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Family Violence as State Crime:

A new framework for theory, practice, and remedy

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Abstract

Family violence is the most prevalent form of violence worldwide, and is overwhelmingly perpetrated by men against women and children. In recent years, Australia has been a leader in the global movement to give this problem the attention it deserves, including through the establishment of the Victorian Royal Commission into Family Violence. Yet in both mainstream and academic discourse, family violence continues to be understood through a narrow lens: framed as a problem of individual perpetrators and harmful cultural norms and attitudes. In these accounts, the historical, structural, and institutional dimensions of male violence in the family remain largely obscured. The notion of institutional or state complicity in family violence has received inadequate attention, and family violence has not been comprehensively investigated, identified, or theorised as a state crime.

Through a transdisciplinary approach to data analysis and theory-building, this study integrates and extends material from diverse fields including criminology, state crime, transitional justice, international law, and radical feminist politics, in order to generate new insights and build new theory around state crime and family violence. The central argument of this thesis is that family violence constitutes a state crime, and towards this central argument, I offer a number of related contributions. I contribute to the development of state crime methodologies by constructing an analytical framework for identifying state complicity through the operation of state institutions. I then demonstrate the application of this framework to identify state complicity in family violence through three state institutions in Australia and comparable international contexts: the criminal justice system, family law, and state-based social services. Through examining family violence policy, practice, and ideology in the operation of these institutions, I identify state complicity in family violence across the spectrum of state criminality: ranging from passive bystander to active agent, participant and direct perpetrator.

My central contribution is a comprehensive theoretical framework for understanding family violence as state crime. Through a unified multi-component feminist model, I propose a way of conceptualising the complementary patriarchal harms that, together, position family violence as a state crime. Specifically, the framework identifies and theorises the state structural and state institutional dimensions of family violence which function in a mutually-

reinforcing manner to produce and reproduce the harm. Based on this framework, I then reflect on the implications that emerge from conceptualising family violence as a state crime.

Through a diverse toolkit for family violence state crime justice, I offer a reconsidered approach to addressing the harm by drawing on insights from transitional justice and redress frameworks for other state crimes. The investigative, acknowledgement, accountability, remedy, and prevention measures I propose aim to address family violence more thoroughly by accounting for the central role of states and institutions in family violence. Ultimately, I argue that genuine progress in addressing family violence can only be achieved by acknowledging the state's responsibility for the harm. Understanding family violence through a state crime lens and recognising its embeddedness in the historical, structural, and institutional landscape then enables the imagination and design of more appropriate responses to the problem.

Declaration

This declaration is to certify that:

i. the thesis comprises only my original work towards the PhD;
ii. due acknowledgement has been made in the text to all other material used;
iii. the thesis is fewer than 100,000 words in length, exclusive of tables, maps, bibliographies and appendices.

Evelyn Rose
September 2019

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1

The state and family violence: Neutral arbiter or complicit actor?

Local context

In 2016, in Victoria, Australia, the Royal Commission into Family Violence delivered its 2082 page report, the culmination of a 13-month inquiry into family violence, its causes and remedies. This was a moment of possibility and promise. Royal Commissions are important institutions in Australian political and public life, and the decision to hold one represents official acknowledgement of an issue's grave significance, the need for thorough and contemporary investigation into it, and a receptivity to innovative insights and ideas for understanding and addressing the problem. When the Family Violence Royal Commission's Report was handed down, it therefore represented an important historical moment. It was an opportunity to initiate an authoritative break from the past, reconfigure old frameworks, and instigate transformative approaches to the problem. As a feminist criminologist with interests in violence against women and state crime, I eagerly anticipated a comprehensive account of family violence, an accurate picture of how it has been produced and reproduced, and innovative ideas for addressing multiple levels of accountability and responsibility for it.

The Royal Commission's Report was encouraging in many ways. Its account of family violence indeed indicates significant positive developments with regard to how the problem is understood at the highest levels.[1] Firstly, it confirms that we have reached a point where feminist explanations of male violence are widely accepted and incorporated into official and mainstream narratives. Indicative of this is the Report's integration of insights from pro-

[1] Throughout this thesis, I use family violence as an umbrella term to encompass a range of violent, abusive, controlling and coercive behaviours perpetrated by one family member against another. Because it is overwhelmingly a problem of male violence against women and children, this is the dynamic to which I refer unless otherwise stipulated. My definition of family violence includes that perpetrated by former partners and non-custodial parents, as women and children are at greatest risk of potentially lethal physical violence at, or soon after, attempts to leave an abusive domestic situation (Kimmel 2010; Chan and Payne 2013; Eriksson and Mazerolle 2013; Campo and Tayton 2015; McKenzie et al 2016; Gillespie and Reckdenwald 2017; Conte 2018). I also acknowledge that family violence can refer to abuse of the elderly or disabled by family, co-residents or carers, as well as violence involving members of a broader family structure, which, notably for Indigenous citizens, can include wider kinship and community networks (Blagg et al 2015; Cunneen 2009; Memmott 2010; Cunneen and Tauri 2016).

feminist academics and practitioners who testified to the Commission (e.g. Flood 2015a; McCormack 2015; Tucker 2015). These insights led to the Report identifying family violence as a distinctly gendered problem related to power, inequality, stereotypes, roles, norms and attitudes. For example:

> *violence against women and children is deeply rooted in power imbalances that are reinforced by gender norms and stereotypes ... the causes of family violence [are] complex and include gender inequality and community attitudes towards women* (RCFV 2016: 2).

The Royal Commission's discussion of family violence offending is also somewhat progressive. It focuses on the notion of individual perpetrator responsibility and accordingly emphasises the need for criminal justice and social service reform to hold perpetrators accountable and to better protect and support victims. In these key ways, the Report's account can be seen as progressive: firstly with regard to recognising the centrality of gender inequality and power to family violence, secondly with its focus on holding perpetrators to account, and thirdly, through acknowledging the need for an improved prevention and response system.

However, closer analysis of the Report exposes a more omissive account. On the one hand, despite acknowledging that family violence stems from sexual inequality and is overwhelmingly perpetrated by a group (men) which is structurally, symbolically and materially superior to the victim[2] group (women and children), family violence is framed as an individual or cultural problem. Offenders are variously portrayed as ill, addicted, uncontrolled, poorly-educated or defectively-acculturated men who may require medical or psychological treatment, attitudinal and behavioural education, and condemnation and punishment.[3]

[2] I use the terms victim, survivor, and victim-survivor interchangeably throughout this thesis, in order to acknowledge the validity and utility of all these ways of describing those who experience or have experienced family violence. Like Meyersfeld (2010), I use the term victim without connotations of inferiority or weakness, but rather to emphasise that the family violence involves serious criminal behaviour which victimises others. I also share Meyersfeld's concern that the term survivor is not appropriate, and may indeed be offensive, if used in a manner that excludes women who have been killed by family violence. However, the term survivor is often preferred by those who have endured abuse, in order to emphasise their strength and resilience. I also acknowledge current shifts towards the term 'people with lived experience of family violence' (State of Victoria 2019). Unfortunately this is not manageable terminology for use throughout this thesis. I concur with Walklate (2011) that we should aim to acknowledge and represent both the vulnerability and resilience involved with criminal victimisation. For further discussion regarding the complexity of terminology in this area, see for example Barry (1979), Kelly and Radford (1996), Mills (1996), Kimmel (2010) and Kent (2018).

[3] My analysis aligns with other recent examinations of official narratives from the Victorian context, including in criminal courts (McKenzie et al 2016) and in family law (Conte 2018). These analyses also identify that male family violence is frequently explained with reference to uncontrollable or external factors like alcohol, drugs, mental illness and stress. They also note the tendency to treat perpetrators with pity, compassion, medicalised treatment or behavioural and attitudinal education.

Although sexual inequality is frequently reiterated as the root of family violence, there is no examination of the origins of sexual inequality itself. It is not understood as a substantive or material problem related to structural arrangements, rather it is reduced to discriminatory attitudes and cultural norms, with community attitudes stated as a core underlying factor (RCFV 2016: 2). Like inequality, these are treated as an unfortunate social fact without identifiable or substantive basis. Despite undertaking to investigate "systemic" issues and consider all levels of society including government and institutions (RCFV 2015: 2-3), the Royal Commission conceptualises family violence as an individual, interpersonal, social and cultural problem. The notion of systemic is confined to family violence response systems which will receive technical and bureaucratic reform. Family violence is not recognised as a systemic, institutional or structural problem, and certainly not one in which the state might be implicated.

The Royal Commission exists in a national and international context in which there is little acknowledgement that family violence originates through, and has been facilitated by, state structures and institutions. There is lack of recognition of the state's role in producing a problem of such epidemic scale that around a third of women across Victoria, Australia and the so-called developed world, have been victimised (UNODC 2014; Garcia-Moreno et al 2015; Our Watch 2016; Guggisberg 2018). There is limited acknowledgement that the very same state and system that claims to prohibit, prevent and punish family violence actively participates in exacerbating and extending it (see e.g. Cameron 2014; Kelly et al 2014; Cummins 2016; Natalier 2017; 2018; Douglas 2018). Critically, the state is represented as the neutral, external arbiter of an interpersonal harm, rather than intrinsic to the harm itself. Accordingly, there is little consideration of the notion of state accountability, justice or remedy.

But the truth is that the state is not simply a neutral arbiter of harm that occasionally neglects its duties due to unfortunate practical realities. It is not the oft-cited economic constraints nor lack of service integration (see e.g. VicHealth 2014; RCFV Report 2016; DHHS 2018; DVRCV 2018; also Groves and Thomas 2014) that have made family violence a problem of epidemic proportions across the liberal-democratic world. The uncomfortable reality is that family violence is so prevalent because it has been and continues to be legitimated and perpetuated by the very same structures and systems that purport to prevent and address it. That is, family violence is so prevalent not *despite*, but precisely *because of* the state. As this thesis will demonstrate, the state plays a demonstrable historic and contemporary, passive and active role in family violence by obscuring, allowing, endorsing, participating in, exacerbating and

extending family violence harms. This state action and inaction is not neutral or random. Rather, it reflects distinctive ideologies and operates according to predictable discriminatory patterns, as with other forms of systematic harm against certain social groups (see Balint 2012; Stanley 2014). In relation to family violence, the state is very much an active contributor, not a neutral arbiter, and this has been the central concern of my research.

International context

The Victorian Royal Commission into Family Violence Report can be situated within a broader international context of simultaneously progressive but also partial and problematic accounts of violence against women. Considering these in parallel highlights a pattern of some positive pro-feminist progress, but also resistance towards acknowledging the true nature and substantive origin of these harms, and notably an avoidance or erasure of the role of the state.

In progressive terms, the Royal Commission into Family Violence is part of an international shift towards acknowledging the prevalence and severity of family and other forms of violence against women. The past decade has seen rapid shifts in the global discursive terrain, with family violence now rarely dismissed or minimised as an insignificant, private, women's problem. It is now widely recognised as the most pervasive and ubiquitous gender-based harm worldwide, as well as a pressing human rights concern and a high priority political issue (Charlesworth and Chinkin 2000; Guggisberg and Fisher 2010; Meyersfeld 2010; Duramy 2013). It is also increasingly documented as a cross-cultural and cross-contextual problem. When the United Nations Commission on the Status of Women convened in 2013, it reiterated the need to address intimate partner violence as "the most prevalent form [of violence] that affects women of all social strata across the world" (2).

Another positive shift within international politics and discourse around family violence is its recognition as a problem of male perpetration. This offending dynamic characterises the overwhelming majority of cases and particularly those involving serious and systematic forms of abuse (Flood 2003; 2011; Kelly and Johnson 2008; Kimmel 2010; 2013; Stark 2007; 2010; Cosimo 2011; Hester 2012; Breiding et al 2014a; DeKeseredy 2016; WLSV 2018). Accordingly, family violence is now most often discussed as a problem of men's violence against women and children and an important, collective issue, rather than a marginal concern for which women have the responsibility to address. Some integration of feminist analysis is

also increasingly common in international accounts of family violence, with frequent references to inequality, power, prescriptive gender roles and problematic masculinity (e.g. UNGA 1993; 2003; Fulu et al for UNDP 2013).

However, as with the Royal Commission into Family Violence Report, the conceptualisation of men's violence against women in other official accounts avoids its structural and state dimensions. In analysing a number of national and international anti-violence campaigns and programs,[4] Salter (2016a) identifies similarly restrictive accounts of the causes of violence against women. In this rhetoric, gender inequality is also identified as the underlying cause of the violence, but it is subsumed within gender norms such that inequality becomes abstract and immaterial rather than connected to state-instituted political, economic and social conditions.[5] These accounts, like the Royal Commission's, tend to attribute men's violence to attitudes and behaviours rather than linking it to the substantive structural subjugation of women and children. Also like the Royal Commission's Report, some of the rhetoric analysed by Salter (2016a) discursively reduces terms to limit their meaning. For example, the term systemic refers not to systems or structures, nor to systems designed to prevent and punish violence, but to individual and collective attitudes. In all these accounts, purposeful terminology and avoidant language elide the substantive, structural, institutional, and state dimensions of the harm.

The widely-used social ecological model of gender-based violence also reproduces limited accounts of family violence, its causes and remedies. This popular model is used to depict complex social problems by accounting for multiple personal and environmental factors that contribute to the problem, and for the often dynamic interactions between contributing factors. It is premised upon the belief that understanding a complex problem requires that it be located within the ecology through which it emerges. Various iterations of the social ecological model have been used to depict family and other gender-based violence across Australia (see Our Watch et al 2015; also DVRCV 2018), by the United States Centres for Disease Control and Prevention (see NCIPC 2019), and internationally by the World Health Organisation (see Dahlberg and Krug 2002). Across these contexts, the model generally does include what are

[4] Examples of such campaigns and programs include Australia's 'White Ribbon Foundation, the United States-based 'National Organisation for Men Against Sexism', the United Nations Development Program, and global NGOs like 'HeforShe', 'Wellness Through Gender' and 'Changing Men Everywhere'.
[5] For an additional example of such an account, see Fulu et al (2013).

termed structural and systemic issues, however these rarely attend adequately to state-level structures or systems. Like the accounts discussed above, structures often equate to cultures and norms, which, when interpreted through the dominant individualised lens of understanding violence against women, ultimately translate as individual and collective attitudes. Systemic often refers to inadequacies, omissions or failures of institutions which are designed to respond to family violence, rather than to the state-created structural conditions, policies and practices which produced and continue to enable family violence.

Looking beyond violence against women, we can identify similarly omissive and avoidant accounts of other forms of collective harm. Across temporal, geographic, racial and cultural contexts, official narratives frequently avoid identifying the nature and origin of mass oppression and violence. Notably, the organised, organisational, institutional and state dimensions of these harms are often absent in these accounts. In post-apartheid South Africa, for example, the state's Truth and Reconciliation Commission documented numerous cases of torture perpetrated by state officials which indicated repeated, specific and organised methods, yet these were generally framed as the result of sadistic or wayward individuals (see SATRC 1998; also Boraine 2000; Christie 2000; Stanley 2005). In the International Criminal Tribunal for Rwanda's account of the country's genocide, the divisive racist colonial history and the modern state's genocidal ideology were generally disappeared within groundless narratives of neighbours spontaneously turning on neighbours (see ICTR 1998). Holocaust atrocities have also been plagued by similarly omissive official accounts. These are widely documented to have originated in Nazi ideology and to have been executed using state law, state-sponsored industry and deliberate institutional design (see e.g. Kolin 2008; Balint 2012; Jones 2013). However, post-war Tribunals have tended to obscure this within stories of individual and cultural racism. The International Criminal Court also frequently narrates war crimes as "bad men doing evil deeds" (Simpson 2007: 157), rather than mass harms which are sanctioned at the highest levels.

The key problem with all these accounts of mass violence is that they evade the centrality of organisational, institutional, structural and state factors in these harms. When narratives focus on aberrant individuals perpetrating interpersonal violations, they obscure the institutional, structural and state dimensions of violence (Kent 2012; Orford 2006; Nagy 2008; Stanley 2014). In relation to family violence, they hinder a comprehensive understanding of the problem, its origins, its maintenance, and its contemporary prevalence. As Wright and Hearn

(2013) explain, this is not a neutral process, but a highly political one. The way that harms are described, represented and conceptualised is not merely an identification process, but a constitutive one (Stanley 2014). This means that when family violence is discursively constructed as an individual and attitudinal problem, it accordingly creates a limiting filter through which responses are imagined and designed.

The research process

I commenced this study in mid 2012 in a very different place from where it has culminated. Following on from earlier graduate research on conflict-related sexual violence, I spent the first eight months of my PhD candidature researching sexual violence, trauma and torture in various international conflict contexts. I investigated how these crimes have been understood through international criminal and human rights lenses and in particular explored how war-time rape has been conceptualised and prosecuted. I spent some time engaging with material from the *ad hoc* tribunals for Rwanda (ICTR) and the former Yugoslavia (ICTY) through cases such as *Prosecutor v. Akayesu* (ICTR 1998) and *Prosecutor v. Kunarac, Kovac and Vukovic (Foca)* (ICTY 2001). These cases produced significant innovation and progress in expanding the conceptualisation and prosecution of sexual violence and prompted me to begin thinking about conceptualising harms against women in unconventional ways.

However, close engagement with data from a particular report on sexual violence in war-affected countries (see HSRP 2012) compelled me to re-evaluate my focus of study. Contrary to the impressions I had gained from media and academia's focus on soldier-perpetrated war-time rape, this data showed that, even during conflict, women were at greatest risk of rape from family members. After some brief and intense exploration of further data and literature in this area, I came to the realisation that, both in and outside of war, women are at greatest risk of violence in their own homes and from male partners and other relatives (e.g. Finn 1989; Mouzos and Makkai 2004; Peterman et al 2011; Signorelli et al 2012; HSRP 2012; Chan and Payne 2013). I had not previously been aware of these figures, and during further reading was struck by the remarkable continuities in women's experiences of sexual, domestic and family violence not only across pre-conflict, conflict and post-conflict settings, but also across diverse geographic, historical and cultural contexts (e.g. Mrsevic 2000; Kelly 2010; Enloe 2012).

Having studied the international criminal adjudication of war-time sexual violence, I was already aware of its intolerable prevalence. I was also aware that in certain contexts and under certain conditions, rape had been judged sufficiently grave and mass-scale to constitute an international crime, a crime against humanity, and a form of genocide. To consider that women were being victimised in even *greater* numbers by partners and other family and in their homes – by perpetrators and in settings which would lead to the lowest incidence of reporting or response – instantly posed the question 'why are we not using these same international conceptual tools for this violence?' Having ascertained that conflict-related rape is not unique or exceptional but merely part of a continuum of violence against women, I was determined to pursue a topic which would highlight the severity and continuity of all violence against women. The feminist aims guiding my research compelled me to pursue a topic with broad 'everyday' relevance, so I chose to shift my focus and concentrate on the most prevalent form of men's violence against women: intimate partner violence. This change was also timely. When I commenced my PhD in 2012, the issue was still a relatively marginal concern, but as I complete, it is widely recognised as a social, cultural and political problem of the utmost importance.

My broad aim at this stage was to explore how intimate partner violence might be reconceptualised by drawing on the frameworks of international criminal law, systematic harm, and possibly state crime. First, I sought to identify what research avenues and approaches might be most feasible and useful. I found the 1990s works of feminist human rights scholars like Copelon, MacKinnon, and Romany particularly influential. These authors' creative and innovative use of international law to theorise and activate against private-sphere violence against women was bold and intelligent, and showcased what a flexible and dexterous research approach could achieve (e.g. MacKinnon 1993; 1994; Romany 1993; 1994; Copelon 1994; 1995a; 1995b). Other radical feminist contributions from politics and international relations further highlighted the continuities between violence against women in diverse contexts and circumstances, revealing a pervasive and normalised spectrum of violence against women (e.g. Enloe 1983; Kelly 1988; Russell and Radford 1992; Kelly and Radford 1996; Radford and Stanko 1996). Together, these feminist contributions solidified my aspiration to pursue conceptually innovative work in studying violence against women, and provided ideas for specific techniques and tools that I could use towards this aim.

I was also inspired by contributions from state crime scholars. My principal supervisor Jennifer Balint's work on state crime (e.g. Balint 2012; 2014; also Balint and Evans 2010; Balint et al 2014; 2016) drew attention to the enduring and systematic harms occurring in supposedly peaceful liberal-democratic societies. By conceptualising harms against Indigenous Australians as genocide and drawing attention to enduring structural violence in colonial states, she and other scholars (e.g. Tatz 1985; 1999; 2003; 2011; Behrendt 2001; Manne 2004; Short 2010; Henry 2015; Curthoys et al 2018) underscore that no context should be immune from scrutiny in relation to state crime. By drawing attention to structural violence perpetrated on the basis of racist and colonial projects in other contexts, as well as economic and ecological oppression (e.g. Barak 1991; 1994; Uvin 1998; Green and Ward 2004; Kauzlarich et al 2003; Cunneen 2008; Balint and Evans 2010; Lu 2011; Balint et al 2014; 2016; Hirschfeld 2017), other structural violence and state crime scholars also reinforced my intention to pursue a flexible and expanded notion of what constitutes state crime.

These broad bodies of work planted the seeds that grew into my idea to look at intimate partner violence in Western liberal-democratic contexts through diverse but complementary lenses. This developed into a focus on family violence, to include the two most common manifestations of the phenomenon: intimate partner and child abuse, and hence 'family violence' is the focus of this thesis.

The academic landscape

In feminist family violence literature, the role of the state has already received significant attention. Authors of the feminist second wave (e.g. Burris 1973; Brownmiller 1975; Barry 1979) identified the patriarchal state and its ideology, structures and institutions as underpinning all male violence against women. They also theorised men's violence against female partners and children as an important and tacitly-condoned tool for maintaining patriarchal power in the family and the wider society. In this and other feminist scholarship, the state is identified as a political construct which originates from patriarchal cultural ideology and which deliberately and consistently functions in support of men's interests (e.g. Dworkin 1981; Bumiller 1987; 1992; 2008; Smart 1989; MacKinnon 1994; Copelon 1995a; 1995b; 2000). Accordingly, this literature also identifies deliberate and systematic subjugation of women through state institutions such as law and the criminal justice apparatus.

Since the early 1990s, feminist literature has identified that family violence against women constitutes a grave human rights violation (MacKinnon 1993; 1994), form of torture (Copelon 1994), terrorism (e.g. Johnson 1995; 2008; Pain 2012), hostage-taking (Graham 1994), a political crime (Caulfield and Wonders 1993), and liberty crime (Stark 2007). Feminist scholars identify the state's failure to adequately respond to violence in the family as a form of sex-based discrimination and a human rights violation. This is because, since the harm disproportionately affects women, state inaction against it equates to the state allowing and tacitly condoning violence against a specific citizen group (e.g. Romany 1993; 1994; MacKinnon 1993; 1994; Beasley and Thomas 1994; Copelon 1994; Mertus and Goldberg 1994; Charlesworth 1995; Sullivan 1995; Naranch 1997; Meyersfeld 2010; Randall and Venkatesh 2015; 2017). States' "legalised disregard" for this harm and the "official impunity" afforded perpetrators (MacKinnon 1993: 29; also Sullivan 1995; Jeffreys 1997) has therefore been asserted by scholars to constitute official acquiescence to the violation. In more recent years, these feminist legal arguments have been upheld in transnational courts. Court outcomes have confirmed that states' systematic failures to respond to women's pleas for protection do indeed constitute actionable gender-based discrimination (e.g. European Court of Human Rights *Opuz v. Turkey* Judgement 2009; Inter-American Court of Human Rights *Lenahan (Gonzales) v. United States* Judgement 2011)[6]. These extensive analytical and theoretical contributions by feminist scholars and activists all point towards conceptualising family violence as a state crime. Yet the harm has not been explicitly or comprehensively identified as such. Further, feminist works have tended to focus on the state as passive bystander to family violence rather than an active initiator, contributor or participant, and have therefore not adequately addressed the state's active criminal role in producing and reproducing the harm.

Across the academic aisle in the international criminal law, state crime and transitional justice fields, there has been limited attention to harms against women. Research has generally focused on either state corporate criminality (e.g. Chambliss 1971; 1975; 1977; Friedrichs 1996; 2010; Rothe 2009; Rothe and Friedrichs 2015; Bernat and Whyte 2017) or mass-scale, organised violence like the crimes against humanity of World War II or Rwanda, or South African apartheid (e.g. Christie 2000; Mani 2002; Kauzlarich et al 2003; Simpson 2007). In the

[6] For extensive discussion and analysis of these cases, see Goldfarb (2008), Meyersfeld (2010), Andrews and Khavinson (2013) and Cabrera (2015). Caroline Bettinger-Lopez, the chief legal representative throughout the litigation process leading up to and including the Inter-American Court of Human Rights case, has also published extensively on these cases, their key principles, and human rights law (e.g. Bettinger-Lopez 2008; 2013; Bettinger-Lopez et al 2011).

frameworks of international criminal law, certain sexual violence against women has been recognised (e.g. ICTR 1998; ICTY 2001).[7] However, this has generally only related to mass violence against women in circumstances of conflict (e.g. also Henry 2009; 2011; 2013; Dolgopol 2018; Simm 2018). Although international criminal law is increasingly influenced by human rights law, which is not context, location or perpetrator specific (e.g. Freeman and Van Ert 2004; Schabas 2007; 2008; Luban et al 2010; Robertson 2010; Bassiouni 2011; Shenkman 2012), it has not yet been adequately utilised in theory or practice to conceptualise harms perpetrated in peacetime, in the private sphere and by non-state actors. Given the common patterns and features of perpetration and victimisation in the family, which this thesis examines, it would appear to be suitable for conceptualisation within these frameworks, but this has not been adequately pursued.

The conceptualisation of state crime, complicity and criminality has progressed in some significant ways that indicate its pertinence for gender-based harms. State criminality is now widely understood to encompass a spectrum of systematic state involvement in harming certain social groups. State crime literature with a structural justice and human rights focus (e.g. Barak 1991; 1994; 2008; Balint 2012; 2014; 2019; Green and Ward 2000; 2004; Ward and Green 2016) emphasises the wide range of action and inaction that can constitute state crime. That is, state criminality is understood to encompass not only direct participation of state officials in gross violations of certain citizens, but also ambiguous inaction which enables non-state actors to carry out group-based harms. Indeed, some perspectives suggest that states' refusal to act constitutes vicarious liability. This is alluded to in Justice McCombe's commentary in the 'Mau Mau' claims cases, which were brought by five Kenyans against the British state over harms suffered in detention under the 1950s Colonial Administration. The British High Court Justice stated that "standing by and doing nothing, by those with authority and ability to stop the abuse, becomes [understood as] a positive duty to continue it" (McCombe 2011 in Balint 2016: 8). This not only acknowledges inaction as complicit, but translates inaction into active endorsement and participation in the abuse. These conceptual developments are pertinent to family violence since the state's systematic failure to protect victims has already been widely documented, yet not explicitly named as state criminality.

[7] For further discussion of these and similar cases, see e.g. MacKinnon (1994), Copelon (1995a; 1995b; 2000z), Simpson (2007), Arieff (2011) and Henry (2011).

Another relevant development in the conceptualisation of state crime is the recognition that complicity can encompass the state's creation of the frameworks, and thus the possibilities, for systematic harms to occur. This is also revealed in the 'Mau Mau' claims judgements, where the High Court conceptualised the system of abuse and detention established by the British colonial administration as the foundation of the problem, and further, that this created vicarious liability for the British administration (see Balint 2016; 2019). This perspective also suggests that structural and institutional forms of state crime can be considered no less a form of criminality than more active and direct forms of state crime perpetration, particularly when relating to institutionalised structures of harm. This is again relevant to family violence because the state's creation of the institutions of marriage and the patriarchal family arguably involves comparable frameworks of state complicity. The state initially established marriage on the basis of male property rights, and the family as an institution of male authority and control (Pateman 1988; Copelon 1994; Sullivan 1995; Dobash and Dobash 1998; McQuigg 2011). Furthermore, it officially designated the private sphere a zone of state non-interference (Stevens 1999; Mrsevic 2000; Malley-Morrison and Hines 2004; Hildebrandt 2006; Leatherman 2011).[8] The state can therefore be understood not only to have created the institutional frameworks within which family violence occurs, but to tacitly endorse it through refusing to intervene.

Important developments in the state crime field around the notion of harms and temporality are also pertinent to family violence. Whilst some state crimes occur at a distinct moment in time, others need to be understood as both historical and contemporary. For instance with enduring harms like racist and colonial harms, there is no distinct point at which state crimes cease (Wolfe 1994; Cunneen 2008; Balint et al 2014; 2016). This is because systematic and institutionalised subjugation was originally created by the state and continues to exist, albeit manifesting in different ways over time as it becomes increasingly unacceptable for states to overtly authorise it. But without fundamentally altering state structures, oppression continues along the same discriminatory lines it was originally instituted. When an interpersonal harm like family violence has been systematically tolerated by the state over an extended historical period, criminalising the harm may achieve little. Although the contemporary state might in one sense communicate its official intolerance of the harm, the powerful structural and

[8] The widespread criminalisation of family violence during the late 1980s and early 1990s did shift the historical framework within which states would essentially refuse to intervene in the domestic sphere. However, as I further explore in Chapters Four and Five, this framework has a powerful and demonstrable enduring legacy which continues to ensure that crimes perpetrated within the family are treated quite differently from comparable offences by unknown offenders and in other contexts.

institutional forces which first endorsed it can persist. As MacKinnon (2019: np) argues, "just because something is legally prohibited doesn't mean it stops. Maybe exceptional acts do, but not pervasive structural practices". This is certainly the case with family violence. It continues to be reproduced in part because state structures continue to reproduce it, albeit in less overt or visible ways.

From reviewing these relevant fields of study, I saw great complementary potential. I decided to further explore some innovative and productive possibilities for reconceptualising family violence and the role of the state.

Family violence as a crime against humanity

The initial idea to theorise family violence as a state crime originated during the preliminary research stage, when I was considering theory and data on intimate partner violence – as a sub-set of family violence – alongside international legal and state crime frameworks. In this initial stage, I brought together international criminal law, domestic victimisation data, and feminist theory, and developed a framework for conceptualising intimate partner violence as a state crime against humanity. This became a fledgling version of my first substantive research contribution and the basis for my first peer-reviewed publication (Rose 2015a).

By showing how intimate partner violence could be understood as a crime against humanity, I intended to elevate it from a form of interpersonal violence criminalised by local jurisdictions, to a harm of wider significance. The crimes against humanity lens was valuable because it offered a new way of thinking about intimate partner violence which accounted for multiple levels of complicity and responsibility, and crucially, a state dimension. Since crimes against humanity are widely understood as "one of the quintessential crimes of state" (Bassiouni 2011: 47; also Robertson 2002; Vernon 2002; Schabas 2007; 2008; Balint 2012), conceptualising intimate partner violence as a crime against humanity was also an important stepping stone towards more comprehensively theorising family violence as a state crime.

Crimes against humanity are a particular category of international crime codified in the International Criminal Court's Rome Statute (ICC 1998; 2011). The Statute's Preamble (ICC 1998) classifies international crimes as "grave crimes" which are "the most serious crimes of

concern to the international community as a whole", and which "threaten the peace, security and well-being of the world". Crimes against humanity are stipulated as "inhumane acts … intentionally causing great suffering, or serious injury to body or to mental or physical health" (ICC 1998: Art 7.1.k). They must involve the "multiple commission of [specified] acts" (ICC 1998: Art 7.2.a) and be "committed as part of a widespread or systematic attack" (ICC 1998: Art 7.1; also ICC 2011: Elements Art 7.3) which is "directed against a specific civilian population" (ICC 1998: Art 7.1; also ICC 2011: Elements Art 7.3). Crimes against humanity are also necessarily associated with "a state or organisational policy" to "promote or encourage such an attack" (ICC 2011: Elements Article 7.3).

The Rome Statute's standards for international crimes, including crimes against humanity, are further developed in the case law of the *ad hoc* international criminal tribunals (ICTR 1998; ICTY 2001), and further explored in international legal scholarship (e.g. Robertson 2002; Vernon 2002; May 2005; Schabas 2007; 2008; Bassiouni 2011; Geras 2011; Jalloh 2013). In sum, crimes against humanity are harms of extreme gravity, scale and impact, which pose a threat to security. Additionally, they are considered distinctive because they involve repetitive and systematic patterns of perpetration and victimisation, and a collective and state dimension. When considering the preliminary data I collected on intimate partner violence through this legal lens and by augmenting it with feminist theory, I was able to demonstrate that intimate partner violence is indeed suitable for conceptualisation as an international crime and a crime against humanity, as I will now explain.

Like other crimes deemed internationally significant, intimate partner violence is a harm of extreme gravity. Official data from a range of national and international contexts routinely details heinous harms including physical and sexual assault, rape, torture, imprisonment, surveillance, systematic psychological abuse, and threats of violence, murder and suicide (Stark 2007; Johnson 2008; Meyersfeld 2010; Chan and Payne 2013; Breiding et al 2014a; 2014b; Kelly et al 2014; McKenzie et al 2016; UKCPS 2017; Sheehy 2018). Individually, many of these acts are already codified as international crimes: for instance severe deprivation of liberty, enslavement, imprisonment, rape, and persecution are all stipulated within the Rome Statute (see ICC 1998; 2011). Certain intimate partner violence has already been systematically shown to violate human rights codified in the Universal Declaration of Human Rights (UNGA 1948) and the Convention Against Torture (UNGA 1984) (see e.g. MacKinnon 1993; Copelon 1994; Meyersfeld 2003; 2010; Sifris 2014). Furthermore, when individual acts of violence are

perpetrated as part of a constellation of abuse tactics, they additionally constitute regimes of terrorism and torture, which are already codified as crimes against humanity (see ICC 1998; 2011). Intimate partner violence therefore fulfils the gravity requirement.

Intimate partner violence is also perpetrated on a mass scale across national and international contexts. It is the most prominent health risk for women internationally, regardless of geography, race, class, age, language, culture or religion (UN 1993; Hattery 2009; McQuigg 2011; Fulu et al 2013; Guggisberg 2018).[9] Indeed, the extreme prevalence of this harm across diverse global contexts has led many commentators to describe it as an international epidemic. Notwithstanding the problematic connotations of this terminology (see Deer 2015; Rose 2017), it is an accurate descriptor for the pure magnitude of the problem. Across diverse contexts, World Health Organisation data shows that between 15% and 71% of women have experienced intimate partner violence, with a third generally accepted as the global mean (Garcia-Moreno et al 2006; 2015; Reed et al 2010). United Nations homicide statistics show that in 2012 alone, 34,444 women globally were killed by an intimate partner (UNODC 2014: 14,53).[10] Whilst cross-contextual rates do vary, in Australia and comparable liberal-democratic Western societies, approximately one third of women report physical or sexual violation by a partner at some point in their lives (Our Watch 2016; Guggisberg 2018; WLSV 2018). In the United States, over ten million women have been raped by an intimate partner (Breiding et al 2014a; 2014b), and every fourteen hours, a woman is fatally shot by a current or former partner (NCADV 2017).[11] In the United Kingdom, an average of two women every week become intimate partner homicide victims (Wright and Hearn 2013), and despite Australia's relatively small population, an average of one woman is killed every week by a current or former male partner (Our Watch 2016). The uncomfortable reality is that no society is free of this problem.

[9] Beyond being female, other markers of subordination and disadvantage can increase the risk of experiencing family violence. In both the United States and Australia, for example, sex intersects with race, ethnicity, age, socio-economic status and other factors to affect risk (Graham-Bermann and Halabu 2004; Murray and Powell 2009; Kimmel 2013). Black feminists such as Ritchie (1985) and Crenshaw (1991) advocate an intersectional approach to studying family violence which centres race as well as gender. Important recent progress is also being made in recognising the heightened vulnerability to family violence of disabled or chronically-ill women (see e.g. Buck and Curran 2009; Engnes et al 2013; Healey et al 2013). I acknowledge the value of intersectional approaches, but unfortunately the constraints of this project do not allow me to incorporate such nuances and still fulfil my key aims.

[10] The broader data set includes a further 9,156 women who were killed by 'other' family members, and many more by offenders with an unknown or unspecified relationship to the victim. The 'intimate partner' homicide figure is thus likely to grossly underestimate the actual number of such cases.

[11] The United States-based National Coalition Against Domestic Violence website also has a live feature which shows real-time data on the number of domestic violence gun-related fatalities for the current calendar year. See http://ncadv.org/ .

The severity and scale of intimate partner violence across the world also indicates its widespread impact and positions it as a security threat on a number of levels. Firstly, intimate partner violence affects both the short and long-term health and well-being of victim-survivors. It causes significant immediate damage to physical, sexual and psychological health and also correlates with multiple, complex and chronic physical and mental health issues, self-harm and suicide (NCRVAWC 2009; Ramsay et al 2012; True 2012; UK Women's Aid 2013; Breiding et al 2014a; Cameron 2014; Kelly et al 2014; Guggisberg 2018; WLSV 2018). Intimate partner violence is also closely connected to lifetimes of heightened vulnerability to other forms of disadvantage and suffering including poverty and unemployment (Guggisberg 2018). Breiding et al's (2014a) American study, for example, shows that women experiencing food insecurity are four to five times more likely to have experienced intimate partner violence, indicating the intersection between this harm and other security and human rights issues. At the broader level also, significant continuities and causal connections between intimate partner and other forms of gender-based violence in the home, in public, and both in and outside of war (e.g. MacKinnon 1994; Mrsevic 2000; Moser 2001; MacKenzie 2010; Enloe 2012) signify its pervasive impact across communities, societies, and indeed the world.

Intimate partner violence also fulfils the requirements that distinguish crimes against humanity as a specific international crime. This first of these is that it involves repetitive and systematic patterns of harm. This can be identified with intimate partner violence firstly because each case of abuse involves a pattern of repeated and systematic violations of each individual victim. The majority of cases reported to authorities in Western jurisdictions involve multiple, systematic, and often escalating violations, as they are part of coercive controlling regimes (Stark 2007; 2010; also see Johnson 2008; Kimmel 2010; Meyer 2011; NSWBOCSAR 2011; Birdsey and Snowball 2013; UK Women's Aid 2013; Cameron 2014; Sheehy 2018; WLSV 2018). This type of abuse involves not just singular acts of harm, but calculated, repetitive and systematic harms which are designed to control the victim and the family. Victims commonly experience multiple forms of physical and sexual abuse which are reinforced by other less visible power and control strategies (Hunter 2006; Kelly and Johnson 2008; Cosimo 2011; Hester 2012; Coy et al 2015; Douglas 2018). Common techniques within coercive controlling regimes include repetitive verbal and psychological abuse, geographic and social isolation, surveillance, stalking, and various threats of harm (see e.g. Harne and Radford 2008; Alcalde 2010; Brush 2011; Hattery and Smith 2012; Cameron 2014; Kelly et al 2014; McKenzie et al 2016; Sheehy

2018). The consistent control, abuse and violence within each intimate partner violence regime demonstrates how it can be understood as a harm involving repetitive and systematic patterns.

Intimate partner violence also involves systematic and collective patterns in relation to the perpetration and victimisation dynamic. Data consistently show that this form of violence is overwhelmingly perpetrated by men against women, and that male victimisation is simply not comparable in terms of frequency, severity, power dynamic, overall pattern of domination, or victim impact (e.g. Johnson 1995; 2008; 2010; Katz 2006; Stark 2007; Enander 2011; Flood 2012a; Kimmel 2010; 2013; Our Watch 2016).[12] This clear perpetrator-victim dynamic positions intimate partner violence as a gender-based harm, since it so disproportionately affects women (see e.g. Romany 1993; 1994; MacKinnon 1993; 1994; Beasley and Thomas 1994; Copelon 1994; Charlesworth 1995; Naranch 1997). I also argue that this indicates that intimate partner violence can be understood as a systematic group-based harm perpetrated against a "specific civilian population" (ICC 1998: Art 7.1; also ICC 2011: Elements Art 7.3), another stipulation of the crimes against humanity framework. Additionally, I suggest the importance of understanding any individual woman's victimisation as part of a "widespread or systematic attack" (ICC 1998: Art 7.1; also ICC 2011: Elements Art 7.3) because her experience of intimate partner abuse occurs within the broader context of similar, simultaneous attacks against other women.

Intimate partner violence can also be understood to cause collective harm at a more pervasive level. This is because all forms of violence against women have an impact on women as a collective. Feminist scholars have consistently identified how the prevalence of intimate partner violence and other sex-based harms creates a "legacy of terror" (Barry 1979: 43) that permeates the everyday existence of women and girls. The knowledge, awareness, and for many the experience of violence, has a cumulative and pervasive effect on all aspects of life because the threat of male intimidation and violence is a perpetual source of concern. Various authors (e.g. Kelly 1988; 2010; Graham 1994; Connell 2005; Katz 2006) have documented the extensive, varied, complex, and constant ways that women order their daily lives and movements around minimising risks of victimisation in both the private and public spheres.

[12] My account is not intended to discount female perpetration or male victimisation. I acknowledge that family violence is not an exclusively male-on-female phenomenon, and that a growing body of research indicates particular vulnerabilities amongst queer communities and within non-heterosexual intimate relationships (e.g. Serra 2013; Frankland and Brown 2014; Kubicek et al 2016). However, extensive data shows that family violence most often involves male offending against female partners and children, and this is the focus I have chosen.

They also note that males demonstrate no comparable adaptive behaviours around any form of real or perceived risk in their daily lives. Since intimate partner violence is the most common form of violence against women, it has an unquantifiable negative impact on the personal safety, well-being, and ability to enjoy a peaceful existence for half the world's population.

