



Why Criminalise Coercive Control? The Complicity of the Criminal Law in Punishing Women Through Furthering the Power of the State

Sandra Walklate

Monash University, Australia; University of Liverpool, United Kingdom

Kate Fitz-Gibbon

Monash University, Australia

Abstract

Moves to criminalise coercive and controlling behaviours are hotly debated. In jurisdictions where the legal response to domestic violence has incorporated coercive control, the efficacy of such interventions has yet to be established. Within this debate, limited attention has been paid to the extent to which such moves challenge or endorse legal understandings of the 'responsible subject' (Lacey 2016). This article will consider the failure of both the law in theory and the law in practice to address this feature in the debates surrounding coercive control. We suggest that this failure may result in the reassertion of traditional conceptions of responsibility. Or, as Naffine (1990) might say, a reconsideration of the unintended impacts of the prevailing influence of the rational, entrepreneurial, heterosexual, white man of law. Consequently, any law intended to offer an avenue for understanding women's experiences of coercive control can reassert women as victims to be blamed for those same experiences and sustain the power of the patriarchal state in responding to such violence.

Keywords

Coercive control; intimate partner violence; criminal law; criminalisation.

Please cite this article as:

Walklate S and Fitz-Gibbon K (2021) Why criminalise coercive control? The complicity of the criminal law in punishing women through furthering the power of the state. *International Journal for Crime, Justice and Social Democracy*. 10(4): 1-12. <https://doi.org/10.5204/ijcjsd.1829>

Except where otherwise noted, content in this journal is licensed under a [Creative Commons Attribution 4.0 International Licence](https://creativecommons.org/licenses/by/4.0/). As an open access journal, articles are free to use with proper attribution.
ISSN: 2202-8005



Introduction

Coercive and controlling behaviour has long been recognised as a problematic feature of some intimate partner relationships (see inter alia, Johnson 1995; Schechter 1982). Since the publication of Evan Stark's book *'Coercive Control: How Men Entrap Women in Personal Life'* (2007), in which he frames coercive control as a 'liberty crime', there has been an increasing momentum pressing for the criminalisation of coercive and controlling behaviour. This pressure, and the responses to it, have been varied. Some jurisdictions have recognised coercive control as an adjunct to other offences, and some have considered it an appropriate space in which to use expert witnesses. Others have introduced specific criminal offences of coercive control (these different developments are summarised in Walklate and Fitz-Gibbon 2019). More recently, there have been attempts to incorporate an understanding of coercive control as a mitigating defence for murder. This incorporation is exemplified in the appeal made on behalf of Sally Challen in England and Wales in 2019. This appeal resulted in newly disclosed psychiatric evidence being accepted by the court, along with a guilty plea for manslaughter for the crime for which she was originally convicted. A case was made for her actions to be framed within understandings of coercive control, but its relevance at that time was disregarded by the court (Fitz-Gibbon and Walklate 2019).

Much of the debate surrounding the criminalisation of coercive control has gained momentum with scant regard for the role of the civil law on this issue, the influence of the northern hemisphere origins in framing this concept and the relevance for those not included within these northern presumptions. For instance, it is important to note that in some jurisdictions (particularly in Australia) there are mechanisms available in civil proceedings that recognise coercive control as grounds for action. Indeed, when viewed historically, civil law has provided a significant and important avenue through which women living in violent relationships have been afforded legal support to improve their lives and secure their safety. This has also arguably been the case in England and Wales (Williams and Walklate 2020). The absence of any consideration of existing civil law options in this debate speaks volumes about the extent to which criminalisation has become a pre-eminent policy option for those seeking to redress the consequences of the violence(s) in women's lives. It is also important to note that this pre-eminence is arguably 'peculiar' to the Anglo-speaking world. In this part of the world, policy responses to violence(s) against women have been influenced by North American work, characterised by what Goodmark (2015) has called 'exporting without a licence' (on the transfer of violence against women policies from the north to the south, see Walklate and Fitz-Gibbon 2018). Usefully, this influence is under some contemporary challenge and critique, with the work of Carrington and others providing evidence for alternative ways of responding to such violence(s) (e.g., see Carrington et al., 2020).

The purpose of this article is to situate recent moves to criminalise coercive control within the historical trajectory of the criminalisation of violence against women more generally and to explore its unintended consequences. Crucially, it delves deeper into the unintended consequences of coercive control creep as explicated by Walklate and Fitz-Gibbon (2019). For this in-depth analysis, the article is divided into four parts. The first part considers (briefly) the arguments for and against criminalising coercive control. In the second part, Goodmark's (2018) recent intervention into the criminalisation thesis is examined, in which she argues for the decriminalisation of domestic violence. Goodmark's work is considered in combination with Lacey's (2013; 2016) contribution to the criminalisation debate as one way of understanding the conditions under which criminalisation may or may not be effective. This work reminds us that in the recourse to law, on which the criminalisation thesis depends, the subject of law is left untouched. It leaves the notion of the *responsible* subject of law unchallenged. In so doing, criminalisation leaves a space for the state and its capacity to 'kill her softly' (Mills 1999) to continue to do its work. In the third part of this article, the notion of the responsible subject of law is placed under further scrutiny. This part considers how constructions of intimacy (Dawson 2016) and 'normal relationships' (Ballinger 2016; Houge 2016), as deployed in law and informed by conceptions of responsibility, serve to 'punish' women not only as offenders but also as victim-survivors. As a result, and as is argued in the conclusion to this article, our analysis points to the ways in which the move to criminalise coercive control fails to overcome the individualising consequence of the criminal justice process, particularly in respect of victim-survivors.

