**Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories.**

Sandra Walklate, Kate Fitz-Gibbon and Jude McCulloch

**Abstract**

In 2015 in England and Wales a new offence of controlling or coercive behaviour was introduced with the aim of improving legal responses to intimate partner violence. Recognising the historical limits of legal interventions in this area, this article examines the efficacy of coercive control as a conceptual device for improving access to law and justice outcomes for women victims. To do so, it considers the problems and possibilities of translating a concept generated from clinical practice into legal practice alongside an exploration of the potential unintended consequences of this new offence. The gendered analysis undertaken here reveals the limitations of framing women’s experiences as ‘coercive control’ in law and concludes that, in the case of coercive control, more law is not the answer to improving responses to intimate partner violence.

**Keywords**

Coercive control, intimate partner violence, violence against women, criminal offences, criminal law

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Responding to violence against women through law reform has long been a contentious issue (see inter alia Smart, 1989; Walklate, 2008; Wilson, 1983). In recognition of the traditionally male centric nature of the criminal justice system (Hudson, 2006), feminist, socio-legal and criminological scholars have advocated for criminal law reform in the areas of gendered violence – including homicide, sexual assault and laws criminalising domestic violence (see inter alia Caringella, 2009; Carline and Easteal, 2014; Fitz-Gibbon, 2014; Hunter, 2008). Such reforms have sought to ensure that the legal system is better able to cater to the ways in which women experience and respond to men’s violence. While the effectiveness of such reforms in practice is contested (Douglas, 2008), recourse to the law remains one of the central planks of policy responses on the highly debated issue of how best to prevent and respond to violence against women.

Representing the latest in a line of reforms designed to improve legal responses to intimate partner violence, in 2015 in England and Wales ongoing acknowledgement of the failure of criminal law in this area culminated in the creation of a new offence of 'controlling or coercive behaviour’ (hereinafter ‘coercive control’). Section 76 of the *Serious Crime Act* 2015 states:

A person (A) commits an offence [of coercive control] if—

(a) A repeatedly or continuously engages in behaviour towards another person (B)

that is controlling or coercive,

(b) At the time of the behaviour, A and B are personally connected,

(c) The behaviour has a serious effect on B, and

(d) A knows or ought to know that the behaviour will have a serious effect on B.

The Home Office (2015: 2) defines a ‘serious effect’ as behaviour that:

has caused the victim to fear violence will be used against them on “at least two occasions”, or it has had a “substantial adverse effect on the victims’ day to day activities”. The alleged perpetrator must have known that their behaviour would have a serious effect on the victim, or the behaviour must have been such that he or she “ought to have known” it would have that effect.

While limited to persons in a current intimate relationship and/or who live together, the offence covers a wide range of behaviours (Home Office, 2015: 3) and draws directly on the work of sociologist and forensic social worker Evan Stark (2007). Described by Stark (2007: 8) as ‘the most widespread and devastating strategy men use to dominate women in personal life’, his work on coercive control sought to address key ‘limits’ in responses to violence against women. The English legislation reflects Stark’s thinking, though the offence is defined in gender neutral terms, a departure from Stark’s (2007) conceptualisation of coercive control which focuses exclusively on women’s victimisation and men’s perpetration.

There have been varied responses to the introduction of this new offence. However underpinning all of them is the question of whether more law is the answer to improving responses to intimate partner violence. The purpose of this article is to consider the implications of this question. In order to do so the article falls into five parts. The first two parts offer a brief overview of the historical scholarly and policy context within which the offence emerged and the efficacy of coercive control as a conceptual device for making sense of violence in women’s lives. The third part considers the problems and possibilities of translating a concept generated from clinical practice into legal practice. Following on from this the fourth part considers the problems of implementation and potential unintended consequences in practice. In the final part we consider the extent to which framing women’s experiences as ‘coercive control’ in law can deliver justice.