Intimate partner violence also involves systematic and collective patterns of harm through the notably consistent perpetration tactics adopted by different offenders. Despite there being no official family violence perpetrator training courses or manuals – although such written material abounds online in the absence of state censure or regulation – the frequency of cases with identical patterns and minute details is remarkable. Across diverse geographic, cultural and temporal contexts, perpetrators' use of particular derogatory phrases in precise settings, complex threats using identical language, specifically-timed escalating tactics, and sophisticated gaslighting[13] techniques, have led some practitioners and scholars to describe the abstract existence of scripts, toolkits, or textbooks of intimate partner abuse (e.g. Barry 1979; Kelly 1988; 2010; Graham 1994; Radford and Stanko 1996; Evans 2006; Stark 2007; Cameron 2014; Kelly et al 2014). In the United States, Stark (2007: 259) for example notes that, regardless of race, class or culture, variations on insults such as 'ho', 'pig', 'bitch' and 'slut' (labels denoting women as ugly, dirty, and sexually corrupt), along with humiliating and degrading sexual treatment, are virtually universal features of abusive relationships. This is also evident in McKenzie et al's (2016: 58) Australian study of intimate partner homicides, where compulsive unfounded suspicions of infidelity and the use of "derogatory gendered terms" such as 'slut', 'bitch' and 'whore' were documented in a significant number of cases and across different cultural and linguistic backgrounds. In fact eleven out of the fifty-one men who were tried for killing their (ex-)partner used almost identical derogatory language to either directly or indirectly abuse the women. These continuities not only illustrate systematic patterns of offending behaviour. The objectifying and sexualised nature of this abuse further indicates the inextricable links between intimate partner violence and women's subordinate status as objects whose primary function is to be owned and accessed by men.

Intimate partner violence can also be understood as a systematic, collective harm in a wider political sense that additionally implies a state element. This is because, through a radical

[13] Gaslighting is a psychological strategy used by many perpetrators to obtain or maintain control over a victim by deceiving and manipulating them into doubting their own mental stability.

feminist lens, intimate partner violence is a critical tool within the broader collective subjugation of women (see e.g. Brownmiller 1975; Barry 1979; Russell 1982; Radford and Stanko 1996). Because intimate partner violence preserves wider patriarchal interests, this also explains why states – either directly or indirectly – allow it to be perpetrated with impunity. In this sense, a radical feminist lens prompts us to think about political supremacy and totalitarianism not only along the lines of, for example, a Nazi totalitarian or other white supremacist state which oppresses on the basis of race, ethnicity and culture, but one that oppresses along the lines of sexual distinction.[14] For example, Caputi and Russell (1990 in Caulfield and Wonders 1993: 88) allude to the crime against humanity of genocide when theorising violence against women thus:

> *most people understand that lynchings and pogroms are motivated by political objectives: preserving white and gentile supremacy. Similarly, the aim of violence against women – conscious or not – is to preserve male supremacy*.

In fact these and other radical feminists have nominated terms such as femicide and gynocide (see e.g. Barry 1979; Caputi 1989; Russell and Radford 1992) to describe systematic patriarchal harms such as intimate partner violence. This is because these harms target women "precisely because they are women" (True 2012: 9; also Copelon 1995a; 1995b; Jeffreys 1997) and because they aim at systematically subjugating or even destroying them as a group. This points to not only the collective and systematic dimensions of intimate partner violence, but an identifiable state role (see Stark 2007; Libal and Parekh 2009). By highlighting the patriarchal nature of the modern nation-state, women's individual victimisation in the home can be theorised as part of a state-based systematic group-based subjugation project.

In sum, intimate partner violence is suitable for conceptualisation through the lens of crimes against humanity. First, it is a grave, mass-scale harm that has a significant impact and poses a threat to security at the individual, community, society and global levels. Second, it involves repeated harms with distinctive patterns of perpetration, victimisation and offending behaviour. Third, it has systematic, collective and state elements. All these features indicate that intimate partner violence can be conceptualised as a crime against humanity. I nominate this framework

[14] Conventional notions of crimes against humanity tend to focus on mass, heinous harms aligned with racial or ethnic persecution. For example, the Holocaust of World War II involved the systematic subjugation, persecution, mass murder, genocide and attempted annihilation of Jewish people as an ethnic, cultural and religious group. South African apartheid systematically segregated, oppressed, persecuted, enslaved and violated non-white peoples on the basis of race. Both these and other examples of well-known crimes against humanity involved state ideologies of white supremacy, dividing on the basis of race, ethnicity, and culture.

for understanding this harm because it offers a constructive new way of understanding it. First, it enables us to situate specific violations of individual women by their male partners within the context of similar, simultaneous attacks against other women. Second, it effectively captures how intimate partner violence is not just a series of heinous criminal acts, but also a form of systematic and collective group persecution, since women are members of the same subjugated group. Third, it provides a framework through which to begin conceptualising the state's implication in intimate partner violence. Since crimes against humanity are understood as a type of state crime, theorising intimate partner violence through this lens also provides an avenue into more broadly conceptualising state complicity in this harm. It thus provided useful conceptual groundwork for my subsequent research into family violence as state crime.

As I proceeded with my more substantive research, the above framework developed and expanded in two important ways. My focus on intimate partner violence against women broadened in terminology to 'family violence' to include the two most common manifestations of the phenomenon: intimate partner and child abuse. My state crime conceptual framework also developed and expanded. Since my conceptualisation of the state's implication in intimate partner violence above is only a broad political framework, I was keen to elaborate and operationalise this notion to aid more thorough and systematic subsequent analytical work. I was also motivated to extend my analysis beyond crimes against humanity to a broader understanding of state crime. Informed by state crime scholarship which considers state criminality to encompass a wider range of state complicity in a harm, I expanded my state crime framework to include systematic violations of human rights, historical and structural violence, indirect and direct omissive state conduct, and both a passive and active state role.

Research questions

My further and more substantive research into family violence and the role of the state was guided by the following questions.

1. How might state complicity in family violence be comprehensively identified across a spectrum of state criminality?
2. How might the state's role in family violence be theorised?
3. How might conceptualising family violence as a state crime inform alternative responses to the problem?

These questions reflected my three key aims for the project: illuminating the connections between the state and family violence, developing a new state crime paradigm for understanding family violence, and using this to generate fresh ideas for addressing the problem.

Thesis contributions

In the expanded and more substantive work of this thesis, I develop my central argument that family violence constitutes a state crime. I believe this work is important because there is a clearly-identifiable state role in family violence which official accounts such as the Royal Commission's do not acknowledge. In academia also, there has been inadequate integration of data and theory from the social science, feminist, and state crime fields such that family violence has not yet been comprehensively identified or theorised as a state crime. In order to more accurately depict family violence and gain a more effective basis for redress, prevention and remedy, the state's role in the harm must be clearly named and understood. This is the gap that my thesis seeks to address.

My substantive research offers three central contributions. The first of these is to identify and analyse the state's complicity in family violence through key state institutions. The second is to construct a theoretical framework through which family violence is understood as a state crime. The third is to consider the implications of conceptualising family violence in this way. Together, my contributions seek to address the fact that neither official nor academic accounts of family violence have identified, comprehensively theorised, or considered the implications of conceptualising family violence as a state crime.

The first contribution I offer is to comprehensively identify how the state is complicit in family violence through the functioning of specific state institutions. These are the criminal justice system, family law, and state social services. I identify this state complicity as both passive and active, indirect and direct, historical and contemporary, and locate it within a spectrum of state criminality. Since this state complicity in family violence needs to be adequately named and mapped within a model of state criminality, my second key contribution is to expand state crime theory in order to facilitate conceptualising, identifying, and naming family violence as a state crime. Through an overarching feminist model which consists of mutually-supportive

forms of what I term ‘family violence state crime’, I show how the state dimensions of family violence can be comprehensively understood. My third and final contribution is to nominate and explore preventative and remedial approaches which are indicated by conceptualising family violence as a state crime. This is because a framework in which family violence is understood as a state crime implies a different approach to the current dominant one which focuses on individual perpetrators and criminal justice responses. Considering the state crime dimensions of family violence opens up a range of justice approaches that may not otherwise be considered. These incorporate notions of collective, institutional and state-level accountability, and consider symbolic, substantive, remedial, preventative and transformative justice needs. Towards this aim, I propose a family violence justice toolkit comprising a range of measures that could complement current approaches and contribute to a more holistic and comprehensive response repertoire.

The thesis also includes some additional and incidental contributions. One is the development of conceptual and analytical frameworks for identifying state complicity and producing theory, which I detail in Chapter Three. Another incidental and recurring contribution is a critique of dominant narratives of and responses to family violence in Western liberal-democratic contexts. As alluded to from the outset of this present chapter, the shortcomings of these accounts and approaches have a significant impact. This is because the way a harm is described and discussed does not merely identify it; rather, it constitutes it, consequently shaping how we can and cannot consider responding (Balint 2012; Stanley 2014; also Wright and Hearn 2013). I argue that contemporary accounts generally misunderstand and misrepresent the origins and antecedents of family violence and mischaracterise the role of institutions and the state. This then fundamentally constrains the possibilities for appropriate and effective response frameworks.

I argue that understanding family violence through the conceptual frames I propose is necessary because it facilitates a more accurate understanding of the problem and how to approach it. We cannot move forward and address a harm unless we first accurately identify and describe it. When the state itself is implicated in a harm, we must move beyond individualised accounts of offending in order to develop a more nuanced and comprehensive perspective which considers multiple levels of accountability and responsibility. Identifying family violence as a state crime fundamentally challenges the discourse of the state as neutral and external to the harm, and instead centres it as active facilitator, contributor and participant. From this basis, we can then

imagine and design more holistic methods of preventing, responding to and remedying family violence in a way that has greater potential for substantive and meaningful impact.

Thesis overview

This thesis is arranged in three parts, each containing three chapters. Part I comprises Chapters One to Three, which together articulate my research problem. Following this present introductory and overview chapter, Chapter Two situates my research within existing literature around family violence and state crime. Through exploring academic and practitioner work on these topics across the legal, social, political and health sciences, I broadly identified the limiting tendency of academic fields and disciplines to develop in a siloed manner and neglect the possibilities of interdisciplinary work. I identified how my project could bring together diverse materials and traditions in order to capitalise on their contributions and advance new ways of understanding family violence, and how this might facilitate the identification of family violence as a state crime. I determined that my aims required a creative transdisciplinary approach which could draw together and enhance the strengths across this spectrum of relevant knowledge, enabling me to re-conceptualise my central problem.

Chapter Three explains the feminist ontology and epistemology underpinning this project and considers the ethical issues involved with researching family violence. It also explains my transdisciplinary approach, research questions, and methodology. I outline the processes which relate to research question one which included selecting appropriate contexts, sites and data for my analysis, and developing a systematic framework for analysis. This framework develops concepts and strategies for identifying and mapping the state complicity in family violence I explore in Chapters Four through Six, and is based on a combination of interdisciplinary international criminal law and state crime literature, a hybrid Marxist Feminist Foucauldian analytical approach, and, ultimately, qualitative meta-analysis. The chief process I used to address research questions two and three was a transdisciplinary method I developed, termed 'upcycled appliqué'. This builds on the notion of researcher as *bricoleur* and draws on analogies from the creative fields to explain certain conceptual and theory-building work.

Part II consists of Chapters Four to Six, which address the first research question and first research contribution. The central aim is to specifically identify state institutional complicity in family violence in Australian and comparable international contexts. Each of the three

chapters examines a specific institution, looking in turn at the criminal justice system, family law, and the social service arm of the state. To identify and analyse the specific role of state institutions in family violence across the spectrum of state criminality, these chapters utilise the frameworks and tools developed in Chapter Three. The spectrum of criminality I identify encompasses the state's role in family violence as historical and contemporary, indirect and direct, and passive and active. Through integrating diverse primary and secondary data from a range of fields and by drawing on the insights and accounts of survivors, each of these chapters reveals a complex web of official and institutional policy, practice, and ideology which both indirectly and directly contributes to family violence.

Chapter Four considers how, through the criminal justice system, the state is complicit in family violence. Drawing on literature and data which looks at English common-law-based justice systems and family violence, I first consider how law established the structural and institutional foundations for family violence. Historically, marriage and the family were important institutional building blocks of the patriarchal state, and family violence was accepted and endorsed in aid of their maintenance. I identify how these historical foundations demonstrably endure in contemporary criminal justice. Through considering my local Australian jurisdiction and comparable international contexts, I demonstrate that, through legislation, law enforcement and adjudication, men's family violence is consistently obscured, minimised, tolerated and excused, whilst women's violence is disproportionately policed and punished. I engage in some detail with the offences of marital rape and intimate partner homicide, because the manner in which these offences are codified in law, understood and documented by police, and narrated and adjudicated by courts, reveals active and demonstrable state participation in family violence.

Chapter Five considers the complicity of another key state institution in family violence: family law. Again, through analysing primary and secondary literature and data from Australia and comparable international contexts, I show how this arm of the state consistently contributes to the obscurity, reproduction and justification of family violence. This occurs through systematically privileging and reinforcing patriarchal values, favouring men's and father's rights over those of women and children, failing to adequately recognise family violence victimisation or the voices and needs of survivors, and ignoring or downplaying men's perpetration of violence. I argue that by neglecting its duty to reasonably identify, recognise, respond to and prevent family violence, family law and the family court are demonstrably

complicit in family violence. I also emphasise the very active and agentic role that this institution plays in facilitating ongoing perpetration of intimate partner and child abuse.

Chapter Six examines the social service arm of the state and its complicity in family violence. I again focus on Australia, whilst also referring to literature and data from international contexts which show continuities with these local patterns. The chapter focuses on the Australian Department of Human Services and the Child Support Agency, both of which are central to victim-survivors' experiences of family violence. The chapter necessarily focuses on economic abuse, which is a critical element within family violence regimes. Economic or financial abuse is one of the most common methods for men's maintenance of control during an abusive relationship, as well as his continuance of post-separation abuse. It is often at the root of survivors' most protracted suffering and disadvantage, as it indefinitely extends harms beyond the temporal and spatial confines of the partnership and the home. It is also one of the most efficient and effective ways in which perpetrators co-opt the state in their long-term offending. In fact I show how the state, through state-based human services agencies, becomes co-opted as an active and willing participant in the perpetration and perpetuation of family violence.

Part III consists of the final three chapters and addresses the second and third research questions and contributions. In Chapter Seven, I address research question two by developing a theoretical framework for understanding family violence as a state crime. I call this overarching model a feminist theory of family violence as state crime, due to its crucial incorporation of feminist theory to extend present state crime frameworks and facilitate the theorisation of sex-based harms as state crimes. The model of family violence as state crime consistently centres structural and institutional violence, and emphasises the mutually-reinforcing function of all its component parts. After presenting a diagram which shows the overall model, its elements, and the relationship between these, I then explain each in turn. The first of three types of what I term 'family violence state crime' is 'structural state crime'. This refers to the state-created socio-economic, cultural, and institutional frameworks and conditions which underpin and directly contribute to family violence. The second, 'micro-institutional state crime', refers to how, through a political feminist reconceptualisation of the state, the family, and figures and dynamics within the family, family violence constitutes a system and a tool of state crime ideology and governance. The third type I term 'macro-institutional state crime'. This refers to the family violence-related state criminality which operates through the governmental and bureaucratic apparatus of the nation-state, encompassing the spectrum of state complicity I

identified throughout Part II. Family violence as 'proxy state crime', and 'reverse proxy state crime' are two further theoretical lenses I present. These further explicate the relationship between the types of family violence state crime, and also offer stand-alone theory for understanding family violence as state crime.

Chapter Eight addresses the final research question and substantive contribution by considering the implications of conceptualising family violence as a state crime. I first explore what conceptualising family violence as a state crime means in terms of responding to the harm. I also explore why a state crime lens indicates a fundamentally different approach to family violence from that which currently dominates theory and practice. I suggest that naming a harm as a state and institutional crime enables the use of a range of accountability, remedial and preventative frameworks which have been used to address other state crimes. I explore the utility of these frameworks of transitional, reparative and transformative justice as a means of pursuing individual, collective, organisational, institutional and state-level accountability and responsibility for harms. Applying these ideas to addressing family violence, I develop a family violence state crime justice toolkit in order to propose various justice initiatives that may better address the state crime dimensions of family violence. Overall, the toolkit offers alternative but complementary approaches to addressing family violence which are aimed at cultivating a more holistic platform for accountability, redress and prevention.

Chapter Nine concludes Part III and the thesis. I reiterate my key findings and contributions, emphasising the value of this work across academic disciplines such as law, criminology, sociology, justice studies, politics, and feminist theory and practice. I also emphasise its relevance to the diverse family violence practitioner field. I conclude by emphasising the importance of challenging current narratives of and approaches towards family violence in order that we continue to progress in understanding and addressing this problem. Finally, I briefly explore directions for future academic study and practice-based innovation, with the aim of reducing and ultimately eliminating this pervasive and destructive form of violence.

In the following chapter, I present my literature review and identify my research problem as the untapped juncture between family violence studies, feminist theory, and the state crime field. This establishes my central research task: uniting these contributions and exploring the rich possibilities they offer for expanding the way we understand family violence and the role of the state.

2

The missing links: Neglecting to theorise family violence as state crime

Introduction

This chapter establishes the central research problem addressed in this thesis by situating my work within existing literature and theory. Through exploring diverse work from criminology and neighbouring social and health sciences, state crime and interdisciplinary justice studies, international law and feminist critiques, and radical feminism, I identify how these complementary fields have not yet capitalised on the rich possibilities offered by their integration. As I demonstrate, this has constrained the conceptual development of family or other violence against women as a state crime.

The chapter is arranged in four sections. The first section considers criminology and the wider social and health science literature on family violence. I identify this field's tendency to view the problem in narrow ways. Many contributions treat family violence as a result of individual pathologies, external factors such as drugs or alcohol, problematic interpersonal relationships, or cultural norms and attitudes, with the latter generally unrelated to structural or substantive conditions. Much of the literature focuses on managing risk, improving existing systems, and developing new tools to enhance detection and prevention. A critical and feminist-informed sub-field does contribute usefully to evolving understandings of family violence. This body of work notably illuminates the prevalence of child abuse and the interconnectedness of different forms of family violence, and documents the increased use of digital technologies to perpetrate harm. Another useful sub-field looks more closely at sexual inequality and culture in relation to family violence. However, no part of this field produces a comprehensive account of family violence as an institutional, structural or state problem.

The second section considers state crime scholarship. I note the broad tendency – within state crime criminology in particular – to define state crime in narrow ways, and to focus on state-corporate crime and the socio-economic harms of capitalism. In relation to state crimes with a

racial, ethnic, or cultural dimension, there is recognition of mass harms such as genocide in well-known contexts. However, there is limited attention to the state crimes of Western liberal-democratic contexts, and scant reflection on the relevance of state crime frameworks for gender-based harms of any type. An advancing sub-group of interdisciplinary state crime scholars who incorporate history, postcolonial studies, international law, and transitional justice in their analyses are beginning to address some of these limitations. Notably, they highlight the prevalence of historical and structural violence and state crime in the so-called developed world. However, across the state crime field and its interdisciplinary neighbouring studies, there is significant neglect of the dimension of sex or gender[15], and limited consideration of any forms of violence against women within state crime frameworks.

In the third section, I turn to consider how international law conceptualises harms against women, and look also at the interdisciplinary academic scholarship which has developed alongside international customary and case law. I begin by reviewing how international and transnational human rights law has conceptualised family and other violence against women, before noting the emergence of international criminal law's recognition of violence against women through *ad hoc* tribunals. I then engage with the feminist academic and activist literature which addresses gaps and limitations in international law's understanding of violence against women. Existing at the margins of mainstream law and politics, this literature has to some extent been incorporated into official accounts of family and other gender-based violence. However, it generally functions to critique the field. I outline some of the key critiques feminists have levelled at international law and its frameworks for recognising grave violence: its neglect of women generally, of harms primarily affecting women, of private-sphere harms, and its disproportionate attention to war-time sexual violence.

In the fourth and final section of the chapter, I explore contributions from radical feminism on family violence. These variously precede, augment, extend, and resist accepted international legal notions of harm. They additionally introduce other diverse concepts to identify and

[15] Throughout this thesis, I use the term sex to refer to the biological category of male or female, and gender to refer to social and cultural roles and identities that often, but not necessarily, align with biological sex. Both sex and gender are hierarchical in the sense that male sex, and traditionally masculine roles and identity, occupy a dominant position in society. Accordingly, both sex-based harms and gender-based harms function to enforce this hierarchy, although they may target different groups. For instance, homophobic and transphobic violence are gender-based crimes that can target people for not conforming to hegemonically and heteronormative constructs of masculinity and femininity. I variously refer to family violence as both a sex-based and a gender-based harm, since it targets women because of their biological sex, and also because it subjugates in accordance with gendered notions regarding perceived male entitlement and what constitutes appropriate feminine roles and behaviours.

understand family violence. They also offer important conceptual innovation around previously taken-for-granted concepts which are central to understanding the state and family violence, including the state's implication in the harm. This scholarship models an innovative theoretical approach and provides critical tools for challenging conceptual boundaries around family violence, however it does not comprehensively identify or theorise family or other violence against women as a state crime.

All these bodies of literature offer pertinent material that points towards conceptualising family violence as a state crime, however their lack of communication and integration has prevented this development from taking place. Even literature with a concerted interdisciplinary focus does not make the necessary connections and extensions in order to construct a clear or comprehensive framework for identifying or theorising family violence as state crime. This chapter functions to identify and bring together these complementary bodies of work to create the intersection at which my research sits, providing a prelude to my research into the state crime dimensions of family violence.

Criminology and the social and health sciences

Over the past decade in criminology and neighbouring disciplines, family violence has gone from being a marginal feminist concern to a mainstream issue. Now, it is increasingly common for literature to incorporate a feminist perspective in its analyses of family violence. Many contributions extend earlier feminist work by providing updated evidence and analyses of the persistent difficulties family violence victims face when seeking protection and assistance. These problems include broadly inadequate and inappropriate service design and delivery, as well discriminatory practices within the criminal justice and victim support systems (e.g. Meyer 2011; 2016; Tyson 2011; 2013; Korkodeilou 2016; Guggisberg 2018). Authors extensively document problematic institutional systems, policies, and practices which often constrain victims' help-seeking both during and following abuse experiences (e.g. Laing 2010; 2013; 2017; Cook and Natalier 2013; Cameron 2014; Kelly et al 2014; Coy et al 2015; Natalier 2017; 2018; Douglas 2018; 2019; Gutowski and Goodman 2019). Some anomalous publications maintain an outdated scepticism towards feminist accounts of problematic criminal justice responses to family violence (e.g. Roark 2016; Russell and Kraus 2016). However, overt anti-feminism in recent academic publications, such as Wilkins (2014: 93),

who claims that criminal justice and social service reform is "based more on feminist political ideologies than scientific fact", is increasingly marginal.[16]

A significant body of recent international literature from the social and health sciences attends to the quantitative and qualitative variables of family violence. Many studies consider definitions, characteristics, correlates, and prevalence of family violence across various local, national, and international contexts (e.g. Mandal and Hindin 2015; Barocas et al 2016; Gillespie and Reckdenwald 2017; Islam et al 2017). There is also growing recognition of the importance of acknowledging and theorising same-sex intimate partner violence by exploring specific continuities with and divergences from heterosexual intimate partner violence (e.g. Nowinski and Bowen 2012; Frankland and Brown 2014; Oliffe et al 2014; Kubicek et al 2016; Register 2018; Stark and Hester 2019). Additionally, Falleiros Braga et al's (2018) study in the Brazilian context highlights the intersection between homophobic and family violence. This research documenting the frequency of homosexuality-related family violence which manifests through families' violent responses to queer revelations, and the perceived challenge that alternative sexuality poses to heteronormative values and traditions.

Much of the social and health science literature on family violence focuses on the physical, mental and psycho-social health of victims and perpetrators. An abundance of empirical studies trace issues considered immediately proximate to family violence, including drug and alcohol abuse, gambling, and psychiatric disorders (e.g. Danuta and Marganski 2014; Gonzalez et al 2014; Reingle et al 2014; Gilchrist et al 2015; 2017; Dowling et al 2016; Radcliffe and Gilchrist 2016; Romero-Martinez et al 2016). Other contributions look at services and interventions based on an individualised and interpersonal model of family violence: individual and group psychotherapy, relational repair, and the popular current focus of policy and practice: men's behaviour change programs (Bunston et al 2016a; 2016b; Moss 2016; Trevillion et al 2016; Liel 2017; McLaughlin 2017). Some literature analyses offender programs and their efficacy, including questioning programs' lack of impact on recidivism (e.g. Scott et al 2015; Babcock et al 2016; Bohall et al 2016; McGinn 2016; McGinn et al 2016; Gray et al 2016; Petropoulos et al 2016; Haggard et al 2017; Liel 2017). However, the literature does not challenge the

[16] A strong indicator of the increased mainstreaming of feminist accounts of family violence in academia is Winstok and Straus' (2016) article. This represents a significant softening of the strident anti-feminism of Straus' earlier publications on family violence (e.g. Straus 1979; 1987; Straus et al 1996; Straus and Douglas 2004), and indeed an acknowledgement of the relevance of Johnson's (2008) pro-feminist typology of domestic violence.

perpetrator-centric nature of such programs. The general tendency of this literature is to either pathologise offenders in the sense that their offending is deemed treatable through medical or psycho-social interventions, or responsibilise them (see Garland 2002) through imposing obligations that they develop updated attitudes and change their behaviour. For victims, protection and remedy are also considered individual pursuits.

Also aligning with an individualised model of family violence, a significant body of work discusses family violence as a technical problem which can be managed through a risk-based approach. This literature (e.g. Healey et al 2013; Gartland et al 2014; Hegarty et al 2015; Taft et al 2015; Ross et al 2016; Tarzia et al 2016) focuses on measuring, assessing and managing risk. It analyses what are considered proximate risk factors for family violence, and works towards developing and implementing interdisciplinary and multi-practitioner risk assessment tools which aim at enhancing family violence detection, prevention, and safety. The emphasis in this literature and the approaches they promote is on improving individual responses and the tools and practices of the frontline family violence system (e.g. Groves and Thomas 2014; Diemer et al 2017). Aside from acknowledging the need for a general commitment to principles of equality, the majority of this literature treats family violence as an individual and interpersonal crime and advocates a traditional, albeit interdisciplinary, approach to crime prevention.

Critical feminist literature from the social sciences generally focuses more on the phenomenon of family violence itself, seeking to better understand and illuminate its characteristics and dynamics. One focus has been on increasing recognition of intra-familial child abuse. Much of the scholarship in this area has been concerned with challenging the widespread and erroneous perception that this phenomenon is rare. These works identify the prevalence and impacts of this problem, highlight the intersection and overlap between intimate partner and child abuse, and emphasise the enduring utility of feminist ways of understanding male power and control in the family (Bancroft and Silverman 2002; 2004; Rossman et al 2004; Patrick et al 2008; Sutton 2008; Murray and Powell 2009; Wathen and MacMillan 2013; Hoyle and Palmer 2014; Kelly et al 2014; Coy et al 2015; Fehlberg et al 2015; Harland et al 2015; Morrison 2015; Laing 2017; Salter 2016b; 2017b; Ferguson et al 2018; O'Donohue et al 2018). The impact of less direct forms of child abuse in the family, including witnessing intimate partner violence, is also receiving increased attention (e.g. Edleson 2004; Rossman et al 2004; Kaufman et al 2011; O'Brien et al 2013; McTavish et al 2016).

Another area of considerable recent growth within criminology and the study of family violence attends to the role of technology and digital media. This scholarship (e.g. Salter 2013; Henry and Powell 2015; Sills et al 2016; Dragiewicz et al 2018; Wood et al 2018) documents the increasing use of digital technology by family violence perpetrators and their supporters to monitor, surveill, stalk, intimidate, harass, coerce, and blackmail their victims. It considers how these technologies and platforms provide scope for diversifying perpetrators' previous patterns and techniques of control and violence, as well as introducing new modes of abuse. Dragiewicz et al's (2018: 609) recent analysis identifies family violence as a "key context of online misogyny", and proposes the term "technology facilitated coercive control" to describe the dynamics and patterns of intimate partner abuse perpetrated via digital media. Some of this literature also acknowledges the possibilities of utilising technology and social media platforms to resist and prevent family violence (e.g. Salter 2013; Sills et al 2016; Guggisberg 2017; Wood et al 2018). Overall, this emerging body of research contributes by highlighting the evolving manifestation of family violence, and the consistently gendered patterns that shape the actions and experiences of victims and perpetrators.

Another important sub-field of social science literature adopts a somewhat more holistic approach to understanding and addressing family and other violence against women. This feminist-informed literature considers the role of sexual inequality and harmful cultural constructs in men's violence. It is also related to so-called primary prevention initiatives, which target gender norms and attitudes which contribute to male violence. These recent and contemporary prevention programs and the literature around them can be seen to follow earlier sociological material which establishes clear links between hegemonic masculinity and violence against women. These earlier sociological and political pro-feminist works (e.g. DeKeseredy 1990; Brod and Kaufman 1994; Schwartz and DeKeseredy 1997; Connell 2000; 2005; Kimmel and Aronson 2004; Kimmel and Messner 2004; Kimmel 2005) all theorise gender as a social construct which prescribes and proscribes norms, attitudes, and behaviours, based on restrictive patriarchal ideology. At the core of this scholarship is its critique of hegemonic masculinity and the prescriptive and proscriptive notions of what constitutes being an ideal man, and how this construct tends to produce entitled, controlling, aggressive, and

violent attitudes and behaviours.[17] These works are broadly informed by earlier feminist political and sociological scholarship which documented specific correlates of hegemonic masculinity and family violence (e.g. Barry 1979; Russell 1982; Kelly 1988; Copelon 1994).

Some of this sub-field identifies the specifically socio-economic dimensions of hegemonic masculinity and its relationship to family violence. As DeKeseredy and Schwartz (2013: 77) explain, men who prescribe to the culturally-defined role of masculine protector and provider can experience difficulties with fulfilling this role as a "dramatic assault" upon their sense of masculine dignity. Fearing a breakdown in their familial authority and control, some men use violence to reassert power and reconstitute their perception of self through "protest masculinity" (Howson 2006: 95; also Tifft 1993; Flood 2003; Kimmel 2010).[18] Research by Boonzaier (2005), Hattery (2009) and Hattery and Smith (2012) confirms this by showing how many family violence perpetrators use violence to reassert their household dominance when they perceive that their masculine identity or traditional familial role is in jeopardy. True's (2012) work in particular provides international evidence for this model, identifying that family violence tends to increase as women increasingly assume traditionally male roles and extend their participation in the economic and public spheres. DeKeseredy's contributions (1990; and Schwartz 2013; et al 2019) document how men's use of violence to restore masculinity has particular support amongst groups of marginalised men, thus emphasising the substantive socio-economic basis of collective attitudes that support family violence.

This critical literature on gender norms, masculinity, and family violence has been effectively utilised by the pro-feminist anti-violence movement. The organisations involved in this movement seek to integrate women's and men's activism by acknowledging that violence is largely a male problem and that men and boys are crucial allies with women in its prevention. An abundance of recent social science and policy literature (e.g. Flood 2012a; 2015b; 2016; Jewkes et al 2015; Leek 2015; Corboz et al 2016; Elias-Lambert and Black 2016; Greenwell 2016; Salter 2016a) has variously initiated, developed, evaluated, and critiqued the activities

[17] I argue that this body of literature has been widely utilised in the contemporary patriarchal context because it highlights the negative aspects of hegemonic masculinity for men. These knowledges have been attractive to 'men's' organisations because they reveal how traditional notions of being a 'real man' impede men's emotional development and expression, constrain their ability to connect with others in a meaningful way, and directly correlate with high rates of social isolation, depression and suicide (see e.g. Beyond Blue 2017; Men's Health Forum in Ireland 2017; Movember Foundation 2017).

[18] The concept of protest masculinity is also discussed in detail by Duriesmith (2017) in relation to gender-based violence in war-time contexts.

and campaigns of local and international organisations including Australia's 'White Ribbon Foundation', the United States-based 'National Organisation for Men Against Sexism', and the global 'HeforShe', 'Wellness Through Gender' and 'Changing Men Everywhere' initiatives. These campaigns and their programs seek to counter men's violence against women primarily through cultural education, working to revise the gendered scripts that produce and justify controlling, aggressive and violent male behaviour.[19] The academic scholarship in this area broadly considers the possibilities and limitations of preventing violence against women through enlisting men in social and cultural education initiatives.

Salter's (2016a) analysis in particular identifies that these so-called primary prevention campaigns and programs are limited by their tendency to maintain an individualised perspective of gender-based violence. In line with their interpersonal and behavioural framing of the problem, these campaigns and programs do not address the structural, institutional and material foundations of cultural norms. They are thus limited in their reformist scope, and in fact, may reinforce rather than challenge the *status quo*. Salter's (2016a: 464) analysis suggests that many of these violence prevention campaigns actually "endorse rather than challenge existing norms about masculinity",[20] and he challenges the labelling of these programs as 'primary preventative' because they avoid the structural dimensions of men's violence against women.[21] Salter's work is an outlier in its consideration of the structural dimensions of family and other violence against women. Yet this analysis also stops short of naming or thoroughly addressing the centrality of the state in the perpetration and perpetuation of this violence.

[19] Much of this work was pioneered by Jackson Katz in the United States. His book *The Macho Paradox* (2006) offers extended discussion of some early programs and approaches.

[20] For example, Salter (2016a) critiques a United Nations anti-violence campaign fronted by international emblem of machismo, film star Antonio Banderas, which is premised upon essentialist notions of inherent differences between the sexes, the construction of women as naturally weak and in need of masculine protection, and 'real men' as embodiments of paternalistic power and heterosexual desire. Salter also identifies several anti-violence campaigns across various contexts including the United States, Croatia, and Australia, which similarly depict "'real men' as the violent custodians of traditional gender norms" (469). Salter's analysis uncovers superficial pro-equality messages to reveal inherently conservative gender identities and behaviours, which both explicitly and implicitly normalise, endorse and perpetuate masculine violence.

[21] Salter (2016a: 464) notes that early international political discourse which instigated these programs emphasised the importance of "a dual focus on structural gender inequality and gender norms". In addressing family violence, it advocated policies and programs which would simultaneously address structural inequality and cultural norms. However, this has since shifted towards rhetoric that either subsumes gender inequality to gender norms, or conflates the two by treating 'systemic' not as relating to systems or structures, but merely individual and collective attitudes. Essentially, Salter argues that the new rhetoric constructs an abstract notion of gender norms which is disconnected from the social, economic and political contexts that produce and sustain them. The programs generated by this discourse are thus more palatable because they construct violence prevention as an issue of attitudinal change, consequently allowing patriarchal structures to remain intact and unchallenged.

In this overview of recent literature from criminology and neighbouring social and health sciences, I have shown that family violence tends to be understood and addressed in alignment with the official narratives I outlined in Chapter One. On the one hand, this has involved encouraging shifts towards recognising the prevalence of family violence and its gendered dimensions, enhancing perpetrator accountability, treatment and education, and improving support for victims. However, academic literature also mirrors official accounts in its limitations. Despite acknowledging that family violence emanates from sexual inequality, the majority of the literature maintains an interpersonal and behavioural framing of the problem. In violence prevention, this translates into a focus on proximate risk factors and enhancing detection and prevention. A significant sub-field of literature does attend to the broader collective, cultural, structural, and substantive dimensions of family violence. However, as a whole, the literature inadequately considers the state's implication in either family violence or the sexual inequality which underpins it. Although some studies document extensive evidence of complicity in family violence at the highest institutional levels, the state is rarely acknowledged or conceptualised as part of the problem. To explore how the state has been more explicitly identified in relation to mass harms, I now turn to the sub-discipline of criminology with a concerted focus on state crime.

State crime studies

Until relatively recently, the criminological field paid little attention to state crime. As Hogan et al (2006) explain, the traditional conceptualisation of the state as benign sovereign, law-maker, and enforcer has generally precluded an appreciation of its capacity to harm its own citizens. It was in the 1970s that critical criminologists such as Taylor et al (1973), Quinney (1970; 1973; 1980), Chambliss (1971; 1975; 1977), and Cohen (1979) began challenging criminology's assumption that the state functioned only as a neutral arbiter of harms. The Marxist persuasion of many of these authors led to a concern with the criminogenic nature of capitalist policies, and how the state selectively criminalised certain behaviours whilst tolerating and facilitating others, such as corporate deviance. The illumination of states' sometimes deliberate actions to violate citizens' rights and contribute to the production of criminality heralded the emergence of the concept of state crime (Barak 1994).

Much early state crime literature was concerned with defining and identifying state crime. An important early contribution from Chambliss (1989: 184) named "state-organised crime" as the involvement of state officials in organised criminality. This publication integrated findings from earlier research on the relationship between organised crime, law enforcement, and politics (e.g. Chambliss 1971; 1977; 1988). Since 1990, state crime criminologists have, with few exceptions, maintained a focus on state-facilitated corporate and organised crime. Various combinations of key authors Kramer (and Michalowski 1990; Rynbrandt and Kramer 1995), Barak (1991; 1994), Friedrichs (1996; 2010), Kauzlarich (and Kramer 1998), and Rothe (2009; and Mullins 2006; 2011; and Friedrichs 2015) have continued to present literature which reiterates similar theses. For example, Friedrichs' early work focuses on state-corporate crime (1996), and an updated edition of this publication in 2010 maintains the same focus. Similarly, Rothe's (2009) book reiterates earlier literature on capitalism and globalisation in relation to state crime. Although recognising that genocide and civil wars are valid inclusions to the field, Rothe persists with conceptualising state crime as state-facilitated corporate harm. Rothe and Kauzlarich's (2014) book on state crime victimology also reiterates an earlier restrictive understanding of state crime studies as a "major subfield of the study of *white-collar crime*" (3; my emphasis).[22] Even a more recent collaboration from Rothe and Friedrichs (2015) focuses almost exclusively on crimes of the global capitalist economic system. Bernat and Whyte's (2017) analysis of state-corporate crime through two major lethal corporate accidents is indicative of the ongoing corporate and capitalist focus within state crime criminology. The inclusion of atrocities like genocide in some literature in this field (e.g. Green and Ward 2004) acknowledges that state crime is potentially a broader area of study, however harms of this type remain generally neglected and under-theorised in the state crime literature.

The integration of international human rights concepts is one way that some state crime criminologists have extended the field and its notion of what constitutes state crime. Barak (2008: 59), for example, identifies state criminality as occurring when the state violates national or international laws or implements "official or unofficial social and institutional policies" that result in the denial of fundamental rights to groups of people. Given the paradoxical results of adopting states' legal criteria to identify harms which it perpetrates, Green and Ward (2000; 2004) also argue that state crimes can be identified and defined independently of the state by

[22] In the closing chapters, Rothe and Kauzlarich (2014) briefly consider victims' claims through International Criminal Justice channels, yet these are not explicitly discussed in relation to conceptualising state crime or victimology at all.

drawing on human rights concepts. Cohen (2003) similarly affirms the value of human rights frameworks for the sub-field, and Barak (1994) goes further by suggesting that state criminality and rights abuses cannot be conceptually separated. Indeed, he conflates the two, referring to "the state criminality *of* human rights abuses" (263; my emphasis). Expanding the notion of state crime beyond state-facilitated corporate harms and towards the systematic discrimination and deprivation of rights represents an important broadening of the field.

Some state crime authors also suggest understanding state crime by focusing on issues of legitimacy and illegitimacy, rather than legality or illegality. This charts a way forward that relies less on states, international bodies, and law to define state crime, and more on citizens and society. Green and Ward (2000; 2004) advocate progressing beyond legal and political frameworks and drawing on the concept of political legitimacy in determining what constitutes state crime. These authors (also Ward and Green 2016) also suggest that state crime can be defined by an active civil society which includes a vast array of formal and informal non-state organisations and collectives, ranging from fringe protest groups, to advocacy bodies, churches, to large civil liberties organisations. Through a process of protest and resistance, civil society through such groups can question actions taken by the state and label these as deviant, harmful, and even criminal (also Stanley and McCulloch 2012; Balint 2019).

One useful conceptual distinction made by some state crime authors is between crimes of commission and omission. Barak (1991; 1994), for example, argues that the study of state criminality should not only include proactive crimes of the state, but also the criminality and criminogenic influence of non-interventionist state policies. Through a Marxist lens, Barak considers how state-constructed capitalist economics cultivates street criminality through marginalising population groups and ensuring their reliance on illegal rather than legitimate financial activities. Barak (1991: 12) also suggests that the socio-economic stratification and "exploitative materialism" associated with capitalism constitutes state criminality. Similarly, Kauzlarich et al (2003) use the term commission to signify active, purposeful, and deliberate state crimes, and omission to denote state disregard for class or race-based inequality. Distinguishing between state crimes in this manner, and broadening the field to include state failures and structural harms, has been an important development in the field because it acknowledges more subtle and insidious ways that state crime can be perpetrated.

Accounting for crimes of omission and commission, Kauzlarich et al (2003: 244-6) offer one of the discipline's more comprehensive definitions of state crime which they name a complicity continuum.[23] This continuum ranges from state crimes of omission at one end, to those of commission at the other. Notwithstanding its limitations, this construct is a useful tool for conceptualising specific contemporary state crimes along a spectrum. It contains four categories of state crime and nominates an archetype for each: at one end of the continuum is omission implicit, for which the archetype is social inequality; next is omission explicit, typified by negligence of a government regulatory body resulting in large numbers of accidental deaths; then commission implicit with the example of human radiation experiments, and finally, commission explicit, exemplified by the Holocaust.[24] The authors also propose five useful criteria which establish an act as a state crime: it generates harm to individuals, groups and property;[25] it is a product of action or inaction on behalf of the state or state agencies; it relates directly to an assigned or implied trust or duty; it is committed or omitted by a governmental agency, organisation or representative; and its perpetration furthers the interests of either the state or of elite groups controlling the state. This criteria-based framework has particular utility for a more expansive and comprehensive conceptualisation of state crime.

