

# 7

## *Ma-slaan-pa* docket<sup>120</sup>

Mother Courage: "Courage is the name they gave me because I was scared of going broke, sergeant, so I drove me cart right through the bombardment of Riga with fifty loaves of bread aboard. They were going mouldy, it was high time, hadn't any choice really" (Bertolt Brecht, 1980:19).

### 7.1 Introduction: "Defeating the ends of justice"

It was eleven o' clock at night in Johannesburg. Three unmarked police cars from Sophiatown police station were making their way along the bumpy roads of Westbury. The police had been on their monthly night raid since eight o' clock. They had a list of 20 or 30 addresses of suspects whom they wanted to arrest. They stopped in front of a block of flats not far from the police station, close to the main road which divided the former coloured township of Westbury from the former white working-class and lower-middle-class areas of Newlands and Triomf. Police detectives in civilian clothes moved into the dark passages where light bulbs had long ceased to function. The torch rays moved over walls and doors in the search for a flat number.

Finally one detective found the right address. "Bang, bang!" One of the detectives knocked on the door. "*Polisie, maak oop*" [Police, open up]. There was silence, and the detective knocked again. Finally they could hear a voice inside: "*Wag net, ek's besig om oop te maak. Net 'n oomblik.*" [Wait, I am opening. Just a second.] Then we could hear the key turning in the lock, and the door was partially opened. The face of a young woman appeared. Hesitantly she allowed the police officers to enter. While four of the detectives ventured into the room, the woman went

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<sup>120</sup> *Ma-slaan-pa* literally means "mother-beats-father". See section 7.6.2 for a discussion of this phrase.

back to the bed to sit beside another woman. The television was on, and a stove was turned up to heat the room, chilled by its concrete floor.

One of the detectives informed the women that they were looking for Daniel Jacobs<sup>121</sup> in relation with a case of domestic violence. It appeared that the woman who had opened the door was the complainant in the case. The detective asked her if she knew where her boyfriend was. She explained that he sometimes came to her apartment, but insisted that she had not seen him in the last few weeks. The other detectives were already leaving the room when one of them decided to look in the wardrobe. And there the boyfriend was, standing pressed against the back of the cupboard, holding his breath. The detective immediately took him by the arm, pulled him out and pushed him forward to the bed. The detective was angry. He started swearing; however, it was at the young woman that he directed his verbal abuse. He even threatened her with arrest and said he would charge her with defeating the ends of justice. She tried to defend herself, explaining that she could not betray the boyfriend in his presence. But the detective showed no sympathy and, treating both of them as if there were conspiring criminals, told them to get dressed in the bathroom without closing the door.

Outside the block of flats the man was pushed into the back of one police car while the woman ended up sitting next to me in another. She tried to get the police officer's attention to tell him that she regretted that she had opened the case in the first place, and that she wanted to withdraw the case. The detectives responded rudely: "You better should have thought about this before. Now we teach you what happens when you are not serious, and when you think that you can fool us around." At the station, after letting her wait with a sense of uncertainty in the reception area for hours, the detective in charge of the case allowed her to leave, but not before making another disparaging remark.

The next morning the woman returned to the police station and withdrew the case.

The scene provides an example of the "new routine" of the detectives of Sophiatown police station when dealing with cases related to domestic violence. Arrests,

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<sup>121</sup>. All names used in this account are fictional.

taking statements and, poignantly, dealing with the withdrawal of the cases, or the obstruction of arrests by the complainants themselves, were what characterised the detectives' routine with regard to domestic violence cases. On this particular night, the detectives arrested 15 people – one was a suspect in a murder case, three others were arrested for theft and housebreaking, and at least seven were arrested for domestic violence. Four of these seven cases were withdrawn the next day, as were two others, after the suspect's first appearance in court. Altbeker (2005: 10-25; 247-265) in his study of the police in South Africa sketches a similar picture in which domestic violence cases, which rarely end up in court, dominate a lot of police officers' work. While national statistics point to a massive increase in cases opened for domestic violence, they fail to capture the number of withdrawals.<sup>122</sup>

The scene also gives a glimpse into what the police officers' response was towards the withdrawal of the case, or the obstruction of arrest. They reacted with anger and resentment. It even triggered in them the urge to "teach the woman a lesson". The victim of domestic violence ended up being threatened and intimidated even more than the suspect had been.

It is these two aspects, and the wider reality to which they point, that I would like to discuss in this chapter. The introduction of the Domestic Violence Act in January 1999 represented a drastic challenge to police practice, and meant that local police officers were confronted with something quite novel. This is not only because of the public attention and the seriousness with which police management looked on the introduction of the Act, but mainly because of the wide definitions and the special obligations on the police contained in the Act's formulation. Through the Domestic Violence Act, the state expands its powers through a regime of rights in order to create autonomy and freedom for the individual – even as far as in the private sphere. This pertains to that level of human rights intervention, which can be described as horizontal, where the state becomes responsible for implementing human rights legislation that protects citizens against each other. In exploring this level, this chapter aims to address issues of police accountability

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<sup>122</sup> "The increase in assault Gross Bodily Harm and common assault of respectively 4.6% and 9.9% between 1999 and 2000 could be expected, as all indications are there that this was a direct result of the implementation of the Domestic Violence Act at the end of 1999" (Crime Information Analysis Centre 2001).

towards both people and the law; and to look into what kind of practice, informed by human rights, is produced at the confluence of these two interfaces.

Privatisation and the appropriation of police intervention were discussed in the two previous chapters. The practice of the withdrawal of cases is central to yet another form of this appropriation. It once more highlights that the presumed ameliorative nature of state intervention in relation to the enforcement of human rights legislation ends up failing the so-called victims – in this case a victim of domestic violence. However, it also shows that the domestic violence legislation produces spaces of new social manoeuvring – albeit unintended by the legislators.

It allows for the redirection of state power into the private and informal realm, even if – and herein lies the difference from the previous chapters – there is neither a connection between police officer and the civilian (see Sergeant Legodi, Chapter Six), nor a voluntary personal enactment of human rights by the police officer (see Inspector Chatty, Chapter Six), nor an inadvertent concurrence of interest (see Sergeant Kloppers, Chapter Five). What makes domestic violence legislation so prone to being the channel through which state power is redirected, is that it strongly reinforces the commitment of police officers to a proactive human rights agenda and to involvement in issues within the private realm.

The second aspect, – the issue of police abuse of the complainant/victim of domestic violence – points to the fact that the legislation of domestic violence has a significant restructuring effect on everyday policing practice which – to put it colloquially – does not go down very well with most police officers. In fact, police officers' attempts to resist the effect of this restructuring of themselves have the effect of generating violence – physical as well as emotional. In this chapter, it will become clear how the complainants' practice of withdrawing cases, in conjunction with the legislation's rootedness in the international human rights agenda, and its expansionist and interventionist nature into the gendered and private realm, produce a policing practice which leaves police officers hugely challenged. It undermines their gendered and social relationship to the policed subject, and leaves officers beleaguered by bureaucratic efforts that usurp their sense of adequacy for the work.

In addition, it is the particularity of the area of Westbury, with its very own history of state and subject relationship, which exacerbates and therefore highlights some of the restructuring effects of the legislation. The particular habitual relationship between the police and people from Westbury – a relationship more grounded in a *long durée* and less subject to the fluctuation of people's movements – contributes to a relentless and predictable familiarity suffused with unequal power. Deviation from the established norm, in the sense of a new practice and a relocation of state power, becomes brutally visible and often painfully palpable for the police. At the same time, there is a "tradition" in Westbury of people relying on the state. This means that there is a certain readiness to engage with the state, which in this case strongly drives the appropriation and redesign/redirection of police intervention.

Before I begin to discuss the reaction of police officers towards the domestic violence legislation, I will introduce an even more poignant police-citizen encounter, and use this to shed light on how the appropriation and redirection of state power takes place in the case of domestic violence legislation in Westbury. I will try to create an understanding of the meaning behind the increase in the number of domestic violence cases that are opened on the one hand, and the practice of withdrawal and obstruction of arrest on the other. I will explore what happens when a woman allows the involvement of the state (the police) in her domestic matters, by opening a case at the police station and then refuses to deliver the husband (or boyfriend) to the full process of the criminal justice system. To illuminate this contradiction, I discuss in more detail the history and mandatory provisions and scope of the domestic violence legislation, as well as the particular case of Westbury with regards to its relationship with the state and its subjects. This will create an understanding of how the appropriation of the legislation fits into wider practices of local justice.

I then concentrate on the restructuring effect that the legislation (and its new practice) in particular, and human rights in general, have for police officers, discussing the collision of these effects with both the organisational culture and the gendered and social relationship between police and people from Westbury.

