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'AS EVERYBODY KNOWS'
Countering Myths of Gender Bias in Family Law

Angela Melville and Rosemary Hunter[*]

According to certain media commentators, supporters of the men's movement, and even some family lawyers, 'everybody knows' that family law is biased against men. This article draws upon empirical research which shows that the incidence of domestic violence in Family Court cases is relatively high, and that women are often reluctant to take out a domestic violence protection order even if domestic violence has occurred. Despite the high incidence of domestic violence, the Family Court generally supports men having contact with their children and, rather than the Family Court being biased towards women, the very opposite sometimes occurs. It would appear that what 'everybody knows' are a number of myths that can be located within a broader backlash against feminism, and that these myths fail to stand up to empirical testing.

Introduction

The title of this article is taken from a comment made by Bettina Arndt, contributor to the *Sydney Morning Herald* and other publications, and well-known advocate of the Australian men's movement. Arndt had accused the Family Court of discriminating against men, so that their feelings of frustration and anger triggered acts of violence. She then denied that she was inciting violence in the Family Court, arguing that: 'Everybody knows that in the majority of cases where violence does erupt it's over denial of access.'[1]

Arndt's use of the phrase 'everybody knows' warrants closer scrutiny. This phrase is used to make claims that women routinely deny contact to the fathers of their children following separation, and that family law and the Family Court are biased against men. These claims apparently appeal to 'common sense' and gloss over the fact that they lack any empirical basis. They are often given credibility without the critical attention that they deserve, and this acceptance has the potential to cause very real harm. As Kaye and Tolmie explain:

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1 Vogel (1996).

> We want to challenge the views presented by many fathers' rights groups because we are concerned about the extent to which they have the potential to influence public opinion and attitudes towards violence against women and children. We are aware of the fact that public opinions and attitudes exist in a symbiotic relationship with public discourse on violence, particularly within the media and the legal system. It is therefore essential to caution against reiteration (or indeed, implicit support) by the media and the legal system of any views which do not reflect the truth about violence.[2]

The intention of this article is to continue the work of researchers such as Miranda Kaye and Julia Tolmie in exposing myths generated by some (although not all) factions of the men's movement.[3] Whereas Kaye and Tolmie focus on myths generated by fathers' rights groups, this article looks more broadly at the men's movement. Kaye and Tolmie describe claims made by fathers' rights groups as 'retrograde mythologies about violence and problematic stereotypes about women'.[4] An understanding of the history of the men's movement, and in particular of how it differs from earlier men's groups, suggests that mythologies operate in more complicated ways. Kaye and Tolmie provide an invaluable critique of such myths; however, they do not provide an insight into how these claims are produced. Therefore, they do not examine the 'deeper' beliefs that underlie myths of gender bias in family law and the Family Court.

History of the Men's Movement

The men's movement began in the United States in the early 1970s, with the emergence of various 'men's groups'. These groups were typically small, flexible and anti-authoritarian, and arose in imitation and support of the Women's Liberation Movement. Their members sought to confront and change masculinity, in the form of dominant masculine roles and values, in order to address the oppression of women. As such, these groups represented an adjunct of feminism, especially of liberal feminism. The focus on the need for radical reform was an important feature of these groups. They stressed the need for social change, at both a structural and a personal level, and were often connected with other social change movements, such as socialism and environmentalism.[5]

Connell argues that these early men's groups generally faced difficulties in sustaining a critical stance towards hegemonic masculinity. They were often met with scepticism from feminist groups, satirised by the mass media and taunted by supporters of hegemonic masculinity. Their attempts to undermine the patriarchal order from a position of relative power led to a tension, which

2 Kaye and Tolmie (1998a), p 53.
3 Kaye and Tolmie (1998a), p 53; Kaye and Tolmie (1998b); Kaye and Tolmie (1998c).
4 Kaye and Tolmie (1998a), p 53.
5 Connell (1995).