Green and Ward (2004) also offer an interesting conceptualisation of omissive state harms that would not ordinarily be understood to involve state responsibility. In a book chapter entitled 'Natural Disaster as State Crime', they challenge the de-politicised representation of so-called natural disasters as geophysical anomalies which inevitably cause devastating harm. Instead, they argue that natural disasters constitute state crime when violations of victims' human rights result from state organisational deviance. Inspired by de Waal's work on famine (1997 in Green and Ward 2004: 54), they identify direct links between natural catastrophes, government

[23] Despite the purported originality of this continuum, Kauzlarich et al (2003) are following Caulfield and Wonders' (1993) innovative contribution of a decade earlier, which identifies specific exemplars of state crimes, ranging from commission to omission. I consider this publication in the final section of this chapter.

[24] Although labelled a continuum, Kauzlarich et al's (2003) construct is implicitly hierarchical in design, where the level of seriousness and state culpability increases from lowest on the left, to highest on the right. As feminist critics of international law and politics have identified, hierarchical representations of harm can be problematic. In the case of Kauzlarich et al's continuum, I suggest that its hierarchical construction belies the fact that implicit omissions can be very deliberate state acts and can cause the most mass-scale and systematic harms, such as forms of violence against women which are so normalised that they are rendered invisible.

[25] Kauzlarich et al (2003) are oddly critical of Green and Ward's (2000) human rights approach to defining state crime, despite being favourable towards a zemiological approach and proposing a definition based on harm rather than law.

corruption and negligence, and mass human rights violations.[26] Another author, Stanley (2007), similarly interrogates the concept of 'natural' disaster, noting that the vulnerability of certain groups to disaster is clearly rooted in social and structural arrangements which can be directly traced to state policy. Indeed, Stanley argues that in cases like Hurricane Katrina in New Orleans, the obstructive, partial and oppressive nature of the state's response in itself constitutes a form of state brutality or state-induced disaster (also see Faust and Kauzlarich 2008). These works are significant because they expand the concept of state crime towards harms that would ordinarily not be considered to involve the state.

A useful debate within this literature is whether state crime is anomalous and aberrant, or integral and routine to the operation of societies in which it occurs. Cohen (2003), for example, suggests that state crime in Western democracies is unusual and uncharacteristic such that, when uncovered, is decisively condemned. Green and Ward (2000: 103) disagree by arguing that state crime in liberal democracies "is not aberrant or anomalous … but shades imperceptibly into the routine, legitimate activities of the state". They describe the example of the 'reasonable use of force' in law enforcement, which, even when excessive, is generally perceived as valid by the legal system and the populace (also Ward and Green 2016). This aspect of Green and Ward's work is significant because it considers how state crimes can be normalised and integrated into everyday life. I suggest that this echoes Arendt's (1964) identification of the 'banality of evil' in the context of the post-Holocaust trial of Eichmann. In emphasising the unexceptional and, in fact, profoundly unintelligent and uninspiring nature of Eichmann as a character, as well as the routinised and bureaucratic manner in which outrageous crimes against humanity were perpetrated, Arendt challenges the idea that atrocities can be explained with reference to historical or personal aberrations. Similarly, Stanley (2014: 58) identifies how, in addition to specific violations by particular individuals, institutionalised harms involve the disturbingly "mundane realities of state crime". These perspectives are crucial to an expanded conception of state crime because they recognise how it can be imperceptibly integrated into the ordinary operation of society.

The state crime scholarship generally pays limited attention to the broad contextual dimensions of state crimes. In accordance with the individualised discourses that characterise criminology

[26] Although Green and Ward (2004) acknowledge passive state failures to protect individuals against human rights violations by others as an "important dimension of state crime" (111), they reject the assertion of some state criminologists that the state's maintenance of systemic inequalities through capitalism constitutes state crime.

more broadly (Barton et al 2007), state crime literature tends to focus on specific crimes and criminal actors rather than engaging in a holistic consideration of the harm's historical, structural, economic, and political dimensions. Only a relatively small body within the literature adequately considers the wider forces that are integral to the commission of state crime. Stanley (2014: 58), for example, does address the structural and institutional dimensions of state crime in her analysis of systemic child abuse in state-run homes in New Zealand, and argues that

> *it is necessary to move beyond analyses that offending is individualised, to a more nuanced account that considers the role of institutional practices as well as structural relations of power in violence and harm*.

Other authors to acknowledge the importance of these levels of power include Simpson (2007), Kent (2012), Henry (2013; 2015), Balint et al (2014; 2016), and Mertens and Pardy (2017). Stanley's (2014) work also offers an unusually comprehensive analysis of the intricacies of state crime, particularly around discursive management. In her case study, Stanley documents specific strategies used by the state to obscure, minimise, isolate, reframe, and excuse systematic harms. She notes that when the state does acknowledge violations, it ensures that the debate is narrowed such that violations are depicted as rare and historic rather than systemic and ongoing. This literature is unique because it highlights the institutional, structural, and discursive power that is exercised in the perpetration and concealment of state crime.

A key limitation across the state crime literature is its tendency to neglect the dimension of sex and gender in systematic harms. The persistent focus is on harms that most often affect men: organised criminal syndicates, piracy, state-sponsored terrorism or torture, or in accordance with a broader conceptualisation of state crime by omission, class-based harms. Harms primarily affecting women or other subjugated gender groups receive scant attention. In the whole edited volume of *Crimes of the Capitalist State* (Barak 1991), just one chapter relates to gender-based harms. In this, Hinch (1991: 247) offers an interesting pro-feminist critique of rape law reform in Canada and its ineffectiveness in addressing "the forces of patriarchy and class". Yet, this contains no mention of key overarching terms or concepts within the field such as state crime or criminality, nor crimes of commission or omission. Although it hints at the relevance of state crime concepts to women's sexual victimisation, it does not offer a substantive theoretical contribution. In Kauzlarich et al's (2003) 'complicity continuum' also, none of the archetypal harms on the spectrum relate to gender, nor does the broader discussion

consider gender-based harms at all. Even a recent edited collection from key authors Rothe and Kauzlarich (2014) does not include any chapters specifically relating to gender-based crimes.

A few outliers in the state crime literature do consider sex and gender as dimensions in state crimes. One early contribution from Rynbrandt and Kramer (1995: 206) analyses "corporate violence against women" through the silicon breast implant industry. This article offers early feminist insight in a field which generally overlooked the possibility that state crimes could relate specifically to women. These authors argue that "the manufacture and sale of potentially harmful silicone breast implants were clear acts of organisational crime" (214), and that this could only occur in the absence of government regulation and oversight. Further, the fact that the industry's success was premised on prescriptive cultural notions of female beauty, led the authors to conclude that the case study illustrates an example of organisational crime and state complicity in the systematic harming of women. A broader and more recent conceptualisation of state culpability in relation to violence against women is offered by McCulloch and Blair (2012). These authors discuss the role of Community Law Centres in Australia in exposing "the fallacy of impartial justice" and the "systematic exclusion of (certain groups) from the benefits of the law", which they argue has "masked a range of state crimes" including "the institutionalised failure of the criminal justice system to protect women from male violence" (178). This reference is only momentary and passing, however, and an outlier within the broader state crime field. Additionally, the identification of a state role in family violence is specifically in relation to failures and omissions; the analysis falls short of naming the state as a proactive agent in perpetrating and perpetuating this harm, and does not explicitly name the violence itself as a state crime.

State crime has also been the focus of scholarship with a more diverse and interdisciplinary basis. These works often integrate neighbouring fields including history, international law, Holocaust and comparative genocide studies, transitional and transformative justice, and structural violence studies.[27] This material seeks to produce a broader narrative about state-based harms and the historical and geographic contexts in which they are perpetrated. Some of

[27] As Kolin (2008) and Tatz (2011) argue, literature from genocide studies is similarly narrow and specialised to many other disciplines. Whilst Holocaust studies offers "profound and meticulous histories (which) deal with its antecedents and descendants, painting huge canvasses of the mass destruction of European Jewry" (Tatz 2011: 232), genocide studies has yet to analyse post-World War II mass harms in a similarly holistic and integrated way. It is therefore necessary to look at literature which deliberately adopts an interdisciplinary approach.

this literature is also more effective than that from state crime criminology at identifying specific processes and practices that systematically subjugate, violate, and annihilate certain social groups. These works often explore the sites, function and intricacies of state crime, highlight the range of contexts in which it can occur, and situate it within a broader institutional and structural narrative.

One such example is political scientist Kolin's (2008) boundary-spanning analysis of genocide. This work examines the machinations of this state crime in contexts like Stalinist Russia, Nazi Germany, and East Timor, and in particular illuminates "the underlying dimensions of state power that 'predispose' states to commit genocide" (v). Kolin considers how states can perpetrate gross, heinous and systematic harms in a normalised, and even invisible, manner by ensuring that "ordinary violence is woven into the social fabric" (68). He explains how this is achieved through diverse contexts and often subtle processes including the prison system, which legitimates the segregation and confinement of certain populations, and factory farming, which provides an ideological and industrial model for the normalisation of systematic cruelty to and slaughter of animals. Kolin's analysis broadens the scope of state crime to consider wider processes and practices which provide the foundations and support for state crime over time. It also sheds light on how particular conditions and practices can induce the general populace to ignore or tacitly condone mass harms against others.

Comparative genocide scholar Jones' (2013) work also exemplifies useful interdisciplinary work on state crime. This study applies structural and institutional violence theory to a range of unusual contexts in order to challenge the traditional notion of genocide as one of direct, overt extermination of an identity-based group. Jones introduces the argument that mass hunger and starvation constitute active "murder" and "assassination", perpetrated by global institutions like the World Trade Organisation, whose policies and practices "condemn (millions of victims) to starve" (207).[28] Jones follows this with a discussion of structural violence and the genocidal continuum, which considers diverse case studies illustrating various state, political, and institutional complicity in mass harms. These include illness and death from HIV/AIDS in Africa, hazardous waste dumping in China, and the devastating human toll from United Nations sanctions against Iraq. This work's key contribution is to challenge the conceptual boundaries

[28] This argument was originally put forward by Jean Ziegler, former United Nations Special Rapporteur on the Right to Food, however, Jones further extends this as a more comprehensive case for state crime.

of genocide and other state crimes by importing unconventional definitions of these concepts. It also encourages a more critical and reflexive consideration of contexts often considered immune to scrutiny over state crimes. This diverse account of state crimes challenges conventional boundaries through which key state crime concepts have been understood.

Genocide scholar Tatz (e.g. 1985; 1999; 2003; 2011) also offers wide-ranging interdisciplinary commentary on state crime through incorporating the studies of history, racism, genocide, philosophy, and law. In his 1985 piece, Tatz considers the German, South African, and Australian contexts, arguing that it is impossible to analyse state-instituted genocide without examining racist politics and the manner in which racist policies are consciously and technically administered. His 2011 publication looks further at the structural and ideological prerequisites for genocide, the complicity of bystanders (like Kolin 2008), and harms of both commission and omission (like state crime scholars such as Barak 1991; 1994; Kauzlarich et al 2003). Other scholars such as Behrendt (2001), Manne (2004), Wolfe (2006) and Short (2010) offer similar contributions to those of Tatz, documenting how the treatment of Indigenous populations by colonial states often constitutes genocide.[29] The chief contribution of this literature from a state crime perspective is drawing attention to systematic and enduring state crimes in liberal-democratic societies.

Recent transitional justice literature in particular highlights the systematic harms endemic to many supposedly peaceful democracies. Early transitional justice scholarship generally overlooked these contexts, as it focused on post-war contexts, military dictatorships, and fractured societies with the most visible of violence. More recent contributions to the field address this omission by highlighting the relevance of transitional justice frameworks for supposedly peaceful, democratic societies. Orford (2006), Bell and O'Rourke (2007), Balint (2012; and Evans 2010; et al 2014), Henry (2015) and others challenge the assumption that established democracies are free of systematic injustice. Continuing the critical contributions of authors like Tatz (1985; 1999; 2003; 2011) and Cunneen (e.g. 2008; 2009), these authors draw on postcolonial perspectives to highlight how developed Western liberal democracies can also be the site of state crimes through the enduring racist violence of colonial and imperial projects. Their works also consider the application of transitional justice tools in such societies.

[29] In a landmark case in the Australian Capital Territory in 1998, Supreme Court Justice Crispin determined that there was ample evidence to indicate that acts of genocide were committed during Australian colonisation. For full discussion of the case, see Balint (2014).

Indeed, Balint et al (2014: 196) argue that there is great "flexibility and potentiality of transitional justice as a broader justice model" for addressing persistent historical injustices and structural harms in Western contexts.

Interdisciplinary literature in this area has usefully complexified the temporal aspects of state crime. Some authors have problematised the notion that state crime is perpetrated during a discrete period. Wolfe (1994: 96), for example, suggests that state crime can unfold as a "structure rather than an event", as with the mass destruction of First Nations Peoples in Australia. Although this state crime began in the late 18th century with white invasion and the racist imperial project, its perpetration has continued over time, albeit in shifting and sometimes more subtle forms. For instance, the ostensibly benevolent policies of paternalism and assimilation which were responsible for the 'Stolen Generations' can be seen as a continuance of this state crime, as they destroyed the lives of thousands of Indigenous families through the forcible removal of children (see e.g. Behrendt 2001; Manne 2004; Cunneen 2008; Short 2010). State crime against Indigenous Australians also persists contemporarily through enduring forms of inequality and injustice (Balint et al 2014; 2016; Henry 2015). Balint (2012) discusses how, regardless of whether state crimes are perpetrated over a short or extended timeframe, they share a logic of destruction and nation-building. Lasslett (2010; 2012a; 2012b) also suggests that state crime can encompass not only singular incidents or sets of incidents, but can also be an unfolding event or history of harm.

These nuanced considerations of state crime techniques and timeframes are useful for considering more pervasive and long-term state harms. These harms may not be restricted to a particular period and may be perpetrated such that the state's connection to harms is more indirect and diffuse. Recent transitional justice scholarship also illuminates how state crime can involve unfolding structural violence (e.g. Orford 2006; Nagy 2008; Balint and Evans 2010; Kent 2012; Mertens and Pardy 2017). These works respond to the problematic tendency of early transitional justice literature to focus on discreet violations perpetrated by identifiable individuals at specific moments in time, which tended to imply that violations are exceptional, extraordinary and temporally contained. More recent contributions (e.g. Balint et al 2014; 2016) seek to complexify accounts of mass harms by examining the role of indirect perpetrators and institutions in state crimes, and illuminating complex histories, structural violence, and social injustice, which lead to specific gross violations.

Interdisciplinary literature on state crime is also particularly useful for illuminating the machinations of state crime. Balint (2012), for example, explores the complex ways in which states harness the power of various institutions, particularly law, to perpetrate state crime. By analysing a range of case studies including Nazi Germany, Cambodia, Rwanda, and the former Yugoslavia, Balint considers how law variously facilitates, collaborates or is purposefully absent in cases of genocide and other state crimes. Lasslett's work (2010; 2012a; 2012b) also attempts to deconstruct the machinations of state crime. In looking at the diffuse and complex nature of the exercise of state power, Lasslett puts forward a more nuanced notion of the state than much scholarship in this area, conceptualising it not as a homogenous singular entity but a "strategic field made up of competing power networks which are tied to specific governmental projects" (Lasslett 2012a: 128). This contribution also draws attention to how state crimes can be "administered by a broad alliance of actors positioned within numerous public and private agencies" (Lasslett 2012a: 127). Both Lasslett and Balint highlight the cross-institutional and cumulative combination of actors and factors that, together, contribute to the perpetration and perpetuation of complex state crimes.

Other interdisciplinary work on state crime, structural violence, and transitional justice highlights its normalised operation in everyday life. Holistic state crime and transitional justice contributions (e.g. Mani 2002; Lambourne 2004; 2009; Miller 2008; Nagy 2008; Laplante 2009; Muvingi 2009; Evans 2013), along with structural violence scholarship (e.g. Galtung 1969; Uvin 1998; Zizek 2008; Hirschfeld 2017), emphasise the need to identify and target the everyday experiences of inequality, disadvantage and exclusion that underpin specific incidents of criminal violation. Structural violence authors such as Galtung (1969), Uvin (1998), Zizek (2008) and state crime and transitional justice authors who adopt a more diffuse understanding of state crime (e.g. Green and Ward 2000; 2004; Kauzlarich et al 2003; Tatz 2003; 2011; Manne 2004; Miller 2008; Laplante 2009; Muvingi 2009; Balint and Evans 2010; Balint et al 2014) illuminate the often invisible and taken-for-granted structural and systemic forces that underlie more specific violent phenomena. These can refer to economic arrangements, cultural norms, and ideologies that determine policy in subtle but powerful ways, and, as Zizek (2008) highlights, are often obscured by more visible and easily identifiable violence. However, these works generally neglect to consider structural violence on the basis of sex and gender. They most often focus on crimes of capitalism and class-based inequalities or, with more recent literature, the structural violence of colonialism.

For all its strengths, interdisciplinary state crime, structural violence, and transitional justice literature is broadly limited by the neglect of gender that constrains the state crime criminology scholarship. Nagy (2008) suggests that the exclusion or marginalisation of women's experiences of suffering persists because harm is structured around a masculinised model of violence which is predominantly experienced by men. Franke (2006: 822) also argues that transitional justice processes often reduce women either to "repositories of memory" regarding violence against men, or to sexual violence victims who "must perform a kind of sexual vulnerability" in order to gain recognition. Even more comprehensive interdisciplinary works which consider historical and structural harms in liberal-democratic contexts, still neglect the dimension of sex or gender as the basis of mass harm. Ironically, despite examining in detail the inherently paternalistic – and thus patriarchy-derived – ideologies and practices of racist imperial and colonial projects, this scholarship overlooks the relevance of a gendered analysis or of examining systematic violence against women through the same structural violence lenses. This type of analysis would usefully be extended to historical and persistent sexism, which involves institutionalised frameworks of subjugation which directly contribute to systematic forms of gender-based violence. In Western contexts where family violence has already been linked to structural and systemic sexual inequality, transitional justice models for understanding and addressing harms have obvious relevance; an argument that will be taken up in the latter part of this thesis.

International law and feminist critique

International law evolved to include family and other forms of violence against women only quite recently. Although early international human rights documents were theoretically inclusive of women, it was not until later that they were understood to include and protect women in practice. The Universal Declaration of Human Rights' (UNGA 1948) stated that "everyone is entitled to all rights … without distinction of any kind such as … sex" (1-2), and the Convention Against Torture (UNGA 1984) provided in principle protection against violations for all. The Convention on the Elimination of All Forms of Discrimination Against Women (UNGA 1979) reiterated that discrimination against women violates the equality principles enshrined in human rights documents. But these early "ostensibly gender-neutral" frameworks (Beasley and Thomas 1994: 324) did not, in practice, include women.

During the 1990s, which Ignatieff (2007) describes as the age of human rights, a more inclusive understanding of human rights developed to consider women's experiences of violence (Subedi 1997; Merry 2006). The Declaration on the Elimination of Violence Against Women (UNGA 1993), the Vienna Declaration and Programme of Action (UN 1993), and the Beijing Declaration and Platform for Action (UN 1995) reiterated the indivisibility of women's rights and universal human rights, and asserted that all violence against women constitutes sex discrimination and a grave rights violation. In 1996, the United Nations Commission for Human Rights delivered its first report specifically dedicated to violence in the family. This repudiated the "myth of the family as a sanctuary of tranquillity and harmony" and identified family violence as a "gender-specific" harm (UNCHR 1996: 7).

This Report (UNCHR 1996) represented an important development in theorising the role of the state in relation to family violence. It extended provisions on states' responsibility to prohibit, prevent, protect against, and punish this crime, and described state obligations in a new and radical way. Traditionally, international human rights law had only been interested in harms perpetrated directly by the state or its agents, as states were regarded as the sole subjects of international law (Beasley and Thomas 1994; MacKinnon 1994; Subedi 1997; Libal and Parekh 2009). But this was a new international norm that required states to protect citizens from violations perpetrated by non-state actors, including ordinary citizens and in the domestic sphere (see Romany 1993; Copelon 1994; Charlesworth 1995; Sullivan 1995; Meyersfeld 2003; 2010; Hakimi 2010; Duramy 2013). Drawing upon feminist activist work of the time, which I consider in more detail later in this chapter, the UNCHR Report (1996: 9) report introduced terminology suggestive of state crime: identifying states as "complicit" in and to "condone" family violence when they systematically failed to protect victims. Further, it asserted that failing to appropriately punish family violence perpetrators "reflects the consent of the State" (13). The subsequent Resolution on the Elimination of Domestic Violence Against Women (UNGA 2003) strengthened these provisions, requiring states "to exercise due diligence to prevent, investigate and punish the perpetrators of domestic violence against women and to provide protection to the victims" (np). Repeated iterations of international statements about family violence across decades (e.g. UNGA 1979; 1993; UNCHR 1996; UNGA 2003) reasserted these international obligations, placing concrete family-violence-

related responsibilities on states and constructing the legally-enforceable notion of state accountability for neglecting this role, as Meyersfeld (2010) explains.[30]

This expanded legal perspective on state responsibility means that states can now be held liable for failing to protect citizens from family violence. In legal literature, this obligation has been termed 'state bystander responsibility', and when not taken seriously, the state is considered to 'acquiesce' to the violation (Charlesworth 1995; Sullivan 1995; Meyersfeld 2003; 2010; Libal and Parekh 2009; Hakimi 2010; Andrews and Khavinson 2013). This idea has been tested in a number of transnational law cases, with a notable example being *Opuz v. Turkey* (2009). This European Court of Human Rights case contested the idea that the state can be held responsible for safeguarding victims' basic rights and providing protection against family violence. The Court determined that the Turkish state had failed to respond appropriately to prevent serious human rights violations, and that government authorities had abrogated their responsibility to protect the rights to life, and to be free from torture and sex-based discrimination (*Opuz v. Turkey* Judgement 2009). The decision was particularly important because it established that a state's failure to protect women against domestic violence, *even if unintentional,* breached women's right to equal legal protections. This was based on the understanding that family violence is a form of gender-based harm because it disproportionately affects women, and that the passivity characterising the State's responses to this harm therefore constitutes a form of gender-based discrimination. An additional compelling finding was that the judicial passivity of the Turkish State created a climate *conducive* to domestic violence. The Court's ruling and the principles of the case are discussed at length by international legal scholars including Hakimi (2010) and Duramy (2013), who identify this as a turning point in state-based accountability for family violence victim protection.

Another case, heard in the Inter-American Court of Human Rights, also reinforced the notion of state responsibility in relation to family violence. In *Lenahan (Gonzales) v. United States* (2011), it was determined that the United States government and its institutions had failed to uphold various rights guaranteed in the American Declaration of Rights: the rights to life, to reasonable protection, and to be able to access appropriate remedies to ensure respect for these

[30] Also introduced in the 1990s, the popularised legal doctrine of states' 'responsibility to protect' against mass atrocities is discussed at length by Evans (2008). This is a useful doctrine for conceptualising state failures and omissions in relation to harms against certain groups. Yet Evans' focus is on conventional conflict-based and masculinised notions of harm. At no point does he consider the applicability of the doctrine to state inaction in relation to harms against women, nor to atrocities perpetrated in the domestic sphere.

rights (*Lenahan (Gonzales) v. United States* Judgement 2011). The Court further found, in line with the *Opuz v. Turkey* ruling, that because family violence is a gender-based crime and the state had systemically failed to provide protection from this harm, this constituted sexual discrimination. This case has received significant attention in the international legal field (e.g. Goldfarb 2008; Meyersfeld 2010; Andrews and Khavinson 2013; Cabrera 2015), with authors highlighting the conceptual shifts and significant precedents established by the judgement. Caroline Bettinger-Lopez, the applicant's chief legal representative throughout the litigation process, has also published extensively on the case and its principles (e.g. Bettinger-Lopez 2008; 2013; Bettinger-Lopez et al 2011). All commentary on both the American and Turkish cases highlights their significance in establishing state responsibility for family violence prevention and remedy.

State crime and state responsibility in relation to family violence can also be understood through international criminal law frameworks. To date, this body of law has adjudicated conflict-related harms against women, but not those perpetrated in peacetime nor in the domestic sphere. As part of genocidal atrocities in Rwanda and the former Yugoslavia in the early 1990s, mass rape was used as a tool of war to oppress, violate, and destroy certain groups (see MacKinnon 1994; Copelon 1995; Henry 2011; Simm 2018). These gross violations were pursued through the *ad hoc* International Criminal Tribunals for Rwanda and the former Yugoslavia, with case outcomes seeing the codification of a range of gender-based crimes as international crimes (e.g. *Prosecutor v. Akayesu* ICTR 1998; *Prosecutor v. Kunarac, Kovac and Vukovic (Foca)* ICTY 2001; also Rome Statute 1998 Art 7.1.g). War-time rape was explicitly named a human rights violation, form of torture, war crime, and, in certain circumstances, an act of genocide (Copelon 2000; Simpson 2007; Arieff 2011; Henry 2011). These cases represented a "historic departure from the international legal and political silence" that had obscured war-time sexual violence against women (Buss 2011: 409). Previously, war-time sexual violence was largely dismissed as an inevitable and relatively trivial byproduct of armed conflict (Chappell 2009; Heineman 2011). With these cases, it was acknowledged as a serious stand-alone violation resulting from organised and purposeful state action and inaction.

International feminist scholarship addresses some gaps in mainstream international law's account of family and other violence against women. From the late 1980s onwards, legal scholars like Copelon, Charlesworth, MacKinnon, and Smart, who work at the margins of international law, have produced incisive and detailed critiques of international laws'

omissions in relation to harms against women. Although some of this feminist literature informed international documents (e.g. UNGA 1979; UNCHR 1996), it generally lacked substantive or sustained influence over dominant frameworks, and can therefore be seen as both a critique of and addendum to the international developments discussed above. Here, I focus on a few key critiques that feminist authors have levelled at the mainstream field: its neglect of women, of harms primarily affecting women, and of peacetime and domestic harms.

As mentioned earlier, mainstream international law and politics historically neglected women and the harms they experience. MacKinnon (e.g. 1994; 2006) discusses how international law has always conceived of 'human' as a male concept and has fundamentally struggled to expand this to include women. Indeed, she argues that the identity 'woman' automatically precludes one from simultaneously occupying human status in law. A number of other theorists including Smart (1989), MacKinnon (1994), Buss (2007), Charlesworth (2010) and Otto (2012) have explained how law's presumption that men are its sole subjects has led to the broad exclusion of distinctively female experiences of harm. Despite the purported universality of human rights, this male model of victimisation has created what Henry (2013: 366) refers to as a "gendered hierarchy" of harm. This hierarchy means that harms generally experienced by men receive recognition as human rights violations, whereas those primarily experienced by women do not. Copelon (1994), Meyersfeld (2003) and Sifris (2014) all discuss how the archetype of torture in human rights law is officially-sanctioned torture during interrogation of a male political detainee, under a repressive regime. But women's most common experiences of torturous harm do not fit this model. As MacKinnon (1982), Subedi (1997) and Meyersfeld (2010) explain, women's biological characteristics and their subordinate status are the basis for a variety of harms generally not experienced by men. Sifris (2014) confirms that, even in the contemporary context, women experience distinctive but unrecognised forms of torture due to ongoing restrictions to their sexual and reproductive rights.

The international legal and political field's neglect of harms perpetrated in the private sphere is another issue critiqued by feminist scholars. In principle, a human rights approach considers all violations, regardless of perpetrator or context, supposedly ensuring attention to family violence (Subedi 1997). But, as Jeffreys (1997) argues, although the language of human rights *can* enable domestic violence to be elevated out of the private sphere, this has been constrained by liberal ideology and practice which dictates that it be treated as a sanctified space and immune from state scrutiny or intervention (also see Hildebrandt 2006; Bumiller 2008). This

reification of the private sphere has proven a key barrier to international recognition of and action against family violence, and in itself represents a form of discrimination against women, since this harm disproportionately affects women (Beasley and Thomas 1994). Contemporary feminist legal scholars (e.g. Randall and Venkatesh 2015; 2017) continue to draw on international human rights law to highlight the severity of private sphere harms against women, international law's practical inadequacy in this area, and to activate for change. Randall and Venkatesh (2017: 190), for example, interrogate the persistent inadequacy of state responses to marital rape, arguing that this "effectively facilitates and condones a private legal space … where sexual assault and coercion are permissible".

The neglect of private sphere harms has also been exacerbated by the disproportionate attention to conflict-related sexual violence against women. As previously mentioned, the notable international response to war-time rape perpetrated during genocidal campaigns of the 1990s prompted progress in the recognition of women's rights violations. This development was welcomed by feminist scholars and activists. However, this attention also helped entrench the obscurity of violence in peace-time and private-sphere contexts, since it was not accompanied by a corresponding increase in the recognition of more pervasive but normalised harms: what Kelly (2010: 114) calls the "everyday" violations experienced by women (also MacKinnon 1994). Mertus and Goldberg (1994) and MacKenzie (2010) argue that framing war-time sexual violence as an urgent international concern can foster the problematic impression that it is more serious, prevalent, and worthy of action than other forms of violence against women. MacKinnon (1994) expresses outrage that common atrocities such as men torturing their wives or murdering prostitutes are not treated as abhorrent human rights abuses. Despite being far more prevalent than war-time rape, these everyday atrocities exist in relative obscurity and are rarely recognised as grave harms. Across a range of disciplines, Copelon (1994), Sideris (2001), Enloe (2012), St Germain and Dewey (2012) and others echo the concern the focus on war-time atrocities against women has tended to elicit condemnation of this violence, but implicit acceptance of atrocities in peace-time and in everyday lives and homes.

Framing war-time violence against women as exceptional and actionable has also contributed to the problematic differentiation and ranking of violations of women. This practice involves specific forms of victimisation and suffering being compared and categorised according to their perceived level of seriousness, creating a variant of the unethical construct of a "hierarchy of harm" (Henry 2013: 366) which I referred to earlier. Mertus and Goldberg (1994: 218) confirm

the existence of this hierarchy by noting how the human rights system "privileges some [harms against women] while excluding or trivialising others". As Copelon (1995a: 208) suggests, whilst accurately identifying and describing harms is worthwhile, "to rank the egregious demeans it" (also see Tatz 2011). Ranking violations is also problematic because it differentiates and compares the suffering of the innocent war victim and the supposedly willing victim in everyday life (Copelon 1994, 1995b; Sideris 2001; Heineman 2011; Henry 2011). This conceals the continuities between different forms and contexts of violence against women, as Copelon (2000: 230) explains:

> *with regard to crimes against women, there is unfortunately not so sharp a difference between war and everyday life. Torture and rape in conflict situations have too much in common with rape in the marital bedroom, battering in the home, and gang rape in bars and streets*.

Presenting war-time sexual violation as aberrant and extreme implies that it is unrelated to peacetime and domestic violence against women, whereas Mrsevic (2000) and Peterman et al's (2011) research shows that the two are intimately connected. Other authors note that treating war-time rape as exceptional also inaccurately implies that is it "unconnected to the systemic inequality of women" (Buss 2007: 22; also MacKinnon 1994; Mrsevic 2000; Bumiller 2008).

Emphasising the dangers of war also cultivates the erroneous impression that non-war contexts are safe for women. Considering that the formal cessation of combat often involves merely new or different dangers such as displacement, poverty and increased family violence, Enloe (2012: n.p.) argues that "post-conflict" is a highly problematic term (also Sideris 2001; Nagy 2008; MacKenzie 2010; Leatherman 2011). MacKinnon (1994) also rejects the term peace-time for its inaccuracy, arguing that it belies the "state of everyday hostilities" (5) that characterises women's lives both in and outside of war. Similarly, Kelly (2010: 114) describes the predictability and pervasiveness of these hostilities as the "everyday / everynightness" of female experiences of violence. These feminist contributions highlight the limitations of mainstream international frameworks and discourse, and demonstrate the value of using consistent conceptual tools to understand different forms of violence against women.

Radical feminism

In addition to critiquing dominant international narratives of harm as discussed above, radical feminist scholarship offers innovative frameworks for conceptualising family and other violence against women. These contributions variously precede, resist, augment, and extend legal and other mainstream notions of harm, and additionally draw on a range of diverse concepts to describe family violence and the institutional vehicles through which it is perpetrated. Through conceptual innovation on the state, marriage, the family, and on violence against women, radical feminist literature provides a holistic understanding of family violence as a deliberate tool of patriarchal harm. I will now outline some innovative and useful ways that radical feminists have conceptualised family violence, marriage and the family.

Early radical feminist authors identified marriage as an institution of slavery. Well before the emergence of international organisations or the human rights movement, a number of revolutionary feminists provided incisive critiques of the family and its foundation upon men's violent dominion. In Taylor Mill's (1869: 162) work, marriage is theorised as an institution of "domestic slavery". Mill likens the status of wives to that of ancient Greek or Roman slaves, but notes the key difference that slaves had the right to refuse sexual advances from their owners. Not so the wife, as she explains:

> *however brutal a tyrant she may unfortunately be chained to … he can claim from her and enforce the lowest degradation of a human being, that of being made the instrument of an animal function contrary to her inclinations* (160).

This represents an early identification of the injustice and degradation of marital rape. Later, Pateman (1988: 154) similarly names the family as an institution where men "exercise the power of a slave-owner over (their) wife". Dworkin (1981: 101) further identifies women's status in the family as men's "chattel property", describing how their value is established in the same way as with other moveable property like cattle or slaves (also see Burris 1973).

Imperialism and colonisation have also been used by radical feminists to describe the ideology and practices condoned within marriage and the family. Burris (1973: 247) describes women as "the first colonised group" and their bodies as colonised territory. She identifies how male sovereign power operates through the family such that female bodies are considered the property of men, firstly of their father or other male relatives, and later, through passing this ownership on to a husband. Burris suggests that imperialism is an accurate descriptor of this

model of complete patriarchal control. Barry (1979) extends Burris' (1973) work by identifying how the servitude of colonised women is enforced in the domestic sphere. She theorises men's violence as the tool and method for maintaining control over their family, positing that "the private practice of female sexual slavery is carried out by husbands and fathers who use battery and sexual abuse as a personal measure of their power over their wives and/or daughters" (Barry 1979: 39-40). These and other radical feminist works theorise marriage and the family as institutions which have been purposefully created, sanctified, and maintained by the patriarchal state, in aid of maintaining male dominance.

Another frame adopted by radical feminist authors to describe family violence is torture. One of the earliest of these contributions was from Cobbe (1878). This revolutionary feminist challenged the familiar legal terminology of the time, wife-beating, labelling it a euphemism and arguing that it conveyed only a "remote notion of the extremity of the cruelty involved" (48). Cobbe identified that violence in the home was rarely limited to a single or small number of incidents, and also that the escalating nature of abuse meant that "wife-*beating,* ... in numberless cases, advances to Wife-*torture*, and the Wife-torture usually ends in Wife-maiming, Wife-blinding, or Wife-murder" (49). Russell's (1982) study of marital violence also utilises torture terminology. Prior to the ratification of the Convention Against Torture (UNGA 1984), Russell identified coercive and violent techniques used in domestic abuse as comparable to the political torture condemned by human rights organisations.[31] MacKinnon (1993) pioneered the modern movement to challenge the perceived triviality of domestic abuse by theorising it as torture, and was followed by Copelon (1994), who systematically demonstrated that, according to international declarations and conventions, certain family violence constitutes torture.[32] This proposal was supported by Amnesty International (2001 in Merry 2006: 22), and was a vital part of the initiation of family violence into international discourse.

The conceptualisation of certain family violence as terrorism has also been put forward by radical feminist scholars. Kelly (1988) offered an early critique of the incongruity of attention to international political terrorism when the domestic terrorism of partner abuse threatened far greater numbers of people in daily life. Feminist cultural studies scholars also questioned the disproportionate media focus on random international terrorist acts, when compared to the

[31] Also see Meyersfeld (2003) for a detailed comparative case study of incidents of 'official torture' and 'private torture'.
[32] See Zarkov et al (2011) for further discussion.

simultaneous silence and normalisation of the "everyday taken-for-granted campaign of terror" (Finn 1989: 376) waged against women in the domestic sphere. More detailed conceptualisations of domestic abuse as terrorism identify how it actually operates as a regime, and how the specific strategies employed by perpetrators mirror those used by international terrorists. Marcus (1994), for example, explains how, in both international and domestic terrorism, "well-developed tactics of intimidation and coercion" (31) impose "discipline and a strategy of … governance" over victims (32). Pain (2012: 8) also discusses the comparable operation of "fear, terror and control" in global, national, and "everyday terrorism" in the home. Both Stark (2007; 2010) and Johnson (2008; also 1995; 2005; 2010; 2011) highlight how systematic domestic abuse, like political terrorism, involves multiple oppressive tactics which create an overall regime of isolation, intimidation, and control.

In broader terms, radical feminist analyses of the state, marriage, the family, and violence against women offer important conceptual innovation. Centrally, these works identify the inherently patriarchal nature of the modern state, and public and private institutions. This relates to ideology, structure, politics, substantive, and material realities, and in both a historical and contemporary sense. Since the enduring aim of patriarchy is understood to be preserving male supremacy, this is achieved by the diverse and multi-sited subjugation of women (see e.g. MacKinnon 1982; 1993; 1994; Jeffreys 1997). Radical feminist analyses remind us to consider "the processes by which male dominance and violence are reproduced", as well as the system-wide conditions "that support, condone, or ignore gross power imbalances including the subjugation of women to men" (Mertus and Goldberg 1994: 228). This highlights the importance of looking at specific systems and practices – at the structural, institutional and state levels – that, together, contribute to patriarchal aims.

Radical feminist theory sees women as a perpetually subjugated group, within which individuals have both unique and collective experiences of oppression (e.g. Kelly 1988; 2010). Female subjugation is pervasive: simultaneously occurring at different sites, by different individual and collective men, using diverse different tactics, yet with common features and aims:

> *… the privileged group use violence to sustain their dominance. Intimidation of women ranges across the spectrum from wolf-whistling in the street, to office harassment, to rape and domestic assault, to murder by a woman's patriarchal 'owner', such as a*

> *separated husband…* (all of which) *are commonly accompanied by verbal abuse of women* (Connell 2005: 83).

Family violence is understood as one type of female subjugation that aligns with the state's broader patriarchal interests through ensuring male control at the micro-level. This also explains the state's purposeful failure to prevent or protect in relation to family violence. The state is unwilling to act against this violence because men's violence in the home is a type of informal social control which aligns with the state's wider interests (e.g. Romany 1993). This analysis alludes to the omissive state crimes described by state crime scholars, however is not explicitly theorised as such within the radical feminist literature.

With patriarchy as the underpinning concept, radical feminists focus on theorising violence against women in distinctively political terms. Caulfield and Wonders (1993), for example, describe various violence against women as a political crime when it is an outcome of states' refusal to criminalise certain harms or provide full legal protections to women.[33] They argue that the term political crime accurately reflects how state inaction over women's victimisation in the United States reinforces the state's patriarchal power and systematic sexual inequality. Extending feminist human rights arguments, these state failures are also discussed as a systematic deprivation of women's citizenship rights (e.g. Beasley and Thomas 1994; MacKinnon 1994; Naranch 1997; Stark 2007). In the United States context, Stark (2007) further names family violence as a liberty crime, due to the systematic way that men's violence, along with state inaction, prevents women from exercising their constitutional rights to equality, liberty, safety, and integrity. These theoretical contributions illuminate the patriarchal ideology and power involved in state action and inaction, and the specific political effects of this. Although these analyses use frameworks and terminology that highlight power relations between the state and women, they do not constitute explicit or comprehensive accounts of family or other violence against women as a state crime. Firstly, it is not explicitly named as such; secondly, the state's role is conceptualised in terms of omissive acts only, and thirdly, politics is understood only in the sense of broad power relations.

[33] Some state crime authors have used the label 'political state crimes', but with different connotations and limited conceptual development. According to Barak (1991), 'political state crimes' are committed by state agents and have distinctly political aims in that they are designed to maintain the political status quo or to repress change. I would suggest, in line with Balint's (2012) broad perspective on what constitutes state crime, that *all* state crimes are political in this sense, because they are perpetrated with the aim of creating and maintaining the state in a particular political image or according to particular political ideologies.

Broadening radical feminist theory beyond omissive acts, other contributions implicate the state in violence against women through its maintenance of structures, conditions, cultures, and industries that underpin the harm. Stark (2007) argues that the state is responsible for family violence not only through its specific inactions against the crime, but also through maintaining economic, social, and cultural conditions that perpetuate sexual inequalities and the subordination of women. This thesis is further developed by Hattery (2009), Hattery and Smith (2012) and True (2012). Caulfield and Wonders (1993: 91) also implicate the state in all forms of violence against women through its "support of a culture of violence toward women". This systemic support is posited to legitimate harms against women through diverse avenues including militarism, media, and pornography. All of these are said to perpetuate sexism and receive inadequate state regulation. These arguments resemble Enloe's (1983; 2000; 2012) theorisation of the connections between militarisation and violence against women, and others' identification of state support for the sex industry (e.g. Dworkin 1981; 1985; Jeffreys 1997; 2009; 2010; Coy 2008; Dines 2010; MacKinnon 2011; Tyler 2011). These accounts of the state's role in conditions which underpin violence against women come close to a more holistic conceptualisation of state criminality, but without explicitly naming or theorising it as such.

Focusing specifically on the institution of the family and violence perpetrated within it, radical feminist contributions enable us to conceptualise the family *itself* as the state, and the patriarch as sovereign entity. Blackstone (1765: 1053), in his interpretation of and commentary on English common law, had identified the husband in a marriage as the "lord" of his wife, and other family members as his subjects. This led Mill (1869: 156) to critique state-sanctified marriage as "a law of despotism". Indeed, any utterance or behaviour by a woman which questioned her husband's authority or was contrary to his orders or interests was considered treachery, and if an abuse victim killed her husband, it was considered an act of treason (158). During the period of feminist human rights advancement in the 1990s, the family was described as a "parallel state" (see Romany 1993: 100; also Copelon 1994), due to states' treatment of the family as an inviolable space which should be free from official intervention (also Mertus and Goldberg 1994; Mrsevic 2000; Malley-Morrison and Hines 2004; Hildebrandt 2006; Bumiller 2008; Leatherman 2011). Taking this a step further, Copelon (1994: 297) describes the impunity enjoyed by family violence perpetrators as effectively positioning "men as a *de facto* absolutist state in women's lives".