**The development of the concept of coercive control**

Evan Stark’s (2007, 2009) work is critical to recent understandings of coercive control and moves to criminalise it. As a concept it is used to describe a range and pattern of non-physical abusive behaviours, including intimidation, threats, stalking, destruction of personal property, isolation, manipulation, psychological abuse, economic oppression, limitations on movement and restrictions on liberty (Stark, 2007). Thus Stark offers an inclusive appreciation of the way different violence(s) in women’s lives centre around four sets of behaviour (violence, intimidation, isolation and control) that, according to his account, result in the entrapment of women in abusive relationships. Indeed, subsequent research examining the presence and impact of such abuse in intimate partner relationships has noted it rarely occurs in isolation and that acts of coercive control are usually recurring and ‘often culturally and contextually prescribed’ (Velonis, 2016: 1036).

Emphasising the importance of power and control, Stark (2007) argues by understanding intimate partner violence through the lens of coercive control, abusive behaviours that have traditionally been overlooked by the justice system come to the fore. Stark (2007: 204) suggests:

[coercive control] exposes dimensions of partner abuse that have gone largely unnoticed and that are not normally associated with assault, such as the monopolization of perception or “ways to make me crazy”, as well as tactics used to isolate victims, monitor their behaviour, or break their will.

However, the extent to which the concept of coercive control can effectively capture the diversity of women’s lives, the different forms and dynamics of violence(s) and the different levels of harms incurred, is open to debate. Nonetheless Stark (2009: 1509) advocates for the translation of clinical understandings ‘and realities of coercive control into practical legal and advocacy strategies’. The merits of this argument have been examined by a range of scholars (see, for example, Anderson, 2009; Arnold, 2009; Hanna, 2009; Libal and Parekh, 2009). Here we consider the problems and possibilities of translating a concept, meaningful in clinical practice and emanating from such practice, into the legal realm but first a brief overview of the historical context for the emergence of this legislation.

**Two decades of policy reform in violence against women in England and Wales**

In England and Wales there has been over two decades of government activity towards developing an integrated policy strategy to violence against women (see HMCPSI and HMIC, 2004; HMIC, 2014, 2015). The strategy has become increasingly complex and inclusive of different kinds of violence(s) (for example, female genital mutilation, stalking), in response to demands from women’s groups and ever more evidence that current policies and practices were still failing women and indeed some men (see HMIC, 2014, 2015). Notably, despite attempts to improve responses, the number of women murdered every year by their intimate (current or former) partners has remained constant (Brennan, 2016).

In some respects, the offence of coercive control and its wide-ranging approach, can be seen as a logical outcome of the pressures alluded to above, with the HMIC reports in particular directly informing a Home Office (2014a) consultation on whether there was a need for a specific offence of ‘domestic abuse’. That consultation received 757 responses from a wide range of stakeholders. 55% of these respondents advocated for a new offence that ‘captures patterns of coercive and controlling behaviour in a relationship’ (Home Office, 2014b). Following, in December 2014, the Home Secretary announced the introduction of a new offence to ‘explicitly criminalise patterns of coercive and controlling behaviour where they are perpetrated against an intimate partner or family member’ (Home Office, 2014b: 11).

In England and Wales the implementation of this offence has been patchy to date. Bishop (2016) reported in the first six months since its introduction (end of December 2015 to June 2016) it had only been used 62 times with eight of the 22 forces examined not having charged one person. Despite this, the offence has nevertheless generated wide interest internationally. It has received a sympathetic hearing in Scotland (Bettinson, 2016), was put on the agenda for discussion in Queensland, Australia (2015) though not acted upon, has been considered more generally for the Australian context by Douglas (2015): (though she settles for recommending a new offence of cruelty) and considered and rejected by the Royal Commission on Family Violence in Victoria, Australia (2016). Hence it is particularly important to consider whether this new type of offence, emanating from clinical practice as it does, is an appropriate way to address intimate partner violence given the likelihood that other jurisdictions will also embrace, or seriously consider adopting, similar legislation.