Why Criminalise Coercive Control?

To be clear; women's (and others') experiences of coercive and controlling behaviours are real and carry with them severe consequences for themselves and their children. The harms and long-term effects of this form of intimate partner violence are not in dispute. However, recognition of these experiences notwithstanding, a debate remains concerning whether the criminal law can make a meaningful difference for women living with those experiences. Tolmie (2018) gives a voice to some of the arguments in favour of criminalisation. To summarise, she suggests that criminalising coercive control places any physical violence experienced by victim-survivors in the context of their relationships and sensitises police responses to non-violent and other forms of low-level offending, which may escalate to more overt physical abuse over time (see also Bishop 2016). Consequently, should a report be subsequently prosecuted in court, greater awareness of the context of a case can help validate women's experiences of violence and enable the court to make more informed decisions about a case and the disposal of the offender. In capturing the full extent of the abuse experienced, which may be psychological and/or financial and/or involve the use of digital technologies, rather than solely focusing on physical abuse, such an offence labels what has happened more effectively and can inform sentencing (Youngs 2014).

It is also argued that criminalising coercive control has an educative function and may help victim-survivors to make greater sense of their experiences and encourage wider community recognition of this form of violence (Douglas 2015). Voice has also been given to the power of the law as a preventive strategy. Put simply, criminalising coercive and controlling behaviour, recognised as a common feature of lethal relationships, may prevent such deaths from occurring (Johnson et al., 2019). However, in the jurisdictions where coercive control legislation has been implemented, the jury is still very much out on whether this response delivers upon all or any of these purported outcomes.

Admittedly, it is still rather soon to draw any hard and fast conclusions based on the available evidence from jurisdictions with an offence of coercive control. One exception is perhaps Tasmania (Australia). Tasmania represents one of the earliest jurisdictions to criminalise this form of behaviour and remains the only Australian state or territory to do so. Since 2004, Tasmania has had legislation covering some aspects of coercive control. Evidence from that jurisdiction suggests that the offence is rarely used in prosecution. This lack of use was not due to practitioners' unwillingness to pursue cases under the new laws, but rather flaws in drafting the legislation itself (McMahon and McGorrery 2016).

The Tasmanian experience aside, it is difficult to draw any conclusions in relation to the arguments in favour of a standalone offence of coercive control from figures cited from England and Wales. It is also difficult to judge the extent to which its presence and increasing use over time have improved women's safety. The legislation in England and Wales was introduced in December 2015, meaning that the offence has been in operation for only five years. The most recent statistics available relating specifically to this offence are for the year ending March 2019. These figures indicate a fourfold increase in cases of coercive control receiving a first hearing in a magistrate's court (from 309 in the year ending March 2017 to 1177 in the year ending March 2019). The figure for convictions for this offence in which coercive control was the principal offence being tried was 308 in the year ending December 2018 (Office of National Statistics 2019). Given that the police recorded 1.3 million domestic abuse-related crimes in the year ending March 2019, and in that same year the Crime Survey for England and Wales estimated that 2.4 million people experienced domestic abuse, these figures on the early uptake of the coercive control legislation offer some insight into the extent to which this offence has occupied the work of criminal justice professionals since its introduction. At this point, there are no official comparable figures from Scotland, where the criminal offence of domestic abuse came into effect less than a year ago in April 2019.

Although McGorrery and McMahon (2019) make some claims regarding the efficacy of this intervention, we note that their analysis is based on press coverage of cases, which is limited as a data source. There is an arguably problematic assumption that the increasing use of a law equates to evidence of its efficacy. What can perhaps be inferred from these statistics is that they illustrate some of the problems, albeit

perhaps teething problems, associated with translating this law into practice. These have been discussed in more detail by Wiener (2017), Barlow and colleagues (2020) and others (see Walklate et al., 2018; Burman and Brooks-Hay 2018). Implementation problems are not necessarily an argument against criminalisation, but they do point to the realities of the implementation process and that such a process takes time. In practice, criminalisation is not a quick fix policy option and nor should it be represented as such.

These problems are suggestive of deeper tensions posed by the criminalisation of coercive and controlling behaviours for a criminal justice response. These deeper tensions can be summarised in two ways. First, there are difficulties in shifting the criminal justice gaze away from its traditional incident-focused response to a process-focused one demanded in the recognition of coercive control as a course of conduct offence (Kelly and Westmarland 2016). This shift includes the problems of evidencing coercion (Bishop and Bettinson 2018). Second, there are difficulties in evidencing the extent to which criminalisation achieves improved safety outcomes for women (especially women who are particularly marginalised from the criminal justice process) and the extent to which this strategy might contribute to perpetrator accountability. These issues have been discussed elsewhere in terms of understanding the tensions between the presence of coercive control in everyday life and what that might mean when placed within a criminal justice context (Walklate and Fitz-Gibbon 2019).

Interestingly, the debate surrounding coercive control and its criminalisation is, in many ways, a surface manifestation of a deeper problem that has plagued those committed to changing legal responses to violence against women since the 1970s. This problem is: how and under what conditions might a criminal justice response to such violence(s) be an effective one? Goodmark (2018) refers to this problem as the 'criminalisation thesis' which we will now review.