Although none of this radical feminist scholarship specifically identifies family violence as a state crime, its innovative frames of thinking about family violence, the site of its perpetration, its underpinnings, its specific and broader functions, and notably the distinctly political dimensions of the harm, are extremely valuable for my study. I see this literature as essential bridging material that draws closer to the conceptualisation of family violence as state crime. The flexible analyses that radical feminist scholars model are also valuable because they showcase more fluid and flexible ways of thinking about the state and violence. In theorising rape, MacKinnon (1994: 14), for example, simultaneously spans the macro, micro, abstract, and material when she asserts that "women are typically raped not by governments but by what are called individual men. … (this is) tantamount to being raped by the state". With the foundational notion of the state as patriarchal, MacKinnon conceptualises rape in a manner that challenges conventional ways of understanding perpetration and harm. This imaginative, dexterous and at times abstract thinking about concrete phenomena has provided significant personal and intellectual inspiration for my study, and has highlighted the conceptual possibilities when one is open to a creative academic mindset.

Conclusion

This chapter has considered a range of complementary bodies of work on the subjects of state crime and family violence. All of these literatures offer material which could contribute towards conceptualising family violence as state crime, however they have not thus far been adequately integrated to facilitate this development. Even literature with a concerted interdisciplinary focus does not make the necessary connections and extensions in order to construct a clear or comprehensive theoretical and applied framework for identifying, analysing or responding to family violence as state crime. This therefore reveals the gap at which my research problem sits.

I opened the chapter by reviewing family violence literature from criminology and neighbouring social and health sciences. The vast majority of this work continues to conceptualise family violence through the individualised lenses of pathology, interpersonal violence, attitudes, and behaviour. These accounts tend to neglect the broader dimensions of family violence including the institutional, structural, and substantive origins of gender inequality and violence against women. The most useful contributions from this field for my

study offer insight into enduring patterns of patriarchal power in offending, the use of digital technology along gendered lines, substantive and cultural inequalities that correlate with family violence, and the systemic institutional problems that family violence victims face when seeking state recognition and protection. Across this field, however, studies inadequately account for the role of the state, institutions, and structures in producing and reproducing family violence.

I then turned to state crime literature. I suggested that state crime criminology has largely maintained a narrow focus and understanding of state crime as state-facilitated corporate crime, and that it generally relies on masculinised notions of harm to the exclusion of women's experiences. Some state crime scholars draw on human rights frameworks to broaden the scope of study, but are similarly constrained by the neglect of the gendered dimensions of state crime. One valuable contribution this field offers my study is the identification of a spectrum of state complicity which can range from the state being a passive bystander to mass harms, through to tacitly condoning harms through systematic policy failures, to direct negligence which causes grave social harm, to being an active initiator and agent in violations. The identification of structural violence as constitutive of state crime is an important element within this framework. Another useful innovation is that state crime can be defined through grassroots challenge and protest, and therefore that civil society can contribute to the evolving conceptualising of state crime. State crime literature with a more interdisciplinary focus addresses some of the limitations within state crime criminology. For example, recent transitional justice scholarship which incorporates a postcolonial analysis is useful because it illuminates state crimes in Western liberal-democratic contexts. It also considers the justice mechanisms that may suit responses to enduring state crimes in these contexts. However, all literature in state crime studies neglects the dimension of sex and gender and does not adequately consider the relevance of its frameworks for theorising harms against women.

I then considered how international law has theorised and approached family and other violence against women, as well as the feminist contributions which challenge international law's limitations in this area. Through examining human rights and criminal law on violence against women, I identified some progressive frameworks which recognise the state's duty to prevent and protect against family violence. These frameworks are vital for my study because they recognise states' complicity in family violence through systematic policy failures. Feminist critiques of international law are useful because they underscore the importance of recognising

women's distinctive experiences of harm, attending to violence against women in all contexts, and using consistent conceptual frames for understanding the spectrum of harms that encompass women's experiences of coercion and abuse. However, both international law and its feminist critiques focus on understanding family violence as an interpersonal harm, and state failures as omissions rather than deliberate initiation or action in the harm. The state is also consistently seen as a separate entity and external arbiter rather than a key structural and institutional actor in family violence. Without exploring the possibilities of thorough interdisciplinary conceptualisation of harm and the role of institutions, structures, and states in violence against women, these works do not provide a comprehensive account of family or other violence against women as a state harm.

In the final section, I looked at radical feminist frameworks for understanding family violence and the institutional frameworks within which it is perpetrated. Some of these works utilise established international legal concepts to demonstrate the severity of family violence and to indicate its comparability with more widely-recognised international crimes. Additionally, they draw on concepts like imperialism, colonisation, and hostage-taking in order to challenge conventional frameworks for understanding family violence. Some contributions also theorise the state's implication in violence against women in a broad, generally political sense. The key value of this literature for my study is its innovative conceptualisation of phenomena which are central to my project: the state, marriage, the family, and men's violence. The creative and flexible approach modelled by radical feminists also provides tools and inspiration for pursuing my research aims. However, despite its strengths, this field does not comprehensively identify or theorise the state's implication in family violence, nor incorporate criminological or state crime frameworks in order to develop solid theory for understanding family violence as a state crime. Consequently, it also neglects to consider the implications of state responsibility for family violence in terms of the pursuit of justice.

In sum, through engaging in a comprehensive but targeted review of four broad areas of literature, this chapter has demonstrated that each provides valuable contributions for my study. Yet, taken alone, no single field or discipline has clearly identified or thoroughly conceptualised family violence and the role of the state. Brought alongside each other, these four literatures identify my research problem as the untapped intersection between family violence studies from criminology and neighbouring disciplines, state crime and transitional justice, international law, and radical feminist theory. My research task is therefore to unite

these contributions and capitalise on the rich possibilities for expanding the way we understand family violence and the role of the state. Having now identified the central gap at which my research sits, the following chapter outlines the methodology undertaken to fulfil my research aims: identifying a spectrum of state complicity in family violence, generating new theory for conceptualising family violence and the role of the state, and considering the implications of this work for addressing family violence.

3

An imaginative feminist lens: Ontology, epistemology, ethics and methodology

Introduction

This chapter explains the ontology, epistemology, ethics, theory and methodology underpinning and directing this research. Fundamentally, this is based on a radical and standpoint feminist perspective and a creative transdisciplinary approach. I first outline the feminist principles and practices to which I subscribe, and then explain the concept of transdisciplinarity and how it has enabled me to produce my central contributions. The remainder of the chapter then details the methodological processes I undertook. For the first research question, this involved processes for selecting contexts and sites at which to analyse state institutional complicity in family violence, and gathering appropriate data. It also involved developing conceptual tools and an analytical framework to guide my investigation into state institutional complicity in family violence. I then explain the methodological process I call upcycled appliqué, which I developed and utilised to address research questions two and three. This analogy from the creative arts field describes the philosophy, principles, and methods which facilitated my generation of concepts and theory for understanding family violence and the role of the state, and for considering the implications of this work for addressing family violence. Given my aim to produce creative and transdisciplinary contributions, these processes were often complex and non-linear, but necessarily so in order to fulfil my research aims. Since this chapter concludes Part I of the thesis, I conclude by reviewing what I have achieved thus far, before introducing Part II.

Founded in feminism

This project is a normative radical feminist study.[34] All aspects of my research have been grounded in feminist ontology and epistemology and I consistently employed a critical feminist

[34] I specify my approach as 'radical' feminist to distinguish it from other feminisms. Notably, I do not identify with liberal feminism's focus on formal and symbolic sexual equality, as it is insufficient for understanding and

lens throughout the methodological process. Whilst there is dispute over the existence or content of a distinctly feminist method (Stanley and Wise 1993), there are some broadly consistent features of radical feminist research which I have followed. Firstly, my study considers biological sex and the social construct of gender as the primary categorising structure of society. Consistent with radical second-wave feminist principles espoused by Millett (1969), Burris (1973), Brownmiller (1975), Dworkin (1981), and Russell (1982), and reiterated by successive generations of feminist and pro-feminist scholars (e.g. Bumiller 1987; 1992; 2008; Stark and Flitcraft 1993; Copelon 1994; 1995a; 1995b; MacKinnon 1994; 2011; Charlesworth 1995; 2010; Charlesworth and Chinkin 2000; Charlesworth and Gardam 2000; Johnson 1995; 2008; 2010; 2011; Connell 2000; 2005; Stark 2007; Salter 2015; 2016a; 2016b; 2017a; 2017b), I recognise our gendered society as patriarchal. This society is organised as a sexual hierarchy within which men, both individually and collectively, occupy a superior position to that of women.[35] The subjugated position of women relates not just to ideas, symbols and identities, but also to concrete and material disadvantage which is actively (re)produced by patriarchal structures. Through this theoretical lens, there are inextricable links between the pervasive inequality of women and men's violence, and all forms of violence against women are understood as both a symptom and a tool of male dominance. This perspective is borne out in large-scale data analyses that inform authoritative international documents (e.g. UN 1979; 1991; 1993) as well as academic and practitioner studies from around the globe (e.g. Dobash and Dobash 1998; Coomaraswamy and Kois 1999; Stark 2007; NCRVAWAC 2009; Signorelli et al 2012; WLSV 2018), therefore confirming the validity of the feminist principles at the heart of my work.

Another radical feminist feature of my research is its consistency with second-wave feminists' focus on the family as a key site of women's oppression. As Burris (1973) observed, families

addressing structural and substantive oppression and family violence. My approach also differs from an intersectional feminist approach, which would contest prioritising sex and gender over other social identifiers such as race and class, and would prefer to consider these categorising structures in concert (see e.g. Ritchie 1985; Crenshaw 1991).

[35] I acknowledge nuances within this gender hierarchy. For instance, heteronorms dictate that homosexual men and those who do not conform to a hegemonic masculine model of behaviour tend to occupy an inferior position to that of heterosexual men who exhibit hypermasculine traits (see e.g. Polk 1999; Flood 2003; Salter 2013; 2016a). Other non-conformity to traditional gender and sexuality stereotypes also tends to relegate individuals and groups to subjugated positions within the sexual hierarchy, as is evidenced by the extensive discrimination and violence experienced by transgender people (see e.g. Meyer 2012; Lubitow et al 2017). These nuances all confirm rather than deny the value of feminist analysis in my view, however, as they highlight how heteronormative patriarchal power creates the structures through which everyday disadvantage and oppression functions.

are the key units through which male imperialism operates, and Barry (1979: 194) further argued that "it is in the private relationship[s] between men and women that fundamental inequality is established". For MacKinnon (1982; also 1993), the pervasive political oppression of women is an outgrowth of the oppression that occurs within the sphere denoted private and personal, yet which is also profoundly political. MacKinnon argues that to know women's personal lives is to know the politics of womanhood and thus to enact feminist theory and method. Other radical feminist scholars (e.g. Stanley and Wise 1993; Copelon 1994; Mertus and Goldberg 1994; Charlesworth 1995; Kelly 1988; 2010) reaffirm the importance of illuminating the gendered operation of power in the private realm, further justifying the family as a crucial site of analysis. The fact that "institutionalised sexism and misogyny … stem from the primary sexual domination of women in one-to-one situations" (Barry 1979: 194) underscores the value of ongoing family violence research.

Like many other feminist researchers, I place particular value on the subjective positioning of women and their experiential knowledge. Also known as standpoint feminism (see e.g. Hartsock 1983; Zalewski 1993; Mertus and Goldberg 1994; Kelly 2010), this theory and practice privileges women's "epistemic advantage" (Zalewski 1993: 21), and its value for providing accounts of social phenomena that do not accord with dominant narratives. Women's "first-hand knowledge" offers arguably "the sharpest perspective" on oppression (Mertus and Goldberg 1994: 217), since being located on the margins of society provides unique opportunities to perceive and comprehend the world and the power dynamics within it (Zalewski 1993).[36] These insider perspectives are crucial to understanding family violence, as they provide knowledge that is otherwise inaccessible. One example of this relates to abuse and victims' experiences of harm. Contrary to the masculinised criminal justice model of harm, which privileges visible physical injury (see e.g. Smart 1989; Henderson 1991; Hunter 2006; Sifris 2014), family violence survivors consistently testify that invisible forms of abuse often cause the deepest and most lasting damage. For instance, relentless verbal, psychological and emotional assault often disempowers and degrades victims to the point of losing their sense of self, which impacts every aspect of their existence (e.g. Evans 2006; Stark 2007; Johnson 2008; Hattery and Smith 2012; Ramsay et al 2012; Guggisberg 2018; Sheehy 2018). Financial abuse

[36] Standpoint feminism is not the only tradition to value insider perspectives. Foucauldian research, for example, also values subjugated knowledges, which Foucault defines as those which have been disqualified as hierarchically inferior, naïve, subjective or unscientific (e.g. Foucault 1978; 1984; also see Rogers 2012). As with critical feminist analyses, Foucauldian analyses are concerned with illuminating elite groups' monopoly over knowledge production and how this power functions to reproduce subjugation.

is also invisible but is the most common root cause of decades of survivor poverty and chronic ill-health (e.g. Branigan 2004; 2007; Brush 2011; Cameron 2014; Kelly et al 2014; Harris 2015; WLSV 2018). This kind of knowledge about family violence can only be obtained through accessing the accounts of those with direct experience of the harm.

Integrating radical and standpoint feminist perspectives in my research, I seek to recognise the importance of both individual and collective experiences of oppression and violence. Graham and Schiele (2010) caution that postmodern narratives of intersectionality and multiple identities can suppress collective histories and experiences, which can in turn obscure group-based oppression. A radical perspective is therefore vital for keeping sight of the commonalities that unite unique individual experience. Situated knowledges are essential because they make visible and allow for the development of alternative understandings of reality, but we must also respond to group experiences of oppression in order to interrupt and challenge the reproduction of harm. I therefore nominate and practice an approach which values individual voices as well as group experience, seeking to challenge patriarchal knowledge and oppression by emphasising the need for structural, not just personal or interpersonal change.

Another feminist feature of my work is to acknowledge and embrace the embeddedness of self in research. Unlike traditional academic and notably positivist approaches, feminist researchers reject the pretence of objectivity and detachment and instead recognise the inevitability and value in being subjectively involved in one's work. Contrary to the notion that being a member of an oppressed group is "proof of subjective involvement and thus of disqualification from research competence", Stanley and Wise (1993: 169) emphasise the value of this positioning. For me as a family violence researcher, subjective positioning relates to both my identity as a woman and additionally as a victim-survivor. For approximately ten years, I lived with an abusive man who utilised the complete toolkit of coercion and violence in order to maintain control over me and my daughter. I also faced the full range of institutional barriers in my attempts to seek protection, justice and remedy. Now, roughly twelve years on, my daughter and I continue to experience the debilitating permanent effects of victimisation and, like so many perpetrators, he continues to reap the benefits of impunity and pervasive institutional tolerance of his abuse. In line with Kelly (1988), who asserts the importance of intellectual and political honesty about one's positioning, I hope this disclosure highlights the commonality of women's experiences of violence and supports the aim of bringing collective insider perspectives to the forefront of research and theory-building (also Stanley and Wise 2000).

A further way in which my work is distinctly feminist is that it acknowledges and values the place of emotion in research. In proposing a theory and practice of humanistic social science, Behar (1996: 177) discusses the profound value in being emotionally connected to, and even "heart-broken" by one's work (also see Rager 2005). Behar also advocates writing in a manner that embraces the affective dimensions of research, with the aim of cultivating greater understanding and empathy for the people about whom we write. For this reason, I have been cautious about artificially sanitising the inherently disturbing content of this thesis. As noted in Chapter One, a particularly problematic aspect of family violence discourse is its tendency to obscure uncomfortable realities with vague and euphemistic language. In Chapter Four, I analyse euphemisms used by criminal justice actors to describe family violence, which have the effect of normalising and ultimately decriminalising the harm. In academia generally, it is common to omit, soften, or neutralise extreme and distressing information in order to avoid sceptical critique, yet this can produce inauthentic and inaccurate accounts (Gutowski and Goodman 2019). Intent on resisting these harmful tendencies, my writing is at times more descriptive and emotive than is common in academia, and I deliberately retain the original and sometimes graphic language used by survivors to testify to their experience. I believe that this is a small but symbolically-significant way of acknowledging the heart-breaking human suffering caused by family violence and by state institutions' harmful responses, and of representing these issues authentically.

Another distinguishing feminist aim of my work is to generate theory out of practice and women's lived experience (see e.g. Firestone 1971; Kelly 1988; Reinharz 1992; Mertus and Goldberg 1994; Christian 1996; Stanley and Wise 1993; 2000). One way that this can be achieved is through adopting what Posner (2009: 14) terms a "pracademic" or "boundary spanning" approach. This involves blending practitioner and academic knowledges in a manner that values and integrates both, and which can facilitate research that is theoretically rigorous and practically relevant (Owens 2016). Including grey literature[37] in my study is also a deliberate political choice aimed at challenging the way that academic knowledge tends to be privileged over that of practitioners with direct frontline experience. As Coy (in Smith 2013: n.p.) argues, it is particularly problematic in relation to violence against women that data is

[37] Grey literature usually refers to that produced outside of formal academic publishing channels. Typically, it includes official and unofficial reports from non-government organisations, industry practitioners and advocacy groups, and consultancy-based evaluations.

considered "participant observation" when produced by an academic, but "anecdotal" when it comes from a women's services provider. Like Coy and other feminist researchers (e.g. Alcalde 2010; Howe 2014), I seek to challenge this hierarchy of perspectives by using different forms of data in a manner that values all and helps to bridge gaps between activist practice, academic research, and experiential knowledge. This also reinforces Stanley and Wise's (1993: 89) assertion that "experience, theory and practice should exist in a mutual and immediate relationship with each other".

Another feminist imperative which I practice is the importance of linking theory with action, thereby producing work that is not only interpretive but also transformative (see e.g. Firestone 1971; Kelly 1988; Reinharz 1992; Mertus and Goldberg 1994; Christian 1996). Stanley and Wise (2000: 265) argue that, insofar as something foundational about feminist scholarship exists, it is a "belief that something is wrong and that it can and should be changed". In accordance with Ahmed et al's (2000: 1) similar conception of feminist praxis "as a politics seeking radical redress", I have endeavoured to produce research that challenges and promotes genuine shifts in the way family violence is understood and addressed. The motivation to produce research with practical utility also has an ethical dimension. Shaw (2008) refers to this as research utilisation ethics, or the need to consider the consequences and potential application of research products. Towards this aim, I have produced findings with the potential for application and impact beyond academia. Since radical aims rarely lead to radical emancipation, I also accept the need to engage in "practical politics that both makes small improvements and [also] works toward more thoroughgoing change" (Barnett and Sikkink 2008: 76). Buoyed by Messner and Sabo's (1990: 5) call for specific activism to "serve as the basis for more fundamental, radical transformation", this thesis – and notably Chapter Eight – simultaneously considers modest and radical ideas for addressing family violence that could both complement and challenge existing approaches.

Ethical matters

This project involved significant ethical considerations, given the traumatic and sensitive nature of its central subject matter. In light of my own and my daughter's experiences of family violence, being mindful about self-care and the well-being of those closest to me was important. Rager (2005) and Eriksen (2017) caution against neglecting one's psychological

and emotional well-being when researching issues of a traumatic nature, as it can jeopardise immediate and long-term health and also the viability and completion of research. Vicarious trauma, also known as secondary or insidious trauma, is associated with engaging with explicit accounts of harrowing experience and can cause adverse psychological effects of varying degrees and duration, with researchers with trauma histories being particularly susceptible (Lerias and Byrne 2003). I was therefore particularly mindful and disciplined about managing my material and sustaining my psychological health throughout this process. I made efforts to limit the negative impact of material by creating physical and temporal boundaries around it, rationing the most emotionally draining tasks and distributing them throughout my work schedule, and engaging in regular debriefs with empathic colleagues who also work on distressing topics.

My study did not involve primary research with survivors of family violence, which was both a practical and ethical decision. It is widely documented that re-telling personal stories of victimisation has the potential to retraumatise survivors (see Reinharz 1992; Chatzifotiou 2000; also Henry 2011; 2013)[38] as well as vicariously impact the researcher (Lerias and Byrne 2003; Rager 2005; Eriksen 2017). It was also unnecessary to gather new primary data in order to fulfil my research aims. There is a significant body of quality academic and practitioner material from diverse contexts which offers quantitative and qualitative data on family violence and how it is dealt with by state institutions. Much of this material extensively utilises the valuable insider accounts which were critical to my feminist research, and relays victim-survivors' experiences of both family violence itself and the state institutions that respond to it. I therefore considered it unnecessary and unethical to collect further primary data which was not essential to my central tasks, and chose to stick with unobtrusive methods which did not require human participation (see Sarantakos 1998; Lee 2000).

Feminist ethical concerns also influenced the manner in which I approached my conceptual and theoretical work. I was conscious of avoiding the hierarchical categorisation of harms by type, site, or apparent impact. This is because ranking harms in these ways is ethically

[38] Burgess-Proctor (2015) offers an alternative perspective, arguing that the universal labelling of family violence survivors as 'high-risk' research participants has unnecessarily deprived many of the potentially valuable opportunity to discuss their stories with an experienced researcher and to have them formally acknowledged and documented. Burgess-Proctor reflects on her extensive experience conducting in-depth interviews with such survivors, discussing her ethical practices and noting the immense benefit that many participants expressed gaining from these interactions.

problematic (see Henry 2011). Particularly with violence against women, as noted in Chapter Two, a number of erroneous dichotomies have tended to illuminate certain harms in certain contexts while rendering others obscure and under-recognised. One influential narrative depicts war-time and public sphere violence as exceptionally grave and fundamentally different from women's experiences in so-called peacetime and private contexts. Yet, extensive research has demonstrated the significant continuities between violence in war zones, city streets in peacetime, schools, universities, workplaces, and of course the home (e.g. MacKinnon 1994; Copelon 1994; 1995a; 1995b; Kelly 1988; 2000; Mrsevic 2000; MacKenzie 2010; Heineman 2011; Enloe 2012). Since these harms are inextricably linked and mutually-reinforcing, women's victimisation is often better represented as a continuum of violence (e.g. Kelly 1988; 2010; Copelon 2000; Moser 2001).[39] The pervasive and inter-connected nature of the locations and ways in which women are victimised makes it impossible and unethical to judge where, how, what is, or what is experienced as, most or least harmful. This underscores the importance of depicting harms in a manner that does not reify certain harms whilst subjugating others.

These ethical concerns also informed my choice to map the state's role in family violence in a non-hierarchical manner. In the conceptual work of Chapter Seven, where I develop a feminist model of family violence as state crime, I do not categorise the types of family violence state crime by their proximity to the state, nor by attempting to rank active or passive, direct or indirect state involvement. This is because all these endeavours inevitably involve attempts to measure and judge the state's level of complicity, which again implies that harms, or culpability for them, can be classified and placed on a hierarchy. Rather, the model emphasises the mutually-supportive structures of state involvement in family violence, and the inter-connected nature of these different forms of complicity in the harm. Similarly, in Chapter Eight, my proposed toolkit for family violence redress and prevention consists of complementary and inter-connected approaches which, although necessarily administered in a certain order in some cases, are not ranked by significance or imperative. In both Chapters Seven and Eight, my proposals for conceptualising and addressing family violence as state crime emphasise the structural and historical threads through all forms of state involvement in family violence, and

[39] Generations of data gathered by feminist researchers reveals the pervasive nature of violation and violence that girls and women endure in their everyday lives. Ranging from childhood sexual abuse, to street harassment, confrontation with obscene phone calls and degrading visual imagery, surveillance, stalking, verbal and physical assault, and intimate partner violence, these harms are described by Radford and Stanko (1996: 67) as the "permanent backdrop" for women's existence and relationships.

highlight how these various forms of state complicity are inter-related and mutually-reinforcing.

A transdisciplinary approach

Like much other feminist research, my work is transdisciplinary in the sense that it works across fields and disciplines towards the aim of addressing a particular problem in an innovative and integrated way. Since it was the observance of discipline-based orthodoxy which had produced the siloed academic frameworks I sought to challenge, I needed an alternative approach which would facilitate new insights. As feminist academics and activists have long recognised, addressing complex problems often demands a creativity and innovation rarely utilised in academia (Reinharz 1992; Zarkov et al 2011). If family violence can be described as a "wicked problem" (Rittel and Webber 1973: 155, 160) or even a "super wicked problem" (Lazarus 2009: 1153), it means that it is a multi-faceted issue which is rooted in other intractable social problems, and thus may resist resolution through conventional modes of inquiry and action (also Brown et al 2010; McCall and Burge 2016). Approaching issues of this complexity requires imagination and innovation and a willingness to push conventional boundaries. I therefore determined to adopt an "open transdisciplinary" approach (see Brown et al 2010: 4) to studying family violence which would integrate more than just different academic disciplines, but draw on all validated knowledges and methods of inquiry.

Transdisciplinarity has been described as "the science and art of discovering bridges between different areas of knowledge and being" (Nicolescu 1987 in Klein 2004: 516). Because it draws on personal and local as well as specialised knowledge, transdisciplinarity can be understood as a hybrid challenge to knowledge fragmentation and siloing (Lawrence 2010). The mode of "imaginative transdisciplinary inquiry" (Brown et al 2010: 6) I adopted reflects Mills' "sociological imagination" (1970: 233), where the investigator experiments with combining ideas in unusual ways, aiming to move beyond the orthodoxies and limitations of thought siloes. Barton et al's (2007: 2) similar "criminological imagination" also advocates breaking free of old constraints and looking at one's object of study with fresh eyes. Carlen (2017: 18) suggests that "imaginative criminology" creates new knowledge from a *bricolage* of concepts that, together, offer "new possibilities for thinking the presently unthinkable and … speaking the presently unspeakable" (also see Rogers 2012). Parisi's (2012) speculative method, which

"demands of thought to become felt … imagination to supersede observation, object to affect method, method to become transformative of the object" (241), also aligns with both imaginative inquiry and the valuing of intuition and emotion in feminist research. Accordingly, the flexible and creative approach I have pursued has allowed me to to identify diverse material which all contributes to advancing thinking on the subject, and to analyse and conceptualise family violence in innovative ways.

My central aim through adopting an imaginative transdisciplinary feminist criminological approach was to generate innovative and productive ways of understanding and approaching family violence and the role of the state. Methodologically, this meant that although my three research questions were designed to be addressed systematically and sequentially, I also had to be open to the inevitable intersection and overlap of tasks. Creative, dynamic, and transdisciplinary research rarely involves a neat, linear sequence of steps because analysis and theoretical development can prompt further data collection and revision of ideas (Mellor 2001; Ling and Bouma 2004; Walliman 2006). The further I progressed with my research, the more I experienced the challenging reality that transdisciplinary research is messy and non-linear: it demands extended, repeated, and evolving processes of data collection, analysis, and conceptual and theoretical development (Lawrence 2010). In the interests of clarity and simplicity, however, I will now explain these methodological processes in as straightforward and linear a manner as possible, whilst also acknowledging that the reality was somewhat more convoluted and complex.

Site, context and data

The first research question required me to identify and select specific sites through which I could explore state complicity in family violence. To inform this task, I consulted interdisciplinary state crime scholarship on the subject of where and how state crime operates. Much of the state crime and transitional justice literature identifies institutions as key sites through which state crimes are perpetrated (e.g. Boraine 2000; Christie 2000; Kauzlarich et al 2003; Green and Ward 2004; Stanley 2005; 2014; Rothe and Mullins 2006; Kolin 2008; Balint 2012; 2014; Jones 2013). These can be state or non-state institutions, as both have demonstrable connections to the state. In fact Balint (2012: 37) suggests that institutional policy, culture, and practice, even when not operating in accordance with specific state

directives, can be understood "as a parallel and hidden structure of the state". This informed my decision to identify and analyse state complicity in family violence through institutions. I engaged in some preliminary scoping (see e.g. Arksey and O'Malley 2005; Abbott et al 2018), exploring literature and data on a range of state and non-state institutions which routinely deal with family violence in different contexts. Based on the quantity and quality of available data, I then reduced my focus to a small number of institutions, and to maximise their proximity to the state, further narrowed down to those which were direct parts of the state apparatus. My final selection was three state institutional sites: the criminal justice system, family law, and state-based social services.

In terms of geo-political context, I chose to strategically focus on certain locations. Turning to my preliminary literature and data on the three institutional sites, I first categorised this by jurisdictional context. I found that an abundance of quality data was from my local Victorian and wider Australian jurisdictions, and a moderate selection was from various international contexts. I decided that an Australian focus would be appropriate, given my personal and academic proximity and my understanding of local dynamics. I was determined to produce work with wider application, however, so after eliminating some contexts which were not comparable with Australia, due to significant historical, political and legal differences,[40] I arrived at a sample which also included New Zealand, Canada, the United States, England, Scotland, Wales – or more generally the United Kingdom – and mainland Europe. I deliberately chose liberal-democratic Western contexts because it was where state and institutional complicity in family violence might be most difficult to establish. These states and countries all have relatively low rates of family violence, according to large-scale comparative international studies (e.g. Garcia-Moreno et al 2006; 2015; Reed et al 2010; UNODC 2014). They have also all criminalised a broad spectrum of family violence harms (see e.g. Harne and Radford 2008; ALRC 2010; Lesses 2014; Hong 2018). Focusing on these contexts and the post-criminalisation temporal frame would present the greatest challenge for my research in identifying and demonstrating a spectrum of state complicity in family violence. If I could do so, however, it would suggest robust findings and point to their broader applicability to other contexts not explicitly studied in this project, thereby indicating the international relevance of my study.

[40] Some examples were Turkey, Peru, Vanuatu, and South Africa.

Following my preliminary scoping and having established some parameters for my investigation, I engaged in some thematic analysis of this preliminary data set. This included a cross-section of the types of academic and practitioner sources which were critical to my study: for instance, recent qualitative feminist criminological and sociological studies which centre survivor experience and document systematically-problematic institutional responses to family violence. Through this process, I identified notable continuities in themes, survivor experience, and strong evidence of state institutional complicity in family violence. This enabled me to generate a provisional thematic list and a codebook of complicity markers for my subsequent data collection and analysis (see Crabtree and Miller 1999; Fereday and Muir-Cochrane 2006). The codebook comprised a list of verbs which commonly signalled some form of institutional complicity in family violence. It included the verbs ignore, obscure, normalise, allow, excuse, authorise, facilitate, endorse, support, promote, participate in, exacerbate, and decriminalise. This codebook facilitated my substantive data collection as well as the development of the analytical frameworks which I detail shortly. It also supported my analysis of state institutions and family violence by functioning as short-hand for certain forms of complicity. It therefore acted as an efficient tool for identifying, organising, and thinking through data. In line with my open transdisciplinary approach, I was diligent about revising my thematic list and codebook throughout the research process to reflect new material, findings, and my own conceptual progress (see Mellor 2001; Fereday and Muir-Cochrane 2006).

Having engaged in some preliminary data analysis and having developed a thematic list and codebook, I then proceeded to gather the substantive set of data which would enable me to thoroughly explore state complicity in family violence. This was firstly based on the site and context parameters I had established. The sites were three state institutions: the criminal justice system, family law, and social services; the contexts were Australian and comparable Western liberal-democratic jurisdictions. My strategy for gathering further data was also purposeful and theoretical, since it was guided by the ontological, epistemological, theoretical, and ethical principles underpinning my study (see Crabtree and Miller 1999; Fereday and Muir-Cochrane 2006). Theoretical sampling involves the deliberate selection of data that informs emerging theory, and is distinctive in that the researcher exercises power and choice over the selection of data, does this with definite intention, and in accordance with theoretical ideas (Coyne

1997).[41] Due to the complex and non-linear nature of transdisciplinary research which I mentioned earlier (Mellor 2001; Ling and Bouma 2004; Walliman 2006), the substantive data collection process was not simple or discreet, and it necessarily involved analysis whilst still engaging in collection. The following section outlines some of the materials and processes I utilised for investigating the three state institutions' complicity in family violence as I was simultaneously developing and revising the analytical frameworks which I will subsequently detail.

Institutional analysis materials and processes

To thoroughly investigate state institutional complicity in family violence, I gathered together a substantive set of diverse materials and engaged purposeful processes for analysing and reanalysing this data in order to demonstrate systematic state complicity in family violence across the spectrum of state criminality.

In order to analyse the criminal justice system's complicity in family violence, I first looked for the origins of family violence through the policy and ideology of state law. My initial task was engaging with early English common law texts, which have had a significant influence over the development of law in not only the United Kingdom but other contexts such as the United States and Australia. To supplement my own critique of these sources as indicative of law's complicity in family violence, I also engaged closely with radical feminist legal and political literature on the legal and institutional foundations of family violence from the early common law era up to the 2000s. These secondary sources comprehensively analyse the harmful historical and contemporary impacts of state law around marriage and the family, and identify the key role they play in producing and reproducing family violence.

To examine contemporary law in relation to family violence, I chose to focus on intimate partner homicide and provocation law and its use in my local Victorian jurisdiction. My initial research into the relationship between criminal justice practice and family violence revealed provocation policy and ideology as a significant source of further harm. This prompted extensive research into this issue through accessing legislation, academic analyses and

[41] This approach shares some similarities with the grounded theory pioneered by Glaser (1978), in the sense that data collection and analysis is intertwined with the emergence and construction of theory. However, I do not subscribe to the very specific stipulations of this particular methodology.

empirical studies, case summaries, and judicial commentary. I also explored the influence of provocation law and ideology in comparable contexts including Canada and the United States. Due to the rise of abortion criminalisation across the United States, a further focus was the recent Alabama legislation, the *Human Life Protection Act 2019* (State of Alabama 2019), which criminalises abortion without exception for pregnancies caused by sexual family violence. This contemporary example provided a further window into the state's exacerbation of and participation in family violence harms. When the Alabama legislation was passed, I engaged in thorough primary analysis of the Act and media material surrounding it. I also investigated the principles of *Roe v Wade* (1973 in Beery 2019), the case which originally established women's abortion rights in the United States Supreme Court. This is relevant because many commentators believe that the current abortion criminalisation movement is aimed at ultimately challenging this case. I also researched human rights law principles that relate to women's health and reproduction through primary and secondary sources. These included the United Nations' Universal Declaration of Human Rights (1948), United Nations' Convention Against Torture (1984), and Sifris' (2014) recent comprehensive book on women's reproductive rights and international law.

To investigate the complicity of police in family violence, I commenced with a survey of critical criminological studies of law enforcement and family violence from Australia from the early 1990s up to the present. This enabled me to explore continuities and shifts in family violence law enforcement since the harm was comprehensively criminalised. This review enabled me to identify common issues around family violence police practice, and to then expand my scope to other comparable international contexts, to establish whether these issues were indicative of wider patterns. This initial research led me to focus my investigation on the recurring issues of sexist discrimination by police, and primary aggressor misidentification as two key examples of police complicity in family violence. I consulted the relevant policy framework through which these issues should be addressed in my local context, the Victoria Police Code of Practice (2014), and then sourced critical practitioner and academic studies which centered the voices of family violence victim-survivors, enabling me to further explore these recurrent problems through insider experiences. These sources included reports from human rights organisations and community law centres, in particular the Equal Opportunity and Human Rights Commission and Women's Legal Service Victoria.

During my earlier engagement with transnational and international human rights law, I had encountered a significant United States case involving systematic police negligence. Further examination of this case through the Inter-American Court of Human Rights' judgement (*Lenahan (Gonzales) v. United States* IACHR 2011) provided a broader understanding of the problem of negligent police practice around family violence protective order enforcement and its relationship to human rights principles. This coincided with the summary hearing of a landmark Victorian case, *Smith [pseudonym] v Victoria* 2018 (in VSC 2019), in which the state is being sued over police negligence. I examined the Supreme Court's summary of its decision to dismiss the state's application to have the case struck out, and located further online information through the plaintiff's legal team and media reports. As an example of systematic and actionable law enforcement failures, this case illustrates police complicity in family violence. Given the difficulty in locating comprehensive academic and practitioner sources on police discursive practice, I examined cultural studies materials on language and discourse. It was through reading a compilation of studies on gender-based violence and discourse that I located the invaluable source on Swiss police reports that facilitated my engagement with these written texts. This provided a key means of examining the role of ideology through discourse in relation to police complicity in family violence.

To analyse the complicity of criminal courts in family violence, I began with a broad review of local and international criminological research into how courts deal with family violence, and explored cross-contextual patterns in discourse and decision-making. Some of this material related to, and to some extent, overlapped with, the earlier research I had done into provocation legislation. I located a number of studies containing judicial commentary of cases involving provocation ideology, which provided a clear picture of the prevalence of victim-blaming in contemporary court practice. During this process, my research gained significant direction and substantive data from a particular local source, McKenzie et al's (2016) report on the adjudication of intimate partner homicide. My attendance at the forum at which this report was released enabled me to hear directly from key researchers working in this area and better understand this issue. The report, a large pracademic document, contains extensive primary case study data and analysis of Victorian intimate partner homicide cases, and provided rich material for my analysis and identification of courts' discursive complicity in family violence. My identification of key themes in this report also enabled me to expand my focus and investigate specific patterns and findings in other contexts, notably Canada.

My research into family law and its complicity in family violence commenced by identifying all sections within Australian federal family law which were pertinent to family violence. This was the *Family Law Act 1975* and its many amendments, with the most relevant being the *Family Law (Shared Parental Responsibility) Amendments 2006* and the *Family Violence Amendments 2012* (see Commonwealth of Australia 2015). I then engaged in close primary discursive analysis of this material, noting the language used to discuss important phenomena such as intimate partner violence, child abuse, risk, danger, rights, roles, needs, and parental contact. After identifying my own themes of concern, I then engaged with critical legal academic studies of family law and the family court in order to establish whether these concerns were reflected in other contributions and also in wider contexts. At the time of that research in 2015, the Australian Institute of Family Studies had just published a significant body of raw data and analysis from a large-scale study into contemporary practice and outcomes in family law which were emerging as a result of the 2012 amendments (De Maio et al 2013; Kaspiew et al 2015a; 2015b; 2015c; 2015d). Using these sources as key primary and secondary materials, I engaged in both my own re-analysis of their primary data, as well as drawing extensively on their findings and conclusions.

Returning to my work in late 2017 after extended leave necessitated an update to my research on family law and the family court. During this interim period, I had gained heightened awareness of the prevalence of paternal child sex abuse and the implication of custody and contact arrangements in this problem, and was motivated to ensure that my analysis reflected this issue. I decided to go directly to family court data and select and engage in my own mini case study research. After an arduous process which involved identifying appropriate primary legal material, gaining access, and reading a considerable volume of data, I narrowed down to a few cases from the Family Court of Australia which adjudicated child custody and involved allegations of parental abuse. After engaging in a thematic analysis of case materials, I selected the Reasons for Judgement in *Tyler v Sullivan* (FCA 2014) for close analysis since it exemplified themes common to other cases. Through detailed primary discursive and content analysis of this document, I identified extensive evidence of pervasive sexist discourse, ideological support for men, dismissal of allegations against men, and the silencing and oppression of women. The startling alignment of themes in my analysis and colleague Conte's (2018) case research also confirmed the wider currency of the problems I had identified. This prompted my extensive engagement with recent qualitative studies which centre family violence victim-survivors' experiences with family law, and provided vital material for

illuminating the system's facilitation of child abuse in a number of different contexts including the United Kingdom and the United States.

My research on state-based social services and their complicity in family violence began by accessing critical academic and practitioner studies which explore clients' experiences with social services in my local Victorian and wider Australian context. This relatively small academic field works primarily out of politics, policy, and sociology, and often engages in qualitative research with the vulnerable citizens who constitute the majority of social services' clientele. The primary data in these studies provided valuable insight into both broad issues faced by vulnerable citizens who interact with state agencies, as well as specific challenges faced by family violence victim-survivors in their dealings with the system. To supplement this material with my own primary data, I reviewed the Department of Human Services' web-based information for clients, and then engaged more closely with the Department's Family and Domestic Violence Strategy 2016-19 (DHS 2016), a Federal Government publication.

My study's interest in ideology through discourse led me to the particular contributions of some interdisciplinary local feminist scholars who traverse the sociology, family law, and social work fields in order to produce studies that examine the concrete outcomes and everyday impact of specific law and policy around parenting arrangements and child support. The academic study of child support in Australia is an extremely small, marginal, and niche field, with two key authors, Kay Cook and Kristin Natalier, being involved in most studies and publications in this area. My attendance at the Royal Melbourne Institute of Technology's Centre for Applied Social Research Symposium in 2015 enabled me to meet these and other scholars in this interdisciplinary community and led me to some extremely useful academic and grey publications. Since they centre single mother and family violence survivor experiences with the system, these publications provided important data for my analysis of state-based social services' complicity in family violence, and facilitated my aim of bringing insider insights to the forefront of theory-building.

Post-separation economic abuse emerged as a key theme in this research. Two of the notable practitioner studies that heavily influenced my work were Branigan's (2004) report on financial abuse, for the Coburg-Brunswick Community Legal and Financial Counselling Centre, and Cameron's (2014) publication for the Women's Information and Referral Exchange, also on economic abuse. These and other emerging publications in the field reflect the increased

recognition of economic abuse as a key vehicle for post-separation family violence, and through centering survivor experiences, reveal the co-optation of state systems in this harm. Exploring these issues and themes through similar qualitative survivor-based practitioner publications and findings outside of the Australian context demonstrated consistent patterns in the perpetration of post-separation control and abuse elsewhere. Studies from the United Kingdom in particular show consistency in terms of state institutions' approval of and participation in these harms.

These were some of the materials and processes I engaged with in order to analyse the complicity of my three chosen state institutions in family violence. To facilitate more thorough critical analysis of this diverse data, I developed the following substantive analytical frameworks. These assisted me to more thoroughly engage with, process, and analyse my data, before bringing it all together in a process of qualitative meta-analysis (see Schreiber et al 1997; Cook 2012).