**Translating the clinical to the criminal**

Whilst the harm induced by the lack of freedom implied and captured by the concept of coercive control is present in women’s testimonies (Velonis, 2016), translating those experiences and acknowledging them in law is, we argue, fraught with difficulties. Recognising such difficulties in no way implies that the concept of coercive control is without value. Its value, as a way of capturing the nature and impact of violence(s) on women’s lives, has a long-standing presence in advocacy and other literature (see, for example, Schechter, 1982). The difficulty lies in how to translate an understanding of coercive and controlling behaviour and its consequences for women (and children) into something *actionable* in law. There are (at least) three inter-connected problems here: what is meant by coercion in the context of the offence of coercive control, what implications such understandings have for notions of choice or voluntariness, and finally the capacity of the dichotomous thinking of legal proceedings, to incorporate and respond to the *processes* inherent in the emotional relationships captured by coercive control. We shall say something about each of these difficulties in turn.

The question of what coercion means in a legal sense has been discussed in detail by Brunk (1979). Whilst Brunk’s analysis focuses on plea bargaining and the use of coercive tactics by legal practitioners on defendants, it usefully draws attention to two inter-related questions; the relationship between threat and coercion, and the context in which any individual ‘chooses’ a course of action. In law, threat and coercion are separate and separable. Threats to be actionable in law require corroborating evidence (a text message, a recorded telephone call or a third-party witness). Coercion is far more difficult to evidence in law. It is at this juncture that Brunk (1979) discusses the importance of context. Of course, understanding context is crucial to Stark’s (2007) presentation of coercive control. However, as Brunk (1979) points out, making a choice, whatever the conditions of that choice might be, assumes a situation of normalcy against which the choice made can be compared. He states:

To identify an intervention as coercive is to judge that is breaks with some common practice and/or violates a norm of morality, custom, or law. (Brunk, 1979: 538)

A consideration of what is ‘normal’ in the context of a relationship logically applies to every situation where an attempt is made to define coercion. The centring of normalcy in Brunk serves as a reminder of the complexities that can lie behind intimate relationships in which what constitutes ‘the normal’ is open to contestation. Slippage from normal forms of intimate relationships, in which wanting to know what the other person is doing is acceptable, to circumstances in which that becomes rather more construed as surveillance or stalking is one obvious complex dynamic here. As Hanna (2009: 1468) suggests, ‘the law forces the question of illegal coercion into a yes or no answer. The line between free choice and coercion gets drawn somewhere—and you are either coerced or not’. While prosecutors of coercive control offences are to consider a wide range of evidence, including and apart from that provided by the victim (Home Office, 2015), proving coercion is nevertheless likely to require considerable engagement on the part of the victim/complainant in the legal process. This leads into the second difficulty about understandings of choice and voluntariness.

In engaging with the law one of the key issues for the legal process is: how has the complainant weighted what has happened to them? What evidence can they provide of coercion? It may be in cases of intimate partner homicide where a coerced woman kills her partner such evidence is forthcoming, although the difficulties that such women face should not be overlooked (Sheehy, 2014; Sheehy et al., 2012). In these contexts, as Midson (2016: 8) states: ‘If the accused’s choices are constrained or his or her will is overborne by the will of another, the moral fault of the accused is, or at least may be, absent’. In other words they have access to a potential defence and/or plea of mitigation. However, there are dangers in translating such an appreciation of choice (or what Langer, 1980, referred to as ‘choiceless choice’) in extremis, such as in a case of homicide, to the ‘normality’ of coercive control (qua Stark, 2007). Kuennan (2013: 6), in considering the meaning of coercion in the context of prosecutors’ and judges’ assessments about the voluntariness of women’s non-cooperation with prosecution of their batterers, expresses this dilemma in the following way:

This presumption of involuntariness, when coupled with the practical challenges of measuring the impact of coercion, poses an enormous risk to victim autonomy. If a court substitutes its judgment for that of the victim's because it believes her to be coerced, and presumes that when she is coerced she cannot make an autonomous decision, it usurps control over a decision the victim would like to make for herself, thereby replicating the very dynamic it seeks to prevent. Instead of the batterer compelling the victim to do something she does not want, the court does. This is particularly problematic in cases involving domestic violence, in which an important element of responding to the problem is to restore a victim's fundamental rights of freedom, choice, and autonomy.