## 7.2 Making sense of the withdrawal of cases

The scene described in the Introduction of this chapter makes one wonder why the young woman opened the case in the first place. What is it that the woman wanted from the police when she made the effort to go to the police station to lay a charge against her boyfriend? Did she not know that the police would come to arrest him? Did she make a mistake, or was it a misunderstanding? Most studies on domestic violence (Binney, Herkell and Nixon 1981; Bowker 1983; Pagelow 1981) would probably argue that the young woman *wanted* the boyfriend arrested. She *wanted* to make use of the legislation but she was afraid of retaliation by the boyfriend. Functionalistic rationalisations about economic dependency, cultural coyness and overriding patriarchal family pressure, as well as disabling traumatisation, are standard explanations for women's lack of persistence in pursuing the legal process. But if fear, shame and cultural taboos are so prevalent, why are so many cases of domestic violence being opened in the first place? Opening a case is, after all, not only about making an emergency call to the police.<sup>123</sup> It means physically going to the police station and going through the bureaucratic procedure of giving a statement. And why is it that on my trips through the area I have witnessed women threatening their boyfriends, husbands, and sometimes other family members face-to-face and with little apprehension or restraint "*Wag jy maar, ek sal polisie toe gaan en 'n saak van Domestic Violence teen jou maak!*" [You just wait, I will go to the police and open a case of domestic violence against you!].

Looking at the regularity with which such cases are opened and withdrawn, such functionalistic and deterministic answers seem to miss the point of the women's purposefulness and the agency at play in withdrawing the cases. Permitting purposefulness and agency to enter the picture would allow us to better read the practices of local justice in the field of domestic gendered micro-politics. It will allow for an understanding that, even in an environment in which both men and women are caught up in gendered relationships that are deeply imbued with notions of violence, practices

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<sup>123</sup> Many studies of domestic violence have stressed that calling the police in a moment of violent attack by the partner is often the true cry for help. It is afterwards that other considerations, such as family and economics, quell the sense of wanting to get out of the relationship. However, in Westbury, most cases detectives have to deal with are not cases opened at the scene after an emergency call, but are cases opened by women coming to the police station. Thus one would expect that moments of reconsidering would take place before a case is opened.

persist which seem to be about negotiating the boundary of violence within a local imagining of relationships. While this does not challenge overall patriarchal structures, it does engage the local complexities of mutually constitutive gender roles. The following scene, which took place during the same night-raid, undermines simplistic explanations about both the “empowerment” and “disempowerment” of women – two terms which are used in an apparently self-explanatory way in the advocacy literature about gender violence and the domestic violence legislation.

We arrived at another address, looking for a suspect in yet another case of domestic violence. The same procedure repeated itself: One officer knocked at the door and called, “*Polisie, maak oop...*”, and after a short while a woman opened the door. She immediately knew why the police had come. However, this time the husband in question was not hiding but sitting on the couch watching television. He did not seem to be very surprised to see the police coming into their apartment in the middle of the night. Without any resistance he followed the orders of one detective to get dressed. The only thing he did was to quietly mutter some angry imprecations at his wife – why did she have to do this again? She was standing on the other side of the living room. While she was showing one of the detectives some knife wounds on her back, which her husband had allegedly inflicted on her, she responded to her husband, calmly as to a child, that she had had enough of his brutality and that he needed a lesson. To the detective who asked her if she had received a letter from the doctor so that the stab wounds could be used as evidence in the case, she said that it had not been so bad and that she had not considered it necessary to get such a letter. The detective, clearly annoyed with the answer, turned away from her and made sure that the suspect was getting ready. The woman, unperturbed, kept on talking, telling the detectives that she had had enough and that she wanted her husband to stop behaving like he did. In between, however, she turned to her husband and caringly reminded him to take along a warm jacket since it could become cold in the police cell overnight. A little boy, most probably their son, was clinging to her legs and watching the scene, more in surprise than in fear. Then, asking the husband to accompany them, the detectives left the scene. The woman, obviously satisfied with the procedure, wished him and the detectives farewell.

The next day she came to the station to withdraw the case and to take the husband home with her again.

What struck me that night was the calmness with which the woman handled the situation, clearly on her terms. She had quite serious stab wounds on the back, but she did not want to get a doctor's letter as evidence to strengthen the case. She had opened the case at the police station, she welcomed the detectives when they came in the middle of the night, but she was concerned that her husband might suffer from the cold in the police cells, and she came to the station the next day to withdraw the case. Categories of fear and intimidation or even trauma do not seem to be adequate to explain the process of withdrawal here. Rather, as much as the woman wanted the police to intervene, she also wanted the husband out of the cells the next day so they could to resume their relationship. Instead of having the husband prosecuted, sentenced and sent to prison, she only wanted him sent to the police cells for one night. She did not want to end the relationship, but she chose to teach him a lesson – that he could not treat her violently without consequences. In this she displayed a remarkable skill in dealing with the police. She was not distracted by their suggestion about the letter and she knew about the condition of the cells, as if it was familiar ground.

Using the police to intervene in domestic conflict is made possible by engaging the Domestic Violence Act. It is the Act's inclusive definition of what constitutes domestic violence, and the pressure which has been put on the police to intervene, which makes the legislation such an attractive recourse for women involved in domestic disputes. The Act provides a definition of domestic relationship which stretches beyond the traditional matrimonial relationship and includes one-night-stands and relationships with various family members. Cases can be opened that deal with trespassing, stalking, rape or gross bodily harm (GBH). Psychological and economic deprivation, as well as intimidation, were included in the formulation of the legislation. The Act stipulates that police officers are obliged to explain to the complainant her<sup>124</sup> rights, help her find a

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<sup>124</sup>. In principle, the legislation is not only accessible to women, although domestic violence is mostly seen as women suffering from the violence inflicted on them by men. However, as we will see below, the domestic violence legislation can also be used in reverse, or in other possible constellations, such as among two brothers. In terms of the language of this thesis, I use "her" and "she" when summarising the legislation, reflecting the conceptual bias in the legislation.



place of safety, obtain medical treatment and accompany her to collect her belongings. In many ways the Act is meant to enable victims, and actually envisages a break-up of the violent relationship, especially if the violence seems to be endemic. Most importantly, under the Act police officers can be charged with misconduct if they fail to comply with its terms. This further enforces the obligation on police officers to effect an immediate arrest.<sup>125</sup>

The sudden availability of a tool to enable such decisive intervention into the private sphere by the state warrants an explanation. The modern state has played an important role in creating the differentiation between the private and public spheres; for a long time the state was only permitted to intervene in the private sphere to a limited extent. However, through changes in legislation, matters which were restricted to the private and domestic sphere can be brought forward into the public sphere, or can be exposed to intervention by the state. Veena Das (1995) analyses how the state of India asserted a responsibility for the repatriation of women who had been abducted during the violent period of the partition between India and Pakistan and forced into non-Muslim or non-Hindu-relationships. Legal tools had been created for the state to facilitate the break-up of these relationships and the repatriation of the women. Through the legislation, the state could develop its role as *parens patriae*. Das (1995:62) states that in this process “a new kind of disciplinary power over the population” had been played out. The disciplinary power, which of course had been represented in the national discourse as being in the best interest of the abducted women, is critically contested by Das. She argues that “once the problem [of the abducted women] came into the domain of state legislation, it took away the freedom of women to make their own choices” (Das 1995:67). The legislation permitted force in cases where women did not want to be repatriated. Das discusses the realm of “practical kinship” (a concept she takes from Bourdieu), in which women – despite abduction and despite codes of honour of official kinship – had found ways and compromises that made living in an “unpure” marriage possible. However, Das argues that the legal tools had not been developed without

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<sup>125</sup> Many cases are opened only a day or two after the event. In this case, “immediate” means as soon as the case has been opened. In the practice of Sophiatown police officers, this meant “as soon as possible” – for example, during a night raid where high arrest numbers would be positively remarked upon. Those raids were carried out biweekly.

legitimacy. Popular outcries about the suffering of the women forced the state to take action. At a later stage, social workers disqualified the refusal of the women to be repatriated by saying that they had a fear complex; with this, they defused possible criticism.

Das's analysis is instructive in at least three ways. Firstly, it points to practical [kinship] relationships. Even if they come to be dominantly seen by the public as untenable because of their "impure" – and therefore violent and humiliating – nature, they can nonetheless be preferred by those apparently suffering in these relationships. Secondly, it shows that legislation that is supposedly in the interests of the subject can impose and prescribe what women want, the kind of relationship they should live and what the "right" choice should be. Thirdly, it shows how a government can be compelled into action when it feels that its own legitimacy is being undermined by what is happening in the private sphere. The government needs the family, as the classic locus of the private sphere, to reflect the values of the nation state<sup>126</sup>. Distortions or crises in the family are considered to reflect negatively on the nation state and therefore on the government's ability to guarantee the order of the nation state. The "religious and national impurity" of Das's families clearly posed a challenge to the two states of India and Pakistan, because religious nationalism was at the core of their existence as separate states.

