

Editorial Introduction

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This Special Issue of the *Criminology and Criminal Justice* examines changing responses to domestic violence and asks the question: is coercive control the answer?

Over the last ten years there has been increased momentum to criminalise ‘coercive control’ as a response to ongoing concerns about the adequacy of criminal justice responses to domestic violence and as a way to reform the criminal law to better account for the *patterns* of abuse experience by women on a day-to-day basis. Coercive control illuminates domestic abuse as a pattern of behaviours, within which physical violence may exist alongside a range of other abusive behaviours. In particular, recent reform has been targeted at improving police responses at the charging stage of the justice system and improving court outcomes at prosecution and conviction in the light of understanding the patterning of behaviours associated with domestic abuse.

Different jurisdictions have varied markedly in the approaches they have adopted to bringing ‘coercive control’ within the confines of the criminal law. The most well-known example being that of England and Wales, which, as of December 2015, introduced a gender-neutral offence of coercive and controlling behaviour (see Section 76 of the *Serious Crime Act 2015*). The impact of that offence, the concept of which was based largely on the work of American sociologist and social worker Evan Stark (with the exception that it is drafted using gender neutral language), is still emerging in practice, and at the time of writing it has been met with mixed reviews in practice.

Beyond England and Wales, attempts to bring the concept of coercive control into the legal sphere have similarly prompted law reform. In Scotland for example, the government introduced in March 2017 the Domestic Abuse (Scotland) Bill. This opts for a gender specific offence of domestic abuse (rather than coercive control) following a gender specific approach to reform favoured in several European jurisdictions, including Spain and Sweden. At the same time, recent reviews of state and territory laws in Australia (including a Royal Commission into Family Violence in Victoria) have resulted in proposals for a new offence modeled on the English approach.

This international momentum for change signals an important opportunity for criminologists, sociologists and socio-legal scholars to ask: ***Is coercive control the answer?*** This question, at the crux of this Special Issue, affords the opportunity to bring together a range of scholars to examine the following questions:

- What is coercive control and to what extent does it offer a *new* lens for understanding

intimate partner abuse?

- How do you distinguish coercive and controlling behaviour in law? And to what degree is coercive control experienced by women in domestically abusive relationships?
- When legislating in the area of domestic violence, should the criminal law remain gender neutral or be framed to reflect the gendered nature of domestic abuse?
- To what extent can an understanding of coercive control inform practitioner views and practice?
- Is legislating for another criminal offence the answer or part of the answer to improving court responses to domestic abuse?
- What challenges and unintended outcomes may arise, or have emerged, in jurisdictions that have introduced a new offence to capture patterns of non-physical violence?

The Special Issue considers the adequacy of legal responses to violence against women. Of particular interest here is the bank of criminological and legal research that has questioned the extent to which the criminal law can accommodate and adequately respond to violence experienced by women at the hands of their male partners. In doing so the limits of the law in terms of its capacity to understand women's experiences of violence has been acknowledged alongside the generosity of the criminal law in providing a sympathetic hearing to men's use of violence against their female intimate partners.

This Special Issue includes contributions from scholars and practitioners in England, Scotland, New Zealand, Australia, Canada and the United States. Authors come from a range of disciplines at all stages of their careers, working in the fields of violence against women, domestic violence, criminal justice policy, and law reform. The contributions offer new empirical research and theoretical analyses reflecting ongoing debates and recent reforms introduced across key international jurisdictions. In bringing together this range of contributions we have sought to contribute new knowledge and insight into legal responses to violence against women, and specifically the extent to which the concept of 'coercive control' can be used in law to improve legal responses in this area.

The first article of the Special Issue, written by Sylvia Walby and Jude Towers, critically examines the *concept* of coercive control and divergent conceptualisations of what constitutes coercive and controlling behaviour. Drawing on data from the Crime Survey for England and Wales and 'disentangling' the concept of coercive control as originally posed by Stark and Johnson, the article proposes a new conceptualisation of coercive control as 'domestic violence crime'. The article examines how such violence should be counted and the policy implications of responding to intimate partner violence through this lens.

Moving from conceptualisation to application, the article by Amanda Robinson, Andy Myhill and Julia Wire, examines how practitioners understand and respond to coercive control in the wake of the offence's introduction in England and Wales. Highlighting the importance of

understanding risk and educating those charged with implementing the offence, Robinson, Myhill and Wire argue that the introduction of legislation in and of itself achieves very little if it is not accompanied by clear practitioner guidance and training.

Extending the Issue's analysis of the English offence, the article by Julia Tolmie critically analyses the merits of the introduction of the coercive or controlling behaviour offence and considers the extent to which it will overcome long recognised problems in criminal law responses to intimate partner violence. Heeding the lessons on mandatory charging laws in the United States, Tolmie acknowledges that while there may be some benefits of this reform, it will be important to be alert to the ways in which the offence may come to be used against primary victims of intimate partner violence.

Oona Brooks-Hay and Michele Burman take a close, critical look at the rationale underpinning the direction being adopted in Scotland. They offer a detailed exploration of the differences between the impending Scottish legislation and that adopted in England and Wales pointing to an analysis of the likely intended and unintended consequences of the approach adopted in Scotland. They suggest that whilst the Scottish approach might have greater empathy with feminist work, the extent to which new legislation offers a resolution to the issues associated with responding to domestic abuse is open to question.

Moving the focus to Australia, Heather Douglas's article presents the findings of interviews conducted with 62 Australian women victims of coercive control to explore how the legal system acted as an additional site of abuse. Extending the notion of paper abuse, Douglas examines *legal systems abuse* and like Tolmie sounds a warning on the ways in which an offence of coercive control may be used against primary victims of violence. Continuing the focus on women who experience intimate partner violence, Elizabeth Sheehy, writing in the Canadian context, reveals that even in jurisdictions where coercive control has not been criminalised as a specific offence, legal attempts to understand and better respond to coercive and controlling behaviour have animated debate. Through her detailed analysis of a single case study, Sheehy analyses both the merits and the challenges of introducing the concept of coercive control through expert evidence in the trials of women who kill their partners.

Completing the Special Issue, our own article returns to the English context and what we view as a critical question – *Is more law the answer?* Adopting a gendered perspective, the article considers both the problems and possibilities of transporting the concept of coercive control from the clinical to the legal. Taking stock of the challenges often experienced by victims of intimate partner violence who seek remedy through law, the article concludes that the new offence, whilst meritorious in its intentions, will be unlikely to improve legal responses to intimate partner violence.

This range of articles, we hope, will not only stimulate scholarly debate but also positively inform the plethora of law reform activity that presently surrounds legal responses to intimate partner violence. While it is unlikely that any single piece of reform will in and of itself overcome the barriers that women victims face when seeking justice through the criminal courts, learning from the experiences of reform is an undoubtedly valuable exercise.