This dilemma is not a new one for formulating criminal justice responses to intimate partner violence. It runs through debates concerned with the pro-arrest stance towards offenders from the 1980s through to the increasing popularity of Domestic Violence Disclosure Schemes in the 2010s (see Fitz-Gibbon and Walklate, 2016). The tensions elucidated by Kuennan (2013) above are the surface manifestation of the tensions confronting a legal system asked to respond to context. In respect of intimate partner violence, this is a context in which more often than not the broader dynamic of the relationship matters. This brings us to the third problem of the ability of processes of law, based on yes or no, guilty or not guilty, to pass judgement on the nature of emotional relationships. Kuennan (2014: 993-994) states:

In nonabusive relationships, it is a norm for women (and men) to make decisions about their intimate relationships based on love, particularly when deciding whether to end their intimate relationships. The question, then, is how do we as a society draw the line between abusive and nonabusive relationships so as to recognize staying for love as a legitimate reason to stay, rather than writing it off as maladaptive?

This is important because the concept of coercive control assumes that women are trapped in relationships. The offence of coercive control requires the law to draw a line between abusive and non-abusive relationships. This poses problems not just for the law in theory but also for the law in practice.

**Implementing the offence of coercive control**

It is not yet possible to evaluate empirically the implementation of the new offence. The offence has only recently been introduced in England and Wales and to date has been used infrequently. It is however possible to set out the likely gap between the intention of the legislation - to better prevent and respond to violence against women - and its impact in practice. Whilst there has been much activity in a wide range of jurisdictions endeavouring to improve and centre legal responses to intimate partner violence, this level of activity is matched by its failure in delivery (see inter alia Brown and Walklate, 2011; Walklate, 2008). The feminist literature points to myriad reasons why reforms (from pro-arrest to risk assessment and domestic violence disclosure schemes), which will have benefited individual women at various times, have arguably failed overall. Prominent amongst these reasons are the continued failure of criminal justice systems, and police in particular, to recognise and respond to racialised groups, including racialised women as victims of crime rather than offenders, unequal access to justice for poorer women, and women with disabilities (Blagg, 2008: 136-152; Sokoloff, 2005) and the way neo-liberal legal system’s make women responsible for their own safety (Grant, 2015). The failure of reforms is also partly attributable to the unwillingness of women to engage with justice agencies alongside a failure to engage with the reasons why women do not engage the justice system and/or face barriers in doing so.

The implementation of this new offence relies upon victims being willing and able to involve police, and a significant body of research documents the hesitance of women victims of intimate partner violence to engage in this way (see inter alia Douglas, 2012; Meyer, 2011; Stewart, 2001). In Queensland, for example, interviews conducted with women victims revealed a commonly held view that police will only intervene in cases where a person fits an archetypical victim category (Douglas, 2012). Barriers to involving police include fears of discrimination, particularly amongst marginalised and racialized women, perceived lack of police support, fear that the abuse will escalate following formal intervention and fear of gender bias (Blagg, 2008; Meyer, 2011; Stewart, 2001). The factors that disincline women victims to involve police may be more significant in the case of women living in coercively controlling relationships. By Stark’s definition coercive control targets a woman’s independent decision making, autonomy, liberty and social support. The degree of isolation, surveillance and compelled obedience in women’s experiences of coercive control may exacerbate a reluctance to involve police and/or to withstand the justice process. Whether or not this is the case, the introduction of the new offence is unlikely to reduce the reluctance of women victims of intimate partner violence to engage in this way..