While the first two aspects are discussed further below, there is an interesting parallel with the South African situation with regard to the third aspect. The legitimacy of the new ANC government as the achiever of liberation from oppression was threatened by a discourse about the crisis with regard to domestic and sexual violence. This discourse was represented by the constant quoting of statistics such as "one rape in 17 seconds" (Ginwala 1999), broadly reported incidents of child rape (Posel 2005a:21-22), and vivid sketches of the extent of domestic violence. Posel (2005b) argues that while the new government could make moral claims to a sweeping victory in the realm of the political and public spheres, it was taken off guard by the level of private violence, penetrating the inner core – the private and intimate sphere – of the South African family,

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<sup>126</sup> This is of course a reversal of the fact that the nation state has been tailored in many ways in the image of the patriarchal family (Anderson 1991).

and thus the nation. What should have been a complete victory for the new government was overshadowed by a sense of an enemy within, in the form of moral decay and the inability of the government to extend its ability to wield control over violence in the public sphere into the private sphere as well. This threatened to render the victory into a partial one, if not to undo it altogether. In light of this, the government was compelled to find a form of intervention, which would at least make it look competent in overcoming the challenge.

This explains the government's willingness to react to the crisis. But in order to understand why the answer to the crisis took the form of a legal and law-enforcement tool, compelling police officers to protect women's rights, we have to take a broader look at historical national and international developments around the issue of domestic violence.

### 7.3 Gender issues as (human) rights issues

Until 1993 there was no legislation that dealt specifically with domestic violence. The Sexual Offences Act of 1957 and the Child Care Act no. 74 of 1983 were the only legislative tools which could be used to deal with issues of violence in the private sphere. However, as Meintjes (2003:146) explains, "they largely dealt with what were considered unlawful sexual acts between same-sex partners and children". Meanwhile, cases of assault in the private sphere could easily be ignored by the criminal justice system in general and by police officers in particular, without serious consequences for them.

Considering the lacuna which existed under apartheid, the passing of the Prevention of Family Violence Act in 1993 was originally described by activists as a huge step ahead. However, it still only presented an at-long-last aperture after a process of tedious lobbying against the National Party (NP) government which went back to the 1970s. The NP government, through its international isolation and antagonism towards the wider world, had managed to adhere to patriarchal ideas about the inviolability of the marital heterosexual sphere. The definitions of what constituted family violence and the scope – in terms of obligation to intervene – of both magistrates and police officers were

limited in what could be described as a rather diffident Family Violence Act (Meintjes 2003:143-50).

This was subsequently overhauled by new legislation, which came about as a result of the radically different, post-apartheid conditions in conjunction with the sense of crisis, as just described. Ironically, a conservative challenge objecting that the legislation was disadvantaging the male voice, led to a revisiting of the legislation in 1996 by the South Africa Law Commission. This reconsideration offered an opening for a coalition of actors, greatly committed to and drawing from the international human rights agenda, to shape the new legislation. The coalition was based on friendly co-operation between NGO lobbyists making submissions and ministers and parliamentarians who had recently been part of the anti-apartheid movement.

The concept of human rights was the obvious state-of-the-art resource from which to build the intervention. Gender issues had already undergone a national process of being recast in legal terms during the constitution-writing process. This also began the process in which gender issues, which had previously been dealt with by activists at the grassroots level, started to become the prerogative of professionals, particularly those with a legal background (Meintjes 2003). Internationally, gender issues had been established as falling within the ambit of human rights, as confirmed by the world conference on human rights in Vienna in 1993 and the Beijing Declaration of Women in 1995, which had been the “culmination of a period of vigorous international action to promote the rights and interest of women” (Morell 2001:4). Considerable international attention had contributed to the convergence of South African national concerns with international legal standards. For example, a visit in 1996 of a United Nations (UN) Special Rapporteur clearly highlighted the issue of violence against women as a legal matter and as a matter to be dealt with through law enforcement. Also, at a Southern African regional conference, it was reiterated that “violence against women constitutes a serious violation of fundamental human rights ...” (Meintjes, 2003:152).<sup>127</sup>

#### 7.4 From welfare to rights – shifting intervention in the private sphere

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<sup>127</sup> Engle Merry (2003:344) also mentions a decisive shift with regard to the articulation of women's rights as human rights.

Thus, while internationally the domestic violence legislation was widely heralded as an adequate intervention, direct police intervention in the private and intimate personal sphere represented a significant shift, not only from the perspective of the police but also for the people from Westbury.

During the apartheid years, Westbury constituted one of the most disadvantaged areas of the Sophiatown policing district. Disadvantage, however, took a particular form with regard to the coloured population in South Africa, which can best be described as a pervasive, paternalistic subjugation. Westbury had been declared a coloured township under the Group Areas Act of 1950. As Johannesburg grew, the Western Native Township (as Westbury was formerly called) and Sophiatown, situated across the main road, emerged as places of racially mixed lower-class housing. However, forced removals in 1954 (to implement the Group Areas Act), in conjunction with the Population Registration Act of 1950, put an end to this by resettling the African dwellers to areas of Soweto such as Meadowlands and Orlando. On the ruins of Sophiatown a new neighbourhood, arrogantly named Triomf (Triumph), was erected for whites, primarily lower-to-middle-class Afrikaners. Residents who had been registered as coloured were resettled in the Western Native Township, at the time renamed Western Coloured Township, and later to be called Westbury.<sup>128</sup>

While the Group Areas Act and the Population Registration Act lead to brutalising legal apartheid measures (at least in the urban areas) and formed the pillars of the apartheid ideology of separate development, it was the Department of Coloured Affairs (DCA) that was responsible for the everyday administration and governance of the coloured population. This included a whole range of paternalistic state interventions along the lines of social welfare, upliftment programmes and institutionalisation in reformatories and prisons. These interventions were particularly directed at the coloured lower class, which was assumed “to embody the weakness of coloureds caused by their inferiority vis-à-vis white supremacy and African savageness” (Wilcocks Commission

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<sup>128</sup> Westbury was flanked to the south by Bosmont, another coloured area that was somewhat more middle-class. To the east, there was the white working-class area of Claremont, and to the north there were the white working-class (later lower middle-class) areas such as Triomf and Newlands, spatially separated by Ontdekkers Road, one of Johannesburg's main east-west arteries. Westbury (and Bosmont) thus became islands of non-white residency within an exclusive white area.

1937 in Jensen 2001:45). Jensen describes how, although both groups had been disenfranchised, apartheid impacted differently on coloureds than on Africans.

Africans had to bear the brunt of overt apartheid repression. They had significantly less material resources than coloureds, with the consequence that their poverty was and is much more grinding than coloureds. On the other hand apartheid practices penetrated the everyday life of coloureds in more structural ways. Whereas the violence against Africans manifested in the unequal encounter between grotesquely racist police force and activists, the violence against coloureds was located in social welfare offices and prisons (Jensen 2001:82).<sup>129</sup>

Jensen further argues that the range of state interventions did not just validate coloureds as a distinct racial group with distinct problems, but that it split the coloured lower class along gender lines. It did this through a stereotypical construction where the "the burden of 'colouredness' fell squarely with the coloured men, weakened physically, indulging in alcohol and always on the brink of falling into crime" (Jensen 2001:62-3). The police, significantly complicit in producing the stereotype, "most often went out looking for a particular coloured disorder which was organized around alcohol" (Jensen 2001:59) as well as gang activities such as theft, assaults and (attempted) murders. Coloured men consequently could be attributed with the highest imprisonment rate in the world and with a South African average of the longest prison stays (Jensen 2001:77). With regard to family life, the stereotypical coloured man was either an absent father because of imprisonment, alcoholism or abandonment, or, if present, a danger to "healthy family life". "Woman therefore became the state's most prominent allies in the intervention against the decay of the lower class" (Jensen 2001:78). While coloured women were targeted by a moral machinery of instruction courses and visits by social workers, teaching them to become good mothers and homemakers, they were also the main recipients of state financial assistance through the state's maintenance grant for

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<sup>129</sup> Jensen's (2001) study deals mainly with coloured areas as created in Cape Town. Cape Town had been turned into a coloured labour preference area and was the place where the majority of coloured people lived. This meant that apartheid's governance of coloured people was most pronounced and distinct there, as compared to Johannesburg, where coloured people were a small minority in relation to the African population. Nevertheless, coloured people in Johannesburg were submitted to a similarly discriminatory regime as in Cape Town.

which they qualified because of the absence and “inherent irresponsibility” of the fathers (Jensen 2001:81).