Connell terms 'gender vertigo', which most groups failed to overcome. Consequently, the early men's groups were faced with the constant threat of disintegration, and most were unstable and short-lived.[6]

Following from these early groups, a more conservative form of men's movement emerged in the late 1970s and early 1980s, and was again particularly focused in the United States. These groups considered hegemonic masculinity not as a source of oppression, but as an essential and endangered life force. Their response was to advocate 'masculine therapy', which was aimed at 'healing the wounds done to heterosexual men by gender relations'. Thus issues raised by feminist theorists and activists and the early men's groups became reinterpreted as 'therapeutic issues'. Men's therapeutic groups advocated the need to restore their 'deeper masculinity', which had been lost or damaged due to social change.[7]

The new men's movement largely disempowered the momentum achieved by the early men's groups. It did this by translating social issues into psychological issues, and reconceiving power as being entirely internalised and individualised rather than structural. Men were seen to be powerless, as they suffered from emotional and psychological damage. Women's experiences of, powerlessness, caused by institutionalised sexism, were overlooked. Consequently, these groups not only disdained radical reform, they were actively 'pro-male' and anti-feminist.[8]

Myths of the Men's Movement

The reinterpretation of social issues into psychological issues has facilitated a number of myths that have gained some degree of credibility. Several of these myths will be examined, and then countered with empirical material. Much of this material is taken from a larger study aimed at comparing services received by legal aid clients with those received by self-funding clients in family law. Within the legal aid group, the study compared the services received by clients of private solicitors and those of Legal Aid Commission in-house practices. The study attempted to provide as complete a picture as possible of family law legal services, and to this end involved examination of solicitors' files, interviews with solicitors and a survey of clients' views.[9]

6 Connell (1995), p 224.

7 Connell (1995), p 206.

8 Connell (1995).

9 Hunter et al (2000). The study was conducted across four states: New South Wales, Victoria, Queensland and South Australia. The in-house family law practice in each of the state Legal Aid Commissions agreed to participate, and private family law solicitors in the four states were also invited to participate. The solicitors who agreed to do so were asked to forward information about the study to clients who had been involved in contested children's matters in the Family Court, and whose cases had been finalised between August 1998 and February 1999. These clients were asked for permission for the researchers to view their files, and were also invited to complete a client survey. The Legal Aid Commissions gave the researchers access to their files meeting the same criteria, pursuant to their research functions, and in-house clients were also invited to participate in the client survey. Ultimately, the study involved interviews with 23 in-house solicitors, 60 private solicitors from 55 firms, and a further 20 solicitors who were prepared to be interviewed but not to include their clients in the study; analysis of 176 files; and 113 client surveys (69 women, 44 men). Further information about the objectives and methodology of the study is set out in Hunter et al (2000), pp 1–4 and Ch 2. Note that the study did not specifically set out to address claims of gender bias in family law, but generated a considerable amount of empirical material that sheds light on these claims.

Myth #1: Access Bitches

The first myth to be examined is the claim that women fabricate allegations of violence and abuse in order to gain tactical advantage in family law disputes and to derive spiteful satisfaction from denying men contact with children. This myth asserts that one way in which women do this is by taking out unmeritorious Apprehended Violence Orders (AVOs).[10]

This myth has gained some credibility despite the lack of empirical evidence. For example, a recent New South Wales review of AVO legislation quoted an article from the *Newcastle Herald*, which proclaimed that 'hundreds of people are abusing the [AVO] system'.[11] Hon PJ Hannaford told the New South Wales Legislative Council: 'Whilst we might not like it, AVO proceedings are being used as tools in custody battles and in matrimonial arrangements. I believe that that is an inappropriate use of AVOs.'[12] A study conducted by the New South Wales Judicial Commission in 1999 into the role of magistrates in cases involving allegations of domestic violence found that a majority of survey respondents 'agreed that DVOs were used by applicants (often on the advice of a solicitor) as a tactic in Family Court proceedings to deprive their partner from access to their children'.[13] In the same year, one of the first issues to be addressed in a national discussion paper on model domestic violence laws was the allegation that domestic violence legislation has been abused to gain advantage in family law proceedings.[14]

In our interviews, several family law solicitors also expressed a belief in this myth, asserting that many women were 'access bitches', who deliberately fabricated allegations in order to deny contact. Our research, however, failed to reveal instances where the myth of 'access bitches' was based on reality. From the 176 files that we examined, 95 contained evidence of domestic violence,

10 Kaye and Tolmie (1998a, 1998b). Note that 'AVO' (or ADVO) is the New South Wales terminology. In other states, such orders are known variously as Intervention Orders (Victoria), Protection Orders (Queensland, ACT), Restraining Orders (South Australia, Western Australia, Northern Territory) or Restraint Orders (Tasmania).