Analytical framework

To comprehensively critically analyse the data on the three state institutions and their complicity in family violence, I needed a clear political and theoretical framework and some conceptual and analytical tools. Towards this aim, I again worked with the crimes against humanity framework and the interdisciplinary legal scholarship I introduced in Chapter One, and also developed a Marxist Feminist Foucauldian state crime frame which could further inform my analysis.

The crimes against humanity framework is useful for unpacking what can constitute state complicity in a harm. Given that the distinguishing feature of crimes against humanity is their association with "a state or organisational policy" (ICC 2011: Elements Article 7.3), I deemed it a valid conceptual starting point for an analytical framework. Dissecting and developing the concept of state policy would then provide tools for identifying, analysing, and mapping state complicity in family violence across the spectrum of criminality, thus enabling me to address research question one. Towards this aim, I surveyed diverse material on crimes against humanity to determine what is understood to distinguish this state policy element. This material included the Rome Statute (ICC 1998; 2011), case law from *ad hoc* criminal tribunals (ICTR 1998; ICTY 2001), and interdisciplinary legal literature (e.g. Robertson 2002; May 2005;

Schabas 2007; 2008; Bassiouni 2011; Geras 2011; Balint 2012; Vernon 2002; 2013). I identified that the notion of a harm being associated with state policy could refer to diverse forms of state connection and involvement. Aiming for an analytical framework which was both comprehensive and specific, I first selected the broad term 'state complicity' to represent this range of state action and inaction. This was consistent with a broad spectrum of state crime scholars' definitions of state criminality (e.g. Barak 1991; 1994; 2008; Balint 2012; 2014; 2019; Green and Ward 2000; 2004; Ward and Green 2016), and also reflected the complicity codebook I had sketched out during my preliminary data analysis.

I then worked to operationalise the notion of state policy as indicative of state complicity in a harm. Again informed by the material above, I determined that policy could refer to written documents of statutory, common, or customary law, as well as policies governing the rules, principles, and operation of state institutions. It could also refer to unwritten but widely-accepted norms and precedents concerning the interpretation of formal policy and the daily functioning of institutions. Notably, policy could relate to omissions as well as commissions, since, under crimes against humanity law, "the failure to prevent qualif[ies] as policy" (Copelon 2000: 228). For my analysis of state institutions and the way they regard and respond to family violence, relevant policy included legislation, police codes of conduct, and both written and unwritten rules concerning the implementation of relevant government social services. It also concerned silences, exclusions, abrogations and failures in family violence policy.

I also discerned from the material that state policy was understood to encompass more diverse and diffuse forms of state connection to a harm. As an addendum to policy, I determined that practice and ideology adequately encompassed the wider spectrum of vehicles through which state complicity could operate. Since I was examining state institutions, I concluded that the identifiable presence of institutional policy, practice, or ideology which contributed to the perpetration or perpetuation of family violence – and exponentially so when these operated in concert – would clearly point to state complicity in the harm. To identify complicit state practice, I would look to the everyday functioning of the institutions in relation to family violence, including how written and unwritten policy is interpreted, applied, enforced or not enforced. This pointed towards data on, for example, police arrest rates, intervention order enforcement, judicial commentary and court case outcomes. In order for the complex notion of ideology to be a useable analytical tool however, further development within a specific

theoretical framework was required. What was most appropriate for my purposes was a hybrid Marxist Feminist Foucauldian framework, with patriarchal power, oppression and discourse as central themes, as I shall now explain.

Marxist Feminist Foucauldian framework

An understanding of ideology informed by the Western Marxist tradition focuses on how states reproduce oppressive power relations. It aligns with state crime authors' Kauzlarich et al's (2003) suggestion that ideology can be understood as a tool of elites, which reflects the interests of dominant power groups. Within the Marxist tradition, ideology is understood to consist of ideas that function to legitimate hegemonic power (see e.g. Eagleton 1991). Ideology can be analysed in terms of its cognitive and pejorative functions (see Haslanger 2017). Cognitively, ideology consists of implicit beliefs, judgements and specific patterns of reasoning which are treated as inherently valid and self-evident. Pejoratively, ideology is a tool for the distortion of reality and the reproduction of injustice.[42] Through a Marxist lens, ideology can therefore be defined as "a set of misleading beliefs and implicit attitudes … whose wide currency serves a hegemonic social function": to perpetuate oppression (Shelby 2014: 66). Since oppression is institutionalised through systems and agencies and embedded in cultural ideology, it can manifest as taken-for-granted values and assumptions and dominant ways of thinking, seeing and behaving (Patrick et al 2008). Because the oppression of certain groups is so normalised, it is the obligation of critical researchers to uncover, illuminate and interrogate it.

Adding a feminist lens to this Marxist framework draws attention to sex-based oppression and how patriarchal state ideology subjugates women and contributes to family violence. Adopting a feminist cognitive and pejorative approach to analysing state institutions and ideology directed me to two key aims. First, to uncover the ideas, assumptions and judgements about men, women and family violence which masquerade as natural and normal, truth and fact (Millett 1969; MacKinnon 1982; 1989; also Haslanger 2017). Second, to illuminate how these ideologies reproduce sexual inequality and family violence. In the feminist tradition of valuing

[42] Notwithstanding traditional Marxism's limited contemporary relevance, Shelby (2014: 72) argues that it continues to provide "helpful intellectual tools" for critiquing power and oppression, including that exercised by states. In fact Shelby suggests that the profound influence of Marxism over modern mainstream social sciences can be identified in contemporary terminology such as 'narrative', 'discourse', 'frame' and 'social meaning', which typically reflect a Marxian concept of ideology.

and utilising insider perspectives (see e.g. Hartsock 1983; Zalewski 1993; Mertus and Goldberg 1994; Stanley and Wise 2000; Kelly 2010), I was particularly interested in using qualitative data based on victim-survivors' experiences to explore the relationship between ideology and family violence. Survivors' first-hand knowledge of how state agencies deal with family violence was invaluable, and their detailed accounts of interactions with the state and its officials offered vital insight into the daily functioning of powerful ideologies relating to women and family violence.

Augmenting this Marxist Feminist framework with a Foucauldian lens draws attention to how ideology functions through discourse to oppress women and reproduce family violence. Foucault (e.g. 1973; 1978; 1984) was particularly concerned with identifying and illuminating power and knowledge hierarchies and how they function through discourse. Discourse is understood to encompass written and spoken language, symbols, and verbal patterns, all of which articulate the world and its subjects (also Thompson 2001; Graham and Schiele 2010; Rogers 2012; Browne et al 2018; Kent 2018). Discourses are understood as generative, since they do not merely reflect reality but "systematically form the objects of which they speak" (Foucault 1973: 49). Discourse accordingly enables certain possibilities for thought and action while denying others. A key Foucauldian contribution was to identify that it is only the discourses of elites and powerful interest groups which tend to be accepted as knowledge and truth; those of subjugated groups are generally relegated or disqualified as inferior, naïve, subjective, irrational, or unscientific. A Marxist Feminist Foucauldian critique of state institutional ideology and family violence therefore seeks to illuminate how elite power, truth and discourse frames family violence, disqualifies certain knowledges about the harm, and reproduces female oppression and family violence.

Through this Marxist Feminist Foucauldian framework, I was interested in how state institutions might oppress women and contribute to family violence through policy, practice, ideology, and discourse. I needed to be particularly attentive to the potentially misleading complexities in this area. For instance, policy can re-inscribe conservative ideologies through the use of superficially progressive contemporary discourse.[43] New language and new commitments can be merely rhetorical devices to give the impression of state attention and

[43] As Murray and Powell (2009) note, policy can of course also provide a blueprint for genuine progress by charting new ways of seeing and doing things.

transformed approaches to an issue, but can actually mask ongoing lack of action or genuine reform. This occurs when policy and rhetoric around the issue are smokescreens which distract from the ways in which they sustain repressive and unproductive arrangements. With this in mind, it was crucial to look beyond policy rhetoric to institutional practice in order to consider concrete policy outcomes and impacts. The insider perspectives of family violence survivors were particularly useful for this, as they could illuminate contemporary discursive practice which may contradict official policy reform and thereby reveal the endurance of tenacious oppressive ideology and practice. For example, a number of sociological researchers have identified the persistently dismissive, disenfranchising and sometimes degrading treatment of subjugated citizens – including single mother family violence survivors – by state officials which directly contradicts the principles and practices enshrined in agency policy (see e.g. Harris 2005; Murphy et al 2011; McArthur et al 2013; Cook and Natalier 2013; Cook et al 2015; Natalier 2017). Hearing the lived experience of those attempting to engage with state institutions exposes the endurance of patriarchal ideology through the practice of state institutions.

My Marxist Feminist Foucauldian framework also led me to consider how state institutions might be oppressing women and contributing to family violence at both the macro and micro levels. One way of obtaining a window into macro-level oppressive ideology through discursive practice was through the macro-discourses of law. These ideologies could be identified and analysed in criminal or civil cases involving family violence by accessing judicial commentary, for example, which would evidence the narration of family violence by state officials. To critically analyse judicial commentary, I remained alert and attentive to beliefs, assumptions, and attitudes which masqueraded as natural and normal but which were in fact part of the maintenance of unjust social structures and discriminatory arrangements (see Millett 1969; MacKinnon 1982; 1989; Patrick 2008; Shelby 2014; Haslanger 2017). Critically analysing these macro-legal discourses aimed at uncovering the implicit ideologies about men, women, and family violence that have broad sexually oppressive effects and which actively contribute to family violence.

A Marxist Feminist Foucauldian framework calls for a nuanced analysis which also considers discursive oppression at the micro level. “Oppression exists not just ‘out there’ in an abstract form but is made up of the multiple daily experiences of disadvantage that certain citizens face” (Graham and Schiele 2010: 235). This means that state policy and power – and indeed state

oppression and criminality – can play out in everyday interactions between state officials and citizens. This is also reflected in certain state crime authors' work which suggests looking to the micro-operation of governing bodies that make up the nation-state to gain insight into the operation of state crime (e.g. Rothe and Mullins 2006; also Kauzlarich et al 2003). Since state entities are composed of individuals who have been entrusted with everyday operations and the practical interpretation and implementation of policy, when acting in an official capacity, these people can be regarded as state agents. For my analysis, this meant that the daily conduct and discourse of state officials, often expressed through interaction with citizens, was a valuable avenue for identifying and analysing the minutiae of state crime in relation to family violence.

The discursive interface between state officials and family violence victim-survivors was therefore an informative focal point for identifying state complicity in sexual oppression and family violence harms. The 'speech acts' (Reyes 2011; also Constable 2014) of state officials – for example utterances, responses, decisions, and attitudes of institutional representatives when communicating with citizens – can directly reveal the ideologies that underpin policy, as well as evolving ideology expressed through everyday attitudes, opinions and decisions.[44] Through this discursive interface, state officials also express and reinforce power inequalities. For instance, through a degrading and disempowering interaction with a state official, a family violence victim may simultaneously experience psychological devaluation of their personhood, undermining of their citizenship, and ideological support for their interpersonal victimisation. As structural violence analyses have shown (e.g. Galtung 1969; Uvin 1998; Zizek 2008; Hirschfeld 2017), specific instances of micro-oppression also express and reinforce pervasive underlying social, political and economic inequalities which, in turn, directly contribute to individuals' vulnerability to interpersonal victimisation.

[44] The influence of state officials' discursive interactions cannot be overstated. In fact, Fehlberg et al (2015) have argued in the context of family law that the attitudes and opinions of system professionals have such a significant impact on the overall effectiveness and accessibility of the system that they may be more influential than legal and policy frameworks themselves. This highlights the power and productive capacity of discourse, and the importance of analysing informal as well as formal encounters with the state.

Upcycled appliqué

To address the second and third research questions – developing new concepts and theory for understanding family violence, and considering the implications of this for addressing the problem – I primarily used a transdisciplinary philosophy and method which I term upcycled appliqué. This descriptive and instructive analogy builds on the qualitative research tradition of *bricolage* (see e.g. Rogers 2012; Carlen 2017) but uses concepts and technical terminology from the field of textiles and sewing and applies these to concept and theory building.

The contemporary craft practice of upcycling involves the transformation of old, worn or outdated items through restoration, revamping or innovatively combining multiple pieces in order to produce new items with new value. Appliqué is an intricate sewing technique where multiple fabrics and textiles are layered, joined, decorated and embroidered to transform an old, tired or dull garment into something new and original. Traditionally, appliqué was used to repair clothing as it could effectively hide imperfections or wear, but has since transformed into its own art-form (Whittle 2016). Most simply, appliqué is a process of layering and fixing together fabrics of different textures, styles and sizes. Specific terminology for textile components include the base or underlay, which refer to the more sturdy underlying fabric which forms the foundation of the piece; with overlay describing the uppermost and sometimes transparent layer of fabric which contrasts with the one underneath and produces new effects (Contrado 2017).

Upcycling and appliqué terminology and concepts from the creative field usefully describe the theory-building work of this thesis, and help explain how I produced the second and third contributions. The first step involved with my upcycled appliqué process was to select appropriate material. Drawing on the craft analogy of selecting fabrics to combine in appliqué creations, the online journal *Seamwork* encourages creators to

> *choose elements that work well together. A contrasting overlay can transform the look of the print underneath in unexpected ways, muting certain colo[u]rs and brightening or deepening others. You may find your print looks nothing like you first imagined once you try it out* (Seamwork 2015: np).

In evaluating various theoretical material for its utility, I adopted a critical artist's eye, considering its strength, wear, focus, and design, noting some to be more sturdy or modern

than others. Some material evidently required additional layers or embellishment to add dimension, whilst some required updating in order to be contemporarily attractive or useful.

Keeping in mind my aim to identify state crime at new sites and in new ways in order to generate fresh possibilities for understanding and addressing family violence, I considered relevant theory on the state and family violence from the key fields I identified in Chapter Two. This theory was primarily from international law, state crime studies, and feminist law and politics. These fields all offered useful insights about either state crime or family violence which could contribute towards addressing my research aims, but they had long existed in parallel siloes. International criminal law and its interdisciplinary interpretation offered useful initial tools for establishing a harm as an international crime, and subsequently for conceptualising collective harms and those involving a state element. State crime theory offered the conceptual tools for a broader understanding of what constitutes state crime and how it is administered in complex and nuanced ways. Feminist theory provided the overarching lenses necessary for understanding sex, gender, violence, the family and the state in a manner that could transform this other theory and make it applicable to family violence. Observing how the complementary strengths of each of these field could each address the omissions of the other, I saw the potential for these to be blended to produce new insights.

My next task was to combine, layer, refurbish and extend the various layers of theory in order to generate new ways of thinking about the state and family violence. Treating theory as metaphorical layers of fabric, I combined it in strategic ways in order to overcome each element's limitations and omissions. I consistently worked in accordance with the underlying philosophy and aim of 'upcycled appliquéd theory' being to produce something that is richer than the sum of its parts. This is because the theory-creator seeks to capitalise on the value of existing ideas and enhance them through a process of value-adding. This can involve bringing in unusual and seemingly incongruous theoretical layers, and arranging them in a manner that revitalises and transforms them all. The result is the creation of a new and innovative product which can facilitate understanding and responding to the contemporary problem under investigation. Working in this manner and producing this type of theory aligns with Merry's (2006) call from the human rights field to create 'layered' conceptual frames which complement and enrich, rather than refute or undermine, prior frameworks. Combining and transforming theoretical material enabled me to generate new ways of identifying and understanding state crime with a feminist perspective.

I used a similar upcycled appliqué technique to address the third research question and generate new ideas for addressing family violence which emerged from conceptualising it as a state crime. Since family violence has not yet been considered a state crime, this involved bringing together existing theory and practice-based material for addressing other state crimes and then overlaying these with feminist theory in order to realise their potential utility for addressing gender-based harms like family violence. The primary layers I incorporated in this process were state crime theory, feminist family violence studies, and transitional justice perspectives. These layers were necessary because understanding family violence as a state crime indicates a fundamentally different way of approaching the problem from that which currently dominates theory, policy, and practice. Through bringing these ideas together, I hoped to generate a range of innovative and expanded ideas for addressing family violence which could complement and augment our current response repertoire.

Qualitative meta-analysis

The overarching methodological process utilised throughout my research and to address all three research questions can best be described as qualitative meta-analysis (see Schreiber et al 1997; Cook 2012). The key aim of this process is to select, collate, analyse, integrate, and transform specific materials into a final and more expansive conceptual product. Towards this aim, the researcher may utilise specific methods such as primary analysis, reanalysis of raw quantitative or qualitative data, secondary analysis of primary qualitative findings, theoretical reinterpretation of material, and the creation of new meta-concepts and meta-theories. The distinguishing feature of a qualitative meta-analytical process is that its purpose is integrating and reinterpreting various material in order to produce a single "explanatory interpretative end product" (Schreiber et al 1997: 312).

Throughout my research, I engaged all the above micro-methods towards the central aim of reconceptualising family violence as a state crime and considering the implications of this conceptual framework. For the first research question, this involved collecting and (re)analysing data on family violence and state institutions in such a way that demonstrated systematic state complicity in family violence across the spectrum of state criminality. For the second research question, this involved systematically selecting, combining and extending

existing theoretical material through the process of upcycled appliqué in order to develop a framework for theorising family violence as a state crime. Addressing the third research question also utilised upcycled appliqué, this time to develop a toolkit of strategies that could be used to respond to family violence in light of conceptualising it as a state crime.

Conclusion

This chapter has explained the ontology, epistemology and ethics underpinning this research, the research questions guiding my work, and detailed the methodological processes undertaken to address these tasks. I commenced by outlining the radical and standpoint feminist principles to which I subscribe. These include regarding a sexual hierarchy as the primary categorising structure of society, focusing on the family as a key site of women's oppression, privileging women's subjective positioning and insider accounts of harm, acknowledging and embracing the embeddedness of self and emotion in research, integrating both academic and practitioner knowledge, generating theory out of lived experience, minimising harm, and producing work with practical potential. I also explained the transdisciplinary features of my research.

I then detailed the methodological processes undertaken to address my research questions. These included methods for selecting contextual and institutional sites for analysis, and for the purposeful and theoretical selection of data which enabled me to investigate state institutional complicity in family violence. All of these processes were designed to be sufficiently flexible to sustain the necessarily repeated collection, analysis and reanalysis demanded by a creative transdisciplinary approach. I then developed my analytical framework for investigating state institutional complicity in family violence. This draws on concepts from international criminal law and develops the conceptual tools of policy, practice, and ideology through a Marxist Feminist Foucauldian lens, in order to facilitate critical engagement with data on state institutions' relationship to family violence. In the final section, I explained the specific transdisciplinary method I developed to facilitate the conceptual and theoretical work of this research: upcycled appliqué. This draws on terminology and concepts from the creative arts and crafts field in order to describe the philosophy and process that I undertook to generate new theory and practice for understanding and addressing family violence. I then explained the overarching qualitative meta-analytical approach which unified all my methodological processes.

This chapter concludes Part I of the thesis, in which I have established the research problem. Part II addresses the first research question by exploring the complicity of the three selected state institutions in family violence. The three chapters comprising Part II consider, in turn, the criminal justice system, family law and the family court, and the social service arm of the state. In each chapter, I use the analytical frameworks and tools developed in the present chapter to analyse how the institution regards and responds to family violence, its perpetrators, and victims. As these analyses show, each of these institutions is complicit in family violence across the spectrum of state criminality: ranging from passive bystander to active participant in the harm. The first state institution I now turn to examine is the criminal justice system.

4

The criminal justice system

Introduction

This chapter opens Part II and is the first of three chapters which each examine a particular state institution and its complicity in family violence. Here, I look at the criminal justice system. As explained in Chapter Three, my analysis across Part II deliberately focuses on Western liberal-democratic contexts, which in the present chapter include Australia, England, Wales, Canada, the United States and Switzerland. In these comparable jurisdictions, the criminal justice system is expected to protect citizens' safety, uphold human rights without discrimination, and to act decisively against all forms of violence. Yet, as I will show through an analysis of state law, the police, and courts, the criminal justice apparatus demonstrably fails to appropriately protect against, prevent, or punish family violence, and indeed actively contributes to its exacerbation and perpetuation.

As with all Part II's chapters, I use the lenses of policy, practice, and ideology to facilitate my investigation of institutional complicity in family violence. In this chapter, policy refers chiefly to state legislation, case law and precedent, but also to unwritten mores that guide the conduct and decision-making of criminal justice officials. This overlaps with practice, which refers to the daily functioning of law enforcement and adjudication, and the attitudes and actions of these state officials. In line with the critical framework for analysing ideology which I developed in Chapter Three, ideology refers to the underlying but taken-for-granted normative beliefs and assumptions that underpin the functioning of the criminal justice system. Analysing the enforcement and adjudication of policy in practice can help to uncover ideology and identify how it serves *status quo* power arrangements.

In the first section of the chapter, I look at the role of state law in family violence. I begin by considering how, through the institution of law, the state has created the structural, institutional and cultural foundations for family violence. I show that by establishing marriage, the family

and domestic ownership as lawful patriarchal institutions, the state institutionalised male control in the private sphere. By legally designating this sphere a zone of state non-intervention, this legitimised state inaction against men's family violence. I then identify the enduring impact of these foundations and how they persistently function to obscure, excuse, and reproduce family violence. Through looking at contemporary legislation around marital rape, intimate partner homicide, and provocation, I show how law, as authorised and administered by the state, continues to read and reconstruct both male and female behaviour in accordance with early sexist ideology. Drawing on this ideology then enables the state to not only passively stand by while men perpetrate family violence, but to actively obscure, normalise, tolerate, and effectively decriminalise this violence. I conclude this section by considering the case of contemporary abortion legislation in the United States and how it denies family violence victims' rights. By criminalising and stigmatising victims in some particularly violent ways, I show how law is positioned as an active participant in family violence harms.

The next section considers police policy and practice in relation to family violence. I first examine the historical and enduring reluctance of police to respond to family violence as a serious crime. Even decades after criminalisation, domestic harms continue to be treated inconsistently with comparable non-domestic offences. I also show how persistent and systematic sexism continues to underpin contemporary family violence law enforcement. This leads to inadequate protection of female victims and disproportionately harsh treatment of female offenders. In addition to the systematic failure of police to adequately follow procedure, codes of practice, and enforce family violence law, they further exacerbate many women's victimisation. I also identify the discursive participation of police in men's family violence. Through written reports of intimate partner homicide, police actively reconstruct family violence in a manner that systematically erases men's prior violence and minimises male culpability. I conclude this section by discussing a pending landmark case, *Smith [pseudonym] v Victoria* 2018 (in VSC 2019), where the state of Victoria, Australia, is being sued over police negligence and collusion with a male perpetrator. This case illustrates the intersection of systematic failures and active participation by police in family violence.

The final section of the chapter looks at criminal courts and the adjudication of family violence. Again centering intimate partner homicide, I identify how courts are involved in actively excusing and endorsing family violence and the ideologies that underpin it. Despite the official criminalisation of a broad spectrum of family violence harms, courts continue to systematically

ignore, dismiss, erase, and actively reconstruct men's violence in order to dismiss or minimise its. This, in turn, systematically mitigates male perpetrators' responsibility. I also identify the endurance of provocation ideology in contemporary court practice and judicial discourse. Through framing women as responsible for men's transgressions and blaming women for their own victimisation, this ideology functions as active and agentic justification of men's violence, even in cases of murder and (wo)manslaughter.

Throughout this chapter, I identify a spectrum of state institutional complicity in family violence which functions through the criminal justice system. This complicity ranges from systematic neglect and negligence, to active facilitation of and participation in family violence harms, and thus spans the spectrum of state criminality.

State law

The first way that state law is complicit in men's violence in the family is through creating the structural and institutional frameworks within which the harm occurs.[45] In common law systems, there are two broad sources of state law: statute and common law. These exist interdependently, having developed through an historically "integrated system" and a "symbiotic relationship" (Pomerenke 2017: 1). Across common law systems, the institutions of marriage and the family were historically established as part of the overarching patriarchal political structure. Based on the belief that men were spiritually, morally, and intellectually superior to women and children, early English common law nominated adult men as the owners and rulers of the family unit. They were assigned the responsibility for leading, guiding, instructing, and controlling their wife and children (Pateman 1988; Copelon 1994; Sullivan 1995; Stevens 1999; McQuigg 2011). In fact, men were directed not only to use instructive corporal punishment on their children, but also to physically discipline their wives to aid the maintenance of domestic order (Tifft 1993; Dobash and Dobash 1998; Hattery and Smith 2012).[46] By establishing these institutions as sites of patriarchal control, the state created the

[45] I specify 'state law' here to distinguish between this and more fluid notions of law. For example, socio-legal scholar Ehrlich (1913 in Banakar 2002: 34) suggests that "living law" encompasses "the law that dominates life itself, even though it has not been printed in legal propositions". He argues that living law is identifiable in how social life tends to be organised and informally regulated by social networks and groups, rather than officially written statutes or rules.

[46] This is reflected in the following distasteful Old English proverb:

A spaniel, a woman, a hickory tree,
The more ye beat them, the better they be.

foundations for family violence. In fact, through specifying what were perceived to be reasonable bounds of men's violence in the family (Dworkin 1981), state law explicitly endorsed the harm.

The state also contributed to men's violence in the family by denying women and children legal independence and designating them as male property. Historically, men's ownership of women was specified and officially documented in law (Cobbe 1878). Like other moveable property such as cattle or slaves, wives and children were considered part of a man's estate and were commodified in terms of their value to their patriarch (Dworkin 1981). Under early common law, a female's rights and interests were subsumed beneath the relevant male figure, depending on her age and circumstances. Initially, she was under the rule of her father or other male blood relative. Upon marriage, her interests were considered "merged" into her husband's (Peach 2000: 58), as Blackstone's (1765) commentary on English law confirms:

> *By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband* (1052).

This patriarchal framework perpetuated women's utter "dependence and dehumanisation as 'Other'" (Copelon 1995: 305) and rendered them merely items of property under their husband's control. Since a man could treat his property as he chose, this equated to an active endorsement of family violence. A man could legitimately order his wife to do anything he pleased, beat her, and imprison and recapture her if she attempted to leave (see Blackstone 1765; for critique see Mill 1869; Pateman 1988; Harne and Radford 2008; Lesses 2014). Without independent status or rights, women also had no moral or legal capacity to refuse sex from their husband. The concept of marital rape did not even exist, since a woman's identity was effectively dissolved within her husband's and her body was considered his property (Pateman 1988; Harne and Radford 2008; Lesses 2014).

Across common law contexts, states' recent reluctance to recognise and respond to men's violence within the family reflects this history. In most jurisdictions, family violence harms were only recently criminalised. Marital rape, for example, was protected by law in England and Wales until 1990 and 1991 (Lees 1996; Harne and Radford 2008). In the United States, the last state to lift the marital rape exemption was North Carolina, in 1993 (Hong 2018). Across

Australia, marital sexual violence was officially recognised by 1994 (ALRC 2010).[47] Even as legislative reform recognised various family violence as criminal, responses were constrained by the persistent notion that the private sphere should be free from state interference (Romany 1993; Copelon 1994; Mrsevic 2000; Merry 2006; Leatherman 2011). In practice, this meant that family violence generally continued with impunity. In the United States, Stevens (1999: 218-9) observed that, despite criminalisation, law not only continued to allow men to "get away with" criminal violence in the home, it "positively excused" the harm. The protracted history of resistance to criminalising family violence has also contributed to its perceived normality and legitimacy (Merry 2006). This is notable in relation to intimate partner sexual violence, where vestiges of the marital exemption endure in law. In Australia, for example, despite this harm's criminalisation by 1994 (ALRC 2010), it has continued to be widely permitted as a result of legislative technicalities that preclude prosecution (Lesses 2014).

The designation of women as male property and the denial of their legal autonomy also endures in law, functioning to excuse family violence. One example of proprietary law and legal ideology which persists in the present is through various iterations of the provocation defence. Cobbe's (1878) legal critique identifies the earliest documented form of provocation, which was a formal legal defence which justified a man's murder of his wife in 'attenuating circumstances'. The defence was based on male sovereignty and ownership and the associated belief that "any offence of the wife against her husband [constituted] … petty treason" (47). It established that a woman's contravention of her husband's wishes or interests provided a legitimate explanation for his use of extreme and even lethal violence against her. Of course, the defence was not available for women who killed their husbands in response to systematic victimisation. This effectively meant that women were "liable to capital punishment without judge or jury for transgressions which, in the case of a man, would never be punished at all" (47). Early provocation law therefore illustrates not only clear historical justification for male

[47] Lesses (2014) discusses the origins of the marital rape exemption, and in particular the question of whether it initially arose from a "fictional foundation" (830). This debate concerns whether a man's immunity from prosecution for raping his wife derived directly from English common law itself, from biblical assertions around marriage and the unity of husband and wife, from the influential early development of common law in the work of Blackstone (1765), from the historical development of the concept through adjudication and precedent, or from various combinations of these factors. In any case, whether originating in legislative fiction or otherwise, there is no question that the marital rape exemption "has been applied in certain contexts" across time (Lesses 2014: 822). I also suggest that it is immaterial which of the above factors were most crucial to the development of this legal principle, since they relate to patriarchal structures. The legal, religious, political and academic spheres all excluded women and were based on ideologies that privileged men and their interests.

violence, but also an early example of law's systematic discrimination against women.

Various modern forms of the provocation defence demonstrate the endurance of male proprietary ideology in law. Lees' (1992) analysis of British cases in the early 1990s shows the enduring use of provocation as a spousal murder defence. Despite the temporal context of increased codification and recognition of family violence crimes, Lees' study shows that the law continued to actively legitimate male lethal intimate partner violence. In cases where a female victim was alleged to have been unconventional, disrespectful, sexually unavailable, unfaithful, or had indicated her wish to end the marriage, murder was considered a legitimate response and the provocation defence was upheld. Notably, rulings tended to favour the man's defence even when there was no evidence for the woman's alleged behaviour. Although the provocation defence was in principle equally available to women charged with spousal murder, Lees found that, in practice, the law was applied with a gross double standard. In cases of comparable lethal violence, it was the perpetrator's sex which dictated the way in which their violence was treated in law. Outcomes show that it was considered reasonable for a man to kill his wife as a response to her alleged infidelity, yet inexcusable for a woman to kill an unfaithful – or even a dangerously violent – husband. Lees (1992: 275-6) concluded that men and women are subject to entirely different social expectations and legal standards and that "the law encourages male possessiveness even to the point of condoning murder".

These patterns are reinforced in more recent studies and other contexts. In Australia, Hunter's (2006) research shows that law's narratives of men's violence consistently excuse it by drawing on victim-blaming tropes. In contrast, women do not receive law's support and are disproportionately punished for using violence against men. Women who kill male partners after suffering years of abuse rarely succeed with provocation or similar defences (also Tyson 2011; 2013; Douglas 2012). McKenzie et al's (2016) review of recent cases of female-perpetrated intimate partner homicide in Victoria, Australia, also reflects these findings. This analysis shows that victimisation histories were not consistently recognised as relevant background to woman's lethal violence. In the American context, Peach (2000) also identifies law's disproportionate treatment of male and female family violence offenders. Even when a woman's violence against a male partner follows a protracted history of victimisation, she is still treated far more harshly by the law than a man who perpetrates a similar offence. Sheehy's (2018) analysis of a recent Canadian case – which I will detail shortly – also illustrates law's reluctance to recognise women's victimisation as a relevant and mitigating factor when

adjudicating their violence.

Although provocation law has evolved and in some contexts has been officially abolished, its ideology persists in contemporary law. In Victoria, Australia, the provocation defence itself was available until 2005, and subsequently defensive homicide continued to operate in a similar manner until 2014 (Naylor and Tyson 2017). These legal doctrines have continued to draw on the ideology of male proprietariness and are used in cases where the defence claims that the deceased spoke or acted in a provocative manner that precipitated the defendant's lethal violence. These doctrines have provided either a complete or partial defence to murder; therefore offering either complete exoneration for an offender or a reduction in their culpability (Freiberg et al 2015). The provocation defence, for example, could reduce the liability and penalty from murder to manslaughter in cases where the accused was judged to have killed after "losing control" as a result of an accepted category of provocation (Naylor and Tyson 2017: 73). Given that accepted categories of provocation reflect notions of male sexual ownership, they can be understood as enduring legislative expressions, and thus official endorsements, of male proprietariness. As Tyson's (2011) research shows, provocation could include a woman nagging, taunting, insulting, or goading her partner. It was considered particularly provocative if a woman flirted with another man, flaunted infidelity, or expressed a desire to leave the relationship. For any such behaviours, men could "rely on the defence of provocation with relative ease" (Tyson 2011: 208). In other words, these legal doctrines have readily framed women as responsible for their own victimisation and have thus excused or minimised men's violence. Despite their official abolition, these doctrines continue to influence the adjudication of lethal family violence (Hunter and Tyson 2016; Naylor and Tyson 2017), as I will further explore in the later section on courts.

Law's historical denial of women's autonomy and rights also endures in the present through the recriminalisation of abortion, with severe ramifications for family violence victims. In the United States, there is a current movement to systematically remove women's reproductive rights and ultimately challenge *Roe v Wade* (1973 in Beery 2019), the case which established a woman's right to liberty and privacy in relation to abortion. One particularly concerning example is Alabama's *Human Life Protection Act 2019* (State of Alabama 2019; also see Smith 2019). This Act bans abortion without exception for cases of rape, incest, or where the pregnant person is herself a young child. In fact, it relegates the rights of women and girls to life, health, and well-being below those of the unborn foetus. It does not even enable a pregnant woman to

obtain a safe and legal abortion when she testifies to "suffering from an emotional condition or a mental illness which will cause her to engage in conduct that intends to result in her death or the death of her unborn child" (State of Alabama 2019: 6-7). One of very few Senators to actively oppose the Act, Democrat Bobby Singleton, said that by passing this "horrible bill", the Senate had effectively "raped women" (Singleton in CNN Politics 2019: n.p.).[48]

This legislation has particularly grave implications for victims of sexual family violence. It has already been established in human rights law that

> *legally coercing a woman to carry an unwanted pregnancy to term is not only an abuse of her basic human rights but may also be extremely damaging from a mental health perspective … Restrictions on abortion may cause severe pain and suffering at both the physical and mental level* (Sifris 2014: 67-8).

The detrimental impacts of being forced to carry an unwanted pregnancy to term are severely exacerbated when the pregnancy is a result of family violence such as ex-partner rape or incest. By forcing women and girls to continue unwanted family-violence-related pregnancies and to endure childbirth, the law actively participates in extending and exacerbating these family violence harms. Further developing Sifris' (2014) arguments, I also suggest that preventing a pregnant victim of family violence to obtain a legal and safe abortion constitutes state torture because it imposes cruel, inhuman, and degrading punishment upon victims and thus violates the United Nations Convention Against Torture (UNGA 1984). By unnecessarily and deliberately extending the trauma of family violence well beyond the initial sexual violation, law actively participates in this violation. Further, since the legislation robs family violence victims of the capacity to deal with a particularly debilitating impact of sexual violation, it also represents law's active criminalisation of victims and its exacerbation of their suffering. This

[48] Additionally, this Act morally criminalises all citizens who have undergone, performed or facilitated abortions by likening abortions in the United States to genocidal atrocities in various historical and geographic contexts. As can be seen in the following excerpt from the Act, the direct implication is that abortions constitute a crime against humanity of greater scale and gravity than murders of the Holocaust and other abhorrent regimes:

> *It is estimated that 6,000,000 Jewish people were murdered in German concentration camps during World War II; 3,000,000 people were executed by Joseph Stalin's regime in Soviet gulags; 2,500,000 people were murdered during the Chinese 'Great Leap Forward' in 1958; 1,500,000 to 3,000,000 people were murdered by the Khmer Rouge in Cambodia during the 1970s; and approximately 1,000,000 people were murdered during the Rwandan genocide in 1994. All of these are widely acknowledged to have been crimes against humanity. By comparison, more than 50 million babies have been aborted in the United States since the Roe decision in 1973, more than three times the number who were killed in German death camps, Chinese purges, Stalin's gulags, Cambodian killing fields, and the Rwandan genocide combined* (State of Alabama 2019: 4-5).

law therefore not only directly denies victims' human rights; it also exemplifies contemporary active and agentic state participation in family violence harms.

Police and law enforcement

I now turn to consider the complicity of law enforcement in family violence. In comparable Western liberal-democratic contexts, prior to the widespread criminalisation of family violence in the early 1990s, the issue was generally regarded as a non-criminal, private and relatively insignificant matter. Accordingly, police recognition of and response to family violence was minimal (Kelly 1988; Caulfield and Wonder 1993; Tifft 1993; Harne and Radford 2008; Johnson 2008). Since then, there has been notable improvement, as official legal recognition of family violence filters down to law enforcement policy and practice. However, even post 2000, well after the criminalisation period and following significant reform to law and policing frameworks, police have continued to systematically neglect their responsibility to impartially enforce the law and adequately protect family violence victims. In the Australian context, the perceived sanctity of the private sphere endures, often accompanying police attitudes that violence in the home is a trivial interpersonal matter rather than a crime (Douglas and Godden 2002; Preston and Gyde 2005). In the United States, Johnson (2008: 75) notes that "we continue to encounter cases in which such violence is treated more as a minor personal problem than as the crime that it is". In Europe, Smeenk and Malsch (2005) cite multiple studies that document law enforcers' ongoing tendency to minimise family violence and offer unhelpful and inappropriate advice. Across diverse Western contexts, professional apathy is often caused by the enduring perception that family violence should be resolved privately and that it "does not constitute real police work" (Meyersfeld 2010: 214). This can be attributed to the enduring impact of law's construction of the public / private divide (Stevens 1999; Hildebrandt 2006; Leatherman 2011), which influences police perceptions of their role, and the priority afforded various offences based on the site of perpetration.

Poor police responses to family violence also contribute to criminal justice failures in this area. Research from Australia and the United States shows consistently inadequate and ill-informed police responses to family violence incidents (Preston and Gyde 2005; Stark 2007; Fehlberg and Behrens 2008; Guggisberg and Fisher 2010; Fernandez 2010; Tyson 2011). A persistent issue is law enforcers' inadequate understanding of family violence and thus their failure to

recognise the spectrum of family violence harm and risk. Through studying the experiences of women family violence victims who sought official assistance in Queensland, Australia, Meyer (2011; 2016) found a male-dominated system with minimal understanding of gendered power and family violence, which often contributed to inappropriate police responses. In Birdsey and Snowball's (2013) research in the Australian jurisdiction of New South Wales, the majority of survey respondents chose not to report their most recent family violence victimisation, citing police's poor understanding of family violence and their insufficient responses as a key reason. Contemporary research in Victoria, Australia, for the Women's Legal Service (see Ulbrick and Jago 2018) identifies systemic police neglect of fundamental responsibilities to respond impartially and to accurately gather information and evidence. Bumiller's (2008) United States-based research participants described their struggles to have abuse recognised by police, particularly when presenting injuries or pain that did not align with officers' assumptions about what constitutes family violence. A range of studies in various temporal and jurisdictional contexts show the persistent difficulties victims face in receiving recognition of the complex web of criminal harms and dangers associated with family violence (e.g. Stark 2007; 2010; McKenzie et al 2016; Sheehy 2018).

Police responses to family violence also frequently reinforce perpetrators' harms and exacerbate the trauma that victims have already suffered. As gate-keepers of the criminal justice system, police play a particularly significant role. Frequently being victims' first point of contact with the system, police can convey to a victim that her report is valid, worthy of attention, and that allegations will be taken seriously. Conversely, if they trivialise an incident, this undermines the victim and communicates that the perpetrator's behavior will be ignored and tacitly condoned (Merry 2006; Harne and Radford 2008; Alcalde 2010; CIJ 2015; Kent 2018). Police therefore "set the tone for how, or whether, a pattern of violence continues" (CIJ 2015: 45). Research from Australian and United States jurisdictions shows that police do indeed frequently respond in a manner that exacerbates family violence harms (Kaye et al 2003; Preston and Gyde 2005; Stark 2007; Fehlberg and Behrens 2008; Guggisberg and Fisher 2010; Tyson 2011; 2013; Douglas 2019). There is also evidence of police themselves participating in family violence. Bumiller's (2008) research with family violence survivors in the United States provides examples of police actively siding with perpetrators and further harming victims. One participant recalled an incident where officers on a routine street patrol not only witnessed her being assaulted by her partner and failed to intervene, but later that day, ridiculed her about her victimisation. This is a stark example of police not only neglecting their law enforcement

responsibilities but also participating in abuse themselves. These inadequate, inappropriate, and harmful responses show police not only as passive bystanders to family violence crimes, but as active supporters and co-perpetrators.

When police directly participate in exacerbating family violence, victim-survivors consistently experience a uniquely grave form of harm. Bumiller's (2008) interviewee mentioned above described the profound sense of injustice and betrayal when police treated her as unworthy of state protection, and when her victimisation was mocked. This experience is echoed in survivor accounts across diverse international contexts. The impact of disenfranchising encounters with state officials is profound. When family violence victims recognise that they are not, in practice, considered full citizens who will receive state protection and support, this is experienced as a gross downgrading of their status and subjective personhood (see Alcalde 2010; Cameron 2014; Coy et al 2015; Natalier 2017; 2018; Douglas 2018; 2019; Gutowski and Goodman 2019). It is also an experience of re-victimisation, as it is "ostensibly a continuation of the violence and abuse that they were subjected to by their current or ex-partners" (Guggisberg and Fisher 2010: 25). This leaves women feeling doubly injured: both by the man closest to them, and additionally by the state (Alcalde 2010). In fact, many of Bumiller's (2008) interviewees recounted that state dismissal of their victimisation was more damaging and traumatic than the original victimisation itself. Underscoring the unique severity of harms which emanate from a state authority figure, participants' concerns "centered on indignities perpetrated by the system rather than the individual men who battered them" (Bumiller 2008: 109). This underscores the intensified impact of law enforcers' collaboration in harming family violence victims.