Apartheid state governance of coloureds thus did not just produce a history of close and paternalistic engagement with the state through welfare intervention in the domestic sphere and over-policing of particular crimes, it also contributed to a particular gender landscape. In this landscape, lower-class men appeared as very destabilised and racially emasculated. Women, on the other hand, were ascribed a form of burdensome matriarchy which arose from the moral responsibility to uphold respectability and make a good home. This sort of role emerged from sheer necessity, arising from the periodical if not continued absence of men and strengthened by privileged access to material benefits and social security. While this shift in gender relations did not mean in any way the erasure of violence from relationships, it shows that a simplistic imagination of women as victims does not hold. It reminds us, rather, that violence by men has to be understood within their emasculation and marginalisation (Connel 1995).

It is against this societal and historical background that we have to understand the introduction of the Domestic Violence Act and the complex matrix of continuities and shifts that it produces. The domestic violence legislation introduces a shift in state intervention in the domestic sphere, from a paternalistic welfare-based framework to a rights-based framework. The notion of human rights, as explained in the Introduction, utilises the idea of accountability to limit some of the state's discretion and to subject the state and its apparatus more to the wishes of the populace. Thus the domestic violence legislation, drawing from the human rights agenda, shifts power towards the (female) populace. This is so, even though the legislation is a tool chosen by the state and one which makes the criminal justice system the administrator of issues of the private sphere. Since this power is coupled to and backed up by the powers of law enforcement, it bestows a new discretion on women, giving them the option to call in the police on matters pertaining to the private sphere, and on their own terms. For the police, this translates into a transfer of control, in the sense that they now receive their directions from a new locus – from the private sphere in general and from women in particular. Previously, the discretion to arrest lay more with them, or at least was grounded in the more public sphere and in the idea of non-intimate crimes. Thus, while the police

consider the domestic violence legislation to result in a “welfare-isation” of their work, the population comes to see issues of family as matters of law enforcement and police intervention, with very tangible consequences such as incarceration and the possible use of force. At the more general level, however, the introduction of the domestic violence act in Westbury has simply meant a continuation of the close engagement of the state with the people of Westbury. Now, however, law enforcement fits into the pattern of matriarchal power, while for men it could easily mean represent a further element of emasculation.

Bound to this legislative bestowing of power was, of course, the assumption and the expectancy that women would use the legislation to liberate themselves from violence. To avert domestic violence would mean either getting rid of the husband or forcing the husband to behave in a fundamentally different manner. In either case, dealing with violence was to be achieved by following the envisaged path through the criminal justice institutions.<sup>130</sup> It was this particular expectation which was rejected by women from Westbury when they withdrew their complaints. By withdrawing, they seemed to express a different preference and clear ambivalence towards what was offered to them by the state.

Ludsin and Vetten (2005:17) remark that “abused women do not make decisions about their lives in the abstract or according to fixed rules. Rather, their choices are made within contexts shaped by social beliefs and values, personal circumstances and access to resources. Competing obligations and responsibilities to others may also form part of this context”. The challenge here is to conceptualise and describe such a context in a way which does not downplay the reality that women are caught up in situations which make it difficult, even impossible, for them to move beyond them, while simultaneously allowing for women in such contexts to have room to manoeuvre and to make decisions.

However, more illuminating in understanding women’s practice would be to look at what it entails to engage the law and to live up to its expectations. This is often neglected by activists who rely strongly on a woman “redefine[ing] her problem as an offence that violates her rights rather than a burden of everyday married life” (Engle

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<sup>130</sup> This means that inherent in the idea of accountability through human rights is an expectancy of what the state should be held accountable for by the empowered populace, which in this case means it should help women to exit violent relationships.



Merry 2003:346). Engle Merry (2003:349) argues that to engage the law means to take on “a new subject position, defined in the discourses and social practices of law”. As noted earlier, the recasting of gender issues in terms of human rights has meant that these issues have become the prerogative of legal professionals instead of grassroots activists.<sup>131</sup> This “expert-isation” of gender issues clearly indicates the class shift which is related to such a move. It highlights the fact that the idea of gender issues as human rights is clearly rooted in a more middle-class perspective of society. The material conditions that enable the emergence of skills and the development of a subject position are “shaped by the discourse of autonomy, choice, and reasonable behaviour...” (Engle Merry 2003:350). It also entails an idea of gender relationship which is defined by the authority of men over property, and where women can have more control over their own lives. This type of conjuncture of material conditions, gender relations and subject position is necessary to engage the law, persist with it, envision and enable an alternative life, and allow the man to make the transition to a state where he can dispense with a sense of masculinity where authority is rooted in physical violence. It is this last aspects which means that a break-up of the relationship would not be necessary.

However, such conjuncture and subject position are not simply available. Actually, with regard to autonomy, for example, it can seem frightening and alienating, or even unimaginable, to someone whose subject position and sense of self is grounded in what Engle Merry calls the “relational” realm. With this she indicates a subjectivity that is overwhelmingly rooted in the relationship with and recognition by family and neighbourhood (Merry, 2003:345). To engage with the law means to break with the environment; while it is the site of the abuse, it is also the habitual site of self-esteem, responsibility and protection.

As mentioned earlier, the role of the women in Westbury is quite closely connected with a particular idea of matriarchy. This refers to a sense of being in charge, but also means a great responsibility and burden in upholding the respectability of the family. There is also a history of men being removed, while women had to handle the

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<sup>131</sup> Dezalay and Garth (2002b) describe how grassroots NGOs feel disempowered by recasting gender issues as rights issues. The shift means they must exceed their skills, as well as their class and educational background, in order to adequately and proficiently express their demands and to participate skillfully and thus effectively in the public (national or international) arena where their claims are played out, heard and judged.

family; this tended to threaten the respectability of the family. With a high level of unemployment and school drop-out rates, the social and economic conditions are such that a middle-class life (especially for men) is more the material of dreams and exit fantasies than of actual options. Thus, because of the lack of material as well as social capital, the women engaging with the law would relinquish themselves to the state for protection, although without having the adequate resources to uphold and realise the new subject position. This would mean that a woman, instead of gaining control over her life, would lose control over it, this time to the state. At the same time she would also lose whatever ambivalent self-esteem and sense of self, rooted in where she comes from, she might have. It thus often appears as safer and more reasonable to remain within the realm of the relational, defined by the immediate and familiar environment and the relationships it produces.

However, this does not mean that within this realm women do not attempt to ameliorate their situation. The prevalence of exit fantasies about a better life clearly shows that women are constantly concerned with improving their lives, even if their attempts are constricted by material and social conditions. It is here where the "offer" of the state to involve the police becomes a resource. The refusal to take on the necessary subject position that underlies engagement with the law confines police power to the realm of the women's local, lower-class relational realm, defined by local ideas about relationship and gender relations. The police intervention is thus disengaged from the wider legal system. And because of its tangibility and its affinity with physical violence (such as the use of force and arrest), it lends itself squarely to being translated into new means of recognisable punishment and heavy-handed persuasion to stop (momentarily and provisionally) the violence. The intervening police officer is assigned to play a particular localised role in a situation of local and private circumstances.

## **7.5 The powers of domestic violence policy "estranged"**

The process of translating the role of the police force into one of locally applied punishment, physical disciplining, and heavy-handed persuasion, clearly points to the broader practice of local justice. The disconnection (and consequent localisation) of

police intervention from the wider criminal justice system also helps to explain how and why the domestic violence legislation is used in other cases, which only partly fit into the legal definition of what constitutes domestic violence.

In Westbury, cases have been opened in the name of domestic violence on the basis of inventing or twisting the story so that the police would accept it as a "serious" case, thus making the intervention of the police possible. In terms of evidence, these cases have little chance of succeeding in court, but that was often not the intention of those who made the charge. The following incident gives an idea of how the powers provided by the Domestic Violence Act are applied beyond the definitional boundaries and how the Act is used within other kinds of conflicts.

A young woman had laid a complaint against her ex-boyfriend and his new girlfriend. However, she failed to appear in court after she had been subpoenaed as a witness. Later, she came to the police station to withdraw the case, whereupon she was arrested for not appearing in court. She was released the next day with a fine for defying the ends of justice. The case was dropped. Her sister, who had accompanied her to the station to withdraw the case, was not very moved by the fact that her sister was arrested since, as she said:

"She deserves it. She should not have opened the case against him and the girl in the first place, because they did not do anything to her. Yes, he is a gangster and he dropped her and the girl was after him already for a long while but they did not do anything to her. And she knew it. That's why she did not come to the court. She thought if she would stay away, they would just drop the case and that she had gotten back at him and the girl. But I am sorry for her that she has to spend the night now in a cell."