11 Criminal Law Review Division, NSW Attorney-General's Department (1999), p 5.

12 Criminal Law Review Division, NSW Attorney-General's Department (1999), p 5.

13 Hickey and Cumines (1999), pp vii–viii. Tempering this statement, some respondents claimed that these tactics were not used in their courts, or that the problem was exaggerated. Two thirds of respondents disagreed that AVOs were unfair to men, and a large majority felt that the level of proof was appropriate.

14 Domestic Violence Legislation Working Group (1997). See also Hunter and Stubbs (1999), pp 12–13.

representing 54 per cent of the cases in total. Of these cases, 38 per cent involved instances where an AVO had *not* been obtained. This would suggest that — rather than being 'access bitches' — in cases where domestic violence is an issue, women may in fact be reluctant to take out AVOs.

Further countering this myth, there is a lack of empirical evidence to suggest that women believe that allegations of domestic violence provide an advantage in family law proceedings, or that they fabricate allegations to gain tactical advantage. For instance, a study into child sexual abuse allegations in Australian family law proceedings found that, in a majority of cases, allegations were not made for tactical advantage.[15] Several other studies have found that women are often reluctant to take out AVOs, and tend to do so only as a last resort in response to repeat and serious victimisation.[16]

Trimboli and Bonney acknowledge that proceedings in the Family Court are often accompanied by AVO complaints; however, this does not necessarily mean that women are lodging complaints in order to gain tactical advantage.[17] They point out that the timing of AVOs may reflect the fact that violence often escalates at the time of separation and the issuing of an application for parenting orders (or indeed may precipitate separation). As Sheehan and Smyth state:

> A commonality of violence among those who divorce is evident. When broadly defined, spousal violence is not an exceptional circumstance for divorced women and men but rather the norm.[18]

Several authors have argued that AVOs may in fact be used vexatiously by men making cross-applications, rather than by women denying contact.[19] This claim, however, also lacks empirical support.[20]

Men's groups further claim that, with or without the aid of AVOs, women deliberately and maliciously refuse to comply with contact orders, and that it is then very difficult for fathers to enforce such orders. Recent evidence, however, suggests that these claims have very little basis in fact. Rhoades et al, in a study of cases in the Family Court from June 1996 to the end of 1999, found that most resident parents (who are largely mothers) are supportive of contact between their former partner and their children. Few women had sought to deny contact between father and child, even if there had been a

15 Hume (1995). By contrast, one study discovered that child protection workers tend automatically to consider allegations of child abuse made at the same time as Family Court proceedings as vindictive, malicious or not serious, creating obvious risks for the children involved: Rendell et al (2000).

16 Stubbs and Powell (1989), p 83; Trimboli and Bonney (1997), p 31; Wearing (1992).

17 Trimboli and Bonney (1997).

18 Sheehan and Smyth (2000), p 117.

19 Todd (1994), p 38; Spowart and Neil (1997).

20 Criminal Law Review Division, NSW Attorney-General's Department (1999), p 6.

history of domestic violence. Women were more likely to request some form of safety measure, such as supervised contact, rather than to deny contact.[21]

Rhoades et al also report that Family Court judges and judicial registrars feel that there has been an increase in 'trivial' or 'inappropriate' complaints of contact denial by non-resident parents. This perception was supported by empirical evidence, in that a majority of contravention applications were considered to be without merit. Many were dismissed altogether, or considered to be so minor that no penalty was given. Some applications were dismissed as the non-resident parent had acted in a violent or harassing manner. Rhoades et al argue that contravention applications are often used to abuse and control resident parents rather than to restore contact.[22]