The Criminalisation Thesis

The criminalisation thesis grew in prominence during the 1970s, particularly in the United States, and spread soon after to other parts of the Anglo-speaking world. At that time, the voices demanding tougher responses to crime more generally became aligned with feminist voices campaigning for all violence(s) against women to be taken more seriously, particularly by those within the criminal justice system. Arguably, this alignment was more evident in the United States than elsewhere, but as the 1980s unfolded and different victims' movements made their presence felt, these voices became increasingly intertwined (see Barker 2007; Ginsberg 2014). However, as recognition of, and concern about violence against women became more prominent, as increasingly voiced by feminists at that time, the policy responses to these concerns became marked by a recourse to the law (see inter alia Walklate 2008; Smart 1989). It is important to note that not all feminist voices spoke as one. Some pointed to the fact that changing the law and its practice was only one piece of the puzzle (see, for example, Wilson 1983). Such differences notwithstanding, Goodmark's (2018) analysis does point to the myriad of ways in which focusing attention on the criminal justice system has been beneficial for some women victim-survivors. For example, mandatory and pro-arrest arrest policies, the currently popular Domestic Violence Prevention Orders, court-mandated interventions for violent men, prosecution and/or the threat of prosecution and/or imprisonment can all offer short-term and sometimes longer-term benefits for the safety of some women victim-survivors. These responses can also satisfy the desire to punish and raise awareness of the unacceptability of this kind of violence (Goodmark 2018).

However, as Goodmark (2018) goes on to outline, these same practices do not affect all women victim-survivors in the same way. For some, these practices have resulted in greater state control over their and their children's lives. This is particularly the case for ethnic minority women, those belonging to Aboriginal and Torres Strait Islander communities and for women with disabilities. As Stubbs and Wangmann (2015) evidence, the different legal domains these women are exposed to when their experiences of violence come to the attention of the authorities require them to perform themselves differently (to fit with the expectations of these different authorities as legitimate victims) to secure legal redress and safety for

themselves and their children (see also McCulloch et al., 2020; Meyer 2011). Moreover, for some women, recourse to the law adds to the increasingly recognised risk of dual arrest, a phenomenon occurring in incidents of intimate partner violence where the police officer arrests both the ‘perpetrator’ and the ‘victim’ in the absence of evidence easily differentiating one from the other (see Miller and Meloy 2006; Nancarrow 2019; Reeves 2020). In addition, many of these policies have had a differential effect on women of colour (Goodmark’s term, see 2018). This issue was demonstrated by the work of Berk and others (1992) 28 years ago when revisiting the efficacy of the mandatory arrest policy, in which the longer-term consequences for ethnic minority women were documented.

Goodmark (2018) argues that many of these kinds of policies have added to the hyper-incarceration of ethnic minority men (especially in the United States) and have ultimately committed police and criminal justice resources in ways in which it is difficult to see what good effect they might have had (see also Goodmark 2020). Goodmark (2018) is clearly commenting on the effect that this move towards criminalisation has had in the United States, and reminiscent of the agenda posited by Wilson (1983), she goes on to make a case for more holistic responses to domestic/family violence(s) against women (see also Royal Commission into Family Violence 2016). Goodmark (2020) ultimately asks the question: does criminalisation deter? Despite the United States orientation of her analysis, the issues raised in her work are pertinent to the recurring recourse to law found in other jurisdictions across the globe. However, before considering some of these issues in more detail, there is more to be said about the process of criminalisation and the conditions under which it is possible to make claims for its efficacy emanating from the work of Lacey (2016).

Lacey (2013) reminds us that there is a political-economic framework underpinning any process of criminalisation. Although policy transfer processes have engendered assumptions around global convergence in relation to criminalisation, significant institutional differences remain (this point is well made in several of the contributions in Carrington et al., 2018). Furthering this analysis, Lacey (2016) goes on to observe that in recognising that the law in action is not the same as the law in books (as the problems of implementing coercive control laws referred to above illustrate), it is important to recognise that:

A primary gatekeeper between social behaviour which might be defined as criminal and the process of formal criminalisation is the ordinary citizen. What this implies, among other things, is that where central, hierarchically defined criminal law standards depart from community standards – as, unfortunately, has often been the case in relation to the application of the law of assault to domestic violence ... Lack of alignment with community-based control will, therefore, place limits on the effectiveness with which centrally determined hierarchically imposed regulatory objectives can be pursued: in this sense, wider social norms themselves regulate formal criminalisation. (Lacey 2016: 18)

These observations point to several key issues. First, Lacey’s appreciation of criminalisation pointedly crystallises the comments expressed by Mooney (2007) some time ago on the persistence of violence against women as a private common-place while seemingly a public anathema. These observations perhaps suggest there has been a failure to appreciate the role of the ‘ordinary citizen’ in the policy process. Second, this view lends some weight to the questioning of criminalisation as a solution to this problem, as exemplified in the recent interventions made by Goodmark. Third, Lacey’s analysis offers a cautionary note concerning the predominance given to neoliberal political economies in framing debates on criminalisation, which perhaps encourages deeper thinking about the contextual origins of the phrase ‘liberty crime’. Fourth, and importantly for the development of the argument here, this situates an understanding of criminalisation within wider understandings of the role and function of the criminal law. In drawing attention to the associated constructions of criminal responsibility, Lacey’s works add a layer of complexity to how criminalisation and its consequences might be understood.