The extent to which general frontline police officers can, and should be expected to understand the complexities of coercive control as a form of abuse is also questionable. The police (alongside society more generally) more readily see physical violence as opposed to psychological violence as criminal (Robinson et al., 2016). Coercive control, which relies more heavily on understanding the dynamics of a relationship than other family violence offences, highlights the tension between the largely incident focus of the criminal justice system, and policing in particular, and the context and dynamics of relationships. Coercive control can only be understood in the broader context of a relationship. The implementation of the new offence is reliant on a police officer’s ability to identify the potential presence of coercive and controlling behaviour, elicit information on a series of abusive events from the victim and correctly assess that behaviour, in terms of laying charges. This requires a reframing of an officer’s more typical approach from responding and taking stock of crime ‘incidents’ as isolated events towards looking to a series of interrelated events and the harm that flows from these. The well documented challenges of police implementation of hate crime offences, which likewise require the police to look beyond incidents to broader social processes and contexts, points to the magnitude of the paradigm shift required (see, for example, Mason et al., 2016). It is unlikely that training, which focuses on procedure rather than broader social context, will be effective in equipping police to recognise and respond appropriately to coercive control. Recent research on police training on the recognition of hate crime has found it to be ineffective in assisting police to recognise and respond to such crimes (Mason et al., 2017). Effectively educating frontline police on the gender dynamics at play in coercive control situations will require long term commitment.

One argument in favour of criminalizing coercive control may be the emerging evidence that it is a risk factor in intimate partner homicides (Buzawa et al., 2017). Police and other criminal justice practitioners are increasingly required to evaluate the risk of intimate partner violence and intimate partner homicide in particular (see McCulloch et al., 2016). Myhill and Hohl (2016) have endeavoured to examine one way in which the risk assessment practices of professionals might be rendered sensitive to, and raise awareness of, the process practices of coercive control. However, it is a moot point whether or not coercive control, rooted in an appreciation of context, can in and of itself be rendered measureable in the way in which any risk assessment process assumes or can be readily prosecuted in the criminal courts.

For victims of (alleged) coercive control whose complaints do proceed to court, there are well documented hurdles which have traditionally proved insurmountable for many women victims of intimate partner violence. A combination of evidence laws and thresholds, designed as part of an inherently masculine criminal justice system, have long seen women struggle to have their experiences of gendered violence understood and adequately responded to within criminal courts. Moreover, where women have told their stories in legal settings they have long been ‘othered’ by those within the law and have faced victim blaming and denigration (see inter alia Douglas, 2008; Fitz-Gibbon and Pickering, 2012; Hudson, 2006; Walklate, 2008). The offence of coercive control, focusing on a pattern of behaviour, which may involve unremarkable acts when viewed in isolation, that are not criminal except in the context of the pattern of abuse, and which may not involve any acts of physical violence, is a subtle and relatively novel offence. It presents the opportunity for courts to reorient themselves to the reality of victims of coercive control, but the history of court responses to women’s experience of gendered crimes suggests that such a shift is uncertain and, at best, will require the time and resources necessary to support cultural change within the system. It seems likely that the nature of this offence will create difficulties for women attempting to access and obtain justice for non-physical forms of partner violence.

**The unintended consequences of criminalizing coercive control**

The gap between intention and implementation of law reform designed to prevent or respond to violence against women is filled with unintended consequences and has also been well documented (see inter alia Smart, 1989). That this offence is expressed in gender neutral terms, gives rise to some of these possibilities. For example, evidence suggests that police often find it difficult to identify the ‘primary aggressor’ in intimate partner violence incidents (see, for example, Royal Commission into Family Violence Volume 3, 2016: 17). Indeed Chesney-Lind (2006) documents that North American domestic violence mandatory arrest policies resulted in an increase in the arrest of women for their use of violence in ‘fighting back’ (see also Miller and Meloy, 2006), thus raising the profile of men as victims of such violence. If police fail to identify the primary aggressor in family violence incidents generally, these difficulties are likely to be compounded in relation to a gender neutral offence of coercive control. In a similar vein, the *Daily Mail* newspaper reporting on the new laws, stated that 'Crazy law could make nagging your other half illegal’ (Vine, 2015). ‘Nagging’, a word historically associated with the way women communicate, harks back to the days when women were punished by being forced to wear a ‘scold’s bridal’, a torture devise that prevented women deemed excessively noisy from speaking (Dobash and Dobash, 1981: 567). Indeed, the influential economist FA Hayek (1998), in a 1960 publication titled the ‘Constitution of Liberty’ defined coercion more broadly than physical violence, providing, as one example, a ‘nagging wife’. The potential for the offence to be used against women, particularly racialised and marginalised women who are routinely criminalized (Cunneen, 2001), is highlighted by a history of gender dynamics that tends to construct women as primary aggressors when they are deemed to be insufficiently compliant.