The motivation of the young woman from Westbury for opening the case of domestic violence was revenge – to "get back" at her boyfriend because of jealousy and, as she said, because she felt deeply hurt. She must have been partly aware that the legislation did not actually fit her case because she made up a complaint. At the same time, the idea of police intervention and of some tangible action against the former boyfriend must have been very attractive. The case backfired for her, though, since she had underestimated the

role of the state once the case went beyond the initial arrest. In the process, she got the idea that involving the state could mean a loss of control. Involving the police was a precarious undertaking and needed a certain skill. Nevertheless, she had succeeded in the sense that her ex-boyfriend and his new girlfriend were locked up for one night in the station cells before they could be released on bail.

A more successful case involving the police for a different purpose than strictly domestic violence is revealed in the following scene:

I was driving with the detectives through Westbury. As they stopped in front of a house they ran into a man who was the complainant in one of the detectives' domestic violence cases. The man had opened a case of common assault against his brother-in-law. He recognised the detective who was dealing with his case and told him: "I will come to the station later to withdraw the case. He has paid me the money he owed me; I gave him 24 hours and I told him otherwise I would go to the station again, but now he said he has the money. I am on my way to get it from him, and then I will come and drop the case." It appeared that the man had opened a case of domestic violence to put pressure on his brother-in-law (who had not assaulted him) to pay him back his money. Tellingly, the man was not even secretive about his manoeuvre, obviously not aware of or fearing the consequences for him. The detectives were not very impressed, however. They shook their heads and told him off. Back in the car the one detective said to me: "You think this is unusual? No, no, this is the usual way. They open cases for whatever they want, and then we have to go out and take the complaint seriously, otherwise we get into trouble, and then they just come and withdraw the case when it suits them. That is the way they run their business, and we are wasting our time and energy, but I tell you why, because our service is the only thing in this world for which you don't have to pay."

Again it is the police's intervention, or the threat of it, as a result of invoking the powers of the Domestic Violence Act, which is used to gain an advantage and solve a private conflict. One could even argue that there is an element of popular justice, with its irreverence towards the differentiation between criminal and civil cases, in this distortion of the powers provided by the legislation. In general, popular justice and its elements of

retribution, material restitution and arbitration, often through the means of physical violence, is carried out by community members or community organisations themselves (Oomen 2004; Merten and Ntabazalila 1999). However, here we find that the police are manoeuvred into executing their power for the purposes of individual or local ideas and modes of justice. The police are brought in on the basis of their ability to carry out punishment and threats and the authority they hold by virtue of this type of force.

It is telling that in the literature on domestic violence legislation, if a woman opens and withdraws a case of domestic violence where she clearly has been the victim of a violent assault, the woman is presented as over-burdened by her social context. However, I argue that the deterministic explanation of why she does not persist with the law appears to be an excuse to safeguard the legislation and its purported usefulness and to conceal the fact that the law actually requires a particular and exclusive subject. Very poignantly, for example, in a report entitled *Magistrates and the Domestic Violence Act*, compiled by the Consortium on Violence Against Women<sup>132</sup> (Artz 2003) – probably the most outstanding and professional advocacy-cum-research coalition on gender violence issues in the country – the first thing which is mentioned in the paragraph on withdrawals is that trauma, similar to that experienced in hostage situations, can lead women to come to see their captors as their saviours (Artz 2003:42). The motivation for withdrawing is thus put on a par with an extremely self-denying and masochistic psychological distortion. While I am not denying that such a phenomenon can occur through repeated or particularly violent abuse, it has to be noted that this interpretation may deny women their claim to common sense and discretion when resorting to withdrawal. It basically erases reasonable agency from the act of withdrawal.<sup>133</sup>

In contrast, when the legislation is used for purposes outside the definition of the legislation – such as in the above examples, or in cases about “maintenance” and “jealousy” as mentioned in another report on domestic violence (Moult 2003:60) – then suddenly women are ascribed with a wilfulness which is highlighted by depicting them as

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<sup>132</sup> The Consortium on Violence Against Women is made up of the Institute of Criminology at the University Cape Town, the Gender Project and the Community Law Centre based at the University of the Western Cape, Rape Crisis Cape Town, and the Health Sector and Gender Violence Project.

<sup>133</sup> One could even go so far as to say that pathologising their act of rejecting the legislation limits their claims to be full citizens, since they do not act as good citizens which would be to embrace the legislation and reconfirm the legitimacy of the government.

shrewd and manipulative or of bad faith. Thus, a distinction is being made between those “disempowered but deserving women” (women as victims), and the empowered and shrewd women (women as manipulators).

In this light, I would like to argue that if we forget for a moment the expectation of the legislation, and its broader mission of restoring the legitimacy of the government, these actions appear rather as an expression of the social manoeuvring within a field limited by a lack of social and economic resources. From the perspective of this realm – disconnected from the wider workings of the law – it is the appeal of the access to the tangible and persuasive police force which leads to a practice of local justice. In both cases – the one seemingly more legitimate than the other, but both situated in an environment of limited resources to advance living conditions and a history of state reliance – the force of the police is deferred and localised. It also shows how women (and men) can be bound by local entrapments, while simultaneously they can be manoeuvring to ameliorate their situation, be it by shifting of the line of violence in relationships, the recovery of self-respect after being ‘dropped as the girlfriend’, or the recovery of material resources.

## **7.6 Retaliate, resist, abide – new police practice**

### 7.6.1 Looking from the other side of the encounter

For the police, the practice of using the legislation as a form of heavy-handed persuasion and authority in local conflict, which in Westbury is followed particularly by women, is a source of frustration and provocation. This chapter’s introductory scene, in which the victim of domestic violence was threatened with arrest, clearly shows the police officers’ perceived need to restore order, which has been challenged by the complainant’s behaviour. The exasperation of the police has to be understood as a reaction to the modernisation of the state through legislation reflecting human rights needs and the liberal notion of protection and creating individual autonomy in the private sphere. They feel provoked by legislation that creates and compels new police practice. This situation makes itself manifest in changing gender and social relations between

police and the women of the area, as well as in the organisational realm with regard to particular administrative practices.

I begin this section by analysing the gender aspect, which is closely related to the issue of being drawn into the domestic sphere. I then turn to the aspect of an increased case-load, which is exemplified by seemingly insurmountable piles of dockets. As the bureaucratic manifestation of the state's expansion into the private sphere, dockets provide a poignant site of provocation for the officer on the one hand, and loss of control for the withdrawing complainant on the other. Together, these aspects form the matrix through which the practice of the people from Westbury, enabled through the domestic violence legislation, is interpreted and perceived by the police.

#### 7.6.2 "Strong women – weak men"

Many police officers strongly and explicitly express their objection to the task of intervening in the private sphere. This is based on the belief that violence is a legitimate and necessary form of behaviour within the relationship between men and women, and that private matters should be dealt with within the private sphere, without outside intervention. The following extracts from conversations with two police officers – one North-Sotho-speaking and one Zulu-speaking – illustrate their moral logic on the role of private violence and their lack of support for the legislation. The first police officer commented:

...and then this domestic violence legislation. It is necessary that a man has to give a woman a slap from time to time. If she does something bad, she has to be told that she can't do it like this. You can really excuse such a behaviour. Yes, if the man has planned it, then it is bad, but when it was a mistake ... you can't just leave him, he is your lover. And a woman, she can slap a man, too. When he comes home drunk, she slaps him, throws him on the bed, pulls off his clothes and then she turns to the wall. That's what woman do, isn't it like this? And the next day she apologises and he apologises. They don't need the police to sort things out.

The other officer, who works in the charge office and often has to open cases of domestic violence, commented:

I think they must reverse this legislation. This legislation brings a third party into a relationship which is only about the man and the woman who have committed to each other. Now, the woman comes running to the station and she wants to open a case against her husband because she is angry with him, but the moment they come to put him in a cell she wants to withdraw the case, because all that was important to her before the fight comes back into her mind and she does not want the one she loves behind bars. I think the legislation mixes into family matters. How can a man tell a woman that he does not like that, for example, she is not home when he comes home. You [speaking to the researcher] listen through the ears, but some people they don't listen through the ears; you have to touch them so they can listen; they listen through the skin. The woman is subject to the man. Isn't it like that, that universally the woman is subject to the man? I don't know, maybe with white people it is different. There the women are like men, and men are like women. There a woman gives the man a slap and the man just turns away, and holds his cheek. But I think men and women who fight most, they love each other most. When she sobs, like this: 'Sniff, sniff', then she calls your name and then you love her even more and she calls you in deep love. I have seen women who have scars in their face, at their arms ... but they still love their men. I think that people who fight most, love most. People who are like Desmond Tutu, who talk like him, they don't love. And it is not right that the women can run now to the police.