To summarise, for Lacey (2016: 16) criminalisation needs to be understood as a ‘regulatory space’ with actors, tasks and ways of operating in which the interaction between these components can sometimes be

coordinated and sometimes fragmented. The actors include the legislative processes, courts, criminal justice professionals, non-governmental organisations, individuals and private security companies. All of whom can set standards, monitor, and enforce the tasks set by the criminal law. How this is done depends upon each of their different modes of operation, which can be hierarchical, community, competition or design based. In this model, the view that criminalisation per se works in a hierarchical and regulatory fashion (as is often expressed in debates focusing on the recourse to law as a policy fix) offers only a partial picture. From this vantage, the process of criminalisation, and its acceptance as legitimate, is produced in a 'regulatory space' that can, by definition, be incomplete and contested. The efficacy of criminalisation, as understood in this way, rests upon how the responsibility of the criminal subject is constructed within this process. It is through the construction of the responsible subject of the criminal law that the criminal law itself contributes to processes of legitimacy. In other words, it serves the interests of the state. However, questions remain. Why does adding this level of complexity to the understanding of the process of criminalisation matter, and what relevance does this have for the problems and possibilities of criminalising coercive and controlling behaviours?

Criminalisation, Gender, and the Construction of the Responsible Subject of Law

Rendering the recourse to law as more complex, and its deployment as constituting more than asserting its potential to have a symbolic and/or educative function, as Lacey's work does, enables two things. It enables a more nuanced appreciation of the slippages between law in theory and law in action (referred to above) and the processes that mitigate against the capacity of the law to work hierarchically.

It is perhaps obvious, though not often made explicit, that criminalisation creates complainants and defendants (victims and offenders). These two categories exist in a mutual relationship with one another brought into being by the criminal law. Leaving aside the bigger, and extensively debated question concerning the purpose of the criminal law, the creation of these categories, as legal subjects, are intimately connected in understandings of responsibility (in law) and the concomitant construction of the responsible subject (of law). This subject, as Lacey (2013) reminds us, is gendered. Put simply, understandings in law of who did what to whom and why are interconnected and gendered.

Theoretically, there are at least three possible constructions of law's person (see Naffine 2003), and while, as Lacey (2016) has pointed out, understandings of criminal responsibility have shifted over time (from being character based in the eighteenth century to more capacity based in the nineteenth and twentieth centuries), some features of the person of law stubbornly persist. For example, as Lacey (2016: 57) comments:

The criminalisation of prostitution constitutes a vivid example of both a survival of character-responsibility in criminal law itself and of the distinctive way in which sexuality continues to be implicated in social judgements of women's character. (Lacey 2016: 57)

Moreover, although some laws might include gendered understandings of certain behaviours (as the recent Scottish legislation incorporating coercive control does), the kind of social judgements referred to by Lacey above can, of course, pervade the practices of all those involved in the practice and delivery of justice. As Lacey (2007) has commented elsewhere, being deemed responsible and being judged responsible are one and the same in law. At root remains the enduring presumption that the responsible subject of law is the entrepreneurial, rational, white, and male (Naffine 1990). These presumptions construct the responsible subject in national and international law and permeate understandings of and responses to both victims and offenders.

While the contours of this responsible subject can shift over time (Lacey 2016) the persistence of gender as a feature of the construction of both individual victims and perpetrators is particularly salient for the concerns in this article. The work of Midson (2016), Ballinger (2016), Houge (2016) and Dawson (2016) affords some insight into the different ways this question of the (gendered) responsible subject carries

implications for how the recourse to law (criminalisation) can be understood and the consequences it has, particularly in cases of lethal violence, in which women, in the work cited here, can be both victims and offenders.

Ballinger (2016), for example, revisits the case of Ruth Ellis, the last woman to be hanged for murder in the UK. She considers the arguments made when Ruth's guilty verdict was (unsuccessfully) appealed in 2003 in the light of more recent legal developments in understandings of provocation. The Court of Appeal rejected the case made on two grounds: the first being the principle of viewing each case through the legal requirements dominant when the offence occurred; the second was the undeniable admission made by Ellis. When asked what she intended to do with the gun in her possession, she replied that she intended to kill him—an admission she maintained until her execution. For Ballinger (2016) this case still provokes considerable interest, in part because of the gendered assumptions underpinning who was held responsible for what in this act of lethal violence. Put simply, in overemphasising Ellis' admission of responsibility and underemphasising Blakely's (her victim) irresponsibility towards her, the court took the concept of responsibility itself as being neutral and given. Yet in examining this case in detail, as Ballinger does, such neutrality is clearly misplaced. The relationship between Ellis and Blakely was far from neutral. They belonged to different social classes, clearly had different levels of commitment to the relationship, and Blakely evidently had considerable power and influence over Ellis, partially achieved through the alleged use of psychological and physical violence throughout their relationship. However, these complexities became lost in the legal desire to assign individual responsibility for what took place: a process clearly facilitated by Ellis' own admission. Thus, the complex narratives of people's lives became transformed into a simple legal one (see also Midson 2016). As Foucault (1976) might say, their knowledges become subjugated and thereby, the law misses the mark in enabling it to stand for us all (Naffine 2003). In this way, complex lives become manageable and controllable through the law and at the same time sanitised into something resembling 'normal' (heterosexual) relationships. Dawson (2016) explores this process of sanitisation further.