Further research suggests that the breakdown of contact orders may be due to the nature of family law rather than the actions of vexatious women. While contact orders reflect the situation at the time they are made, and may attempt to deal with foreseeable contingencies, it is inevitable that, over time, the lives of children and their parents change, making the original orders redundant. If parents are not able to negotiate modifications to the contact regime, disputes will predictably ensue.[23] Moreover, in the context of domestic violence, there is now considerable evidence to suggest that contact arrangements reached through processes which ignore or downplay the presence and impact of violence (such as legal aid conferences, or consent orders brokered by solicitors who choose to disregard the violence) are often unworkable in practice, and will break down once the woman realises that the contact regime is unsafe for her children.[24]

Myth #2: Women Abusing Men

Another myth asserted by the men's movement is that the rates of domestic violence against women are exaggerated, and the rates of domestic violence against men are under-reported. Supporters of the men's movement claim that men experience violence as often as women, if not more frequently. They argue that domestic violence against men is silenced, and that men are denied the same level of support offered to female victims.[25]

Claims that women are equally violent generally rely on the 'Conflict Tactics Scale', which records violent behaviours (eg hitting, throwing things, pushing and shoving), but does not rate, or discounts, their relative severity or the amount of injury they cause. There is also no distinction drawn between aggression and self-defence, and the focus is on acts of violence in isolation,

21 Rhoades et al (2001), pp 82–83.

22 Rhoades et al (2001), pp 84–85; see also Rendell et al (2000), pp 38–39.

23 Earlier research on the durability of residence and contact agreements reached through legal aid conferencing in Queensland suggested that the survival of agreements depended very much on the relationship between the parties: Williams (1992), pp 62–65.

24 Rendell et al (2000), pp 43–44, 73, 98–99.

25 Spowart and Neil (1997); James (1999), p 153.

rather than on the locus of power and control in the overall relationship.[26] Clearly, this provides a highly distorted view of domestic violence. Nevertheless, claims that men are equally victimised persist despite a growing body of more reliable research demonstrating that the rates of violence against women in Australia are quite worrying, and that these rates are most likely to be underestimated.[27] These studies also show that women are far more likely to be victims of domestic violence than men, that women are often the victims of repeated assaults, and that women face serious consequences of domestic violence, including homicide, at a much higher rate than men.[28]

In addition, research has demonstrated that younger women, Aboriginal women, women with disabilities, women living in isolated regions, and women from non-English backgrounds who are sponsored to Australia as the wives or fiancees of Australian residents are especially likely to experience domestic violence and abuse.[29] These studies contrast with the men's movement's lack of attention to issues of diversity. The men's movement assumes a white, heterosexual, middle-class readership. As Connell states: 'The men addressed are those who quietly benefit from patriarchy without being militant in its defence.'[30]

In our study of legal services in family law, we found several cases involving female clients who had been subjected to severe domestic violence by their male partners, and who faced great difficulties in having their experiences of violence appropriately acknowledged and acted upon. In one case, the mother had had four previous domestic violence orders and the father had twice beenconvicted for breaches of the orders. In another, the mother's partner had broken her arm three times, broken her collarbone, and inflicted other injuries requiring medical attention. In each case, the mother had either fled from the violence leaving the children, as she had nowhere to take them, or the children had been 'snatched' by the other party. In each case, the mother applied for legal aid for residence or contact, but her application was either initially refused, or granted to a stage that was clearly inappropriate, such as to negotiate a parenting plan. In one of the cases, when the father refused to return the children from a contact visit, moved house and told the mother that he wanted to 'go for custody', the mother sought legal aid for an urgent

26 See eg Steinmetz (1978); Brush (1993), pp 240–49; James (1999).

27 Ferrante (1996); Kaye and Tolmie (1998a), p 55; McLennan (1996), p 29; Sheehan and Smyth (2000); Trimboli and Bonney (1997), p 60.

28 Cunneen and Stubbs (1997); Easteal (1993); Ferrante et al (1996); McLennan (1996).

29 For research into domestic violence against younger women, see Goff (1998); against Aboriginal women, see Blagg et al (2000); The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report (2000); andBolger (1991); against women with disabilities, see Cattalini (1993); against women living in regional Australia, see *Is Domestic Violence Too Close to Home? A Kit for Rural Women* (1999); and Dempsey (1990). For research into domestic violence against NESB women, see Cunneen and Stubbs (1998); Easteal (1996); Ferrante et al (1996); McLennan (1996); and Sheehan and Smyth (2000).