Black male police officers were particularly outspoken about the fact that the legislation would bring a foreign element into relationships, and that they were not convinced about their ability to carry it out. While clearly underplaying the severity of the violence that is inflicted in such relationships, they displayed a clear perception of how gender relationships are embedded in a certain socio-cultural context; in this context, they consider violence to be normal and meaningful. In the first comment, violence in a relationship is contrasted with the "premeditated violence" that underlies an unambiguous crime such as armed robbery – "If the man has planned it, it is bad". By virtue of this



contrast, “impulsive” violence is redeemed from its association with crime – that is, it is not considered to be criminal. The comments also suggest that a man’s authority can be dependent on the ability to inflict violence. Without that, he is powerless. The link between listening and talking reasonably (like Desmond Tutu) and whiteness (as embodied in the European researcher) is contrasted to the ability to imagine love and passion. In the familiar realm (the private sphere), violence is seen as part of communicating. This evokes an awareness, as much of cultural as of class differences. Both officers paint women as far from powerless, and insist that there is equilibrium (but not equality) between men and women. They believe that this balance becomes distorted if women have the possibility “to run to the police” – an outside resource of power. They clearly see it as weakening men, rather than strengthening disadvantaged women.

Police officers at Sophiatown police station, especially those who were Afrikaans-speaking, popularly called domestic violence cases “*ma slaan pa docketts*” – that is, “mother beats father docketts”. While obviously so named with the impropriety and crudeness innate to police slang – which like humour can work cathartically through the expression of politically incorrect or other forms of verbal transgression or inversions – it nevertheless shows their contempt for domestic violence cases. It points to the prevalence of the idea that women are equally involved in violence at home. In its acerbic way it goes even further. It alludes to the idea that the woman is the dominant person in the household, and that she has the means to abuse the man. Such views are dismissed by the domestic violence policy-makers as a misjudgement on the part of police officers: police officers, due to their own patriarchal ideas, fail to recognise domestic violence (Paranee 2001; Artz 2003).

While the prevalence of patriarchal ideas certainly exists, as the above comments by the two officers confirm, I would like to explore how police officers come to see themselves in such a position in their practice. I would like to suggest that there is a certain reverberation with a social reality, which becomes magnified for police officers through their close involvement with the populace of Westbury. This reality relates to the matriarchal role taken up by women in Westbury. Police officers often experience women as being in charge of households. Due to their responsibility for men and family, women are often either decisively delivering the men to the police (as in the case of

domestic violence) or, when it seems opportune, defending them fiercely – especially when the crime concerned does not impinge on the family or even materially supports it. Women, as they obstruct arrests or direct the involvement of police by the withdrawal of cases, appear to be taking on a very assertive role vis-à-vis the police officers. Often an exuberant outspokenness – which is not confined to the private sphere but which “trespasses” into the public and the police station, and which often makes police officers the target of verbal abuse or mockery – further influences police officers’ understanding of women in the area. Thus the woman appears more as an agent in charge of her decisions and someone who is standing up for herself than as a disadvantaged victim. Police officers then resist what they see as a situation in which women already have superior strength and are allowed, through the domestic violence legislation, to accumulate even more strength.

In this sense, the so-called “abuse of the legislation” through making and then withdrawing complaints is only partly about the fact that women are estranged from the law. To a great degree, it is about women who appear to be in charge *and* who engage the law on their terms, which leads to the perception that it is they who are abusing the law. It is the double bind which is important here. Given the prevalence of such perceptions and evaluation of experience, it “makes sense” that police officers feel unconstrained, and even encouraged, to take corrective action:

Arriving at the station in the afternoon, one of the detectives comes up to me with a big smile on his face and tells me: "You should have been with us today. We only arrested women. We taught them a lesson, that they can't just run to the police station and open a case against their men when it suits them. They have to learn that they can't just open a case against their men. Today they learned that they can also be arrested. The next time they [will] think twice before they open a case, because a man can also open a case of domestic violence."

The revengeful action takes the form of correcting what is seen as an unwarranted bias of the legislation. The police officers’ defence of what they think gender relationships should be features prominently in this.

However the satisfaction deriving from revenge cannot be explained merely by the police officers' concern about what is happening between men and women in Westbury. The fact that stories about abuse of the legislation proliferate, and that these stories often play a part in longer tirades of dissatisfaction with police work, indicates that police officers are in fact *personally* disempowered by the new practice. The police officer is not only forced to become complicit in what he sees as the domination of women over men, but is unwillingly implicated in furthering that domination in the sense that the legislation shifts the gendered nature of police work in general, and the encounters between police and subjects in particular.

The police officers of Sophiatown police station constantly complained about women calling for the police and then withdrawing the case, mistaking them for social workers. Over and over again, the officers stressed the distinction between a social worker and a police officer, with the latter having more difficult responsibilities, while it is up to the social worker to deal with the "petty and irritating" social matters of the people and especially of the women from Westbury. These concerns clearly point towards the classic binary opposition between the law enforcement side as masculine and the welfare side as feminine. This division finds its resonance in a whole set of meanings and practices rooted in the binary opposition of public and private, and society and state. However, the state, while traditionally seen as male, exemplified by its executive arms such the military and police, can be subdivided according to the nature of control and intervention. Intervention into the private sphere, traditionally the role of welfare, is then the feminine side of the overall masculine state. This means that if the new police practice constitutes a welfarisation, in the sense that police officers now have to be responsible for what they considered to be the prerogative of social workers, it also amounts to a feminisation of their work. This conflicts to a great extent with their identification of their work as masculine. Joan Wardrop (2001), in her study of the Soweto Flying Squad, makes the point that police do not simply display a pointless machismo or "essentialised or undifferentiated toughness". However, their sense of what they consider the essential quality – namely, being in control and level-headed in dangerous situations – is still ultimately rooted in ideas of dominant masculinity. Their relationship with the public is held up as male superiority – either in the role of protector

or by virtue of their exposure to danger, physical challenge and the rationality involved in investigations. The introduction of the domestic violence legislation upsets the order and reverses some of the binary oppositions which traditionally allowed police officers to ignore what they did not consider as crime but as "petty and irritating matters".

### 7.6.3 "Domestic mess"

What can also be picked up from the comments of police officers about social work is the difficulties police officers face, when being drawn into the domestic sphere, with what they regard as the "messy" nature of this sphere. "Messy" here applies in both senses of the word – as cluttered and unintelligible, as well as dirty.

With regard to the first notion: It has been noted that one of the daily challenges of police work when applying the law is to interpret an ambiguous and complex reality in a way that fits the delineated categories of the law. For police officers, this challenge is exacerbated when they become involved in the domestic sphere. The domestic sphere resists being conclusively fitted into a picture of victim and perpetrator. Because of the intimate nature of the private sphere, the police officer is confronted with mutual implications and a spiral of justifications and blaming, which often go back much further than the immediate violent incidents. This creates for the police officer an often impermeable moral haze; or as Altbeker (2005:24) describes it:

In these cases the image of a thin blue line is completely misleading because in none does the wrongdoer have a boundary to cross: he lives within the perimeter, sleeping beside or drinking with his eventual victim. Anyone posted on a frontier looking for an assault launched from the other side would be looking the wrong way.

It also has been noted that police officers, in order to get motivated about their work, make practical judgements about guilt or its absence (ignoring the legal principle which states that a person is innocent until proven guilty, and which ascribes judgement to the courts). The situation is complicated by the moral ambiguities of the domestic sphere. Interventions in the domestic sphere thus undermine and destabilise the masculine ideal

of remaining in control. It also means that if the police officer follows through with the intervention he has to apply a concentrated understanding to the intricate matters of the relationship.

It is with regard to understanding the intricate matters of the relationship that the notion of "messy" as "dirty" comes into play. A concentrated understanding holds the potential for social proximity, which is experienced as forced transgression and contagion. Even by taking a statement, or by trying to make sense of the case by carrying out further investigations, the police officer has to engage with some of the complexities of the case.

I was working with Sergeant Le Roux. When he teamed up with his police partner, Sergeant de Bruin the two embodied the rough team of the squad. To impress me, they counted how many arrests they had made in the last two months. Indeed, they had outperformed everybody else in the unit.

One morning we went out to arrest two men who were sought for armed robbery. They caught one of them. Then things took a different turn. Sergeant de Bruin had some business in town and so Sergeant Le Roux went on the next case on his own – a case of domestic violence and gross bodily harm (GBH). The case had been opened by a transvestite who, according to his complaint, regularly had to suffer the scorn of his family, including physical assault. There were about six suspects in the case. Sergeant Le Roux arrested four of them: the aunt, her two daughters and the one daughter's husband.