Dawson (2016) takes a close look at how cases of intimate partner homicide are constructed and understood in the court process through the lens of intimacy. She argues that assumptions about intimacy are found in the search for and justifications of reduced culpability. These can be found in expressions of violence committed in 'hot blood', being provoked by a partner's unacceptable behaviour, or indeed in the presumption that private acts of violence are not a threat to the social order because this offender was only dangerous to their partner. For Dawson (2016) these domain assumptions inform how the criminal justice process constructs the 'normal' crime of intimate partner violence and draws on gendered assumptions of who can do what to whom. They facilitate a taken-for-granted (masculinised) legitimacy view of such events, couched in terms of intimacy (see also D'Cruze 2011). So, when there is a man, a woman, a history of violence and a death, the concept of intimacy informed along these dimensions frames who is made responsible for what and concomitantly who was culpable of what (i.e., who could be blamed) harking back to Mendelsohn's (1956) early use of the concept of victim-precipitation.

This search for gendered individual responsibility is subjected to further scrutiny by Houge (2016) in the context of the collective acts of war and conflict. In a detailed analysis of the case files of 15 defendants convicted of murder by the International Criminal Tribunal in the former Yugoslavia, Houge illustrates the power of legal discourses in seeking out individual responsibility. Her analysis reveals that prosecutors relied on two discourses. These men before the court were either deviant or just ordinary men responding to situational pressures. Alternatively, they were in varying states of denial that their behaviours were in any way problematic. Thus, their status as men, and the gendered assumptions associated with what men might do under different circumstances, was never called into account.

Each of these examples (and there are others) articulate the means by which the legal subject of law is constructed as an individualised, gendered, and responsible subject, even in the face of different circumstances in which responsibility for what transpired may, in reality, be multilayered and complex. What is key here is that this subject is constituted by whatever means possible as a neoliberal, governable

subject (O'Malley 2010) in which the marginal status of the subjects being scrutinised can be silenced alongside their gender (Gerard and Kerr 2016; see also Weber and Pickering 2011 on the diffusion of responsibility).

So, gender informs not only how individuals respond to the circumstances in which they find themselves, but also frames how the legal process responds to them and constructs them as responsible (neoliberal) subjects (Lacey 2016). These are not new observations, but they are all but missing in the context of recent debates to expand the remit of the criminal law to capture coercive and controlling behaviours. The failure to recognise their silent but pervasive influence in the recourse to law is both telling and important for (at least) two reasons. These observations more clearly bring into view the questions of who the subject of criminalisation is, and whose interests are served in the construction of this subject. This requires further explication.

Responsible Subjects and Blameless Victims

Some time ago, Mills (1999), using the same typology as an abuser might use against their partner, documented the ways in which the state replicated the same abuses as experienced by abused women. These abuses range from rejecting her views to confining her when she, the victim, turns abuser. Recently, Douglas (2018) has referred to this as legal systems abuse, when a partner uses the legal system to perpetuate the abuse of which they have been accused. Douglas (2018) considers the ways in which criminalising coercive control might afford further possibilities for the proliferation of systems abuse within the context of criminal law proceedings, including contested hearings. However, Mills (1999) is talking about the system itself as a source of abuse, particularly when the system pursues mandatory policies of intervention. More recently, the consequences of this have been demonstrated by Edwards (2012) in the practices of compelling reluctant victims (often fearful abused women) to give evidence. Each of these examples has come to represent recognised points at which the criminal law has failed women victim-survivors—both in terms of failing to fulfil their desire for justice and their recourse to safety.

There is more to be said on the nature and effect of this kind of system-generated abuse. This emanates from a fuller appreciation of the context in which women living with violence(s) find themselves and the level of fear experienced by them, not just from their partner, but from the legal system itself. Awareness of these experiences constitutes a serious challenge for the criminalisation thesis and one that has received limited attention in scholarly writing to date.

Women's reluctance to engage with the criminal justice system in general in relation to their experiences of violence is well documented, as is their reluctance to engage with other support service providers, particularly when they have children (Meyer 2011). Frequently, they believe what their partners have told them about them as mothers and the likelihood of losing access to their children should they report their partner for abusive behaviour. The evidence in this regard is compelling and does not need reiterating here. These fears arguably become more acute, the more marginalised the woman is. For example, for women living with disabilities, the Royal Commission into Family Violence (RCFV) in the State of Victoria (Australia) reported that the 'fear of retribution or a loss of support' can be heightened if the perpetrator they are reporting is their primary carer (RCFV 2016: 31, 183). Moreover, fear of losing their children as a result of reporting violence has particular salience for women with disabilities 'because of prevailing stereotypes about their capability as parents and ... because removal of children from parents with disabilities happens at a much higher rate' (ibid.). These sensitivities need to be set in a context of '[a] lifetime ... of discrimination and demeaning experiences' (ibid.) (see also McCulloch et al., 2020).

Similar barriers to reporting and subsequent unintended effects of engagement with criminal law also pertain to Indigenous women. Wilson (2017: 288) reports that:

The under-reporting of family violence for indigenous peoples is a concern made worse by structural discrimination, fear of being excluded from their community, fears about consequences for the offender, lack of access to services due to rurality and remoteness, and encountering culturally inappropriate responses.