30 Connell (1995), p 210.

recovery order and to file an application for residence, but instead she was given a grant to attend a Legal Aid Conference at which the issue of residence was not resolved. In another case, when the mother was denied a legal aid grant to seek contact with her children after fleeing from their father's violence, she wrote:

> To be honest I feel as though I am being condemned/punished for leaving prior to the abuse becoming severe enough to require hospitalization or a funeral ... I hold grave fears for the safety of my children.[31]

None of the male clients in our study had similar experiences of being compelled to escape from a violent relationship or struggling to have the violence against them taken seriously in the family law litigation process.

Myth #3: 'The Whole System is Stacked Against Husbands'

Another myth that permeates the men's movement, and which has also entered public consciousness, is the belief that male experiences of the Family Court are devalued.[32] This belief was certainly expressed by a number of male clients whom we surveyed. A total of 113 clients responded to our survey: 69 female and 44 male. In additional comments made at the end of the surveys, 12 clients (11 male and one female, who was a grandmother disputing contact) said they thought that the family law system was biased towards mothers. In particular, the Family Court was considered biased, although clients also felt that Family Court counselling, the Family Report, the children's representative and the Department of Social Security were also biased. Comments included:

> The whole system is stacked against husbands.

> The legal system is highly biased towards women, so is DSS and all other related departments. I couldn't afford to take it further. Took seven months to get child support. Then she got the kids, simply because she was the mother. Decided against because father has no rights.

> The system was unfair. The sep rep for the children was biased, especially towards women.

> The system disadvantages men, and doesn't understand the feelings of fathers. Men are disempowered, it should be that gender makes no difference. The whole system is unfair.

31 Hunter et al (2000), p 214.

32 Several authors have observed that men's rights groups claim that the family law system and the Family Court are biased against men, despite the lack of supporting empirical research. See Kaye and Tolmie (1998c); Hasche (1989); Smart (1989), pp 1–26.

The system is biased — blokes may as well chuck their money away.

The files showed that three of the clients who made such comments may have had objective grounds to feel that they had been treated unfairly in the course of their family law proceedings, although this was not due to their gender. In the remaining nine cases, there did not appear to be any overt cause for grievance. On examination of the files, it appeared that clients who felt that there was bias against men experienced outcomes that were different from what they wanted, their cases were more likely to be resolved late in the process (after pre-hearing conference), and the client had ultimately consented to terms of settlement with which they were not satisfied. Moreover, these cases tended to be particularly 'difficult', with a high number of 'aggravating' factors such as allegations of abuse, mental illness or very difficult opponents, or notable problems with legal aid.

Whilst the outcomes may not have satisfied these clients, there was little indication that the other party had gained any particular advantage. There were only three cases in which the other party had clearly 'won' — in one the wife appeared to have won the property dispute, in another the mother gained residence of the children after leaving them temporarily in the client's care, and in the third the father's expectations of gaining residence were stated by his solicitor to be clearly unrealistic. In the remaining cases, the mother gained residence but was restrained from relocating, the children were split between the parents, or the parents were granted shared residence. In one case, the mother lost residence altogether and then committed suicide not long after.

In several of the cases, the solicitor explained that, despite the client's perception of the outcome, the case had resolved as well as could be hoped, or was in the best interests of the children or the client. The clients' animosity towards the Family Court 'system' derived from this disjunction between what the solicitor explained was the best possible or most desirable outcome, and what the client had wanted.