 The prosecution process also affords opportunities for unintended consequences. The prosecution of this offence itself may well provide a new context for perpetrators to engage in abuse. As the previous discussion has implied it is often difficult for women to explain ‘psychological stuff’ to police (Williamson, 2010). Providing compelling evidence of a mainly psychological pattern of behaviour in court, where the charges are contested, is likely to be even more difficult. ‘Legal systems abuse’ is increasingly recognised as a way for abusive partners continuing their abuse post separation (see Douglas and Fitzgerald, 2013). A coercive and controlling partner seems unlikely to let his partner’s version of the relationship go unchallenged in court, particularly as monopolising the victim’s perception is considered a feature of coercive control. While other legal contexts such as family law and intervention order processes may be opportunities for perpetrators to engage in legal systems abuse, the requirement that the offence of coercive control be proved with reference to the psychological dimensions of the relationship to the criminal standard of proof, may expand these opportunities, providing a context for further abuse by the perpetrator. Moreover, victims might experience the legal process as abusive, separate from the behaviour of the perpetrator during proceedings. The court room is an adversarial rather than therapeutic or clinical setting. Complainants in criminal trials have no control over proceedings and only limited influence. The harmful consequences of this for sexual assault victims are well documented (see Jordan, 2008). Coercive control, similar to sexual assault, is a highly personal crime and experienced as an attack on self. This suggests similar issues are very likely to arise for complainants in coercive control cases where the criminal justice system itself compounds the experience of lack of control inherent in the crime addressed.

Finally this new offence may also prove a distraction from successfully implementing some of the less subtle extant laws that criminalise assault (regardless of the relationship between the parties) and civil orders that aim to prevent the repetition and escalation of intimate partner violence. The evidence suggests that there is still much room for improvement in the implementation and application of these laws (see, for example, Bond and Jefferies, 2014; Douglas, 2008; Sentencing Advisory Council, 2015). To this end Padfield (2016: 1) suggests, the new offence ‘simply increases the difficulties facing police and prosecutors when deciding what charge or what charges to lay.’ The dilemma posed by Padfield (2016) endorses a long-standing problem for criminal justice professionals in this arena: the disinclination to engage in policy initiatives on this issue

This disinclination is linked to what in policy terms, Lewis and Greene (1978) have referred to as conceptual failure. Just taking the two HMIC Reports referred to earlier as exemplars, the problems identified in both of these reports in policing responses to domestic violence are not new. They highlight not the failure of police forces to take such violence seriously per se but illustrate the ongoing failure of engaging in the internal environmental and organisational changes that ensure when individual officers take such violence seriously the wider organisational context is equally committed to doing so. The same observation might be made of the prosecution process and any associated court proceedings. The incident focus of policing in particular, but any criminal justice system in general, has great difficulty in capturing and responding to process. Such conceptual failure compounds the failure to understand that when responding the intimate partner violence ‘love matters’ (Kuennan, 2014). Thus there are deeply embedded interconnections between conceptual failure and women’s reluctance to engage with the criminal justice system resulting in the kinds of dilemmas for practitioners as posed by Padfield (2016). So, is more law the answer?