The silencing processes embedded here contribute further to women 'Feeling unsafe within one's family and within a system designed to provide helping services can place indigenous women and children at greater risk of serious injury and death' (Wilson 2017: 289). Such 'contextual complexities' (Wilson 2017) raise fundamental questions about the appropriateness of criminal justice responses in general, as well as coercive control and the recourse to law in particular. In the latter, the coercive and controlling behaviour of a partner may be seen as more tolerable to the coercive and controlling responses of the state and its authorities (Wilson 2020; see also Nancarrow 2019).

Such contextual and structural complexities are also evident for migrant women, women whose visa status may be temporary (Maher and Segrave 2018) and women for whom offending family honour may be a more traumatic prospect than living with the intimate partner violence (Gill and Harrison 2016). In these instances, the experiences of women victim-survivors belonging to marginalised communities come up against the sometimes ongoing, sometimes perceived and feared, systemic abuses of the state. These observations provide some insight, not only into the complexity of criminalisation itself but also into its complex consequences. In sum, for women victim-survivors for whom the state and/or their family are feared more than their partner, to engage 'successfully' with the criminal justice system and its processes they must demonstrate that they are blameless victims. All of the evidence cited above points to this systemically driven requirement. Only blameless victims can challenge the powerful effects of the responsible subject. Given the very nature of the operation of victim hierarchies (Carrabine et al., 2004) demonstrably present in social and legal judgement and the complex nature of people's real lives and relationships, particularly where coercive and controlling behaviour has been a feature, to be constituted as a blameless victim is a significant challenge indeed. As some of the evidence in relation to criminal justice responses to intimate partner violence already illustrates, the reality is that the state finds it much easier to construct women as dual offenders than it does to readily accept and legitimise their status as a victim-survivor.

Concluding Thoughts: Criminalising Coercive Control, Responsible Subjects and the Punishment of Women

Gender continues to pervade struggles to interpret and/or reform the criminal law. The unintended consequences of law reform, which fails to take account of the pervasive influence of gender, is likely to continue to repeat the mistakes of the past. At the same time, they are unlikely to service the needs of women victim-survivors (Smart 1989; Hanna 2009). In fact, history reveals that reforms are just as likely to serve the needs of men, in contradiction to their intended purpose (Smart 1989). One of the reasons why gender continues to be pervasive is ultimately connected with the role of criminal law in contributing to the construction of governable subjects in the interests of social order. This is a process that thrives on maintaining public and private violence(s) as separate and separable, for which individuals are responsible and for which the state has the power to punish. In the cracks, not only are responsible subjects constructed (as white, heterosexual, males) by implication, so is the requirement for blameless victims.

Criminalising coercive control without considering the process of criminalisation in the round poses questions, not only about how such laws are framed, implemented and criminal justice professionals trained, but also about the purpose and capabilities of the criminal law itself. The evidence concerning the recourse to law and its unintended consequences, particularly for those in most need of its support, is there for all to see. To continue in this vein facilitates the ongoing punishment of women victim-survivors for whom the recourse to law is not a recourse to a place of safety.

Correspondence:

Sandra Walklate, Eleanor Rathbone Chair of Sociology (Liverpool, U.K.) conjoint Chair of Criminology (Monash, Australia), School of Law and Social Justice, University of Liverpool, United Kingdom. Email: S.L.Walklate@liverpool.ac.uk and Sandra.Walklate@monash.edu

Kate Fitz-Gibbon, Associate Professor of Criminology, Director of the Monash Gender and Family Violence Prevention Centre, Faculty of Arts, Monash University, Victoria 3800, Australia. Email: kate.fitzgibbon@monash.edu

References

- Ballinger A (2016) A question of provocation or responsibility? Revisiting the case of Ruth Ellis and David Blakely. In Fitz-Gibbon K and Walklate S (eds) *Gender, Homicide and Responsibility: An International Perspective*: 13–35. Abingdon: Routledge.
- Barker V (2007) The politics of pain: A political institutionalist analysis of crime victims’ moral protests. *Law & Society Review* 41(3): 619–663. <https://doi.org/10.1111/j.1540-5893.2007.00316.x>
- Barlow C, Johnson J, Walklate S and Humphreys L (2020) Putting coercive control into practice: Problems and possibilities. *The British Journal of Criminology* 60(1): 160–179. <https://doi.org/10.1093/bjc/azz041>
- Berk RA, Campbell A, Klap R and Western B (1992) The deterrent effect of arrest in incidents of domestic violence: A Bayesian analysis of four field experiments. *American Sociological Review* 57(5): 698–708. <https://doi.org/10.2307/2095923>
- Bishop C (2016) Why it’s so hard to prosecute cases of coercive or controlling behaviour. *The Conversation*, 31 October. <https://theconversation.com/why-its-so-hard-to-prosecute-cases-of-coercive-or-controlling-behaviour-66108>
- Bishop C and Bettinson V (2018) Evidencing domestic violence, including behaviour that falls under the new offence of ‘controlling or coercive behaviour’. *The International Journal of Evidence & Proof* 22(1): 3–29. <https://doi.org/10.1177%2F1365712717725535>
- Burman M and Brooks-Hay O (2018) Aligning policy and law? The creation of a domestic abuse offence incorporating coercive control. *Criminology & Criminal Justice* 18(1): 67–83. <https://doi.org/10.1177%2F1748895817752223>
- Carrabine E, Iganski P, Lee M, Plummer K and South N (2004) *Criminology: A Sociological Introduction*. London: Routledge.
- Carrington K, Hogg R, Scott J and Sozzo M (eds) (2018) *The Palgrave Handbook of Criminology and the Global South*. London: Palgrave.
- Carrington K, Sozzo M, Guala N and Puyol MV (2020) *How Women’s Police Stations Prevent Gender Violence*. Brisbane: QUT Centre for Justice.
- Dawson M (2016) Representing intimacy, gender and homicide; The validity and utility of common stereotypes in law. In Fitz-Gibbon K and Walklate S (eds) *Gender, Homicide and Responsibility: An International Perspective*: 53–77. Abingdon: Routledge.
- D’Cruze S (2011) Sexual violence in history: A contemporary heritage? In Brown J and Walklate S (eds) *Handbook of Sexual Violence*: 23–51. London: Routledge.
- Douglas H (2015) Do we need a specific domestic violence offence? *Melbourne University Law Review* 39(2): 434–471.
- Douglas H (2018) Legal systems abuse and coercive control. *Criminology & Criminal Justice* 18(1): 84–99. <https://doi.org/10.1177%2F1748895817728380>
- Edwards S (2012) The duplicity of protection—Prosecuting frightened victims: An act of gender-based violence. *The Journal of Criminal Law* 76(1): 29–52. [10.1350/jcla.2012.76.1.749](https://doi.org/10.1350/jcla.2012.76.1.749)
- Fitz-Gibbon K and Walklate S (2019) Why Sally Challen’s appeal is not a win for women victims of coercive control. *The Conversation*, 13 March. <https://theconversation.com/why-sally-challens-appeal-is-not-a-win-for-women-victims-of-coercive-control-112869>
- Foucault M (1976) *The History of Sexuality Volume 1: An Introduction*. London: Allen Lane.
- Gill AK and Harrison K (2016) Police responses to intimate partner sexual violence in South Asian communities. *Policing* 10(4): 446–455. <https://doi.org/10.1093/policing/paw027>