In terms of the actual outcomes achieved in the cases we studied, again there was a lack of evidence that men were being disadvantaged. Contact orders were made in 161 (91 per cent) of the cases. In only eight cases did orders provide for no personal contact between the child(ren) and the non-residential parent (four of these orders allowed the parent to write to the child). All of these no-contact orders were made against the father, and involved extreme circumstances. The fathers in these cases had variously:

- assaulted the mother during the case;
- applied for contact whilst he was in gaol for raping the mother's sister;
- acted in a drunken, aggressive and suggestive manner towards staff at a Children's Access Program;
- had a psychological disorder and his behaviour was having an extreme impact upon the child, which was also supported by expert reports. In this case, the father's behaviour was described in the final judgment as 'chilling';

- acted in an extremely violent manner, threatening and pursuing both mother and teenage child. The child did not want to see the father;
- smashed up the mother's home with a sledge hammer, and threatened to kill her and abduct the child. The child expressed a strong wish not to see the father at all;
- had problems with alcohol and drugs (for which he had previous convictions), had a psychiatric disorder, was extremely violent, had been convicted of a number of assaults in other states, and had allegedly abused the child. The mother, however, had difficulty convincing the court that the father's problems warranted a no-contact order. He then sexually assaulted the mother in front of the child, and was convicted. Even then, there were another three interim hearings while the father was in gaol, until the court made final orders.

The relative lack of no-contact orders suggests that men are not being denied contact with their children by the Family Court. These findings are supported by other research, which suggests that the principle of both parents having contact with their children often overrides considerations of the safety of the parties and, arguably, the best interests of the children. Rhoades et al found that, since the implementation of the *Family Law Reform Act 1995*, there has been a decrease in cases where contact between a parent and child was denied at interim proceedings. The majority of interim contact applications involve allegations of violence and abuse, yet it is rare for contact not to be ordered.[33] This reluctance to order no contact for the non-residential parent was partly based on the belief that it would be unfair to create a status quo in favour of one parent before allegations had been tested at final hearing. As there can be long delays in reaching the final hearing, orders made at interim hearings are often difficult to overturn.[34]

Rhoades et al also consider that the reluctance to make no-contact orders is attributable to an underlying tension in the principles for determining contact, created by the *Family Law Reform Act 1995*. The Act first asserts that children have a 'right to contact', as set out in s 60B(2), and second, that a parenting order must not expose a person to 'an unacceptable risk of family violence' (s 68K). According to Rhoades et al, the right to contact principle has been given a greater emphasis by most solicitors and judges than concerns about domestic violence and abuse. Fathers are also interpreting this principle to mean that they have a right to contact with their children, rather than vice versa.[35] Therefore, interim orders refusing contact are more difficult to obtain since the *Family Law Reform Act 1995*, despite allegations of domestic violence.

In addition, Rhoades et al found that there had been an initial increase in orders requiring the return of the resident parent who had relocated without the

33 Rhoades et al (2001), pp 75–76.

34 Rhoades et al (2001), pp 79–80.

35 Rhoades et al (2001), pp 74–76.

consent of the contact parent, and injunctions for relocation. These restrictions, however, have recently eased.[36]

From our research, cases involving domestic violence were more likely than other cases to involve the issue of relocation, as the victim of violence attempted to remove herself and the children from the presence of the perpetrator. The research also highlighted potential problems faced by victims of domestic violence who apply for relocation orders, with several women being restrained from relocating away from a violent partner. One case in particular emphasised these problems.

The mother had attempted to flee her former partner and return to her family in another country with their child, but she was then ordered by the court under the Hague Convention to return the child. The father had subjected the mother to physical, emotional, psychological and financial abuse. This was substantiated by a number of reports and records from medical services, psychiatrists and doctors. However, the mother's application for a domestic violence order was dismissed due to the supposed unlikelihood of domestic violence occurring in the future. The father was very obstructionist, sending menacing, derogatory and defamatory faxes to the mother's solicitor. He refused to return the mother's property unless his demands for contact were met, returned only the child's clothing that was too small or was for a different season, and returned other property, including heirlooms, broken. At Family Court counselling he was verbally abusive, and the mother fled in tears.

A major concern for the mother throughout the case was that she did not want to be confined to living in the same town as the father. She wanted to be able to move and to extend her own life. She was also concerned about the well-being of the child, who had returned from contact distressed and ill, and so wanted overnight contact phased in. Just before the final hearing, however, she agreed to consent orders that gave contact to the father and restrained her from leaving the local area without the father's written permission. If she were to take the child out of Australia, the father was to have compensatory contact. If this order were breached, a recovery order was to be issued, the mother was to pay costs relating to recovery, and the father was to have residence of the child. The mother abided by these orders; however, the father continued with minor breaches of the contact orders and remained very uncooperative. In the client survey, the mother observed that it is 'unfair that you can get deported from your homeland and made to live somewhere you don't want to'.