The aunt especially was outraged. She cursed Sergeant Le Roux and told him how rude he was. She played the role of the courageous and righteous mother to the hilt, using her entire verbal and moral arsenal. In Le Roux's office, where they all sat to give statements, she got a chance to call her youngest daughter. She told her to get a lawyer for the family because "they have arrested us today and the police is very rude to us and we cannot talk to the sergeant because he is not listening". Then the family of the daughter's husband arrived. Overrunning Le Roux's office, they pleaded with him to let everybody go, because the daughter was pregnant and because it was a special Muslim holiday. Then finally the three women and one man were given the chance to give their version of the incident. Since the detective was listening to them by then, the women were very courteous

and charming, and came up with a very convincing version of how the incident had unfolded. They also explained that they had been threatened by the complainant. They claimed that they had actually wanted to open a case, but because of certain circumstances they had not managed to get a protection order.

It appeared that the actual story was far from clear-cut. Getting drawn into their story, Sergeant Le Roux started to empathise with the accused. It was no longer the quick arrest which he had anticipated when he first headed for their house. Since each statement took about 40 minutes to take down, he spent the rest of the day with the family in his office. Other family members came and went, asking what they could do. At the end of the day Sergeant Le Roux submitted to their pleading and allowed them to leave, on the condition that they would all appear for the court case the next day.

They were overcome with joy. They thanked him and complimented him for his understanding and generosity. In a gesture of great gratitude, the food which the youngest daughter had brought to the station in case the mother and her sisters had to stay in the cells was handed over to the detective. They stressed that it was a special dish which had been cooked in advance for the festive day.

Sergeant Le Roux took it, but once they had left the room, in a sudden swing of mood and attitude, he said in a dismissive and disparaging way: "Those guys in the cells can eat it. I wouldn't dream of taking these people's food home to my family. You can just imagine what's in it." He then added that all his time had been wasted and that he truly had more important things to do.

The vocalness of women comes out in this case quite clearly, and so does the police officer's initial demonstration of police potency. What is most significant about the incident, however, is Sergeant Le Roux's oscillation between social distance marked by superiority, social proximity and engagement through compassionate absorption, and expressions of disgust and rudeness – the last being an attempt to undo the social proximity which had prevailed in his office and to restore the initial, more masculine, state of the day. By denigrating and rejecting the food he re-established a social hierarchy. One could even say that by sending the food to the cells (which he indeed did), he symbolically put the complainants back where he thought they belonged. He then made it clear that he had cases of much greater importance to deal with, and that this

should not be seen as his main work, even if he spent the better half of the day on the case.

While it becomes clear that social proximity and distance are constantly being renegotiated, the patent urge to undo proximity can only be explained by the fact that a marked distance between police officers and the people from Westbury is considered by police officers to be the norm. Social proximity, on the other hand, is experienced as transgression and contagion. This distance found a clear expression in police officers' response to a survey question which asked them if they were familiar with Westbury through their own social context or through the neighbourhood in which they grew up. Only one officer interviewed during the research period said that he had been exposed to such a conflict-ridden society as Westbury or that it had any similarity to what he knew in the area where he grew up. While a handful stressed that it was a learning process and that they understood the people better now, the majority answered the question of whether they had exposure to Westbury with a definite and slightly scandalised "No", as if the question itself was abhorrent or offensive. This was equally valid for white Afrikaans-speaking officers and for black officers.

Most black officers evoked tradition and culture as the main factors which set them apart from the people in Westbury. They claimed that where they came from there was a lot of respect for people, especially for elders and traditional hierarchies. Some of them also told me that when they went back home they were treated as authorities and with great respect due to their status as police officers and civil servants. They were often seen as members of the community who had "made it" and who could provide for the whole family. The fact that they had a regular income, that they could buy houses (with the help of police housing subsidies) that they even lived in racially mixed areas in Johannesburg gave them elevated status, especially among their village folks and families.<sup>134</sup> They therefore often stressed their disgust about the way in which the Westbury community acted out their social conflicts, such as the excessive use of alcohol

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<sup>134</sup> This has always been the case. It would be a mistake to think because in the past members of the police force were seen as the long arm of apartheid and as the enforcers of injustice against blacks, that a black policeman would have been seen as a perpetrator by his community. This was mainly the case in urban areas, where there was a politicised anti-apartheid movement. In most areas, however, especially in rural areas from where black police officers were mainly recruited, to be a civil servant was seen as a great success and was the ambition of many young men. For an authentic account of this historical aspect see N.R. Mandela's (2000) *Long Walk to Freedom* and John Miles' (1996) *Deafening Silence*.

which led to violence and social destruction. Their narrative allowed them to consider themselves as standing on higher ground socially and culturally. The apartheid idea that Africans had at least their culture and tradition, while coloured people had nothing but their inferior status because they were the product of miscegenation, clearly reverberates in these narratives.

The distancing of white Afrikaans-speaking officers from the mainly coloured people of Westbury has an additional historical and spatial dimension. Most Afrikaner police officers working at Sophiatown police station come from the urban areas of Johannesburg. Some of them grew up and still live in Newlands and Triomf one of the (former purely) white working-class areas of their policing district. Their disrespect for the people of Westbury is a combination of classism and racism, which has been shaped by the apartheid history of the country, especially with regard to poor whites. In his study of police transformation in Cape Town, Jensen (2001) argues that the urge of coloured police officers to explicitly distance themselves from the working-class coloured community comes from the racial proximity. With white working-class officers, it is the symbolic geographical proximity that creates such an urge. It reminds them that there is only a fragile border between them and the coloured townships, which also implies that there must be some social and economic proximity between themselves and Westbury.

One of apartheid's rationales was that the white under-class was in "danger" of becoming poorer than certain groups of black and coloured people. With the formalised introduction of race-based preferential policies under apartheid, this proximity was obliterated – or at least held at bay. However, with the end of apartheid and the changes taking place in South Africa, the reliability of race as an economic and social buffer declined. This threat of proximity and the challenge to the white working-class officer's social position is reason enough for such an officer to feel an urge to constantly position himself as aloof to the coloured "neighbours". Transgression of the class/race boundaries has to be avoided. White police officers are easily provoked by any attempt from the working-class coloured community to claim equality, service and rights. Each entitlement by the Westbury community is perceived as contributing to the demolition of the racial class border.



When police officers work in groups, their reputation is most at stake, and they tend to reinforce their image of what policing is about. It is especially in such situations that social distance is acted out in the form of displays of physical disgust, denigration of other groups and racist attitudes, as well as humiliating treatment of the local population of Westbury. During night-raids police officers from Sophiatown police station would enter the houses of people showing open disgust for the smell in the houses, and make provoking comments about the living conditions. They would make jokes and intimidate people, whether they were suspects or not. With each of these acts the racialised divide was reproduced. The detectives would again and again say about the complainants: "It is their own fault; if they would not drink so much they would not have these problems." One detective said on the occasion of going into the Westbury area to make an arrest: "These things over there, they don't know manners." While it is common for police to dehumanise criminals and hold them personally accountable for their deeds, in the case of Westbury many officers hardly distinguish between victims and perpetrators due to a general aversion. They justified their attitude by saying, "each complainant we get here at the police station is a perpetrator of another case". With this attitude, any claim of being entitled to respectful treatment by the police can be nullified.

Given this situation, any practice which compels police officers to lessen the social distance between them and their subjects upsets a complex and historically rooted relationship, and leaves them caught up in an uncomfortable and despised state, with the need to restore order. Ironically, it is in relation to the image of the police officer as a superior physical discipliner, and in relation to the authority derived from such an officer's rudeness and distancing behaviour, that women and men draw the police into their private and local conflicts.

#### 7.6.4 "Administrative onslaught"

As a final aspect of the way in which police officers' practice is transformed by the domestic violence legislation, I would like to discuss the issue of workload and the increased number of dockets. As described in Chapter Four, the practice centred on the piles of dockets assumes the form of a docket culture. Dockets are a source, as well as

means of punishment and humiliation. Since the closing of dockets constitutes a surrogate measure of performance and represents "good work", dockets often provide grounds for anxiety. In addition, they are a source of embarrassment, since administrative tasks are often seen as being part of a more female sort of work which tends to be based on better education. As a disciplinary pressure point within the police hierarchy, dockets provoke subversion and various coping strategies. As such, docket culture structures police officers' routines in a fundamental way. It is through the lens of sensitivities, which emerge from the meaning and practice of the docket culture, that domestic violence legislation translates for detectives into an "administrative onslaught".