Another way that police systematically contribute to family violence is through institutionalised sexism. Contemporary law enforcement practices around family violence reveal persistent and entrenched discriminatory ideology which negatively impacts police practice. The Victorian Equal Opportunity and Human Rights Commission's (2017: 2-3) review of sex-based discrimination by Victoria Police noted that respect for women was "sorely lacking within the organisation" and its "systems and structures" and that there continues to be "resistance to change". Across Australian jurisdictions, research with women family violence victims indicates that sexist stereotypes and oppressive attitudes continue to influence police responses (e.g. Meyer 2011; Ulbrick and Jago 2018; Douglas 2019). These beliefs are founded on the same oppressive ideology that denoted women's inferiority and denied their status in law. In Queensland, Australia, studies by Meyer (2016) and Douglas (2019) also demonstrate

that sexist attitudes underpinned the prevalence of victim-blaming attitudes amongst police. Particularly when women failed to conform to the inherently sexist image of the ideal victim[49] – weak, vulnerable and compliant with authorities – police did not deem them worthy of state protection.

Sexism is also evident in police responses to women as offenders. In the United States, Miller's (2005) study of both male and female intimate partner violence perpetrators indicates that police responses often rely on restrictive gender stereotypes to interpret behaviour and risk. This research shows that officers tend to perceive women offenders as more unstable, erratic and volatile than men accused of similar offences (also see Fernandez 2010). One prominent sexist trope drawn on by police was the enigmatic and uncontrollable "crazy woman", evidenced by the many different officers who re-told "a story of folklore proportions about a female offender who put a guy in hospital" (Miller 2005: 74). This is also consistent with Roark's (2016) analysis of family-violence-related arrests in the United States, where findings indicate that police responses are often based on the perception that men are "more responsible" than women (59). Since these gendered narratives echo tropes drawn on by male perpetrators to justify their controlling and abusive treatment of women – for instance, through framing women as unreasonable, irrational, and hysterical – they also contribute to the ideological justification of men's violence. This shows how state institution's sexist ideology and practice can intersect with, and support, family violence regimes.

Hester's (2012) United Kingdom-based research also indicates enduring sexism in police practice, particularly in relation to women as perpetrators. Police often displayed grossly inadequate understanding of women's use of violence against partners, and notably its context, meaning, and the level of risk it posed. Women's violence against partners is overwhelmingly less severe than men's and is most often defensive violence used to protect themselves from systematic male abuse (Katz 2006; Stark 2007; Johnson 2010; Flood 2012a; Kimmel 2013). Fitting this pattern, in the whole of Hester's study sample, none of the female perpetrators' violence indicated systematic abuse. Yet police arrested female perpetrators at three times the rate of male perpetrators. Despite the very low levels of risk posed by the majority of female offenders, these women experienced disproportionate levels of policing and censure.

[49] The term 'ideal victim' was coined by critical criminologist Nils Christie (1986), who observed that victim claims are significantly constrained by whether the claimant displays certain characteristics and attributes.

Ironically, the high levels of risk posed by many male offenders elicited relatively lenient police responses. The disproportionate treatment of female offenders and the comparative lenience shown to male offenders by the state further indicates how male, but not female, family violence is tolerated by law enforcement agents.

Across a range of contexts, recent reforms to law enforcement policy and practice in relation to family violence show disproportionately negative impacts on women. In the United States, mandatory arrest, pro-arrest, and no-drop prosecution policies have resulted in a number of harmful consequences as the law is applied in a manner that causes disproportionate harms to women victims and offenders. Research findings following these reforms indicate significant variation in arrest rates between men and women, with "mandatory arrest policies disproportionately affect[ing] women" (Durfee 2012: 64; also see Stark 2007; NCRVAWAC 2009). Similar research in the Australian context also shows disproportionate and discriminatory criminalisation of women's defensive responses to male violence. Ongoing investigations by Women's Legal Service Victoria (see Ulbrick and Jago 2018) reveal the serious contemporary problem of police misidentifying women as the primary aggressor in family violence incidents. Through extensive quantitative data analysis and qualitative research with women who sought the assistance of community legal services, this research shows that police misidentification is widespread and that it disproportionately affects women. The research also reveals that the main driver of the misidentification of women as the primary aggressor is the tendency of police to believe male perpetrators' stories, facilitating the widespread "gaming of the intervention order system" (1) and the protective role of police by men. Research showed that when male perpetrators portrayed themselves as calm and reasonable, it was relatively easy for them to frame the woman as the problematic individual and have police respond accordingly. Preliminary cross-contextual scoping conducted during this research project also suggests that misidentification is not restricted to the Victorian context but is occurring across Australia and globally.

Intersectionally-marginalised family violence victims are particularly prone to police misidentification and other forms of discrimination. Ulbrick and Jago's (2018) research shows that many migrant and refugee women from linguistically diverse backgrounds are not being provided with interpreters when police attend family violence incidents (also see Douglas 2019). This directly contravenes Victoria Police's Code of Practice for the Investigation of Family Violence (2014), which requires that police ensure access to interpreters at every stage

of the criminal justice process. Without culturally and linguistically-appropriate services, migrant and refugee women are severely disadvantaged when it comes to interactions with police (Tucker 2015). It is, of course, distressing for any victim to have police attend a family violence incident, and it is common for distress to impair their capacity to communicate. For women with limited or no English, and whose expression of anguish may be culturally-specific and not easily understood by police, the challenges of this situation can be exacerbated. Indigenous Australian women victims also face unique forms of systemic police discrimination. Taylor (2018) highlights the particularly high arrest rates of Indigenous females for family violence offences, which are often, as for other women, due to their misidentification as primary aggressors. Taylor also locates this within the broader tendency of police to treat minor offending by Indigenous women in a punitive manner. This further underscores state agents' persistent treatment of women in accordance with oppressive patriarchal – as well as racist and ethnocentric – patterns.

One significant effect of police failures in this area is that they erect barriers to help-seeking for family violence victims, thus inhibiting their access to the protections and justice to which they are entitled. This is exemplified by the experiences of one anonymous client of Women's Legal Service Victoria (see Ulbrick and Jago 2018: 1). This woman had called police to an intimate partner violence incident but was misidentified as the primary aggressor. The police's inaccurate determination of her culpability then resulted in her referral to the Department of Human Services, who deemed her a violence risk and arranged for official visits to her home to assess the safety of her infant. The woman told lawyers that the experience led her to decide never to contact law enforcement again, explaining that "police scare me now ... I needed to be protected [but] I don't feel like they protected me" (Anon in Ulbrick and Jago 2018: 1). This sentiment is commonly expressed by misidentified women: even when they remain at high risk of re-victimisation, their negative experiences with police render them unable or unwilling to seek assistance from the state, thus leaving them in situations of heightened vulnerability.

Contemporary police negligence and active involvement in family violence is extensively evidenced in the details of a pending case in the Supreme Court in Victoria, Australia. *Smith [pseudonym] v Victoria* 2018 in VSC 2019) indicates serious and systemic problems with police responses to family violence. It involves the State of Victoria, for the first time ever, being sued for police negligence and breaches of duties of care. The plaintiff and her children allege that at least eighteen different police officers across different regional Victorian towns

consistently failed over a nine-year period to protect them or take action against a family violence perpetrator, resulting in their repeated victimisation. The plaintiff cites multiple occasions where police failed to protect her and her children from violence when Family Violence Intervention Orders were in place. For two years prior to the first Intervention Order, police had documented many incidents of violence. One took place during the woman's pregnancy, when the man smashed both the home phone and her mobile phone, and neighbours responded to her cries for help. For the year following the birth of one of their children, the man forcibly and repeatedly took the baby from her and the home until police intervened. The offender's sister had also reported her own victimisation by her brother to police, and conveyed grave concerns about the dangers he posed to others (also Estcourt 2018; Farnsworth 2018).

Preceding the first Intervention Order application, the man had wrought havoc in the house after a two-day drinking spree, and it required six police officers to subdue him. Following this incident, the woman took out the first of four intervention orders over a period of seven years. This first order prohibited the man from assaulting, threatening, contacting her or the children, or being within one hundred metres of their home when he was intoxicated. Two particular violent breaches occurred after police officers, who played football with the perpetrator, dropped him at the woman's home after a game while he was intoxicated (Estcourt 2018; Farnsworth 2018). The plaintiff and her legal team allege that police failed to enforce numerous intervention orders against the offender, with repeated failures causing further assaults on at least six occasions.

The plaintiff and her legal team argue that these law enforcement failures amount to state negligence, a breach of the victims' human rights, and a breach of state obligations under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (in VSC 2019: 1). This landmark case will consider state liability for family violence protection in a new way for Victoria, and thus evidences the state's demonstrable role in family violence. At the Supreme Court pre-trial hearing last August, Justice Dixon rejected the State's application for a summary dismissal of the case and also refused to strike out the claims alleging a common law duty of care. Describing the case as "fact rich and fact intensive", the judge approved it to proceed to trial (Dixon in VSC 2019: 1). This case does not relate to isolated incidents, locations, nor deviant individual police officers. It relates to multiple incidents over an extended period of time, at different regional Victorian location, and involves multiple officers. It is a pattern of systematic omissions which have resulted in serious further harm to victims. It is also a case where there

was extensive information and evidence available to police to indicate the grave dangers posed by the offender. It showcases the complicity of the criminal justice apparatus and its agents right across the spectrum: from passive failures to intervene or respond, to more active involvement through providing support to the perpetrator and actively enabling his further violence.

Another window into the complicity of police in family violence is through official written reports. The language used by police to narrate family violence reveals powerful sexist ideologies which continue to influence the way family violence is understood and approached. In the Swiss context, Gloor and Meier's (2013) analysis of intimate partner homicide reports reveals systematic discursive minimisation of men's violence. One way this occurred was through police reconstructing men's lethal violence as spontaneous and inevitable. In the reports, police employed passive euphemisms and metaphors that framed men's violence as "akin to weather, [and thus] like a natural force" with inevitable outcomes (Gloor and Meier 2013: 76). In Report 41 (p 75-6), the period preceding the homicide was narrated as a time of "turbulences in the marital sky". In others, it was a time during which "the marriage … was clouding" (Report 12, p 75), or "became partly turbid" (Report 37, p 75). When the killing itself was referenced by police, it was very rarely characterised as a serious crime; rather, most often through vague euphemisms like "the deed" and presented as merely one unfortunate incident amidst "ugly circumstances" (Report 11, p 70). These "actorless accounts" (Gloor and Meier 2013: 68) construct lethal violence as appearing out of nowhere: isolated from prior history, underlying dynamics, and in no way attributable to perpetrators' choices or actions.

In accordance with typical patterns of intimate partner homicide, the vast majority of these cases contained clear references to abuse histories. Some reports even referred to incidents involving obsessive male control, escalating threats, and in some cases, prior physical violence. Yet, contrary to recognising and documenting the dangerous power dynamics and behaviours which are known to characterise the overwhelming majority of intimate partner homicide histories (Stark 2007; Johnson 2008; McKenzie et al 2016; Sheehy 2018), police did not explicitly document perpetrators' prior violence, nor recognise its role in the homicide. For instance, in Report 37 (see Gloor and Meier 2013: 71-2), police specifically mentioned that a door was broken during a past incident, and that, on another occasion, the perpetrator "assumed [his wife] was having a fling" and that his suspicions led to him to "hit his wife on at least one occasion for certain". Yet their benign account of this history was that the relationship "become

rowdy" and that "quarrels occurred repeatedly". Another case, Report 38 (p73-5), referred to what was likely a coercive controlling relationship, given that "in 1996 [the perpetrator] threatened to kill his wife and himself if she would separate from him". But police only referred to this background by vaguely stating that "according to documents … weather vanes turned to storm … not only in 1997, but already in 1995 [and] supposedly even already in 1981". Revealing an extensive history of physical violence, Report 22 (p 72) even detailed that

> *within his family, he is said to have been the 'absolute boss', never allowing any ifs or buts. … It wasn't rare that he beat her in front of the children, [and] the children had also been subjected mercilessly and had to suffer all kinds of beatings*.

Yet, incredibly, police did not explicitly document or log this as relevant prior violence. Their summary was merely the mild assertion that "[his wife] has been noticed every now and again with a black eye or other kinds of sores". Consistently, police reconstructed systematically prior abuse as irrelevant background rather than vital case evidence. In fact, these police reports systematically obfuscate, obscure, ignore and erase men's violence despite its direct relevance to the homicides.

In many cases, police indicated a clear awareness of the existence of multiple incidents of prior violence by the accused against the victim, yet, officially, did not identify this as a relevant pattern of perpetration which had escalated to homicide. In fact, in not a single case did police identify a pattern of coercive controlling abuse, nor made links between prior violence and the homicide, even in the case of murder threats. This led Gloor and Meier (2013: 78) to conclude that "the concept of domestic violence is not present in the reports". The normalisation of proprietary, possessive, jealous, and aggressive male behaviour is a particularly concerning feature of these narratives. The reports disguise the well-documented power imbalance, controlling behaviours, and extensive violent histories that characterise cases of intimate partner homicide and are thus crucial to understanding this crime. By officially neutralising, trivialising and excusing men's violence, these police texts discursively erase the harm and thus demonstrate the active complicity of law enforcers in family violence. This also equates to the official normalisation and effective decriminalisation of men's family violence, further indicating a direct and active police role in this harm.

Courts

This section looks at courts' complicity in family violence. I focus here on the period since the criminalisation of family violence harms and consider how court practice and discourse reveals the tenacious influence of patriarchal ideology over the adjudication of family violence.

The adjudication of marital rape following its official criminalisation shows the continuity of sexist ideology which excuses male violence and discounts harms against women. One notorious example is *R v Johns*, which was heard in the post-criminalisation context of South Australia in 1992 (in Hocking 1993; also Kaspiew 1995). In the case, Supreme Court Justice Bollen apparently ignored that marital rape was a crime in his jurisdiction when he informed the jury that

> *there is, of course, nothing wrong with a husband, faced with his wife's initial refusal to engage in intercourse, in attempting ... to persuade her to change her mind ... [through] rougher than usual handling* (Bollen 1992 in Kaspiew 1995: 350).

In his closing remarks, Justice Bollen also specifically – and erroneously – directed the jury to be sceptical of the alleged victim's testimony, specifically because she was a woman and was alleging rape. He warned the jury that "experience has taught the judges that there have been cases where women have manufactured or invented false allegations of rape and sexual assault" (Bollen in Hocking 1993: 153), and added a lengthy and dramatic anecdote of the alleged fabrication of rape in an unrelated and irrelevant case. These adjudicative instructions illustrate the enduring spirit of the marital rape exemption in court practice, as well as the endurance of sexist ideology and its role in excusing and endorsing men's family violence.

The judge's pervasive scepticism of female testimony in this case also reveals more insidious sexist ideology. By framing women as a uniquely suspect category of witness, Justice Bollen's comments also officially characterise women as wholly unreliable group that cannot be trusted (Hocking 1993). These comments hark back to early common law's relegation of women as inferior, irrational, and unreasonable, and thus not deserving of legal status.[50] This recent judicial commentary indicates the persistent demarcation of women as ineligible for full equality before the law, and the consequent denial of their victim claims. Evidently, law continues to either refuse – or struggle – to conceive of women as human (see MacKinnon 1989; 1994; 2006). Another rape case from this period, *R v Donald* (1993 in Kaspiew 1995),

[50] This is as opposed to the abstract 'reasonable man' who is the quintessential subject of law (e.g. Smart 1989; Charlesworth 1995; Hekman 1999).

reveals similar sexist ideology. This case was heard in a different Australian jurisdiction, Morwell County Court in Victoria, but also involved the judge expressing cynical views of women and rape allegations. In diminishing the severity of the defendant's charges of sexual violence, Justice Bland stated that "'No' often means 'Yes'" when it comes to women and sex" (Bland in Kaspiew 1995: 367). This commentary frames women as incapable of knowing their sexual desires or expressing themselves accurately or truthfully, and like *R v Johns*, characterises women as a uniquely suspect category of witness. In the absence of any substantive basis, these assertions can be understood as powerful and pervasive patriarchal ideology which functions to subjugate women, endorse male dominance, and excuse male sexual violence.

Across many comparable contexts, courts continue to both express and reinforce ideologies that frame male family violence as acceptable. In the United States, whether through explicit justification or tacit support, the spirit of the marital exemption endures through court practice (see e.g. Copelon 2000; Hattery 2009; Hattery and Smith 2012; DeKeseredy and Schwartz 2013). This is because law reform often fails to produce substantive shifts in outcomes because the sexist ideology of law and its practitioners is so deeply entrenched (Peach 2000; Polisi 2009; MacKinnon 2019). In an extensive analysis of the adjudication of intimate partner violence cases across Australian jurisdictions since criminalisation, Howson (2006) identifies systematic tolerance of men's violence against female partners. Courts delivered consistently lenient sentences which were based on accepting defence arguments which construct masculine violence, particularly in the context of attempting to salvage a relationship, as understandable and legally normative. In the Canadian context, Wells' (2012) analysis of sentencing commentary on intimate partner homicide shows similar patterns, with perpetrators' prior violence routinely minimised and normalised, and systematic abuse recast as a problematic relationship for which partners had mutual responsibility. Even in the face of evidence of serious prior abuse, lethal intimate partner violence was often conceptualised as a single aberration on the part of the perpetrator.

The endurance of provocation principles in contemporary court discourse and practice is another way that the system excuses and supports men's family violence. In Victoria, Australia, although both provocation and defensive homicide were abolished by 2014, they continue to inform case narratives and sentencing decisions (Naylor and Tyson 2017). Tyson's (2011; 2013) research examines the impact of these doctrines in some detail, concluding that,

regardless of whether they officially exist in law at the time of adjudication, they continue to "operate as a profoundly sexed excuse or male anger and violence towards women" (Tyson 2011: 207). Contemporarily, courts continue to accept and reproduce the ideology of provocation when adjudicating men's lethal intimate partner violence. Hall et al's (2016) analysis of sentencing remarks in intimate partner homicide cases in two Australian jurisdictions – New South Wales and Victoria – identifies prevalent victim-blaming narratives. The most obvious was made by Justice Teague in *R v Roesner* (2002 in Hall 2016: 401), who stated that "the wife was the source of the conflict", even though all she had done was attempt to separate from her husband and gain custody of their children. In many other cases, a woman's decision to leave her partner was also framed as the cause of his violence, thus positioning the victim as responsible for her own death.

McKenzie et al's (2016) study of intimate partner homicide cases in Victoria, Australia, reinforces these findings. This more recent research also identifies enduring provocation narratives which reproduce victim-blaming tropes. For example, it was not uncommon for women to be presented as having caused the defendant's "build-up of stress" that led to him killing her (97). At sentencing, "distress" caused by the deceased to the defendant continued to be accepted as a mitigating factor (108). These narratives are consistent with the original spirit of the provocation defence, which is essentially a doctrine which discharges men of full responsibility for killing women who were "asking for it" or who "had it coming" (see Tyson 2011: 203, 209; also 2013). As former Supreme Court Justice Cummins stated in a speech at the release of McKenzie et al's (2016) report, "these tales are nothing short of character assassination of the victim, and the living man … is trying to colonise the status of the victim, when he is in fact perpetrator" (Cummins 2016: n.p.). Contemporarily, women are still blamed for men's violence against them, and men continue to literally get away with murder. This demonstrates courts' active participation in excusing, minimising, and justifying family violence, to the gross detriment of victims and justice.

Another specific way that courts actively contribute to family violence is by discursively erasing family violence. McKenzie et al's (2016) analysis reveals the systematic failure of courts to recognise relevant prior family violence. In the study, an overwhelming proportion of male perpetrators had a history of violence against the victim. Twelve of the total fifty-one cases (24%) involved either a current or previous Family Violence Intervention Order, and in eight cases (16%), the homicide itself was perpetrated during the breach of an Order. In over

half of all cases, there was evidence of a history of intimate partner violence (McKenzie et al 2016: 54-55). In addition to physical assault, prior violence by the defendant included offences criminally codified as coercive controlling family violence (see State Government of Victoria 2008; Magistrate's Court of Victoria 2015: s.5:1:a).[51] This included surveilling and stalking the victim, prohibiting her from leaving the home, exclusively controlling all family finances, and making threats to kill the victim, her family, friends, or pets. Many cases featured multiple red flag indicators of extreme controlling abuse (State Government of Victoria 2007; 2019a; also Stark 2007; Sheehy 2018).[52] These indicators are extensively used across family violence systems to assess risk and nominate appropriate interventions, and situations involving multiple indicators are widely understood to indicate imminent and possibly life-threatening risk. Some of the most well-recognised of these risk factors include extreme possessive behaviour, obsessive (and generally unfounded) sexual jealousy, and circumstances in which the victim is attempting to separate. These types of controlling behaviours, especially when combined with attempts at separation, are as dangerous as assault in their capacity for predicting escalating and potentially lethal violence (Stark 2007; Sheehy 2018). Yet, MacKenzie et al (2016) found that courts systematically reconstructed male control, possessiveness, jealousy, micro-management, surveillance, stalking, and even aggression and threats as normal and benign male behaviour in intimate relationships. In many cases, judges actively facilitated the defence team's reconstruction of the past in order to erase the defendant's offending history, revealing courts' effective decriminalisation of some of the most dangerous forms of family violence, and their downgrading of lethal assault to a first-time offence.

One case which exemplifies courts' active erasure of family violence is the murder trial of Stephen McPhee and its ensuing sentence appeal case (*The Queen v McPhee* 2013 and *McPhee v The Queen* 2014 in McKenzie et al 2016: 70-1). In the initial case, the court heard the history and circumstances preceding and surrounding Stephen McPhee stabbing his wife Cathy

[51] Coercive control regimes (Stark 2007) are not characterised by unique or extreme forms of violence, but rather by the underlying oppressive dynamic that pervades the entire intimate relationship and family dynamic. This is often invisible to outsiders. Considered alone, singular incidents of physical aggression may appear minor and isolated, but within an overall context of control and coercion, each individual violation is elevated to a level of harm that is all-encompassing and cumulative in its effect (Copelon 1994; Stark 2007; Johnson 2008; Laing 2010; 2013; Kelly et al 2014; Fehlberg et al 2015; Sheehy 2018).

[52] In Victoria, Australia, where these lethal crimes were perpetrated, this tool has been known as the Family Violence Risk Assessment and Risk Management Framework and the Common Risk Assessment Framework (CRAF) (State Government of Victoria 2007). The currently version is the Multi Agency Risk Assessment and Management (MARAM) framework (State Government of Victoria 2019a). This is widely utilised across the system to assess risk by diverse practitioners including police, victim support social workers, and general and emergency medical staff.

McPhee to death. Multiple witnesses including family, friends, and a marital psychologist, testified to the defendant's history of obsessive, jealous, controlling, aggressive and threatening behaviour towards his wife, including making threats with a knife. Yet the judge accepted the defence narrative that the accused's lethal violence was aberrant and exceptional. Casting aside extensive evidence to the contrary, the initial sentencing judge stated that "the marriage was not marked by violence" and that the accused's lethal conduct was "totally out of character … and … otherwise inexplicable" (in McKenzie et al 2016: 70). He cited these mitigating factors as reasons for a murder sentence of moderate length. By failing to recognise the offender's extensive and relevant abuse history, the judge actively participated in erasing family violence and minimising the offender's culpability. Nevertheless, the defence appealed the moderate sentence and won, with Joint Appeal Justices Redlich and Priest further participating in the erasure of McPhee's extensive prior abuse and reducing his murder sentence. These judges cited the offender's "unblemished history" and "absence of … aggravating features" as reasons for determining that the murder "not only fell within the lowest category of seriousness of the offence of murder, but at the lower end of that category" (in McKenzie et al 2016: 71). By systematically normalising male control and abuse and actively erasing relevant prior offending, all judges involved in this case were complicit in the harm itself, and also in the demonstrably inadequate delivery of justice.

Another intimate partner homicide case, *R v Felicite* 2010 (in McKenzie et al 2016: 63-4), also involved serious and protracted abuse which the court reconstructed as innocuous. Ron Felicite pleaded guilty to murdering his wife Marie Juliette Felicite by stabbing her in the neck multiple times. Their four-year-old son witnessed at least some of this attack. During the case, the court heard a documented history of aggressive and threatening behaviour by the defendant for two years preceding the lethal incident. The victim had sought police assistance on a number of occasions, and police had documented the offender's repeated threats to kill the victim and her son. They had also granted an interim intervention order after one incident involving lethal threats. The court even received as evidence a letter from the defendant to his wife, in which he admitted being "very aggressive" towards her during their relationship (63). The day before the murder, Marie Juliette sought police assistance and reported that her husband had threatened her with a knife; yet later, in the presence of her husband, altered this account. The following day, Ron stabbed her twelve times in the neck after an argument about her wanting to separate. Despite this extensive and substantiated history of violence, the sentencing judge entirely recast the defendant's history as unproblematic and benign. His sentencing

commentary noted the defendant's "passive, caring nature" and recast his prior violence as "verbal conflicts" in the relationship (64). He stated to the defendant that "there is no suggestion that you were ever violent to your wife before this event" (64), and even framed the homicide as an unfortunate incident for which the defendant might deserve official compassion.

In these and other cases, courts routinely favoured narratives of men's lethal violence as a singular and aberrant incident, and the defendant as a man with an admirable history and no problematic behaviour of pertinence to the murders. McKenzie et al (2016) identified many cases where men's lethal violence was presented as an accidental and unintentional result of a spontaneous outburst or loss of control. Even where there was an extensive documented history of prior violence, in the absence of previous criminal convictions, judges tended to accept defence arguments that the killing was isolated and out of character. These narratives reveal courts' direct and demonstrable complicity in family violence. By systematically ignoring relevant evidence, privileging men's over women's narratives, and reconstructing the past in order to mitigate male culpability, these judicial narratives actively support and protect perpetrators and excuse their violence. By erasing family violence histories in the face of evidence of repeat perpetration and a high level of culpability, courts provide an official rewriting of history which actively denies relevant prior offending.

In Canada, Sheehy (2018) also identifies contemporary court narratives which obscure and dismiss men's violence, yet demonise women who use violence to escape regimes of systematic abuse. Sheehy's (2018) analysis of the Canadian cases *R v Craig* (2008 and 2011) illustrates courts' dismissal of relevant male offending. This murder trial and its subsequent sentence appeal case adjudicated Teresa Craig's self-confessed murder of her husband. The case involved an extensive and well-substantiated history of severe and systematic violence by the deceased against the accused. The deceased had terrorised the accused and their son for many years, isolating them geographically, socially and financially, forcing them to live in abject poverty, threatening to kill, brandishing weapons, assaulting other people, and repeatedly degrading and physically abusing the child. This was established through extensive testimony from different witnesses and was of critical importance to establishing the context in which the defendant killed her partner. The defence presented a cogent and substantiated

narrative of the deceased's coercive control[53] which detailed conditions of absolute imprisonment and overwhelming terror which led the accused to see no escape and to genuinely fear for her and her son's lives. Yet the court was reluctant to accept the deceased's abuse as relevant to the case because it did not involve overt physical violence nor physical injury to the accused. This shows that, in practice, courts continue to obscure, deny or reject women's experiences and narratives of abuse, thus depriving them of the opportunity to have resistive violence appropriately contextualised. It also demonstrates how the law renders invisible some of the most destructive and dangerous forms of male violence in the family. Law's apparent willingness to disappear, justify or excuse male violence, but not to contextualise violence by abused women, indicates enduring tolerance of male coercive control.

Conclusion

This chapter has identified the complicity of the criminal justice system in family violence across a range of Western liberal-democratic contexts. The first section looked at state law. I identified how, historically, law has supported the state's structural and institutional foundations for family violence. As institutions of patriarchal ownership and control, marriage and the family were sanctified sites within which men were allowed and even encouraged to use violence. Even following law's criminalisation of family violence, the official exceptionalism of the private sphere largely precluded legal intervention in the harm. Together, these factors position family violence harms as occurring within a state-created structure and with state-approved impunity, thus positioning them as state crimes (see e.g. Balint 2019). I also showed how the historical foundations of family violence endure in contemporary law and continue to excuse men's violence and exacerbate harms to victims. One way this occurs is through law's persistent differentiation of family violence as less serious than comparable non-domestic violence. This is particularly prevalent in relation to intimate partner sexual crimes. I also considered the contemporary recriminalisation of abortion in certain contexts, which demonstrably inhibits family violence victims' rights and causes significant further harm.

The second section of the chapter looked at police policy and practice. This analysis identified persistent police neglect of family violence offences, uninformed and insufficient responses,

[53] The expert witness for the defence was Evan Stark (see 2007), the highly experienced sociological practitioner and academic professor who pioneered the movement to reconceptualise systematic intimate partner violence regimes through the lens of coercive control.

and sexually discriminatory treatment of women as both family violence victims and offenders. I identified how women victims are often subjected to dismissive police attitudes, whilst women offenders tend to be over-policed and disproportionately censured, and how both ends of this spectrum emerge from sexist ideology. I also identified how police reports of family violence discursively erase men's abuse and minimise their culpability for even lethal crimes. I also provided evidence of systematic police negligence in relation to basic standards of law enforcement and victim protection and considered how this can overlap into the active facilitation of men's family violence by police.

The third section examined criminal courts and their role in adjudicating family violence. Through vestiges of proprietary and provocation ideology, I demonstrated that women victims are often blamed for their own victimisation, whilst as offenders, they receive disproportionately severe judicial responses and harsh punishment. On the other hand, courts systematically obscure, minimise, and justify men's violence, adopt sympathetic attitudes towards male offenders, and deliver relatively lenient sentences for even the most heinous of crimes. Overall, contemporary court practices and narratives illustrate the overarching and enduring authorisation of men's family violence.

Across all parts of the criminal justice system, men's family violence is inadequately recognised and censured. It is also systematically ignored, obscured, dismissed, minimised, tolerated, and excused, whereas women's violence is often disproportionately policed and punished. We also see the exacerbation of family violence harms through victim-blaming narratives and re-traumatising responses of state officials. From the denial of basic rights by state legislation, to police treating women in sexist and discriminatory ways, to being ignored and overlooked in the courtroom, the criminal justice system is often the source of additional harm to victims, rather than a source of protection, assistance and justice. Ultimately, this chapter shows how, through the letter, enforcement, and adjudication of law, state complicity in family violence spans the spectrum of state criminality. It involves a historical, passive and indirect role, as well as a contemporary, active and agentic one. This exposes the complicity of the state in family violence and positions the harm as a state crime.

In the next chapter, I turn from the criminal to the civil arm of the state to examine family law and the family court, and its complicity in family violence.

5

Family law

Introduction

In this second institutional chapter, the focus shifts beyond the criminal justice system to civil law, as achieved through family law and the family court. This arm of law has particular relevance to family violence, due to its focus on financial and custodial arrangements for separated families. My analysis focuses on the Australian context, but also refers to the United Kingdom, United States, Canadian and New Zealand systems in order to indicate similarities across various comparable Western contexts. Throughout the chapter, I identify how family law ignores, obscures, tolerates, and facilitates men's family violence. I show how the system consistently privileges men's and fathers' interests over those of women and children, jeopardises victim-survivors' safety and well-being, and provides tools for perpetrators' ongoing control and abuse. In addition to identifying how family law and the family court facilitates family violence, I also show how the institution participates in directly harming victims.

As with the previous chapter, I identify state institutional complicity in family violence through policy, practice, and ideology. Here, in relation to family law, policy refers chiefly to legislation and practice guidelines, as well as unofficial but entrenched frameworks which guide the implementation of law. Practice refers to the manner in which legislation and other official codes are interpreted and applied in the day-to-day administration and adjudication of family law. In line with the critical analytical framework developed in Chapter Three, ideology refers to the hegemonic values, beliefs, and assumptions which underpin policy and can be identified by analysing the everyday practice and discourse of family law, courts, and the officials that represent this institution.

The first section of the chapter identifies the centrality of family violence to family law and considers some of the Australian federal legislative principles which guide legal practice and decision-making in this area. I explain the importance of an accurate and thorough

understanding of family violence to family law professionals' work, yet note how deficient knowledge and outdated views of family violence impede the accurate detection of serious abuse. Specifically, family law practitioners' negligently inadequate understanding of coercive control, the intersection and overlap of different family violence harms, and the prevalence of intrafamilial child sex abuse, contributes to this institutions' production of unsafe outcomes, and contradictory and harmful practice.

The next section considers what is known as 'pro-contact' ideology and culture in family law. This is implicated in the systematically sexist discrimination treatment of family law's subjects, and the consistent privileging of men's and father's voices and interests over those of women and children. It also underpins a discursive hierarchy which systematically refutes victim-survivors' testimony and experiences concerning men's family violence, and produces outcomes which enable perpetrators to perpetrate ongoing control and abuse against victims. Specifically, this discursive hierarchy is implicated in the systematic dismissal of allegations of paternal child sexual abuse, which contributes to arrangements where children are at direct risk of further violence.

I then consider how family law's custody and contact rulings are implicated in the extension of post-separation family violence. Through endorsing abusive fathers' ongoing contact with children, family law facilitates continued offending against ex-partners. It also provides opportunities for perpetrators to co-opt children in their abuse, as well as train children as independent perpetrators, which harms both children and mothers alike. I then look at the further extension of family violence through 'paper abuse': the aggressive and protracted pursuit of vexatious family litigation that causes significant further harm to family violence victim-survivors. By providing perpetrators with the opportunities and the specific tools for this abuse, family law is a complicit actor in this harm.

The final section considers the family court as abuser. Through the lens of a particular Australian family law case, *Tyler v Sullivan* (FCA 2015), I put forward the notion of the family court as perpetrator of direct state institutional violence. By replicating the abusive dynamic and mirroring specific tactics used by men to perpetrate intimate partner violence, the family court in this case can be seen as direct perpetrator of coercive controlling abuse. Since this pattern is identifiable in other contexts and through other women's experiences, it also indicates the broader utility of this framework for understanding family courts as criminal actors in

family violence. Finally, I also consider how family law directly coerces and abuses children through its implementation and enforcement of unsafe parental contact arrangements. In these situations, children are placed at direct risk of abuse, and are further traumatised by law's violence.

Throughout my analysis, I identify a spectrum of state institutional complicity in family violence operating through family law and the family court. This ranges from neglectful and negligent responses to family violence, to facilitation of individual offenders' violence, to active enabling of and participation in harming victim-survivors.

Family violence and family law

Family violence is central to the letter and practice of family law, since this system provides the frameworks for overseeing financial disputes and settlements of separating couples, and child custody and contact arrangements (Fehlberg and Behrens 2008; Fehlberg et al 2015; Harland et al 2015; WLSV 2018). In over 60% of adult relationship separations involving children, there is a history of partner violence involving either physical or sexual assault or both, and a substantial further proportion involving other forms of victimisation (Qu et al 2014; also Kaspiew et al 2015a). Furthermore, the end of an abusive intimate relationship rarely signals the cessation of violence. More often, it heralds a period of increased risk of serious and lethal assaults of both women and children (e.g. Kaye et al 2003; State Government of Victoria 2007; Harne and Radford 2008; Phillips and Vandenbroek 2014; Coy et al 2015; Fehlberg et al 2015; PHAA 2015; QLD Law Society 2015; RCFV 2016; Sheehy 2018). Perpetrators of systematic partner abuse, who use dominating and coercive tactics to maintain family control, are particularly unlikely to accept a partner's decision to leave, or to engage in reasonable negotiations over finances or child custody. These types of cases, which involve complex features and ongoing issues, often require formal intervention and adjudication, and thus tend to be concentrated in family law systems (Fehlberg et al 2015).

There is a complex array of federal, state, and territory legislation at the intersection of family violence and family law in Australia. Here, I focus on some relevant aspects of federal family law, where the relevant contemporary statute is the *Family Law Act 1975* and its many amendments, with the most pertinent being the *Family Law (Shared Parental Responsibility)*

Amendments 2006 and the *Family Violence Amendments 2012* (see Commonwealth of Australia 2015). Considering the relevance of family violence to the majority of separating families, there is an expectation that identifying and preventing it be central to the policy and practice of family law. Fehlberg et al (2015) confirm that it is critical for family law and its practitioners to appreciate the complexity of the issues raised by family violence. Yet, as I will show, family violence is actively overlooked, ignored, mischaracterised, and excused by the system in a manner that facilitates perpetrators' abuse. Through the letter and the implementation of law, as well as the work of system professionals and adjudicators, we see family violence excused, condoned, reinforced, and perpetuated. In fact, abuse is sometimes produced by the very structures that are meant to prevent family violence.

One way that the family law is complicit in family violence is through failing to reasonably identify and consider family violence in its work. The recent *Family Violence Amendments 2012* (see Commonwealth of Australia 2015) recognise the centrality of family violence to family law and assert safety as a key principle. As part of the emphasis on prioritising safety in these amendments, family law professionals now have obligations to recognise, identify and act upon family violence-related concerns, which includes a stipulated requirement that courts actively inquire about intimate partner and child abuse (Fehlberg et al 2015). But in practice, family law professionals continue to demonstrably neglect these mandated obligations. Kaspiew et al's Australian study (2015a) found that between 30 and 41% of parents were never asked about family violence by anyone in the system at any stage. Also in Australia, De Maio et al's study (2013: 78) found that almost half of parents who disclosed past violence or child safety concerns to family law professionals reported that "nothing happened" in response. The broad neglect of family violence by family law administrators, practitioners, and adjudicators directly hinders, and even actively hampers its detection and prevention.

Family law professionals' consistent neglect to identify and act upon family violence concerns often arises from a deficient knowledge-base. Critical to adequate family law practice is an understanding of family violence, its features, and dynamics. Family violence encompasses a vast range of harms and, whilst it occasionally involves relatively minor and reciprocal violence between partners which affects parties equally and is not characterised by overarching dominance or control (see Johnson 1995; 2008; 2011), this type rarely appears in the family law system. The systematic abuse regimes that are most often the subject of official adjudication are widely referred to as coercive control (see Stark 2007). These regimes involve

a complex array of abusive tactics designed to maintain complete control over the victim and the relationship. These relationships are not necessarily marked by physical or sexual violence, although this does occur; rather, they are characterised by a tailored combination of isolation, intimidation and a range of fear-inducing strategies which maintain the perpetrator's dominance (Flood 2012a; Coy et al 2015; McCormack 2015; RCFV 2016; Sheehy 2018; Douglas 2018).

Despite its widespread legal codification and its centrality to family law, coercive control is inadequately recognised by the family law system. Victoria's *Family Violence Protection Act* (State Government of Victoria 2008; Magistrate's Court of Victoria 2015: 5.1.a) defines family violence as inclusive of behaviour that is psychologically abusive, threatening, coercive, controlling, dominating and which causes a person to fear for their or others' safety and well-being. In the United Kingdom also, coercive control within an intimate relationship is explicitly included in Section 76 of the *Serious Crimes Act 2015*. This criminal framework stipulates that coercive control can encompass a range of non-physical behaviours such as systematic social isolation, financial abuse, and psychological intimidation (UKCPS 2017). In family law practice however, practitioners and adjudicators demonstrate widespread refusal to acknowledge coercive control and its centrality to their work.

Studies indicate that judges rarely acknowledge family violence when it manifests as a pattern of coercive control. This was a consistent finding in Coy et al's (2015) research with family law subjects in the United Kingdom. One anonymous participant was told that verbal and psychological abuse was not harmful to children and was irrelevant to determining parenting arrangements. Another anonymous interviewee was admonished by a judge and instructed to "stop using the word violence" when referring to emotional abuse and threats because it was "clearly not" (Anon in Coy et al 2015: 58). These experiences are echoed in the Australian context. One of Laing's (2017) research participants recounted being told by family law officials that because her ex-partner "appears to be behaving himself, the court is satisfied that he's not really violent". Even though she informed them that his abuse involved all manner of physical and non-physical harms and, like typical abusers, he concealed them in the presence of others, she was disbelieved (Woman 19 in Laing 2017: 1325). In the New Zealand context, Elizabeth (2015) also found that family courts tend to rely on an assault-based model of family violence rather than the more apt coercive control paradigm. Cross-contextually, family law

practitioners' narrow understanding of family violence leads to inappropriate responses to the cases which constitute the substance of their work.

Another deficient area of understanding in family law concerns the intersecting and overlapping nature of family violence harms. It has been established over time and across international contexts that family violence frequently involves the co-perpetration of intimate partner and child abuse (e.g. Bancroft and Silverman 2002; 2004; Rossman et al 2004; Patrick et al 2008; Sutton 2008; Murray and Powell 2009; UK Women's Aid 2013; Wathen and MacMillan 2013; Kelly et al 2014; Coy et al 2015; Fehlberg et al 2015; Morrison 2015; QLD Law Society 2015; McTavish et al 2016; Laing 2017). It is also well-established that intimate partner violence often masks claims of child abuse in the Australian family law system (Harland et al 2015). In England, Hoyle and Palmer (2014: 198) suggest that up to two-thirds of cases involving partner violence against a woman also involve the direct physical or sexual abuse of children. The prevalence of intrafamilial child sexual abuse is also well-established. International estimates of childhood victimisation are around 20% for females and 5-10% for males, with the vast majority of perpetrators being biological fathers or other paternal figures (O'Donohue et al 2018: 459). As I will soon explain, family law professionals actively overlook and reject these facts concerning child abuse in their practice.

Family violence harms also intersect and overlap when accounting for children's indirect victimisation. Child exposure to violence directed against other family members is widely recognised as a serious harm across Australia, Canada, the United States, and the United Kingdom (Rossman et al 2004; Dunford-Jackson 2004; Sutton 2008; Kaufman et al 2011; O'Brien et al 2013; Campo et al 2014; PHAA 2015; McTavish et al 2016).[54] Indirect victimisation is also widely recognised to constitute a form of child abuse, with similar detrimental outcomes to other types of abuse and neglect. United States jurisdictions, for example, treat this harm very seriously (see Dunford-Jackson 2004: 191-3).[55] In Australia, the *Family Violence Amendments 2012* (Commonwealth of Australia 2015) also consider exposure

[54] This can include seeing or hearing physical assaults, sexual violations, harassment, psychological taunting, derogatory treatment, threatening behaviour, and various forms of coercive and controlling violence. It can also include witnessing the impacts of this abuse, such as seeing a parent injured, visibly upset or mentally unwell. As children often deeply empathise with parents and feel obligated to assist, their exposure severely constrains their ability to receive adequate parental care or to experience normal psychological development. Specific effects include significant psychological and emotional impairment, both short and long term.