**Is more law the answer?**

Embedded in the desire to criminalise coercive control is a belief in the symbolic power of the law. A belief that Hanna (2009) has argued is naïve but is one that has been present in feminist informed campaigns around violence against women for some time. The criminalisation of behaviour does send out strong messages about what is and is not acceptable and vindicates campaigns for the private experiences of women to be taken seriously (Dempsey, 2007; Bettinson and Bishop, 2015). Recourse to the symbolic power of the law in this way, however can put advocates for victims and criminal justice professionals in an uneasy alliance (Chesney-Lind, 2006) and contributes to unintended consequences some of which are outlined above. Yet Wilson (1983: 228) argued cogently that changes in the law, especially where the law supported violence against women, are needed. So, the law, despite the above caveats, may still be an important conduit for change. The question remains though, who and what is imagined in such change? Whose knowledge and what experiences are suppressed in this recourse to law? Put simply, in law an individual is either a victim (a complainant) or an offender (a defendant) and it is self-evident that people’s real lives do not look like this. Messiness often accompanies intimate partner violence and such messiness is produced in what are usually highly charged emotional situations (as well as frequently gendered ones). Such lives are also often unpredictable for all parties, including the criminal justice professionals. More fundamentally, as Miller and Meloy (2006: 108) comment an ‘over-reliance on the criminal justice system to protect women’ fails in part because it endorses:

a movement away from a critique of underlying social, legal, and political structures that underpin male privilege and use of violence and toward a more individual focus on the pathologies of offenders and victims, and the intricacies related to practitioners’ styles, practices, and specific procedures.

As intimated above, the recourse to an offence of coercive control is likely to repeat this very same scenario as efforts are made to render this concept actionable and doable through improved police training or more sensitive risk assessment tools (qua Myhill and Hohl, 2016). Is there another way of centring coercive control and not perpetuating the dilemmas of the past? One avenue might be to consider the possibilities for a more holistic understanding of what might count as justice for offences of this kind.

 Our intention here is not to suggest that there is no place for coercive control in law but rather an effective place for clinical understandings of, and explanations for intimate partner violence may better lie in expert testimony presented to the court in very serious offences. For example, in homicide trials involving a battered woman who has killed her abuser, where introduced and explained by an expert practitioner, evidence about coercive and controlling behaviour may be particularly valuable for countering common myths (ie. Why didn’t she leave?), and effectively explaining women’s experiences of abuse to a jury. While the use of experts has been criticised in the context of battered women’s syndrome (see inter alia Stark, 1995), as a general tool the value of expert evidence in the context of intimate partner violence is widely acknowledged (see inter alia Douglas, 2012; Sheehy et al., 2014). As captured by Bartels and Easteal (2012: 1):

Judges and juries should be introduced to evidence from psychologists and psychiatrists, as well as those with extensive experience at the “coal-face” of domestic abuse. This kind of evidence can contextualise what might otherwise appear to be a history of discrete incidents of violence. Courts need to examine the history of evidence of what it is like to live under the constant shadow of abuse, rather than just an atomised account.

While Bartels and Easteal were writing on the Australian context, the benefits they see in the use of expert evidence can be applied within the context of improving legal understandings of coercive and controlling behaviours. More specifically, in their analysis of the Australian battered woman’s homicide case of *R v Falls,* Sheehy, Stubbs and Tolmie (2014: 695-696) speak directly to the value of expert evidence on coercive control:

Expert evidence about the relationship between a man’s use of coercive control and a woman’s resort to homicide may be particularly important where there is no apparent increase in the deceased’s physical violence nor any new and catastrophic threat. Thus, for women responding to the general threat posed by a abusive relationship from which they cannot safely extricate themselves rather than a specific threat, it elucidates the full nature of the harm that the relationship presents.

Pointing to the merits of bringing understandings of coercive control into the realm of law beyond the mere creation of legal categories, these views point to an alternate (and arguably more effective) way in which this clinical concept could come to aid women’s access to justice.

**Coercive control: imagining justice differently?**

The unintended consequences of the recourse to law have persistently dogged campaigners in this area and one of the roots of this problem lies in the universal principles of liberalism inherent within it (Hudson, 2003). These principles operate implicitly within an either/or framework and are fundamentally tied to what Hudson (2006) has called ‘white man’s justice’ (see also Naffine, 1990). Thus the legal subject, the rational man of law, must remain intact. This is a fundamental stranglehold taking its toll on translating experiences of real life into something that is actionable and doable within any criminal justice system. There are, however two pathways out of this both of which require thinking differently about justice.