Dockets speak of crime, in the sense that they are the prime bureaucratic manifestation of the state's dealings with crime. They represent the primary charting and recoding mechanism in relation to crime. Based on police dockets, statistics are compiled and conclusions drawn about the state of crime in the country. They categorise crime, and they shape and accumulate the administrative narratives of complainants, witnesses, suspects and experts. They produce knowledge and facts for and by police officers, prosecutors and judges. They ultimately bring the crime forward into the public realm.

As argued before, the government's willingness to pass the domestic violence legislation can be understood as the state's attempt to assert its monopoly on the means of violence over its population. This takes the form of promoting a human rights culture, which aims at regulating violence not just with regard to the state-subject relationship, but – on a so called horizontal level – *among* subjects in the private sphere. The form of governance applied is the disciplinary expansion of the state into the private sphere and the conferring of autonomy onto women. It is an institutional expansion, in the sense that the police service (and the courts) are assigned with regulating violence.

With this expansion, the violent intimate relationship becomes a new object of knowledge acquisition by the state. As such, it can be brought forward into the public sphere and altered by the intervention of the state. Dockets, as a primary interface between state and population – with their qualities of charting knowledge and defining the qualities of crime – are the initial instruments of objectification and, hence, governance, which is applied to bring the relationship forward into the public sphere.

The information captured by dockets might be utterly inadequate. Activists and researchers have complained extensively and publicly about the lack of central records; they also complain that, until today, the extent of domestic violence can still not be established because of the inadequacy of sources. While this means that the instruments of governance are fallible, and while it speaks of the limited capacity of the state to expand its disciplinary powers, it nevertheless shows the concern for recording. It also illustrates how these activist are very much complementary and, in terms of legitimacy, instrumental to the state's expansive and disciplinary undertaking. This does not change the fact that even incomplete recording – authorised and commissioned by the expansion of the state – results in an augmentation of administrative work for the police, in the form of the increase in docket numbers. Each case opened under the domestic violence legislation means that the police officer has to carry out the necessary administrative tasks, such as taking statements and keeping track of the number of dockets on hand. Considering the discomfort that is associated with this task and the anxiety that is provoked by each docket, each extra docket, as Sergeant Bothma makes clear, will be felt:

One day, Sergeant Bothma, was rubbing his hands in great satisfaction when I joined him in his office. With a sense of malicious pleasure he told me that a Westbury woman had just come to him to request the withdrawal of the case of domestic violence which he had opened the other day. Sergeant Bothma explained to me that he first had played hard to get and had kept the woman on tenterhooks, eventually sending her to the prosecutor with her request. At least, so Sergeant Bothma said, the woman also had to make an extra effort: "I will let her feel that all the time I spent sitting at my desk was not nothing. She will have to do her share now."

To refuse the woman's request and send her on to the prosecutor is just another form of revenge and an attempt to rectify a certain order. In this case, however, it is around the issue of the administrative record – the docket – that the revenge is lodged; at stake is the time and effort spent on the docket.

The detective's revenge takes the form of unleashing the disciplinary power which is imbued in the administrative effort against the woman. The disciplinary power emanates from her case being charted in the docket; she, by allowing this to be done, has commissioned the state as a protector, which means she has handed over some of her discretion to the state.

For the police officers, the act of withdrawing a charge exacerbates the challenge they face in domestic violence cases. For them the act of opening and then withdrawing a case represents carelessness and inconsideration in the light of what for the police officer is a hugely sensitive matter, namely the receiving of dockets. Each extra docket can be thought of as an extra threat and source of anxiety, humiliation and inadequacy. As such, carelessness and inconsideration appear as disrespect and disregard for the police officer's plight. It further reminds the detective of the discretion and power the woman exerts over him by opening a case of domestic violence. It puts her in the position of being able to inflict punishment and humiliation on the police officer. To first open and then to withdraw a case is felt as a double assertion of this discretion and as an unnecessary, thus arbitrary, infliction of punishment and humiliation.

Hence, the effect of the expansion of the state into the private and domestic realm is not just a simple augmentation in workload, represented by a numerical increase in dockets. The increase in workload in the form of increased dockets means an increase in humiliation and punishment, and therefore anxiety. It also means an increase of the administrative task, and thus of the more feminine and the educationally demanding load. And as if this was not enough, with the shift of discretion and through women's assertion and apparently arbitrary application of discretion, it means that power is placed in the hands of some of the Westbury populace to inflict punishment and humiliation on the police, and so to reverse what has been a long-ingrained relationship based on the police inflicting humiliation on the populace.

## **7.7 Conclusion**

In this chapter I have discussed the domestic violence legislation as a specific although typical case of the introduction of human rights and as an example of

accountability towards the population and the law. The Domestic Violence Act is a representative case of the application of human rights in the sense that it is aimed at the protection of the weak, vulnerable, disempowered and disadvantaged, reflecting explicitly the human rights credo of creating equality. It is also a good example of accountability in that it demands an increased responsiveness by police officers towards the population. In the application of the Domestic Violence Act we find a confluence of accountability towards the law and accountability towards the population, clearly built upon the assumption that this dual accountability is reinforcing rather than contradictory.

In its broad definition and its stipulation of mandatory duties for the police, the domestic violence legislation reflects the post-apartheid attitude of the government and its disposition towards the regime of international human rights and civil society activism. It also embodies the liberal notion of creating autonomous and responsible subjects both through holding the state accountable, and through the subjects' own engagement with the law. On the other hand, it exemplifies the expansion of the state's responsibility for its subjects through law enforcement into the private sphere. Within the South African context, it is one of the most clearly delineated and innovative legal changes affecting law enforcement.

I have shown how the disciplinary powers conferred by the legislation are being rejected by the police, because they demand women's autonomy. These powers are localised by the women in the area and used for certain social manoeuvres, such as the recovery of a sense of self-respect and to negotiate the boundaries of violence, rather than for eliminating violence from relationships. In this process, police officers are disengaged from the rest of the criminal justice system. Their role is re-inscribed with a form of authority which is rooted in power over transitory arrest in local(!) cells and the threat or use of violence. This interpretation of police intervention calls for a physically persuasive discipline which is tangible in the local realm. Ironically, it is an interpretation of authority which resembles the terrifying power of the police in the past, rather than the benign and gentle authority into which human rights, according to the populace, can translate. It is through the domestic violence legislation that police officers are absorbed into the local realm despite their resistance to it.

The expansion into the private sphere and the mandatory compulsion for police officers to intervene are conducive to the appropriation of police officers by local people. The legal encroachment on the private sphere is conducive to this appropriation of policing powers in the sense that it already means a move away from a more clearly delineated moral realm into the messy moral realm of domestic violence, and in the sense that it is the realm of close social interaction where civil liabilities are concerned. This also creates a new context whereby policing powers can more easily be used for issues of local popular justice, which fall outside the legislation's definition of relationships. It allows a continuity of social practice by local people, enabling them to make use of state resources for the advancement of their situation under conditions of blockage and limited resources. The evidence suggests that there is a continuum linking the seemingly divergent extremes of everyday police practice – namely between the very informal police practice of sociability (see previous chapter) and the practice that is compelled by mandatory human rights enforcement. Both ends of the spectrum lend themselves to the appropriation and redirection of state power. This also shows where the challenge lies for police officers when introducing human rights: it makes them vulnerable to being disengaged from the criminal justice system and becoming absorbed into the informal realm. If the informalisation only meant access to material or other advantages for police officers, then that might be less problematic for them. However, if it means, as in the case of the domestic violence legislation, that they are directed to act against their sense of self and to experience humiliation and punishment, then it constitutes a painful process for them.

Can we understand the need of police officers for retaliation and revenge, and understand why they are frustrated, and why they do not enthusiastically embrace the task of enforcement of the domestic violence legislation? The answer, as I have shown, is a complex one. It lies not only with police officers themselves but just as much with the legislation, and with what the legislation presupposes and expects from them. It is important to understand the nature of the changes which emerge from of the implementation of the legislation. From this perspective we can look at police officers and find that, in these cases, it is the discrepancy between the subjectivity which the

legislation and the accountability toward the law prescribes for them and the attitudes they actually hold, which is crucial.

This discrepancy is further exacerbated because police officers perceive the lack of agency that the legislation attributes to the victims of domestic violence, as being mismatched. They are suspicious of the legislation's disciplinary subtext with regard to making police officers responsible for restoring the autonomy of women. In fact, there is a similarity in the police officers' and the women's perspective, in that they both refuse the subject position of victim, and respectively they also reject the restored autonomy of women through the law. However, the women do not reject the legislation in its entirety. And by women appropriating the legislation and adapting it to the local realm, the police officer still gets to feel some of the gender shift which the legislation is to make in the form of increased command by women.