[55] In Utah, perpetrating violence against one's partner in the presence of a child is defined as child abuse, while in Georgia, perpetrating family violence in front of a child constitutes the crime of cruelty to children.

of children to inter-parental violence as a form of abuse.[56] This problem is extremely widespread. Figures from the United Kingdom indicate that one in five of all children have been exposed to family violence (NSPCC 2019), whilst a Melbourne-based study in Australia showed its impact on the lives of one in four children (Gartland et al 2014).[57] In the United States, O'Brien et al (2013: 95) refer to the "many millions" of children who are exposed to family violence every year.

Yet family law practitioners demonstrate deficient knowledge and active resistance to these family violence realities, thereby directly contributing to erroneous practice and harmful decision-making. In canvassing a range of family law professionals' views of the recent *Family Violence Amendments 2012* (see Commonwealth of Australia 2015) and their impact, Kaspiew et al (2015d) found widespread ignorance of family violence amongst law professionals. Although many practitioners demonstrated increasing awareness of intimate partner violence, there was extreme lack of knowledge about child abuse, its prevalence, and the frequent co-occurrence of intimate partner and child abuse. This research indicates significantly deficient professional knowledge of a number of issues that are central to family law policy and practice and the detection and prevention of harm. A central and problematic notion within legal practitioners' responses – and indeed a notion that pervades family law in general – is that men can simultaneously be controlling and violent partners, yet positive fathers (Flood 2012b). Underpinning this, as I will now discuss, is what is widely known as 'pro-contact' ideology.

Pro-contact and male privilege

Pro-contact ideology and culture is ingrained in family law in most Western systems. It consists of principles and practices which privilege the presence of men and fathering, based on the belief that fathers are inherently necessary to families and to children's development and

[56] However, this recent provision contains the caveat that the exposure must cause 'serious psychological harm'. Any level of exposure to any family violence can cause both short and long-term harm to children. Responses to trauma are often delayed, with the full impact only apparent many years later, when a child begins displaying more easily-identifiable psychological symptoms. I argue that this caveat thus limits the positive features of the amendment. Additionally, it implies tacit tolerance of some level of family violence.

[57] In Kaspiew et al's (2015b) wider Australian research with families utilising the family law system, in two thirds of the families in which intimate partner violence occurred, children had witnessed physical violence both before the parents separated as well as since. In half of these families, parents reported that children witnessed solely emotional abuse during both the pre and post separation periods. In more than half, children had repeatedly witnessed coercive, controlling or fear-inducing abuse before or during separation, and over 40% were exposed to coercive control since parental separation.

upbringing (Harne and Radford 2008; Flood 2012b; Alderson et al 2013; Cook and Natalier 2013; 2016; Kelly et al 2014; Coy et al 2015; Morrison 2015). Pro-contact culture is detrimental to women and children because it prioritises fathers ongoing involvement in children's lives without regard for the quality of their parenting. One of the central (and contradictory) tenets of pro-contact culture is the idea that men can be perpetrators of serious and protracted control, abuse, and violence against women, but remain suitable parental figures and carers for children (Flood 2012b; Cook and Natalier 2013; 2016; Cook 2015; Morrison 2015). This renders men's prior violence irrelevant to custody and child safety, particularly when the only apparent offending is directed towards an intimate partner. These views are evident in Kaspiew et al's (2015d) research with Australian family law practitioners. Refusing to consider its direct relevance to parenting, one lawyer, for example, described his objections to the

> *increased focus on the [intimate partner] violence rather than how to move on and create arrangements that are safe but allow the children to develop a relationship with the other parent* (L49 in Kaspiew et al 2015d: 43).

This lens compartmentalises men's roles and behaviours such that they can threaten, degrade, and assault their child's mother, yet be upstanding men whose fatherly influence is essential for their children's development (Kelly et al 2014; Coy et al 2015). By framing intimate partner violence as irrelevant to parenting, pro-contact discourses provide a framework through which men's violence against women can be hidden and excused, and its impacts on children ignored (Laing 2010).

The intersection of increased recognition of intimate partner abuse, yet on the other hand, insistence of the importance of these same men as fathers, leads to the endangerment of children. In judicial practice, it underpins rulings which prioritise children's contact with violent fathers and which jeopardise the safety and well-being of mothers and children (Alderson et al 2013). In Australia, through Laing's (2010) study with women accessing the family law system in New South Wales, Australia, participants described how family law officials – ranging from solicitors, court-appointed assessors, mediators to magistrates – frequently stressed the importance of fathering, without accounting for whether it might be regular, consistent, engaged, positive, or even safe. Some of the most common beliefs encountered by participants were that children need a relationship with their father even if it has been abusive, and that contact is inevitable, irrespective of a violent history. Pro-contact ideology also underpins common misconceptions that children "want to see their fathers and

must have affection for them" even if they have been violent and abusive (Harne and Radford 2008: 67). Since pro-contact ideology generates narratives that ignore, minimise, and dismiss male violence with direct relevance to family law decision-making, it represents family law's tacit authorisation and toleration of this violence. In both the United Kingdom and Australian contexts, this ideology and culture is directly implicated in perpetuating family violence (Kelly et al 2014; Coy et al 2015).

In child custody cases, men's prior violence is consistently dismissed or downgraded. In both Australia and the United States, Hunter's court research (2006) found that judgements consistently minimise histories of male violence in favour of narratives which emphasise the value of the patriarch and the nuclear family. In cases where parental separation was unavoidable, the maintenance of regular contact with fathers was afforded paramount importance. Even where the fathers' prior violence had caused serious injury to their partner, and in some cases killed them, the maintenance of regular child-father contact was prioritised in judicial decision-making. The "future-focus of family law" (NCRVAWAC 2009: 104) enables courts to actively obscure and dismiss evidence that is demonstrably relevant to the case. Although past violence is a key indicator of future violence, this is not always recognised by family law (NCRVAWAC 2009). This also allows the system and its officials to actively deny the realities of family violence and the temporal and contextual continuity of perpetrator behavior. The system's failure to consider the direct relevance of violent histories to safe and healthy custody arrangements can place children at direct risk of harm from unsuitable parents.

In family courts in England, women who attempted to raise perpetrators' extensive histories of abusive and violent behaviour were told it was irrelevant. 'Kiran' (in Coy et al 2015: 58-9), for example, had been physically, sexually and psychologically violated during her marriage, and after managing to leave her husband, was subjected to hundreds of threatening text messages every day. Yet, even in the presence of police reports of her ex-husband's violence, "the court did not really give too much importance to this. They said 'this is just a child custody issue'" (59) and told her in condescending terms to stop raising "irrelevant" information. Similarly, 'Erika' was told that her ex-partner's extensive violence against her was

> *nothing to do with contact at all. I've never been able to raise that, I've never been allowed to speak about it. The court don't want to know about his conduct, his behaviour, when I've been there it's all about his rights to see the children, have*

> *contact, and when I said I [had] concerns about him emotionally abusing them, they wouldn't hear of it . . . All they wanted to know is when he could see them*. ('Erika' in Coy et al 2015: 58).

Even in the face of extensive evidence of intimate partner violence which was admitted by the father, judges continued to artificially and erroneously separate out this violence and deem it irrelevant to parenting.

In many cases, family law's pro-contact ideology and the associated belief in the importance of fathers even overrides evidence of direct physical and sexual abuse of children. Australian family law practice since the *Family Law Act 1975* (see Commonwealth of Australia 2015) has consistently operated in accordance with pro-contact ideology and upheld the perceived unqualified need for children to know and have contact with their father. The *2006 Shared Parental Responsibility Act* (also see Commonwealth of Australia 2015) has also tended to operate in accordance with the ideology denoted by its title, instituting parenting orders in line with the presumption that it is of utmost importance for children to continue a relationship with their father. Prior to 2012, shared parental responsibility was determined in around 75% of cases where allegations concerning violence and child safety were raised (Fehlberg et al 2015). But, despite the recent amendments' explicit principles relating to prioritising child safety, little has changed. Kaspiew et al's (2015a; 2015b) research identifies negligible differences in the determination of father's access to children, even in the presence of child abuse allegations. This indicates the enduring prominence of pro-contact principles, even in the face of unacceptable risks to children. The detrimental and dangerous implications of this are most obvious in cases involving a history of direct physical or sexual abuse of children.

Pro-contact discourse in family law also perpetuates systematically sexist ideology which has widespread negative impacts. In contrast to the positive narratives around men, women and mothers are consistently painted in a negative and critical light in family law discourse. Laing's (2010; 2013) research participants in New South Wales, Australia, reported that the most common assumptions they encountered during their interactions with family law practitioners were that mothers make false intimate partner and child abuse allegations, that they should not raise these allegations in the family law system, and that attempts to isolate children from their fathers are unjustified (also Flood 2012b). These dominant views also posit that when a family law matter is pending, women often obtain protection orders for tactical rather than genuine reasons, in order to fabricate a history of abuse (Fehlberg et al 2015). Ferguson et al's (2018)

Australian analysis suggests that this belief is widespread and deeply ingrained in family law ideology and practice. These authors identify broadly "critical and insensitive" judicial attitudes toward mothers who make allegations against ex-partners, with many allegations perceived as "malicious and intentional fabrications" aimed at limiting paternal access (Ferguson et al 2018: 94).

These sexist patterns are also evident outside of the Australian context. In the United States, Nichols' (2013) research shows that independent children's lawyers and judges consistently interpret child abuse allegations as indicative of the alleging parent's ulterior motives or mental health problems, rather than an indication that abuse may have actually occurred (also Gutowski and Goodman 2019). In the United Kingdom, scepticism of women and their motives is also a prevalent dimension of that contexts' pro-contact culture. For instance, if children express a view about not wanting paternal contact, this is generally assumed to "have been manipulated by their mothers" (Harne and Radford 2008: 68). Ferguson et al's (2018) review of international literature on this issue also indicates the prevalence of similar sexist views across Australian, Canadian and American systems. These beliefs systematically oppress women and reveal the gendered hierarchy of knowledge, truth and discourse which operates through family law.

By systematically relegating women's voices and interests below men's, family law in turn contributes to systematically discriminatory court practice and erroneous decision-making. Gutowski and Goodman's (2019) qualitative research with women survivors of intimate partner abuse who were engaged with the United States family law system showed consistent patterns of discursive oppression, dismissal of valid testimony, inattention to men's violence, and questionable rulings. Even in cases involving a verified history of the man's violence, male testimony was routinely regarded more highly than that from women. As 'Kelly' stated:

> *Why would* [the court] *believe someone who has done all these things to me and my children, why would [they] take his word over mine? I don't understand. I feel like even though I was the victim and he was the perpetrator, I really feel like he still has more rights than I do* ('Kelly' in Gutowski and Goodman 2019: 10).

Australian studies also show that even in cases where a man's violent history has been established and his integrity systematically discredited through court evidence, his testimony is generally viewed as more credible than that of a woman who has no problematic history (e.g. Patrick et al 2008; Laing 2010; 2013; 2017; Fehlberg et al 2015; Kaspiew 2015a; 2015b;

2015c). This again evidences a persistent gendered hierarchy in which men's voices and interests are consistently elevated above women's and children's.

Conte's (2018) research into recent Australian family court cases involving allegations of parental child sex abuse also confirms the contemporary persistence of official discourses which privilege men. Through an analysis of judicial commentary, this study identifies discursive framing which systematically discredited women and children and dismissed their testimony of male violence. Women were consistently framed as deceitful, malicious, manipulative and mentally-unstable. Court deliberations and decisions were premised upon the assumption that mothers' allegations of paternal abuse were false and fabricated and thus consistently constructed mothers as liars. The overwhelming majority of children were constructed as being "affected", "influenced" and even "coached" by their mother (30-1) and were frequently "characterised as liars and complicit operatives in their mother's scheme" (33). Allegations made by mothers were framed as destructive and harmful to children rather than concerned or protective, and the possibility that they might be based on genuine and well-founded concern for their children's welfare was rarely acknowledged by the court. In these cases, powerful patriarchal discourses functioned to directly impede the recognition, detection, and prevention of abuse and resulted in inappropriate rulings which jeopardised child safety.

Other analyses of Australian family court cases involving allegations of child sexual abuse also show the systematic and gendered discrediting of witness testimony. Ferguson et al (2018), for example, found that 62% of their case sample was discredited and disbelieved. Alleging parents and children were frequently judged unreliable and were subjected to interrogation and criticism concerning their honesty, integrity, and mental stability. There is, of course, no empirical basis for doubting testimony specifically from women and children. In fact, if there is any empirical indication of the need to evaluate witnesses' veracity on the basis of gender, it points towards the need for scepticism of men's accounts (see Ferguson et al 2018). The discursive hierarchy established by court practice therefore reveals these assumptions as ideological in the true critical sense: as an oppressive set of beliefs which gain their power not from any empirical basis or objective truth, but rather because they emanate from elite groups, align with dominant interests, and help sustain hegemonic power arrangements (see Shelby 2014; Haslanger 2017).

This discursive patriarchal framing of credibility is also related to a harmful gendered construct of risk whereby, regardless of the actual risk posed, that emanating from the mother is consistently deemed more serious. This is indicated by Nichols' (2013) research in the United States, where it is noted that judges are far more inclined to make determinations of false negatives rather than false positives in relation to paternal child abuse allegations. The authors attribute this trend to the widespread but erroneous assumption that the consequences of accepting abuse allegations and limiting or ceasing contact with fathers is likely to have more serious consequences than dismissing allegations and allowing child contact with an alleged abuser. This is supported by Conte's (2018) findings in the Australian system, where Conte (2018: 31) notes that, "in constructing the mother as an active saboteur, family consultants and judges seemed to give more emphasis to the risk of emotional abuse perpetrated by the mother [than] the risk of sexual abuse by the father". This kind of decision-making is tantamount to ruling that sexual abuse is of less concern than emotional abuse; however, the key variable here is of course gender, with the risk posed by the mother deemed more serious. This further points to the harmful gendered hierarchies which operate within family law and function to not only oppress women and children, but directly jeopardise their safety and well-being.

Family court determinations in cases involving child abuse allegations reveal institutionalised sexism and discrimination. Ferguson et al's (2018) cross-contextual analysis shows that parent gender is most often the determining factor in such cases. Rather than reflecting the strength of the allegations and the evidence presented in each case, the key factor in whether judges deemed allegations as substantiated was whether the alleging parent was the mother or father. In cases involving allegations made by mothers against fathers, abuse was disproportionately ruled unsubstantiated. Despite a "fairly robust level of international consensus that unsubstantiated allegations are more likely to come from fathers than mothers" (Ferguson et al 2018: 110), the analysis found that judges were more likely to uphold fathers' allegations against mothers than the reverse. This points to clear gender-based discrimination operating in family law practice. It also reveals enduring patriarchal ideology that continues to privilege men's voices, claims and interests, perpetuate myths about women, and make determinations regarding child safety based on patriarchal ideology and gender politics rather than principles of impartiality and evidence. Additionally, when children are placed in the care of an abusive parent, their safety is jeopardised. Family law can thus be seen as an active enabler of injustice and a facilitator of further family violence against children.

There is strong evidence that family law's custody and contact rulings consistently place child abuse victims at risk of further harm. Contrary to widespread assumptions amongst family law practitioners that child abuse allegations are generally fabricated and that intrafamilial child sex abuse is very rare (see Ferguson et al 2018), figures suggest that allegations are highly likely to reflect actual abuse. O'Donohue et al's (2018) broad international review of research literature and data indicate that "false allegations [are] … usually in the 2–5% range" (471). Figures from the United States and Canadian contexts suggest that, broadly and on average, the rate of false allegations of intrafamilial child sexual abuse is less than 1%, and that, contrary to popular belief, false allegations are relatively infrequent even in high-conflict custody disputes (Ferguson et al 2018). De Maio et al's (2013) Australian research also finds little evidence to support assumptions about the prevalence of mothers' specious abuse allegations. Additionally, O'Donohue et al (2018) draw attention to the substantial rate at which abuse is both under-reported and under-recorded, with the latter referring to erroneous official findings of no abuse. Yet this aspect of the data set is rarely acknowledged or accounted for by family law (also Nichols 2013).

Given the extremely low incidence of actual false allegations, there is a strong possibility that custody or contact rulings involving allegations are placing children in the care of abusers. Ferguson et al (2018) cite American data which estimates that, every year, family courts are placing more than 58,000 children in unsupervised custodial care of an abusive parent. Even in cases where paternal child sex abuse has already been established, courts continue to consistently rule in favour of father-child contact. In Australia, studies show courts' consistent refusal to consider even serious cases of child abuse as relevant to determining child custody and contact (e.g. Patrick et al 2008; Laing 2010; 2013; 2017; Fehlberg et al 2015; Kaspiew 2015a; 2015b; 2015c). Research by both Kelly et al (2014) and Coy et al (2015), in the United Kingdom, also indicates that forced contact with parents accused of direct child abuse is still common.

> *Despite histories of violence, despite children refusing contact or expressing terror and distress, despite in some cases injunctions being in place and criminal convictions … findings here support multiple previous studies' [findings that] unsupervised contact was routinely ordered to abusive fathers* (Coy et al 2015: 66).

In the Australian family law system also, Conte's (2018) study shows that the majority of judicial decisions in cases involving paternal child abuse allegations compelled children into contact with their fathers. This was even the case when the children had given formal evidence

of sexual abuse and clearly expressed a desire to cease contact. In direct contravention to their central principles, family courts are clearly failing to appropriately consider child safety in their determinations.

Child contact

Through enforcing child contact with abusive men, family law provides opportunities for the perpetration of further family violence. Granting child custody and access to abusive fathers ensures ongoing contact arrangements, which provide easy and frequent opportunities for the continuation of violence against mothers and children, post-separation. In Australia, Qu et al's (2014) study of separated mothers' experiences shows that whilst some forms of violence generally decrease after separation, there is a significant increase in other abusive behaviours such as verbal harassment and stalking, and that almost half of women continue to experience problems for five years or more.

Post-separation violence is inadequately understood or considered in family law. New Zealand research indicates that family courts lack understanding of the dangers inherent to any interactions with an abusive former partner. Like many women trying to manage their safety, 'Amanda' (in Elizabeth 2015: 36) requested that the court determine a neutral location for child hand-overs. However her request was denied by the judge, who said that "you have nothing to fear from him now, now that you are separated you have nothing to fear". This demonstrates a complete absence of understanding of post-separation violence and the extreme risks posed to victims by having any communication or contact with their ex-partner (see e.g. Phillips and Vandenbroek 2014; Qu et al 2014; PHAA 2015; QLD Law Society 2015; RCFV 2016; Sheehy 2018). In America, both Haley and Braun-Haley (2000) and Harne and Radford (2008) confirm child contact arrangements as the primary vehicle for the continuation of post-separation intimate partner violence. This included verbal abuse, threats, and physical assault. In Scotland, Morrison (2015) also shows clear links between contact arrangements and the facilitation of intimate partner and child abuse. This research found that child hand-overs routinely involved the father shouting, swearing, insulting, and threatening the mother. In all cases in the study, contact arrangements facilitated perpetrators' ongoing intimate partner abuse.

Family-law-mandated child contact arrangements are also used as a tool for more subtle forms of post-separation abuse. Kelly et al's (2014) United Kingdom-based study showed how many

men used the handover of children as a means of gaining information about or continuing to control and constrain their ex-partner. Many women described how child contact was "used in order to subject the woman to further abuse ... a controlling way of knowing what's exactly going on in the woman's life" (Anon in Kelly et al 2014: 96). Other participants described how it was routine for their ex-partner to be late or to not show up at all for handover arrangements, particularly when they were aware of the mother having an important work or social commitment. Of course, again highlighting the intersecting harms of family violence, all these forms of overt and subtle violence were witnessed by children, who are also harmed by witnessing these displays. This illustrates how court-ordered contact facilitates and extends coercive control beyond the abusive intimate partner relationship.

Child contact arrangements also provide the opportunity for abusers to use children as tools for the extension of intimate partner violence. This occurs when perpetrators enlist children as detectives, messengers and weapons to extend perpetrators' monitoring, control and harassment of the other parent (Morrison 2015). In the United States context, Bancroft and Silverman (2002) have documented various forms of this abuse, as well as their function. Tactics include fabricating stories about the mother in order to damage the maternal-child relationship, requiring children to monitor or report on the mother's behaviour, or relaying threats to the mother through the children. Sometimes children are also enlisted as independent abusers themselves, as in cases where they are schooled in using explicit derogatory language against their mother. Kelly et al's study with separated mothers in the United Kingdom (2014) documents the frequency with which male abusers insulted their ex-partner directly to her children, which was often repeated when they returned to the mother's care. For instance, one anonymous participant recounted that, the day after her daughter's visitation with her father, "she told me 'Mummy you are poisonous', and she didn't even know what poisonous mean[t]" (Anon in Kelly et al 2014: 96). It was also common for children to be subjected to "mind games … just for information" about their mother (Anon in Kelly et al 2014: 97). These forms of abuse not only sustain intimate partner violence beyond separation; they also constitute a form of child abuse. This is because they subject children to psychological and emotional harms as they are co-opted in family violence against their will and often even without their knowledge. These custody and contact arrangements are therefore a powerful vehicle for the extension of family violence perpetrators' control over women and children.

The co-optation of children in men's post-separation partner abuse can also be seen as a form of abuse training, designed to expand the original perpetrator's control, and train children to become independent perpetrators. Family violence perpetrated by children against their parents is an under-researched phenomenon, however it has well-substantiated links with men's intimate partner abuse and indicates the strong impact of paternal modelling in family violence. Available data from the Australian practitioner sector shows that this problem overwhelmingly involves adolescent male children perpetrating abuse against their mothers. In Gallagher's (2004) clinical sample of child perpetrators of family violence, 99% victimised their mothers, and in terms of perpetrator gender, boys outnumbered girls by six to one. Evidence points to this behaviour being modelled on abuse of the same victim by the boy's father or step-father, with behaviour often employing very specific patterns and learned techniques. Howard's (2011: 6) study showed that mothers frequently report "almost identical" abusive language and behaviours used by their child and their former partners. Some women were particularly disturbed by the parallels between abuse from their son and their ex-partner. 'Sandra' stated that this pattern is "disturbing for me when I recognise it … sometimes I feel I am [back] living in the relationship with my ex-husband … It disturbs me enormously" (Howard and Rottem 2008: 43).

McKenzie et al's (2016) study of intimate partner violence cases in Victoria, Australia, also identifies the use of children to exacerbate and extend men's partner violence. For example in *R v McDonald* (2011 in McKenzie et al 2016: 58, 140) it was documented that, during contact visits, the father would compel his children to write offensive notes to their mother which labelled her a 'whore' and 'slut'. I suggest that children in this situation are proxy perpetrators[58] for their father's abuse, and further that the family law system is directly implicated in this family violence. This is because it compels child contact with fathers who are unfit parents and who provide direct perpetrator training for a new generation of family violence perpetrators. Indeed, this concerning prospect is indicated by Howard's (2011) research which shows that adolescent perpetration of violence against mothers strongly correlates with future intimate partner violence perpetration.

[58] In Chapter Seven, I thoroughly elaborate on the notion of proxy perpetration in relation to family violence and state crime. Here, however, I simply use the term 'proxy' to refer to fathers using children to perpetrate abuse against their ex-partner, on their behalf.

Paper abuse

Another way that family law facilitates family violence is through providing specific new tools for perpetrators to engage in protracted post-separation abuse. For many victims, this results in the continuation of psychological, emotional and financial abuse for years after a relationship supposedly ends (see e.g. Branigan 2004; 2007; Cameron 2014; Elizabeth et al 2012; Laing 2010; 2013; 2017; Cook et al 2015; Douglas 2018; Natalier 2018; WLSV 2018). Abuse in this form is a "barrage of men's frivolous lawsuits, false reports of child abuse, and other system-related manipulations" (Miller and Smolter 2011: 637). These actions which exert power, intimidation, compel contact, and financially burden women are described by Miller and Smolter as a continuation of coercive control through what they term paper abuse. These authors also liken paper abuse to stalking, due to the way that victims are coerced into contact with their abuser.

One form of paper abuse is repeated threatened or actual vexatious litigation. This refers to legal action intended primarily to upset, demoralise or financially deplete the other party rather than pursue a legitimate claim. Family law is a key vehicle for paper abuse because vexatious litigation commonly relates to financial settlements and claims, child custody and contact, child support, and allegations of child abuse and neglect, which are intended to affect parenting arrangements. Across different Australian jurisdictions, both Douglas (2018) and Women's Legal Service Victoria (2018) confirm that many victim-survivors are continuing to face long-term paper abuse as perpetrators aggressively pursue vexatious litigation. Many Australian women in Cameron's (2014) study described being subjected to a continuous cycle of court appearances initiated by their ex-partner which had a devastating impact on their and their children's lives by causing constant stress, anxiety, illness and extreme hardship. One participant recounted ten years of disputes during which her former partner pursued unnecessary actions and regularly threatened to pursue full custody of their son ('Cathie' in Cameron 2014: 35). 'Serena' (in Cameron 2014: 35) explained how her ex-husband was taking her to court for the eighth time, and how he

> *is definitely, blatantly, obviously using the system to abuse me. ... It is just a control thing and it is just about breaking me down and he is doing all sorts of things within the system to abuse me*.

Another interviewee described how her former partner threatened to use everything in the court system to destroy her financially, and proceeded to do so ('Susan' in Cameron 2014: 35). This

testimony shows how perpetrators are able to use the legal system in a deliberate, strategic way in order to continue their regime of control and abuse. Here, the system is not only tolerating ongoing abuse, but is providing perpetrators with the tools to wield ongoing power and wreak long-term havoc in their victims' lives.

Parallel patterns of family law-facilitated economic abuse are also noted in the United Kingdom context. Kelly et al's study (2014) illustrates how perpetrators use court processes to continue their abuse, ensuring that victims faced stressful, protracted and costly proceedings which would deplete their emotional and financial resources. Participants commonly described family law proceedings extending over years, causing some women significant psychological deterioration and mental illness. This led some women to accept parenting and child support arrangements that were unsuitable for them and their children (Kelly et al 2014). Elizabeth's (2015) research in the New Zealand context similarly suggests that controlling fathers' aggressive family law pursuits should be understood as the continuation of coercive control. This is because these actions force women into costly, traumatic, unnecessary and long-running disputes. In Australia, many perpetrators openly admit that vexatious litigation is their new and officially-sanctioned method of maintaining control and deliberately damaging victims' lives (e.g. Cameron 2014; Cook 2015).

When the system is used in in this way, it can be seen as both a tool and an enabler of abuse. The lack of consequence for perpetrators' litigious actions, and inadequate reform to address these issues also communicates to family violence perpetrators that their behaviour is tacitly approved of by the system and that it will be allowed (Elizabeth et al 2012; Kelly et al 2014). This positions state institutions as official endorsers of the harm. Other Australian research indicates that the misuse of legal mechanisms to perpetuate dynamics of abuse and control is a growing rather than a diminishing problem. Kaspiew et al's (2015a) findings in some areas suggest a possible recent acceleration in this dynamic. This data indicates an increase in the proportion of fathers attempting to stop or limit contact between their child and the other parent, but no corresponding increase in mothers engaging in similar behaviour,[59] thereby supporting the hypothesis that abusive men are using the system to pursue vexatious actions against their

[59] Other data show that increased reports of safety concerns by fathers do not correspond with responses from system professionals. Rather, fathers' disclosure of safety concerns are actually more likely to result in the limitation or cessation of their own time with the child. This suggests a lack of responsiveness to the increased claims of fathers against mothers and an indication that professionals may be developing more sceptical attitudes towards men's claims as compared to women's.

ex-partner. By continuing to provide perpetrators with the tools to prolong and extend abusive behaviour, the system can be seen as an active facilitator of abuse.

Family court as intimate abuser

The Australian family law case of *Tyler v Sullivan* (FCA 2014) illustrates the consistent doubt cast over women and child abuse allegations, and the willingness of courts to side with men in labelling and oppressing women. I engaged in primary analysis of the Court's Reasons for Judgement. In the case, both parents were seeking sole custody of their son. The mother alleged paternal sexual abuse of their son many years prior when the boy was aged two and three, and argued that their son would be at ongoing risk of harm if placed in the father's unsupervised care. The father's legal team made no allegations of physical or sexual abuse by the mother, but argued that her allegations were entirely fabricated due to psychiatric illness.

The mother's case was based on extensive, detailed, and cogent evidence indicating a genuine and well-founded concern that abuse had occurred. The mother presented extensive and consistent details of many conversations and interactions with her son during which he confided specific scenarios and details of various forms of sexual abuse by his father. Testimony from multiple professionals, including child care workers, also documented sudden and significant verbal and behavioural developmental delays and indications of significant psychological disturbance in the boy, which correlated precisely with the alleged abuse in terms of timing and likely impact. The mother could not provide physical evidence of the sexual abuse, as is commonly the case, and evidence from child protection interviews with the child were inconclusive, given the boy's young age at the time. However, he had made some concerning and officially-documented references in child protection interviews, including repeated references to his father causing him "hurties", to him being "very sore", and to him not liking his father (in FCA 2014: 56-7). The mother's intelligence, rationality, and reliability were strongly indicated in excerpts of case proceedings contained in the judgement I analysed. This included the fact that she had educated herself sufficiently in law and legal process to capably self-represent, that her testimony and arguments were extremely eloquent and logical, and that her account was strongly supported by her expert witness with extensive academic and practitioner knowledge of child abuse.

Yet the court judgement dismissed the mother's case and favoured the father, not only in relation to the custody ruling, but also by deeming the mother psychiatrically ill. Its judgement was heavily based on testimony from psychiatrists brought by the father's legal team. The judge accepted their arguments that the child's significant psychological and behavioural abnormalities, which emerged at precisely the time the mother alleges abuse, were spontaneous "Early Onset Psychiatric Disorder" (160). He deemed it irrelevant to explore any causal or precipitating factors to the boy's dramatic and sudden psychiatric and behavioural regression. In assessing the mother and her case, the judge accepted and directly cited testimony from one of the father's psychiatric witnesses, who asserted, in the absence of psychiatric consultation or diagnostic assessment that

> *the mother meets the criteria for diagnosis of the Psychotic Illness 'Delusional Disorder' because she holds with absolute conviction her belief that her son had been sexually abused by his father* (Dr R in FCA 2014: 129-30)

Simply because of the mother's conviction that her son had been abused and her unwillingness to be pressured into an abstract legal game of entertaining the possibility that her conviction was mistaken, she was pathologised by psychiatry and the law. Taking this pathologisation process even further, the court deemed the mother a serious psychological risk to the child because she was seen to have coached and manipulated her son based on so-called false allegations. This is consistent with Conte's (2018: 31) finding that family courts tend to "give more emphasis to the risk of emotional abuse perpetrated by the mother [than] the risk of sexual abuse by the father". Accordingly, in *Tyler v Sullivan*, full custody and parental responsibility was awarded to the father, with no face-to-face contact whatsoever between mother and child.

This case provides a powerful example of active and agentic state participation in family violence. It exemplifies judicial decision-making which relies on and perpetuates sexist narratives about women as irrational, manipulative and with an inherent tendency towards mental instability. This is then used as the basis for casting doubt over their claims, reframing their protective concerns as evidence of illness or deviance, and damaging their relationships with children at the expense of supporting the father. Additionally, by not treating child abuse allegations as a possible indicator of actual abuse, the court also places a child at risk. The case illustrates how, in collusion with psychiatry, the family court is willing to support and collaborate with a male alleged family violence perpetrator.

Tyler v Sullivan (FCA 2014) also illustrates how the family court itself can be understood as a perpetrator of coercive control. As the mother herself argued in Court:

> *this court has itself behaved in a coercive and controlling manner. It is my concern that Family Court judges involved in this case are behaving abusively towards me and my son and identifying with [the father] and [therefore] support the further perpetration of abuse* (Sullivan in FCA 2014: 158).

Like so many parents seeking to protect their children from a perceived risk of abuse, this woman was compelled into painful and protracted legal proceedings. Further extending the mother's arguments, I also suggest that the court can be seen as coercive controller in other ways. In fact, I propose theorising the relationship between this mother and the court *as* an abusive relationship which is comparable to intimate partner coercive control. Like in an intimate partnership from which a victim cannot escape due to the perpetrator's power over her, this woman was compelled into intensive and oppressive contact with the court. Also like an intimate coercive controlling relationship, the court interrogated, accused, demeaned, and judged her, scrutinising every action relating to her son's care, accusing her of dishonesty, questioning her sanity, and labelling her psychiatrically ill. The mother was additionally subjected to particularly harsh treatment when her conduct challenged dominant notions of appropriately deferent female behaviour and thus questioned the court's authority. Also like a coercive controlling intimate relationship, the inherent power imbalance between the individual and the court meant that the court's capacity to interpret information, make decisions, and to coerce and control accordingly, was absolute. Ultimately, the personal capability and power of the mother was immaterial, and her inability to escape the court's control or to challenge its harmful verdict positions the court as her abuser.

As in *Tyler v Sullivan* (FCA 2014), the family court's oppressive and abusive treatment of women is echoed across Australian and other family law systems. One anonymous participant in Cameron's (2014: 32) research study in Victoria, Australia, said she found "the entire legal system oppressive, not understanding, ignorant of abuse in any form, especially child abuse, and indifferent to the needs of my child". In Gutowski and Goodman's (2019) qualitative study with women involved in the United States family law system, nearly all research participants described feeling betrayed by the system, and explained how this "compound(ed) the adverse effects of intimate partner violence" (2). Many interviewees described the frustrating and disenfranchising experience of having one's mental stability and integrity constantly questioned. 'Daniella' (in Gutowski and Goodman 2019: 7), for example, expressed her intense

frustration at being criticised and branded "abnormal" during court proceedings. She recounted how the judge dismissed her as "inappropriately angry", and how she was labelled as someone who responded in an "abnormal way to normal stimuli". As she emphasised in her interview, behaving as she did was "not abnormal. It's *normal* for an abused person". Yet, without adequately understanding abuse and its effects, the court interpreted her responses – and indeed all case evidence – through an ignorant and inaccurate lens. This contributes to inappropriate decision-making and it also devalues family violence survivors and their testimony.

Being thwarted and re-victimised by the family law system was another common experience of victim-survivors. Some women in Gutowski and Goodman's (2019) study identified the particularly grave sense of betrayal associated with being failed by a powerful institution rather than merely an individual family member. 'Olivia', for example, recounted the profound impact of "being victimised by the very same system that is supposed to protect me" (11). She also reflected on the disempowering parallels between her intimate partner victimisation and her family court experiences, describing the sense of her "words hav[ing] no weight" and of being "invisible" (11). This is also reflected in the experiences of 'Steph' (in Coy et al 2015: 60), who describes the pervasive re-victimising experience of going through the British family court system: "It's been like going through the abuse again, it really has. That abuse that I suffered in my marriage … it's been the same thing in the legal system". In Australia, Douglas (2018: 84) also identifies the common experience of family violence victims attempting to engage with and obtain assistance from the system, but instead being subjected to what she terms 'systems abuse'. She also notes that this abuse has similar dynamics and impacts to intimate partner coercive control. Laing's (2017) qualitative research in New South Wales, Australia, shows that many women's engagement with the family law system constitutes secondary victimisation, since it mirrors family violence dynamics by systematic silencing, controlling and undermining them. These experiences highlight the parallels between the control and abuse perpetrated by systematic intimate partner abusers, and by the family court.

The family court *as* abuser resonates in victim-survivor testimony across a range of contexts, positioning this state institution as central to family violence victims' experiences of harm. When family violence victim-survivors are treated in oppressive and abusive ways by family courts, it is particularly disturbing and harmful because it replicates victims' experiences of the abusive relationship from which they were trying to extricate themselves and which has led them into the family law system itself. This treatment is yet another way that family law

actively participates in harming family violence victims and it positions this state institution itself as abuser. Indeed, I argue that direct state abuse of this type should be understood not only as state complicity in family violence and as a model and mirror for abuse, but as direct state violence.

Family law is also directly implicated in family violence harms against children through compelling them into unsafe parent contact. Firstly, by making custody and contact determinations which place children in the care of abusive men, the family law system actively jeopardises child safety (see e.g. Patrick et al 2008; Laing 2013; 2017; Fehlberg et al 2015; Kaspiew 2015a; 2015b; 2015c). But family courts are implicated in more direct coercive and abusive treatment of children. Laing's (2010) research in New South Wales, Australia, indicates some disturbing examples of what I identify as direct state violence. This research details a number of cases where children were forced into contact with fathers who had perpetrated serious physical, sexual and emotional abuse against them. In one case, even though there was an protective order in place for the child, she was forced to spend hours at a time with her father at a supervised contact centre.[60] The mother was legally compelled to leave her daughter there, and when the child cried and refused to interact with her father, staff reprimanded and bullied her into playing with him by telling her she had no choice. The child was so distressed by the time her mother returned that she was sobbing and soiling herself (Anon in Laing 2010: 44). This disturbing case is not isolated; rather it is reflected in other victims' experiences in the United Kingdom (see e.g. Kelly et al 2014; Coy et al 2015).

In other cases involving clear disclosures of child physical or sexual abuse, children were still forced into visitation with their fathers despite there being no positive relational history and despite the contact inducing intense fear, anxiety and identifiable physical illness. This exemplifies the powerful influence of pro-contact ideology and how it functions to the detriment of children. As one anonymous participant in Kelly et al's (2014: 98) British study recalled, it was impossible to influence this powerful ideological undercurrent in the system:

[60] Parker et al (2012) note that even officially-supervised visitation does not eliminate the risk of further direct abuse. These authors cite a survey of Canadian supervision centres which found that direct abuse was not uncommon, even in these highly-controlled settings. In such cases, I argue that the state's refusal to take abuse seriously and act to protect children evidences official condoning of men's abuse and active state facilitation of ongoing victimisation.

> *I was battling to prove that actually it's not his right to see the children … it's their right for them to be safe from whoever's being abusive. [But] if you've been within the family court system you know what your own solicitor will say to you: 'Well it's a father's 'right' to see his children'.*

Kleinman (2017: 296) argues that it is "tantamount to torture to force [a] child into a relationship with a parent the child has identified as abusive". When the family court itself orders this contact, this equates to the state itself ordering, perpetrating and overseeing torture. This gives new meaning to the notion of family violence as state crime, with the state positioned as direct perpetrator of a grave harm, and furthermore as responsible for any further harms that result from this coerced contact. In such cases, the state goes beyond being an enabler of family violence and itself takes on the role of abuser. By compelling children to have contact with a father who has violated them, the state not only facilitates recidivism, it actively inflicts cumulative trauma upon children. I argue that this constitutes child abuse by the state, due to the demonstrable legal coercion involved, the psychological manipulation staff use to compel children to comply with the father's and the patriarchal state's wishes, and the profoundly destructive impact of the contact itself.

Harming children in this way also undeniably harms mothers. Firstly, they are forced to compel their child to comply with a contact ruling, thereby risking being regarded by the child as an active participant in the harm; then, they are traumatised by seeing their child's profound distress, in which they have participated. Further, as the primary carer, they must then deal with the everyday ramifications of their child's repeated trauma. Mothers in this situation experience the patriarchal state's profoundly oppressive effects, and law's refusal to prevent further trauma and havoc in their and their children's lives. They also receive a clear statement from the state regarding who is afforded full citizenship status and the privilege of legal protection, and who is conspicuously not (see Bumiller 2008; Balint 2012). A situation involving state officials directly violating children's integrity and using harassment and bullying to force traumatic contact with the child's abuser, constitutes the state's direct participation in abuse of the child. These state officials can be seen to be policing the notion of the family and fatherhood through direct coercion and violence, thereby bringing the notion of family violence as state crime into stark focus.

Another way family law functions as a direct participant in family violence against children is through court-ordered 'reunification therapy'. This new trend in the United States, critiqued by

Kleinman (2017), is causing direct and grave harms to children through specific programs designed to "deprogram" (296) children and compel them into ongoing contact with alleged abusers. The family court-ordered treatment program is being recommended and utilised across the country in cases involving an estranged parent and child, where the child does not want to re-engage with a parent based on allegations of physical, sexual, or psychological abuse. Reunification therapy involves courts coercing children into relationships with parents who they have accused as perpetrators of direct abuse. Given that the most common dynamic involves a child and their father, the trend can be understood within the wider patriarchal pro-culture narratives around mothers and fathers. Rather than consider the high statistical likelihood that allegations have substance (see e.g. Ferguson et al 2018), this so-called therapy assumes that children have been deliberately alienated from their father through maternal deceit and manipulation. Kleinman (2017: 295-6) argues that court orders stipulating contact with parents from whom the child alleges abuse is "tantamount to torture" and that it facilitates "harming and traumatising children rather than meeting their needs".

This positions the family court in the United States not only as a complicit actor in family violence but an active enabler, since these court-mandated programs compel contact between victims and alleged perpetrators. Courts actions therefore jeopardise child safety and well-being, and also exemplify the system's direct participation in abusing victims. This occurs in a number of ways. First, courts harm victims by systematically disbelieving and discrediting their experiences. Then, by making rulings that dismiss children's expressed needs and wishes; further, by compelling them into ongoing contact with alleged perpetrators; and ultimately by providing state-sanctioned opportunities for the perpetration of further family violence. If further abuse does occur, this positions family law as the direct orchestrator of this harm, since it ordered the contact and therefore the subjection of the child to further violence.

Conclusion

This chapter has considered how, across comparable contexts, family law is complicit in family violence. This role ranges from being a passive bystander to the harm, to an active participant, to a perpetrator of direct abuse.