Conclusion: Countering a Culture of Violence

The first section of this article discussed the history of the men's movement, while the second discussed claims made by the movement countered by empirical evidence. To conclude, it is necessary to bring together these two sections, and to observe that myths produced by the men's movement are not easily discredited by empirical evidence. The new men's movement is founded on the key belief that men are powerless relative to women, and this belief is sustained by the reduction of power to an individual level and by translating

36 Rhoades et al (2001), p 87.

social issues into psychological or emotional issues. This belief has allowed the men's movement to shrug off much of the evidence aimed at countering its claims.

Therefore, claims made by the men's movement cannot simply be dismissed as being 'retrograde'. Myths of the men's movement are not the beliefs of a fraction of men who blindly resist social change, but instead demonstrate the resilience of hegemonic masculinity. The men's movement is not static, but has successfully transformed itself in a relatively short period of time. The movement's success is largely due to its insistence that social problems are really psychological problems, which can then be solved by masculine therapy, and by preventing individual women from manipulating the system to deny men their rights.

Feminist researchers need to counter the myths of the men's movement with empirical research, *and* to continue to focus on structural inequalities. We must counter the underlying beliefs of the men's movement, and continue to argue that issues of inequality are not merely psychological. Men may indeed feel emotional pain; however, they still occupy the dominant position within society.

Some feminist researchers have attempted to provide this two-pronged counter to the men's movement. Rhoades has stressed that empirical research must be placed within a structural context.[37] She contends that the *Family Law Reform Act* has not paid adequate attention to empirical research and has failed to focus on structural inequalities, and thus:

> The *Reform Act* has also created new narratives about family life (and strengthened old ones), including stories about men who are thwarted in their desire to cater for their children, not by the structure of our society, which values men's work more than their parenting, but by the discriminatory practices of the legal profession and the court.[38]

Rhoades argues that the *Family Law Reform Act* is based on the principle of 'formal equality', which allows both parents to have equal parenting rights. This principle denies real gender differences, overlooking the fact that women are still the primary carers of children and that men still have limited input into their children's upbringing prior to separation. The stress on formal equality has prompted the men's movement to call for 'equality rights' — or, as Rhoades states, 'equality with a vengeance'.[39] Men's movement advocates want to claim the 'symbolism' of being the resident father, without the actual responsibility and work of parenting. 'It seems that the equality that is sought by father's groups has much to do with status and rights, and little to do with the actual care of children.'[40]

37 Rhoades (2000).

38 Rhoades (2000), p 158.

39 Rhoades (2000), p 155. The phrase 'equality with a vengeance' was first coined by Lahey (1987), p 15.

40 Rhoades (2000), p 156.

Graycar has also argued that myths of gender bias in family law in Australia generated by the men's movement gain credibility as they act to divert attention away from structural inequalities experienced by women.[41] She contends that men's groups have been successful by appealing to a notion of equal rights that ignores the fact that women are still the primary carers of children, and the growing feminisation of poverty. Thus claims made by men's groups can be located within a broader backlash against feminism.

This backlash, which is expressed in Arndt's defence of violence in the Family Court, has the potential to act against women on the broader, structural level, as well as to cause harm to individual women. As Graycar asserts:

> The final, disturbing common theme that emerges from the men's evidence is the frequent reference to, and evident sympathy for, the terrorist violence which has been directed at the Family Court and which is also becoming more prevalent outside the Court.[42]

In terms of our own empirical research, it is clear that the cases presented are not merely individualised accounts of women struggling to have their experiences of domestic violence recognised. These cases must be seen within the context of continuing gender inequality, where social institutions such as law and the courts allow the victimisation of women to continue. Myths produced by the men's movement are not out of date, and continue to gain credibility by appealing to 'common sense'. Rather than simply accepting such myths at face value, it is important to consider the ways in which what 'everybody knows' acts to maintain a culture of violence against women.

41 Graycar (1990), pp 58–69; Graycar (1989), pp 158–89.

42 Graycar (1990), p 65.

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