The first pathway might be to reconsider the notions of justice inherent in Hudson’s (2006) proposed principles of justice: discursiveness, relationalism and reflectiveness. These principles are suggestive of ways to move away from either/orism towards recognising there are a range of standpoints on any issue; that both complainants and defendants are part of a wider network of relationships and that detailed attention be paid to each case as a unique entity. In applying these principles to data gathered in Magistrate’s Courts in Queensland, Douglas (2008) makes a convincing case that they can be applied in a workable fashion in the routine activities of the court in a way that *makes sense for the women involved* (our emphasis) In particular she found the evident space for the principle of relationalism compelling. She states:

Police, prosecuting authorities and magistrates have a role to play in considering how their various approaches will impact on the ongoing safety of the victim and potentially the transformation of the perpetrator. Decisions made by police, prosecution authorities, lawyers and magistrates in terms of whether and what to charge, whether to accept evidence, whether to encourage clients to enter certain pleas, whether to allow adjournments and about the appropriate sentence may have significant impacts on the parties. Such decision-making needs to be considered in the context of the complex web of relationships in which parties are involved. (Douglas, 2008: 468)

In other words, putting such principles into practice requires all components of the criminal justice process to work in accordance with them. In this context, criminalisation of men’s behaviours only has the potential for meaningful consequences if their strategies of harm minimisation, denial of responsibility and blame shifting are also consistently challenged. While there is some evidence to suggest the space exists to enact the law and take account of context, there may be struggles in adopting this kind of holistic approach. This is illustrated by the ongoing difficulties in the application of understandings of the law of provocation and its reform (see inter alia Fitz-Gibbon, 2014). The second pathway returns us to some of the work with which this article began.

For Wilson (1983) in tackling violence against women in all its forms, changing the law and challenging the sexism inherent in the law, was only one element of a much wider policy agenda. Tackling the socio-economic and cultural circumstances which frame women’s lives is equally, if not more, important. Contemporarily, as Mooney (2007) has observed, violence against women might be a public anathema but it is also a private common place. a Discursiveness, relationalism, and reflectiveness as principles guiding criminal justice practice are but one place to start. There are many others including education, health, the workplace, family members and so on. Arguably a genuine process of change will only become apparent when, in all of these arenas, the ordinariness of intimate partner violence is recognised and in its ordinariness challenged. This may be the context in which coercive control, so valued by Stark (2007), might be embraced. There are as yet no definitive answers to offer here but it is possible to imagine the delivery of justice differently.

**Conclusion**

The offence of coercive control was designed to recognize in law the pervasive harms to women arising in the context of relationships where women’s sense of reality, identity, liberty and human rights are systematically undermined by their male partners. Here we question whether it is indeed possible for the legal system to recognise and respond effectively to women’s experiences of such abuse. A close analysis of the potential unintended consequences of such reform, alongside a reflection on the learnings of over three decades of recourse to law in this area, suggests that the binary, yes, no, guilty, not guilty, abusive not abusive framework of criminal proceedings is unlikely to be conducive to women telling their stories on their own terms or obtaining justice.

While the offence of coercive control, may be viewed as a legitimate attempt to bring a wider range of abusive behaviours within the remit of the criminal law, a critical analysis of the difficulties of translating the clinical to the legal, reveals that the introduction of the offence does little to overcome the difficulties women have long encountered in accessing justice. To this end the very same barriers that have traditionally hindered women’s access to justice are likely to persist despite the existence of a new offence. Recognising the limits of new legal categories in improving responses for victims also reemphasises the importance of ensuring efforts continue beyond the criminal law, including through strengthening civil remedies and ensuring ongoing commitment to service access and delivery. Without broader reform and cultural change, both of which are long term aspirations, we remain sceptical as to the extent a new offence will offer meaningful access to justice for women victims.

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