
Clearly the use of BWS is fraught with controversy. However, the bottom line ought to be, what happens to that woman who, physically, emotionally, sexually and mentally violated for years, kills her tormentor/jailor? In a recent appeal before the New South Wales Superior Court, such a woman's sentence of eight years was upheld.⁸ Although the judge reiterated in his judgement the history of degradation and violence which the appellant endured, and the results of psychological tests which showed marked low self-esteem and high dependency (typical of BWS), he lacked the expert framework in which to place her actions. He could not justify her use of an axe or the fact that the deceased had been asleep. It was explained that she had lost control, had been provoked. Thus, she had been found guilty of manslaughter instead of murder. The judge was incapable of seeing her actions as self-protection; to understand the imminent state of danger in her mind. BWS and its experts can provide that framework and such women's actions can be exonerated. That should be the bottom line for all those who are concerned with the validation and recognition of the experiences of women and equal treatment in our courts. Is it evangelical to recognize that such grounds for self-defence have worked overseas and should be on offer for women in Australia? Few, if any defences are without their critics. However the precedent has not been to restrict evidence and litigation approaches to the arguments or theories which have achieved universal approval. Justice is best served by permitting their presentation in open courts of law which can evaluate the merit of BWS.

PATRICIA WEISER EASTEAL[†]

THE (UN)REASONABLE BATTERED WOMAN? A RESPONSE TO EASTEAL

I welcome Patricia Weiser Easteal's response to my article in the hope that it may provoke more of a debate around the issue of Battered Woman Syndrome (BWS) which is complex, fraught and has the potential to have a huge practical significance for a woman charged with killing an abusive spouse. The promise of utilising the defence to win the acquittal of a battered woman on trial for such an action is very appealing. However, the potential dangers of the strategy for other women must also be anticipated and acknowledged.

Easteal argues, on the basis that some women have been acquitted at trial after invoking the Battered Woman Syndrome as a defence in other countries, that the BWS defence should be actively pursued in Australia. She claims that criticisms of BWS are ill-founded and based on a misunderstanding of the syndrome. The BWS is presented by Easteal as a strategy which helps reinterpret what represents reasonable self defence, confronts myths of masochism and passivity and demonstrates the rational and justifiable nature of the actions of the battered woman who kills an abusive partner.

There are a number of issues which are potentially problematic in the use of BWS and which are not addressed adequately by Easteal's response.

⁸ *Regina v Whalen* (Unreported, NSW Court of Criminal Appeals, April 1991).

[†] Senior Criminologist, Australian Institute of Criminology, Canberra.

Firstly, there is some debate in the literature about what the psychological symptoms which constitute BWS might be, and importantly to what extent battered women share such symptoms. Eastaer herself recognises that not all battered women experience the pattern of violence specified by Lenore Walker's cycle of violence (relied heavily upon in formulations of BWS) nor do they conform with the symptomology of BWS (including that of learned helplessness).

A second and related issue is that the use of BWS does not confront the larger question of what might be considered to be reasonable, but rather constructs a different standard of behaviour against which a (reasonable) battered woman is to be measured. Such a construction may benefit those who fit the stereotype but may disadvantage those women who kill in similar circumstances but who cannot meet the criteria for BWS through not exhibiting the right symptomology — the unreasonable battered woman?

The danger lies not in using BWS as descriptive of the experiences of some battered women, but as prescriptive of what are reasonable responses for battered women.¹

Thirdly, the approach focuses on the psychological characteristics of an individual woman (or subset of women) to explain their conduct. The attention is shifted away from the many social and structural factors which limit women's options, and may make leaving a violent relationship difficult or impossible. Rather the woman's actions are interpreted in the context of her psychological (dys)functioning. Eastaer's claim that BWS does not imply some form of psychological deficit or disability must be held in question. Indeed Lenore Walker, whose work in this area provides the basis for much of the literature promoting the use of BWS, speaks of behavioural disturbance, psychological disorder and bizarre behaviour by women who exhibit BWS.² To Eastaer's statement that "BWS evidence portrays the defendant's killing as entirely rational and justified" needs to be added the qualification "for someone possessing a particular cluster of psychological symptoms".

Eastaer's focus upon the apparent gender neutrality of the term learned helplessness is not particularly helpful. The issue is not whether learned helplessness is gendered, but rather that in being invoked in the context of battered women it reinforces extant stereotypes about women's passivity. More importantly, the validity of the concept itself has been questioned within the psychological literature, and the illogicality of explaining a purposive action — killing — by resort to helplessness has been highlighted.

1 In fact a number of cases have been documented in the U.S. where battered women could not raise the defence because they did not conform with the specified psychological profile and. or, to the cycle of violence model, see Martinson, D C, MacCrimmon, G I and Boyle, C "A forum on *Lavallee v R*: Women and self-defence (1991) 23/23 *U Brit Columbia L R* at 54-55 and Crocker, P L, "The meaning of equality for battered women who kill men in self-defence" (1985) 8/121 *Harv Women's L J* at 137.

2 "When free, once and for all, of the battering circumstance, most of these women cease to manifest any so-called behavioural disturbances or personality disorders, a fact that proves, to this professional at any rate, that their previously abnormal behaviour was directly caused by their victimization. When they are no longer victimized, the bizarre behaviour disappears." Walker, L, *Terrifying Love: Why battered women kill and how society responds* (1989); also cited by Martinson et al, id at 49.

As I have argued the construction of BWS as defence strategy is a response to the inflexibility in the prevailing legal system. Whilst such strategies may achieve some benefits for some women on some occasions, they leave the larger questions untouched. Ironically constructs such as BWS may further entrench the problems which have been identified with the concept of reasonableness since the male standard remains the norm unless a psychological syndrome is invoked to explain any departure from this norm.

Whilst I am sympathetic to strategies which will encourage the courts to recognise the gendered nature of the allegedly objective standards which they invoke, and which will bring to the attention of the judiciary the nature and range of women's experiences, I am sceptical that the use of BWS will achieve these ends. Some gains may be won for some women but at what cost?

JULIE STUBBS*

* Faculty of Law, Sydney University.