- Ginsberg R (2014) Mighty crime victims: Victims' rights and neoliberalism in the American conjuncture. *Cultural Studies* 28(5–6): 911–946. <https://doi.org/10.1080/09502386.2014.886485>
- Goodmark L (2015) Exporting without license: The American attempt to end intimate partner abuse worldwide. In Goel R and Goodmark L (eds) *Comparative Perspectives on Gender Violence: Lessons from Efforts Worldwide*: 3–14. Oxford: Oxford University Press.
- Goodmark L (2018) *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence*. California: University of California Press.
- Goodmark L (2020) Reimagining VAWA: Why criminalization is a failed policy and what a non-carceral VAWA could look like. *Violence Against Women* 27(1): 84–101. <https://doi.org/10.1177/1077801220949686>
- Gerard A and Kerr T (2016) Lethal violence and legal ambiguities: Deaths in custody in Australia's offshore detention centres. In Fitz-Gibbon K and Walklate S (eds) *Gender, Homicide and Responsibility: An International Perspective*: 130–147. Abingdon: Routledge.
- Hanna C (2009) The paradox of progress: Translating Evan Stark's coercive control into legal doctrine for abused women. *Violence Against Women* 15(12): 1458–1476.
- Houge Bringedal A (2016) 'He seems to come out as a personally cruel person': Perpetrator re-presentations in direct murder cases at the ICTY. In Fitz-Gibbon K and Walklate S (eds) *Gender, Homicide and Responsibility: An International Perspective*: 113–129. Abingdon: Routledge.
- Johnson M (1995) Patriarchal terrorism and common couple violence: Two forms of violence against women. *Journal of Marriage and the Family* 57(2): 283–294. <https://psycnet.apa.org/doi/10.2307/353683>
- Johnson H, Eriksson L, Mazerolle P and Wortley R (2019) Intimate femicide: The role of coercive control. *Feminist Criminology* 14(1): 3–23. <http://doi.org/10.1177/1557085117701574>
- Kelly L and Westmarland N (2016) Naming and defining 'domestic violence': Lessons from research with violent men. *Feminist Review* 112(1): 113–127. <https://doi.org/10.1057/fr.2015.52>
- Lacey N (2007) Denial and responsibility. In Chinkin C, Downes D, Gearty C and Rock P (eds) *Crime, Social Control and Human Rights*: 255–269. Willan Publishing. <http://dx.doi.org/10.2139/ssrn.2126532>
- Lacey N (2013) The rule of law and the political economy of criminalisation: An agenda for research. *Punishment & Society* 15(4): 349–366. <https://doi.org/10.1177/1462474513500619>
- Lacey N (2016) *In Search of Criminal Responsibility*. Oxford: Oxford University Press.
- Maher J and Segrave M (2018) Family violence risk, migration status and 'vulnerability': Hearing the voices of immigrant women. *Journal of Gender Based Violence* 2(3): 503–518. <https://doi.org/10.1332/239868018X15375304047178>
- McCulloch J, Maher J, Walklate S, McGowan J, Fitz-Gibbon K (2020) Justice perspectives of women with disability: An Australian story. *International Review of Victimology*. <https://doi.org/10.1177/0269758020906270>
- McGorrery P and McMahon M (2019) Prosecuting controlling or coercive behaviour in England and Wales: Media reports of a novel offence. *Criminology & Criminal Justice*. <https://doi.org/10.1177/1748895819880947>
- McMahon M and McGorrery P (2016) Criminalising emotional abuse, intimidation and economic abuse in the context of family violence: The Tasmanian experience. *University of Tasmania Law Review* 35(2): 1–22.
- Mendelsohn B (1956) The victimology. *Etudes Internationales de Psycho-Sociologie Criminelle* (July–September): 23–26.
- Meyer S (2011). Seeking help for intimate partner violence: Victims' experiences when approaching the criminal justice system for IPV-related support and protection in an Australian jurisdiction. *Feminist Criminology* 6(4): 268–290. <https://doi.org/10.1177/1557085111414860>
- Midson B (2016) Coercive control and criminal responsibility: Victims who kill their abusers. *Criminal Law Forum* 27(4): 417–442. <https://doi.org/10.1007/s10609-016-9292-5>
- Miller S and Meloy M (2006) Women's use of force: Voices of women arrested for domestic violence. *Violence Against Women* 12: 89–115. <https://doi.org/10.1177/1077801205277356>
- Mills L (1999) Killing her softly: Intimate abuse and the violence of state intervention. *Harvard Law Review* 113(2): 550–613. <https://doi.org/10.2307/1342332>
- Mooney J (2007) Shadow values, shadow figures: real violence. *Critical Criminology* 15: 159–170. <https://doi.org/10.1007/s10612-007-9023-7>
- Naffine N (1990) *Law and the Sexes*. London: Allen and Unwin.
- Naffine N (2003) Who are law's persons? From Cheshire cats to responsible subjects. *Modern Law Review* 66(3): 346–367. <https://doi.org/10.1111/1468-2230.6603002>
- Nancarrow H (2019) *Unintended Consequences of Domestic Violence Law: Gendered Aspirations and Racialised Realities*. Hampshire: Palgrave MacMillan.
- Office of National Statistics (2019) *Domestic Abuse Prevalence and Trends, England and Wales: Year Ending March 2019*. <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseprevalenceandtrendsendlandandwales/yearendingmarch2019>

