research and Statistics Directorate, entitled “Does the Criminal Justice System Treat Men and Women Differently?” by C Hedderman and M Hough
6. Research Findings No. 58 of the Home Office Research and Statistics Directorate, entitled “The Sentencing of Women: a Section 95 Publication”, by C Hedderman and L Dowds
7. Research Findings No. 86 of the Home Office Research, Development and Statistics Directorate, entitled “Domestic Violence”, by C Mirrlees-Black and C Byron
8. “Statistics on Women and the Criminal Justice System” (a Home Office publication under Section 95 of the Criminal Justice Act, 1991) (2000)
9. Department for Constitutional Affairs: “A Report to the Lord Chancellor on the Question of Parental Contact in Cases Where there is Domestic Violence”, Final Draft, 29th February 2000 (9).
10. D. L. Faigman and A. J. Wright. 1997. “The Battered Woman Syndrome in the Age of Science”. Arizona Law Review. Volume 39:67
11. J W Dixon, PhD, JD. January 2002. “Battered Woman Syndrome”. ExpertLaw.com website.
12. C Nuttall. “Courts Regard Female Killers as no Deadlier than the Male.” Letter in The Sunday Times, Section 2, Page 7, 9th May 1993.