CIVIL LAW, A TOOL OF MASCULINE DOMINATION?

From the Right of Correction to the Fight to Eliminate Marital Violence

Eighteenth to Twenty-first Century

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ABSTRACT

Until the eighteenth century, a man had a legitimate right of correction over his wife. In nineteenth-century Europe, male domination at the head of the family, which was enshrined in the Napoleonic Civil Code, went hand in hand with a redefined masculinity, even though legislation set limits on and even condemned marital violence. Its social legitimacy decreased at the turn of the twentieth century, and has been increasingly challenged, although in practice it remains an ordinary form of violence that is difficult to eliminate. It took until the 1970s and the struggle of the feminist movement for European states and the European Union to address the problem by passing legislation to eradicate violence against women, albeit not without resistance.

Popular Anti-alcohol League, circa 1900. © Brussels, Royal Institute for Cultural Heritage. Source : Europeana Collections.

Poster for the International Congress on Violence against Women held at the Casa della Donna in Rome in March, 1978. Source : Hestory,Gruppi e collettivi femministi a Roma e nel Lazio dagli anni '70 ad oggi.

Until the eighteenth century, *ius corrigendi*, or a man's right of correction over his wife and children, was seen as legitimate in both canon law and custom. However, this right was not without its limits, for throughout Europe wives and their families could appeal to administrative and judicial authorities, both secular and ecclesiastical, when the husband was akin to a tyrant through his brutality and even cruelty. These authorities would then intervene within the couple in an effort to preserve it, instructing the individual behind these excesses to show more appropriate behavior. The right to punish was gradually challenged in the name of Scripture, the Enlightenment, the rejection of violence by the strong (the man) over the weak (the woman), and the state monopoly on violence.

However, during the nineteenth century the triumph of the nuclear family model validated male domination over it, all while setting limits on the expression of its power. In parallel with a redefined masculinity that imposed self-control, the head of the family had a duty to properly manage *his* home. As established by the Napoleonic Civil Code in 1804, "the husband owes protection to his wife, and the wife obedience to her husband." While the man was the head, over the course of the century various pieces of European legislation condemned domestic violence. The fact that a family member committed it—up to and including murder—was considered an aggravating circumstance (Norway 1842, Italy 1889, Russian Empire 1912). Nevertheless, the wife's morality had to be irreproachable, as adultery on her part was an attenuating circumstance in cases of murder, and even the subject of specific articles in laws dissociating an "honor crime" from homicide, for instance in Italy. Finally, if the husband was violent exclusively in the home, it was a private matter for which the public ministry could not initiate legal proceedings.

Limiting Male Violence

The judicialization of marital violence was accompanied by two related phenomena. The first was its decreasing social legitimacy. Discourses gradually rejected the violent man associated with the working classes, alcoholism, and marginality, as well as husbands unable to fulfill their role as head of the family in a gentlemanly manner. On the other hand, the risk of criminal conviction, social shame, and concerns over exposing the family space to public authorities gradually kept women in silence. Consequently, only the most extreme cases disrupted this new order of male violence, which was legally condemned but socially accepted and kept quiet, and only very rarely accounted.

This conjugal model was challenged at the turn of the twentieth century. In the labor movement there were many writings denouncing marriage as a form of slavery imposed on women, and even a kind of prostitution (Clara Zetkin, August Bebel, Alexandra Kollontai). It was easier for feminists to denounce this violence, especially when it involved the working classes. In the aftermath of the First World War, doctors and moralists became worried about a family weakened by men who were shaken by war, and jealous of increasingly independent women. The "crime of passion" reflected this fear of losing *one's* wife, as well as social recognition thereof—of being ridiculed as a cuckoo, *cornuto*, or *cocu*.

The USSR sought to be a pioneer in the area of the family and gender relations. It was the first state to punish marital rape (1922), and marital violence was forbidden, for it was contrary to the new socialist conjugality. When Stalin proclaimed the total emancipation of women in the country of socialism in 1930, complaining about this amounted to criticizing the regime. Depending on the period, it was condemned as behavior that was

deviant—likened to hooliganism—or private; marital violence was certainly contained, but it receded in the statistics, was often kept quiet socially, and endured in the USSR and the Communist Bloc after 1945.

In Western Europe, violent husbands were certainly seen as a negative social figure, but also as an ordinary one deemed to be inevitable in relations between men and women. When the blows led to murders, this attracted the bargain press, which made abundant use of photography to satisfy a growing audience (*Détective* 1928, *Police Magazine* 1930). Treated as minor news items, they were never the subject of analysis of gender relations, remaining a tragedy of love, misery, and madness.

“Eliminate violence against women”

In the 1970s, feminist movements brought the body to the forefront with contraception, abortion, sexual freedom, and the denunciation of violence against women. Their fight quickly assumed an international dimension with similar forms of action. Shelters for battered women opened across Europe, serving simultaneously as spaces for speech, debate, and engagement. The first Women’s Aid refuge was founded in the London suburb of Chiswick in 1971 at the initiative of Erin Pizzey (1939-), with others following in Edinburgh and Amsterdam in 1974, Rome (Casa della Donna) and Berlin (Frauenhaus) in 1976, Clichy (Flora Tristan), Vienna, and Stockholm (Alla Kvinnors Hus) in 1978, and Zurich in 1979. Public meetings and demonstrations increased throughout Western Europe. International meetings were held in Brussels and Amsterdam in 1976 and in Paris the following year, with the International Congress of Violence against Women being held at the Casa della Donna in Rome in March 1978. There was also mobilization against rape, for instance in connection with the Circeo (Italy, 1976) and Aix-en-Provence (France and Belgium, 1978) trials, leading to its increased criminalization, including instances of marital rape (Sweden 1965, Great Britain 1991, Germany 1997, France 2006), which was recognized in 1995 by the European Court of Human Rights.

The subject became institutionalized in the 1980s. On June 11, 1986, the European Parliament passed the first resolution “on violence against women,” including *within a private setting*, which could no longer serve as an excuse. European states passed legislation one after another, with Sweden being among the first by passing a framework law in 1998 called *Kvinnofrid* (peace for women). In Spain, following the shock from the murder of Ana Orantes, who had publicly borne witness to the violence she had suffered at the hands of her husband, the *Cortès* passed a law in 2004 that was highly innovative on the following grounds: “Gender violence is not a problem that affects the private sphere. On the contrary, it is the most brutal symbol of the inequality existing in our society.” In the early twenty-first century, a number of countries that were candidates for membership in the European Union (Poland, Hungary, Romania, Bulgaria, Croatia) also passed legislation. In 2011, the Convention on Preventing and Combatting Violence against Women and Domestic Violence was signed in Istanbul by 46 of the 47 members of the Council of Europe (except for Russia).

Marital violence is now better understood and counted. In 2008, according to a UN study of multiple European countries, 77.4% of the victims of homicides between partners were women, with the 22.6% of men chiefly being killed out of self-defense. The eradication of violence against women, a stated objective of redefined gender relations, has met with

strong resistance. Prevention, support for victims, and repressive measures struggle with unequal resources, explanations based on misery, alcohol, and the “other culture” that limit it to working-class and foreign backgrounds, as well as masculinist resistance. The denunciation of femicide, the #MeToo movement, and the attention given to increased domestic violence in connection with the confinement implemented during the Covid-19 epidemic in early 2020, reflecting the new and transnational visibility of this violence, as well as its gravity.

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