- O'Malley P (2010) Resilient subjects: Uncertainty, warfare and liberalism. *Economy and Society*, 39(4): 488–509. <https://doi.org/10.1080/03085147.2010.510681>
- Reeves E (2020) Family violence, protection orders and systems abuse: views of legal practitioners, *Current Issues in Criminal Justice*, 32(1): 91–110. <https://doi.org/10.1080/10345329.2019.1665816>
- Royal Commission into Family Violence (2016) *Report and Recommendations*. Melbourne: Royal Commission into Family Violence (Victoria).
- Schechter S (1982) *Women and Male Violence: The Visions and Struggles of the Battered Women's Movement*. Cambridge: South End Press.
- Smart C (1989) *Feminism and the Power of Law*. London: Routledge.
- Stark E (2007) *Coercive Control: How Men Entrap Women in Personal Life*. Oxford: Oxford University Press.
- Stubbs J and Wangmann JM (2015) Competing conceptions of victims of domestic violence within legal processes. In Wilson D and Ross S (eds) *Crime, Victims and Policy*: 107–132. Palgrave Macmillan. <http://dx.doi.org/10.2139/ssrn.2627260>
- Tolmie J (2018) Coercive control: To criminalize or not to criminalize? *Criminology & Criminal Justice* 18(1): 50–66. <https://doi.org/10.1177%2F1748895817746712>
- Walklate S (2008) What is to be done about violence against women? *British Journal of Criminology* 48(1): 39–54. <https://doi.org/10.1093/bjc/azm050>
- Walklate S and Fitz-Gibbon K (2018) Criminology and the violence(s) of Northern Theorizing: A critical examination of policy transfer in relation to violence against women from the global north to the global south. In Carrington K, Hogg R, Scott J and Sozzo M (eds) *The Palgrave Handbook of Criminology and the Global South*: 847–865. Palgrave.
- Walklate S and Fitz-Gibbon K (2019) The criminalisation of coercive control: The power of law? *International Journal for Crime, Justice and Social Democracy* 8(4): 94–108. <https://doi.org/10.5204/ijcjsd.v8i4.1205>
- Walklate S, Fitz-Gibbon K and McCulloch J (2018) Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories. *Criminology & Criminal Justice* 18(1): 115–131. <https://doi.org/10.1177/1748895817728561>
- Weber L and Pickering S (2011) *Globalization and Borders: Death at the Global Frontier*. London: Palgrave.
- Wiener C (2017) Seeing what is 'invisible in plain sight': Policing coercive control. *The Howard Journal of Crime and Justice* 56(4): 500–515. <https://doi.org/10.1111/hojo.12227>
- Williams L and Walklate S (2020) Policy responses to domestic violence, the criminalisation thesis and 'learning from history'. *The Howard Journal of Crime and Justice* 59: 305–316. <https://doi.org/10.1111/hojo.12378>
- Wilson D (2017) Indigenous populations and the domestic homicide review process. In Dawson M (ed) *Domestic Homicides and Death Reviews*: 287–316. London: Palgrave-Macmillan.
- Wilson D (2020) *Colonisation, Race and Coercive Control*. Paper presented at Criminalizing Coercive Control Webinar, de Montford University, July 30–31, 2020.
- Wilson E (1983) *What is to be Done About Violence Against Women?* Harmondsworth: Penguin.
- Youngs J (2014) Domestic violence and criminal law: Reconceptualising reform. *Journal of Criminal Law* 79(1): 55–70. <https://doi.org/10.1177/0022018314566746>