In the first section of the chapter, I explained why family violence is central to family law, and looked at some of the legal principles which guide practice in this area. I identified how family

law professionals' deficient knowledge and limited understandings of family violence impede the detection and prevention of abuse. In particular, family law's negligently inadequate understanding of coercive control, the intersection and overlap of different family violence harms, and the prevalence of intrafamilial child sex abuse, contribute to erroneous practice and decision-making.

I then turned to consider family law's 'pro-contact' ideology and culture. This patriarchal framework underpins systematic discrimination against women and children through family law, and its consistent privileging of men's and father's voices and interests. It also underpins a discursive hierarchy which is implicated in inappropriate responses to allegations of paternal child sexual abuse. I identified how, despite law reform aimed at prioritising child safety and well-being, judicial decision-making continues to place children at risk.

Next, I looked at how family law's custody and contact rulings facilitate abuse of both women and children beyond parental separation, and noted how the system is used as a tool of abuse by perpetrators. Through endorsing ongoing contact with abusive fathers, family law provides opportunities for ongoing family violence and for perpetrators to exercise malevolent influence over children. This provides ample opportunities for perpetrators to co-opt children in their abuse, train children as independent perpetrators, and create a new generation of family violence offenders.

I then considered the phenomenon of paper abuse, which refers to vexatious litigation initiated by family violence perpetrators which aims to extend their control and abuse of victims. By providing perpetrators with the tools and opportunities for this abuse, and failing to deter or prevent this extension of family violence, I suggested that family law is a complicit actor in the harm.

In the final section, I considered how the family court can be understood *as* abuser. Through the lens of a particular Australian family law case, *Tyler v Sullivan* (FCA 2015), I put forward the notion of family court as perpetrator of direct state institutional violence. I also suggested that the family court in this case can be seen as direct perpetrator of coercive control through its replication of the abusive dynamic and the tactics used in intimate partner violence. This pattern is identifiable in other contexts and through other women's experiences, and is a useful framework for understanding family law's active participation in family violence. Finally, I

considered how family law directly coerces and abuses children through its implementation and enforcement of unsafe parental contact arrangements, and through compelling children to reunite with alleged abusers, and how these illustrate direct state institutional violence.

Throughout this chapter, I have shown state institutional complicity in family violence operating through family law and the family court and across the spectrum of state criminality. This ranges from neglectful and negligent responses to family violence, to facilitating individual perpetrators' abuse of ex-partners and children, to its active enabling of and participation in family violence harms.

In the following and final institutional analysis chapter, I shift away from the legal system to look at state-based social services and their complicity in family violence.

6

The social service arm of the state

Introduction

This third institutional chapter and the final instalment of Part II analyses the complicity of the social service arm of the state in family violence. With a focus on the Australian context, I look at the federal-level Department of Human Services[61] and two of its sub-agencies which have particular relevance to family violence: Centrelink and the Child Support Agency.[62] Centrelink is the agency within the wider department which is primarily responsible for delivering services and welfare payments to unemployed and other disadvantaged Australians, including single parents with young children. The Child Support Agency also exists under the umbrella of the Department of Human Services but is responsible for determining and overseeing child support liabilities and payment arrangements for separated parents.[63] Although I focus primarily on the Australian context throughout this chapter, I also mention some continuities with systems in the United States and United Kingdom, in order to demonstrate common themes and parallels across these comparable contexts, and to highlight that complicity in family violence through state-based social services is not limited to a distinct jurisdiction.

In this chapter, I again use the lenses of policy, practice, and ideology to facilitate my identification of institutional complicity in family violence. Here, policy refers to written rules and guidelines around Department and Agency standards, services, processes, information management, determinations, enforcement, and payments which are relevant to family violence and victim-survivors. Practice refers to how these policies are interpreted and implemented in the daily operations of the institution, and can include the discursive interface

[61] The Department of Human Services "is responsible for delivering a range of health, social and welfare payments and services through Medicare, Centrelink and Child Support programs for the Australian Government" (DHS 2016: 4).

[62] The Child Support Agency is the former name for this agency. It is now officially called the Department of Human Services – Child Support (DHS-CS), however it continues to be widely known as the Child Support Agency (or CSA) amongst users of the system as well as in most academic and practitioner literature, which is why I continue to use the term.

[63] Child support can also be referred to as child maintenance, and generally denotes payments made by a non-custodial parent to the primary carer parent, following their separation. The payments are intended to contribute to the basic costs of caring for child/ren.

between Department officials and clients.[64] In line with the critical analytical framework on ideology which I outlined in Chapter Three, ideology in this chapter refers to the unwritten but taken-for-granted beliefs and assumptions which underpin social service policy and practice and which sustain present power relations. Because the dominant power is patriarchal, these ideologies tend to privilege male perspectives and interests, including those of family violence perpetrators, and thus consistently function to the detriment of victim-survivors, further exacerbating the oppression and disadvantage that their victimisation has already caused.

In the first section, I introduce the state social service department which is the focus of the chapter, and explain the centrality of family violence to its work. I identify how, contrary to the Department's claims, it does not deliver an effective anti-violence service. Rather, its dysfunctional and oppressive bureaucracies create significant impediments for all vulnerable people, many of whom end up disengaging from the system and missing out on entitlements. For family violence victims in particular, the system is directly implicated in delaying their ability to leave abusive relationships and survive independently. I identify that single mother intimate partner violence survivors experience the system as particularly oppressive. They commonly receive poor treatment by Department staff which mirrors dynamics in their previous experiences of abuse. In a number of ways, the system reflects and reinforces the abuse that victim-survivors were subjected to by their ex-partner.

Next, I look at the Child Support Agency and the issue of child support, which is central to the persistent poverty of family violence survivor families. I identify how the system further disadvantages these families by producing inadequate child support assessments and failing to enforce compliance with child support obligations. I consider child support avoidance as economic abuse, and document how the Child Support Agency demonstrably fails to recognise or prevent this form of family violence. I also look at how the system further jeopardises victims' safety and well-being by routinely pressuring them to independently pursue non-compliance issues.

In the last section, I look at child support discourse and ideology. I identify that child support policy is underpinned by powerful patriarchal beliefs which normalise gender inequality and

[64] I adopt the term client to refer to citizens who have involvement with these state social services. I reject the Department's preferred term of 'customer' as it erroneously implies a level of agency, autonomy and choice for system users which does not reflect their experiences with the system (also see Murphy et al 2011).

safeguard men's interests at the expense of women's and children's. Recent policy reforms around child support further entrench this pattern of disadvantage, allowing men to further abrogate their responsibilities, and exacerbating the financial hardship that pervades the lives of many victim-survivor families.

Ultimately, this chapter shows how state-based social services are not only ineffective at responding to family violence, they significantly hinder victim-survivors' help-seeking efforts and actively contribute to exacerbating, extending, and replicating family violence harms. This positions state social services as complicit in family violence in a range of ways: from passive complicit bystander to perpetrator violence, to active enabler through the provision of strategies and tools for ongoing abuse, and also as active participant in oppressing and violating victims.

Family violence and social services

Family violence is a salient feature of the lives of the majority of social service recipients. Clients of the Australian Department of Human Services are amongst the most vulnerable of citizens, and a prominent sub-group within the client cohort is single mothers with a history of family violence victimisation. Nationally, 93% of single parents registered to receive the Department's Single Parenting Payment are women (Murphy et al 2011), and violence from partners and ex-partners is a common experience for these individuals, both historically and contemporarily. Similar figures exist in comparable international contexts including the United States, where it is estimated that 50-80% of women receiving welfare benefits have experienced violence from an intimate partner (Patrick et al 2008). In fact, across the Western world, people seeking support from state-based social services experience intersectional disadvantage and vulnerability: not only suffering from family violence, but also poverty, chronic physical and mental ill-health, and substance abuse problems (McArthur et al 2013).

The Australian Federal Department of Human Services, by design, hinders family violence victims' efforts to protect their safety and well-being. The Department is marked by structures and policies which cause inconsistency, overlap and duplication in the bureaucracy, creating a cumbersome and user-hostile service (Murphy et al 2011). Various agencies within the Department have been set up such that, despite operating out of the same government department, they are insulated from other agencies and do not engage in reciprocal operations

or information-sharing. For example, while both Centrelink and the Child Support Agency exist within the Department of Human Services, the employment income information collected by the former is not used by the latter to calculate child support payments, nor to investigate child support non-payment (Cook et al 2015; Natalier et al 2015; Natalier 2017; 2018). Similarly, whilst child support calculations are based on income information provided to the Australian Tax Office, there is no dialogue between the tax office and the Child Support Agency when issues of non-payment or under-payment arise (Cook 2013). This siloed approach to governance poses a serious hindrance to the system's efficiency, consistency, and capacity to enforce policy, which is vital to assisting family violence victims. It also forces clients to engage with a maze of multiple bureaucracies where they frequently receive inaccurate and contradictory information and are required to repeatedly submit duplicate and supplementary paperwork (Murphy et al 2011; McArthur et al 2013). Prolonged delays are associated with all Department processes and applications, often leaving vulnerable clients in limbo and without basic safety or means of subsistence.

Initial and ongoing eligibility requirements for Department of Human Services assistance present significant challenges for family violence victims. The overwhelming majority of participants in McArthur et al's (2013) study found navigating the service and its bureaucratic requirements extremely difficult, and many of Murphy et al's (2011) interviewees found the Department and its policies to be arbitrary, inconsistent and confusing, with some describing their attempts to obtain legitimate entitlements as a "form of work in itself" (40). It is particularly difficult for single mothers experiencing ongoing post-separation intimate partner abuse to meet the system's demands. These women have often left their relationships isolated, unemployed or under-employed, under-resourced, and in financial hardship resulting from economic abuse (Branigan 2007; Cameron 2014; Natalier 2018). Additionally, the vast proportion of single mother family violence survivors are full-time carers for young children. For many low-income mothers, the emotional and administrative labour required to comply with the Department's levels of bureaucracy is simply too onerous to manage, and furthermore it may outweigh the financial value of payments such as single parent payment or child support, which they may receive only partially, temporarily, or not at all (Cook et al 2015). 'Chloe's' (in Murphy et al 2011: 152) experiences led her to believe that the system and its processes are designed to be so arduous that clients give up pursuing entitlements. This opinion is reflected in research findings which suggest that significant numbers of clients disengage from services

and forgo entitlements due to difficulties associated with negotiating the system (McArthur et al 2013; Cameron 2014; Natalier 2017).

Underlying many of the problems facing clients is a system, which, at its foundation, does not adequately recognise, understand, or respond to family violence. As outlined earlier, violence has ongoing relevance to the lives of the majority of separated parents, and particularly to single mothers seeking welfare and child support. It is thus a critical element in Department policies, procedures, and practice. On the face of it, the Department is well-informed and responsive to family violence. The Department website and its current Family and Domestic Violence Strategy 2016-19 (DHS 2016) advertises an up-to-date, comprehensive, and responsive anti-violence service that is supportive of victims and which consistently prioritises their safety and well-being. Notably, the strategy specifically mentions an inclusive definition of family violence that incorporates economic abuse; it also explicitly notes the traumatic and disempowering impacts of abuse. This indicates a progressive system-wide approach which is well-informed, sensitive, and responsive to family violence.

Yet, upon closer review, the Department's anti-violence strategy appears to be rhetorical rather than substantive. A closer reading of the material reveals that customer service staff do not receive specific training in family violence issues, but merely superficial "understanding training" where they gain a generalised "awareness … of family violence" (DHS 2016: 7). In practice, the only staff who receive targeted family violence training are social workers and other specialists. Frontline staff, who are the gatekeepers of the Department and who deal with the vast bulk of client issues, do not receive substantive family violence training. Family violence is the single most relevant factor in many women's separation from male partners and a central theme in their lives as a sole parent. The failure of the service to centre family violence or to adequately understand its impact on clients creates significant difficulties for those seeking assistance. This poor knowledge base also underpins a number of other system failures in relation to recognising, protecting, and supporting victims of family violence. This equates to the institutions' tacit support of family violence, since it allows the ongoing perpetration of harms to victims, as subsequent sections will show.

The Department of Human Services' unhelpful policies and practices are implicated in preventing or delaying women's exit from violent relationships. In Cameron's (2014) study with Victorian women victim-survivors of intimate partner economic abuse, a significant

portion of participants who had managed to separate from abusive partners identified the social service system itself as a major hindrance to their exit from the relationship. A prominent reason for this delay was their inability to obtain relevant, appropriate, or consistent information from the Department of Human Services, which prevented them from figuring out the practicalities of leaving their partner and surviving, post-separation. The inconsistent and contradictory information and advice they received was overwhelming and unhelpful, and is a problem reported in other Australian studies (e.g. Cook 2015; Cook et al 2015; Natalier 2017; 2018). Many women described their confusing interactions with the system reinforcing the fear – instilled in them by their abuser – that they and their children would end up poor and destitute if they were to leave the relationship (e.g. Cameron 2014).[65] The unhelpful and inconsistent information received from different Department agencies regarding financial options in terms of single parent payments, work, income thresholds, and child support, caused many women to significantly delay leaving their abusive partner. These studies show that, by presenting institutional impediments to exiting violent family situations, state social services prolong and exacerbate victims' suffering, force them to remain in violent situations, and are thus complicit in this harm.

Instead of providing vital support to family violence victims, the Department is implicated in oppressing, disempowering them, thereby providing ideological endorsement of men's violence and facilitating perpetrators' abuse both pre- and post-separation. Murphy et al's (2011: 138-9) research shows that Centrelink experiences are frequently the source of "humiliation and belittlement". After any interaction with Centrelink, 'Gemima' (in Murphy et al 2011: 138) said that "I come away feeling really bad about myself". McArthur et al's (2013) participants described feeling frustrated, judged, and humiliated by their interactions with staff, whose attitudes often reflected the powerful but pervasive social belief that those seeking state welfare are undeserving of support (also see Bumiller 2008). Being routinely denigrated by staff was also a common experience for women in Natalier et al's study (2015). Officials who are unresponsive and disrespectful towards clients exacerbate the negative impact of frustrating bureaucratic processes that hinder their attempts to gain support. For

[65] Many mothers, particularly those who have experienced long-term psychological and financial abuse, suffer extreme anxiety about their ability to independently provide for themselves and their children. Systematic abusers frequently exercise control by controlling family finances, hiding information about income and expenditure, and prohibiting the victim from leaving the home, studying, or working. It is therefore common for victims to lack current knowledge about the costs of living and their capacity to independently support themselves and their children.

victims of family violence particularly, difficulties with the system itself are compounded when enquiries are met with insensitive and ill-informed workers. For mothers who experience high levels of conflict or fear in their relationships with their (ex-)partners, unhelpful state officials have a particularly powerful detrimental impact, functioning as both practical and symbolic reinforcement of the abuser's control over their lives, and a reminder of the constraints on their situation (Natalier et al 2015; Natalier 2017; 2018).

Another significant barrier to effective responses is Department staff's deficient knowledge and understanding of family violence, and notably of the common ways that abusers utilise the system to perpetrate abuse. In various studies (e.g. Branigan 2007; Cameron 2014; Natalier et al 2015; Natalier 2017), women described actions and advice provided by Department officials that communicated ignorance of intimate partner and child abuse. Notably, staff had extremely poor knowledge of economic abuse, and ignorance of how the system is used by perpetrators as a tool to further control and harm their victims. One woman attempted to explain to staff how her partner was deliberately withholding child support to financially abuse her and her children, but was told that it had "nothing to do with collecting money" ('Sarah' in Natalier et al 2015: 32).[66] This interaction shows negligently deficient knowledge of issues at the centre of the Department's work, and how this ignorance significantly impedes the recognition and prevention of abuse. Further, many participants in Natalier's studies (Natalier et al 2015; Natalier 2017; 2018) experienced the failure of staff to acknowledge their ex-partner's tactics of manipulation and avoidance as an extension of partner abuse. This represents the simultaneous discursive dismissal of the victim, of male violence, and the institution's tacit support for this abuse.

Another common negative experience for violence survivors in dealing with the Department is the constant pressure and surveillance imposed on their lives to ensure their conformity to requirements. This reinforces McArthur et al's (2013: 159) assertion that welfare systems across the Western world are "principally concerned with the control and surveillance of the vulnerable and disadvantaged rather than tackling the structural inequities that cause

[66] This is further reinforced in anecdotes I have collected. It is common knowledge amongst women survivors of intimate partner abuse that dealing with the Child Support Agency is oppressive and ultimately pointless in terms of obtaining fair economic outcomes. Central to these experiences is the agency's refusal to acknowledge the intersection of domestic abuse and child support. This was highlighted by one woman I spoke to, who, in great frustration had asked a DHS-CS staff member if she received any training in family violence and economic abuse, and the worker retorted that it was "none of her business, and had nothing to do with child support anyway".

disadvantage". As citizens seeking help from the state, abused women gain a similar stigmatised status to that of other dependant state subjects (Bumiller 2008). This status often coerces them into forgoing certain rights, like dignity and privacy, in order to receive assistance. Murphy et al (2011: 20) note the irony of the Department of Human Services' rhetoric around autonomy and respect, yet its stigmatising treatment and "imposition of regimes of surveillance and micro-management" over vulnerable citizens. Many women in Cameron (2014) and Natalier et al's (2015) studies specifically described the intense surveillance and regulation of their personal affairs by the Department as bearing stark similarities to their experiences of control, intimidation and coercion in their (former) relationship. Natalier et al (2015: 33) argue that these institutional practices "reflect and exacerbate the intimidating, manipulating, monitoring, denying, destroying and deceiving behaviours that constitute coercive control". Being treated in this way by the state is particularly harmful for family violence victims because being disrespected, controlled, and surveilled are such familiar experiences from their interpersonal victimisation.

The Department of Human Services' invasive powers are also used by family violence perpetrators to extend victim's oppression and hardship. One destructive tactic identified by Patrick et al (2008) is when abusive men make false allegations against their former partner to the Department, prompting investigation, alteration, or cessation of social security payments. This, in turn, usually enables the father to postpone, or entirely avoid, any child support obligations whilst his ex-partner is being investigated. 'Serena' (in Cameron 2014: 44), for example, was coerced into doing a full financial disclosure to the Department, and described how

> *you feel laid out (and) absolutely raped, you really do. And then you get questioned over everything. I had a Child Support person say 'You shouldn't have a cat [because you] shouldn't be spending money on cat food'* ('Serena' in Cameron 2014: 44).

In addition to oppressive policies, system clients also frequently experience "micro-aggressive" (Natalier 2017: 622) treatment from Department officials. This refers to words or actions from institutional staff which aggress against clients at the micro-level of interpersonal interaction. It can manifest as critical, sceptical, or demeaning attitudes, harassment, and verbal aggression. Sometimes it also includes more subtle insinuation and disrespectful treatment. Consistently, however, it confirms the subjugated position of vulnerable citizens and reinforces their unequal status. It is a pervasive form of institutional harm because it occurs in everyday

life through relatively insignificant moments of human interaction, yet can have a repetitive and relentless impact.

Oppressive and micro-aggressive state responses are particularly harmful and familiar for family violence victims because they so closely resemble the critical and controlling micro-management of their abusive intimate relationship. Such responses also exemplify state agents' mother-blaming discourses, which are pervasive within the institution and indeed the wider society (see McArthur et al 2013; also Cook 2012; Natalier 2017). In this context, mother-blaming and victim-blaming discourses are an intersectional form of discursive subjugation which insinuates that vulnerable women who failed in their relationship and who have been subjected to abuse are responsible for their difficult circumstances. It is a powerful form of ideological oppression. Here, it blames single mother family violence survivors for their struggles with parenting, poverty and abuse, yet it exonerates men for the economic abuse that underpins the problem. For a woman who is already accustomed to the denigration of an abusive relationship, this official criticism has an amplified effect. By reinforcing the disempowering experience of intimate partner abuse, this state agency actively participates in the family violence dynamic and causes additional harm to the victim.

Many women identified the clear parallels between their (former) abusive relationship, and their interactions with state social services. 'Jasmine' (in Branigan 2007: 35), for instance, suggested that getting out of an abusive relationship and then entering the world of interactions with the Department of Human Services equated to "just exchanging one abuser for a whole system". This participant further spoke of state bureaucracies contributing to, and even perpetrating abuse, asserting that "it is the systems that abuse you too … All the government institutions assist in the abuse of women" ('Jasmine in Branigan 2007: 34). This sentiment was echoed by other participants in Branigan's (2007) research study. It also evidences how, when women are "thrust into new relationships within the public sphere, [they] often find that they experience brutalities that mimic the violence they hoped to leave behind" (Bumiller 2008: 97). As 'Vicki' (in Bumiller 2008: 123) explained:

> *You become a battered woman and then (try) to get assistance or any help from any social service agency … you get battered by them too, you get battered by a society and a system … it's very traumatic because it's like, I feel like I am just being beat in the head … over and over and over again*.

These testimonials show how the social service arm of the state not only facilitates the abuse of women by individual men, but also directly harms them. The institution can therefore be understood as both a model, mirror, and extension of women's victimisation by their abusive (ex-)partner. This emphasises the active role that state-based social services play in exacerbating the oppressive effects and the violation of intimate partner abuse. By standing alongside perpetrators and mirroring the way they treat their victim, the state can be seen as a participant in family violence, and as a perpetrator of direct state violence.

Oppressive and abusive treatment by the state has a particularly damaging effect on victims of family violence. This is a theme I have already considered in this thesis, and it is again salient. Women's accounts consistently express that poor treatment by state institutions and their representatives induces a profound sense of victimisation, injustice and despair which, in some ways, exceeds the harms experienced in their abusive relationship/s. In Bumiller's (2008) research in the United States, which focused on women's interactions and experiences with social service agencies, there was a strikingly common theme: women's expressions of injustice were "centered on indignities perpetrated by the system rather than the individual men who battered them" (109). In this sense, the system's oppressive treatment of women reflects and reinforces previous abuse from an intimate partner, and has an additionally profound impact. The state is expected to be a trustworthy and benevolent authority which will assist, not abuse, citizens in need. This therefore heightens victim-survivors' experience of subjugation when it emanates not just from an abusive individual, but from a state institution.

Child support

The Child Support Agency sits within the Department of Human Services, and is central to the lives of family violence victim-survivors. It is implicated in the perpetuation of women's victimisation and the exacerbation of their socio-economic disadvantage following separation from an abusive partner. There is a history of intimate partner violence in over 60% of cases of separating parents with children, with the vast majority of victims being women (Qu et al 2014; Kaspiew et al 2015a). Child care and child support are also highly gendered phenomenon: over 85% of mothers are primary carers for children following parental separation (Cook 2013; De Maio et al 2013), and mothers are overwhelmingly positioned as

potential child support recipients, or 'payees', with fathers being 'payers'.[67] Socio-economic disadvantage is a serious problem for sole-parent families and they remain "amongst the poorest [groups] in the Australian community" (Fehlberg and Maclean 2009: 2). Adequate and regular child support is thus critical for the subsistence of single parent families. The Child Support Agency is intended to oversee a fair system which ensures that separated parents share the financial costs of raising children. Yet, as I will demonstrate, the Agency is in fact central to the ongoing victimisation and vulnerability of many single mother family violence victim-survivors.

The child support system is characterised by inadequate assessments, low levels of compliance, and inadequate enforcement of child support obligations. Even when resident parents do receive assessed rates of child support, these are demonstrably inadequate in relation to actual parenting costs. Studies by Natalier et al (2015) and Natalier (2017) show a significant gap between the child support minimum calculated rate and the most basic of living costs for their children such as rent, utilities, food, clothing, shoes, and school equipment. All participants in Natalier et al's (2015) study reported that the Agency's formula did not reflect the costs of raising children, and some payees' assessed rate was so low that payment or non-payment was immaterial (also Cameron 2014). Patrick et al's (2007) research found that 80% of mothers who were receiving child support received $5 or less per week. Because calculations can be based on dishonest and fraudulent information provided by the payer, the Agency sometimes produces assessed rates of less than $10, or even $5, per month, which are materially useless in relation to the real costs of raising children. Such figures call into question the very existence of the Agency, when its outcomes are so demonstrably poor and the costs of maintaining it are so significant.

Non-compliance with child support obligations is also a major issue. Even without accounting for millions of dollars of debts deemed uncollectable, for abandoned cases, or for debt within private arrangements, there is well over $1.25 billion dollars owed in child support in Australia (Cook et al 2015). According to the Child Support Agency's own figures in Cook (2013: 47), less than half of registered payers pay the full amount of their calculated obligations. Furthermore, these figures account for only 46% of cases registered with the Agency, as these

[67] For these reasons, this discussion will proceed based on the generalisation that child support payees are mothers with primary care of child/ren, and that payers are fathers.

are the ongoing Agency-collect cases. The remaining 54% have private collect arrangements, and regardless of whether or not these arrangements are being met, they are recorded by the Agency as compliant and successful. If a payee decides not to report non-payment or under-payment, this is recorded as fully compliant (Cook 2013). As Cook (2015: n.p.) explains, it is also highly misleading that when payees abandon the pursuit of entitlements altogether, in order to avoid contact with an abuser and prioritise safety, their case actually ends up forming part of the Agency's "successful" cases statistic. This is because when a payee abandons the pursuit of entitlements and ceases contact with the Agency, the case is erroneously considered resolved, and is recorded as fully compliant.

In real terms, child support is a far more problematic than the Agency's figures suggest. Qualitative research with single mother payees shows much higher rates of non-compliance. Only 7% of participants in Branigan's (2007) study were receiving the base rate of child support as determined by the Child Support Agency's formula, which Cook (2015) and other have suggested is inadequate for assisting the primary caregiver to meet even basic living standards. 93% of payers were avoiding or minimising their obligations, and 41% of payees were receiving no child support at all. More recent research continues to show that the majority of non-resident parents are failing to comply with assessed child support obligations, and when payments are made, they are often partial and irregular (Cameron 2014; Cook et al 2015; Natalier 2017; 2018). Income instability is thus a continual challenge for most mothers, "making saving and longer-term financial security virtually impossible" (Cameron 2014: 48). Child support debts are owed not to the tax office or the government, but directly to some of society's most vulnerable people. The fact that this arm of the state allows for payers' (overwhelmingly men's) systematic evasion of these debts highlights why child support evasion can be understood as state-sanctioned economic abuse.

The group most detrimentally impacted by the Child Support Agency's manifestly inadequate policies and practices are family violence victims. This is because non-custodial fathers with a history of intimate partner abuse are the least likely to co-operate with child support arrangements, either privately or through the Agency (Cook 2015). Of payees who experienced violence either before, during or since separation, 36% received less than the assessed amount, compared with 19% who had not experienced family violence (De Maio et al 2013). This positions family violence victim-survivor primary carers as the least likely group to receive much-needed entitlements, further compounding the disadvantages they already face.

Additionally, as the system provides no safety net for parents who are not receiving child support entitlements (Cook and Natalier 2013), there is no way for women to redeem this shortfall in basic income. The child support system thus directly contributes to the financial difficulties faced by single mother family violence victims and their children (Natalier et al 2015; Natalier 2017; 2018).

The child support system is also implicated in the ongoing perpetration of economic abuse. This is because, after relationship separation, withholding child support is a simple way that perpetrators can continue to control and abuse their victims. Over a decade ago, authors such as Branigan (2004; 2007) and Patrick et al (2007; 2008) began investigating economic abuse and its operation through the child support system[68], and more recent studies confirm the ongoing prevalence of this problem (Cameron 2014; Cook 2013; 2015; Laing 2013; Natalier 2017; 2018). Single mother family violence victims consistently testify to payers' systematic minimisation, manipulation, evasion, and avoidance of obligations, often describing how child support is used as a weapon of abuse against them and her children. The experiences of this anonymous participant were typical:

> *[My ex-partner] said that he was going to stop the child support payments for a couple of weeks just to teach me a lesson. He said he knew how little money I had and that without the payments I would be unable to pay my rent and I would soon go under. … I explained to him that it would directly affect the children if he didn't pay but he said that he didn't care* (Anon in Laing 2013: 18).

Because there is little compulsion to pay child support, and few consequences for avoiding it, women in Patrick et al's (2007) study felt that this demonstrated the collusion between their ex-partner and the system in controlling their lives and impeding their economic survival. Many perpetrators, like the man mentioned in the quote above, are acutely aware of their power in this regard, and of how the state aligns with their interests and enables them to harm victims. Indeed, the "overwhelming majority" of Cameron's (2014: 49) study participants experienced the child support system enabling and assisting their former partner to financially abuse them, which in turn, extended perpetrators' control over their lives, post-separation.

[68] Economic abuse is now widely recognised within legal codes as a form of family violence. For instance, the Victorian *Family Violence Protection Act* (Magistrate's Court of Victoria 2015: 13-15) states that "family violence includes … behaviour that is economically abusive". Economic abuse can include "withholding or threatening to withhold the financial support necessary for meeting reasonable living expenses". Through this lens, child support withholding constitutes economic abuse because it is a deliberately harmful practice and a principle source of financial hardship and poverty for many single-parent families.

The oppressive relationship between child support payers and payees can be understood as a form of state-sanctioned and state-facilitated harm. This is because the system actively supports the power discrepancy between payer and payee (Patrick et al 2008). Payers are given state-sanctioned power to dictate the quality of life of their former family, and by allowing men to exert this control with impunity, the state actively facilitates and endorses this abuse. The state's choice to provide extremely limited authority and resources for child support compliance means that the system is ultimately an enabler for perpetrators of financial abuse. As Natalier et al (2015) put it, the system's tools are ultimately blunt. The Child Support Agency's lack of enforcement powers and the demonstrable disinterest of staff in assisting payees means that single mothers whose former partners are abusive receive no real assistance from the state. It also further underscores the low priority afforded to the issue of single parent and child poverty.

Since problems of compliance are not adequately addressed by the Child Support Agency, the onus is instead placed on payees to independently pursue such issues. In practice, this means that if a payee is not receiving their entitlements, it is up to them to either attempt direct negotiations with the ex-partner, or to gather comprehensive information on payers' personal circumstances in order to instigate and follow up on compliance processes (Natalier et al 2015). This directly conflicts with a key principle purportedly underpinning the Department's work, to "avoid placing blame, responsibility, or an onerous burden … on people subjected to family and domestic violence" (DHS 2016: 5). When family violence victim-survivors are pressured into direct negotiations with their perpetrators, this forces on them unnecessary and unfair time, stress, and emotional burdens, often for negligible to no economic benefit. Of greater concern, negotiating directly with one's abuser is a frightening and risky experience for victims-survivors (Natalier et al 2015). Many women are genuinely fearful for their and their children's safety from the perpetrator, in both the immediate and longer-term. Compelling single mothers into direct and ongoing contact with perpetrators shows the state's willingness to passively stand by while the safety and well-being of family violence victim-survivor families is jeopardised. This exemplifies the state's passive complicity and its tacit approval for any violence that occurs as a result of these risky communications. Further, if communicating with perpetrators has no impact and payment obligations continue to be unmet, women are then pressured into dangerous information-gathering to progress their case.

It is deeply problematic that a social group most vulnerable to poverty and violence is being coerced by a government department to act on its own to "doggedly investigate and pursue" legitimate entitlements (see Cook et al 2015: n.p.). By pressuring family violence victim-survivors to pursue non-compliance issues themselves, the Child Support Agency places them at risk of serious further harm. Staff routinely instruct women to track down and chase up their ex-partners and obtain documentary evidence of their employment and income, in order to take the issue further. 'Gina' was told by staff to "follow it up" and get photos to prove that her ex-partner was working a cash-in-hand job which enabled him to claim no income and avoid paying child support. She says she was compelled to "chase him like some kind of stalker", and that all this achieved was being "verbally abused by him and hav[ing her] children verbally abused" (in Cameron 2014: 42-3). Similarly, 'Phoung' (in Branigan 2007: 35) was told by the Child Support Agency to "chase" her children's father, but as she was unable to do this herself, and potential investigative costs far outweighed the assessed child support rate of $5 per week, she abandoned the case. It is not uncommon for women to be told by Agency staff that if they wanted to pursue an issue, they should hire a private investigator (e.g. 'Beatrice' in Natalier et al 2015: 23; also Cameron 2014). Considering that single mothers are among the most financially-disadvantaged groups in Australian society (ACOSS 2014), this suggestion is generally perceived by women as insulting and ridiculous (Cameron 2014). Pressuring vulnerable women to resolve these issues themselves also represents an insidious form of victim-blaming perpetuated directly by the state, as it implies that they have created their own predicament and are unworthy of assistance.

Pursuing child support non-compliance is also difficult and dangerous for family violence victims. Surveilling, monitoring, and gathering information about their abuser is not only unacceptably risky, it may in any case be impossible if there is a Family Violence Intervention Order in place that prohibits contact or proximity. As explored in detail in earlier chapters, the most dangerous time for victims of intimate partner violence is the period during which they attempt to separate from and establish independence from their partner (see e.g. Flood 2012a; Fehlberg et al 2015; PHAA 2015; McKenzie et al 2016; DHHS 2018). Beyond this initial period, almost half of mothers with a history of domestic victimisation continue to experience problems for five years or more (Qu et al 2014). By pressuring victims to engage in risky activities such as the intrusive information-gathering advocated by the Child Support Agency, the state is endorsing women's endangerment of further violence from perpetrators. This provides further evidence that state agencies which supposedly engage in victim support and

violence prevention (see DHS 2016), are instead actively involved in perpetuating harms against victims.

Ultimately, many mothers forgo child support entitlements because the burdens and dangers associated with independently pursuing various assessment and non-compliance issues are too significant. Fear of serious assault is a major factor in women's decisions not to pursue these issues or provide information that might lead to their former partner being investigated (Cook 2015). Based on their experiences of threatened or actual physical violence, survivors are acutely aware that challenging their ex-partner in any way will induce anger and increase the likelihood of violence, leading many to abandon the pursuit of entitlements rather than further jeopardise their safety (Natalier et al 2015). Findings from the United States and the United Kingdom also indicate similar patterns in their child support systems (Patrick et al 2008). For instance, in the United Kingdom, around a fifth of parents on the lowest incomes chose not to apply for child support payments because they believed that it would endanger them or their children (Refuge 2007 in Patrick et al 2008: 759). Family violence survivors are disengaging from the system and choosing to forgo entitlements because the system and its processes place them at direct risk of harm. This demonstrates another way that this vulnerable group is being systematically disadvantaged by the system.

The system does provide for at-risk clients to be exempt from actively seeking child support, however in practice this is unavailable or ill-suited to most clients. This policy provision allows for individuals to be granted a full or partial exemption from seeking child support from the other parent "if there have been documented incidents of violence towards the individual and / or their immediate family by the payer, or violence by the payer may occur if the individual takes maintenance action" (Australian Government 2019: n.p.). This means that women who can prove recent intimate partner violence victimisation can apply to be exempt from the requirement to pursue child support in order to receive additional Family Tax Benefit payments. However, as explored by Patrick et al (2008), Cameron (2014), Cook (2015), Natalier et al (2015) and Natalier (2017), not only is this option poorly known or advertised by the Department, it is difficult for women to secure the exemption, since applications require documentary evidence such as a Family Violence Intervention Order. Considering that the vast majority of family violence goes unreported and is difficult to document, many women cannot prove their eligibility. Moreover, each exemption is only granted for a set short period, and any extensions require updated documentation. As a result of these stringent requirements, victims

often end up disadvantaged in multiple simultaneous ways: through their victimisation, through the system's denial of their victimhood and their legitimate claims for assistance, and finally, through receiving neither child support nor the maximum rate of sole parenting payment.

Notwithstanding the difficulties in securing an exemption, even if they are successful, the system continues to financially penalise women. This is because, whilst being eligible for the maximum rate of social security payment, they forego any income from child support and have to subsist on payments that do not provide an adequate living wage (Patrick et al 2008). Australian Council of Social Service (2014) figures show that almost half of people in households receiving Centrelink's Parenting Payment – most of whom are sole parents – live below the poverty line. As discussed earlier, the difficulties involved with negotiating the Department of Human Services also often result in clients' ultimate disengagement. If women on welfare cannot sufficiently document their victimisation in order to satisfy the exemption requirements at the same time as their ex-partner is withholding child support, the only avenue through which they may seek their entitlements is through private negotiations with their abuser (Patrick et al 2007; 2008). Thus, they are not only financially penalised for the abuse they have suffered, but also compelled into dangerous negotiations by the Department's policies. This shows how the state not only allows family violence perpetrators to continue their abuse beyond the relationship, but how it is more directly involved in punishing women for their victimisation. As Patrick et al (2008) suggest, these women have merely replaced one manipulative and coercive relationship with another.

The exemption for seeking child support policy also has the insidious effect of rewarding perpetrators for their violence. This is because, once a victim has secured an exemption, the other parent escapes all financial responsibility for their children through no longer being obligated to pay any child support (Patrick et al 2007; 2008; Cameron 2014). Again, this conflicts with the Department's claim to uphold the principle that "responsibility always lies with the person who uses (family) violence" (DHS 2016: 5). Instead, in practice, the Department allows perpetrators to escape responsibility not only for their violence, but also all parental obligations. This impunity and reward system equates to the state's endorsement of men's violence. It is notable that being a victim of intimate partner violence increases the risk of poverty, but being a perpetrator does not affect financial circumstances or opportunities. In fact, because of the way that the system operates, being a family violence perpetrator is often a key indicator of elevated economic resources (Patrick et al 2007; 2008).

Child support discourse

Underpinning child support policy is powerful discourse which reflects similar patriarchal ideologies to those operating in the family law system. Accordingly, child support narratives are dominated by men's 'rights' and interests, functioning to the detriment of women and children and particularly family violence victim-survivors. Embodied within Australian child support policy are gendered notions of parental identities, roles, and responsibilities. One aspect of this concerns the perceived entitlement of men to independence from state interference in their personal affairs. As Branigan (2007) identifies, male entitlement in this regard is based on a highly gendered conceptualisation of parental responsibility. Within these narratives, separated fathers are perceived to be financially responsible for themselves alone, whereas mothers are expected to be responsible for themselves and their children, including for all labour and financial costs. Entitlement to autonomy and independence does not extend to women. Women's financial autonomy is essentially "written out of the picture" in these policy discourses (Cook and Natalier 2013: 44), demonstrating a form of institutionalised discursive sexism.

Another discriminatory aspect of child support policy discourse is its emphasis on paternal authority. Cook and Natalier (2016) explain how this discourse produces a power relationship whereby men have the socially-constructed entitlement to exert economic control over women and children. In real terms, the result of this is that fathers have greater choice over the manner in which they make their contributions, and an enhanced ability to directly dictate how a substantial percentage of these contributions are used by the primary parent. By continuing to privilege men's interests through child support policy, the state actively reproduces male dominance and thereby reinforces the framework within which male control and abuse in the family occurs. Through prioritising non-custodial father's interests and their perceived entitlement to autonomy and independence – but not affording mothers similar rights – the state maintains the unequal gendered roles and material conditions which provide the foundation for abusive relationships.

Another problematic discourse which is actively reproduced through child support policy and practice is one where payments are framed as a generous gift offered by honourable fathers.

This is again underpinned by patriarchal ideologies which assign great value to fathers and fathering, regardless of the quality of their presence or behaviours. It means that any financial or other contribution fathers make to their children's lives is greatly extolled (Laing 2010; Beller 2015). This ideology can be identified in Department staff responses to women who were attempting to obtain late, partial, or unpaid child support from their ex-partner (Cameron 2014). Based on a number of respondents' experiences, Natalier et al (2015) concluded that women are encouraged to be grateful for any child support payments they receive, no matter how tokenistic or paltry. 'Wendy' (in Natalier et al 2014: 25), for example, was told by staff to "count yourself lucky" because she received a few irregular and partial payments. The idea of child support as a gift is also identifiable in Harris' (2015) United States-based research, which shows that fathers' contributions to the financial burden of parenting are regarded by both payers and recipients as a spontaneous and generous offering to the other parent, rather than as a parental obligation or a necessary contribution to their child's well-being.

Child support policy reform has reinforced ideological and discursive gender inequality in both symbolic and substantive ways. During the past decade, policy shifts have had an "immediate and detrimental impact on women's lives" (Cameron 2014: 42). Following recommendations made by the Ministerial Taskforce for Child Support in their report (Commonwealth of Australia 2005), the Federal Government made sweeping changes to the child support scheme through reforms in 2006 and 2008 (see Fehlberg and Maclean 2009). Intense lobbying from men's rights' groups ensured that reforms were primarily concerned with sustaining men's symbolic and practical position as autonomous subjects who should be free to control their lives and finances (Cook and Natalier 2013; 2016; also Flood 2012b). Changes included variations to the child support formula, which had the net effect of decreasing payments to low income mothers and was further exacerbated when combined with changes to eligibility for other welfare entitlements (Cook 2015; Natalier et al 2015; Natalier 2018).

These policy shifts were consistently presented within a discursive framework of fairness. However, on closer review, this fairness was predicated upon notions of men's so-called rights rather than notions of social equality or equity (Cook and Natalier 2013; 2016). Mothers' rights to receive reasonable financial input from their children's father, or children's rights to a decent standard of living, were peripheral. Rather, the notion of fairness primarily concerned men's interests and the perceived right of non-custodial male parents to be autonomous and unburdened. Harris' (2015) analysis from the Californian context indicates similar patterns in

the re-inscribing of patriarchal ideology and interests through child support policy. In both the Australian and United States contexts, conservative gendered narratives and norms prevail, ensuring that fathers have the perceived right to personal independence and financial autonomy, whereas mothers do not. Ultimately, the Australian child support reforms have had the overall effect of the majority of payers paying even less than previously; thus, they have generally benefitted men at the expense of women and children (Cook 2015; Natalier et al 2015). Studies confirm that single mothers who experience family violence have faced the greatest financial hardships as a result of these reforms (De Maio et al 2013; De Vaus et al 2014). The ideological underpinnings, the discursive framing, and the practical outcomes of these reforms illustrate how state social policy disproportionately harms family violence victims and further entrenches their disadvantage.

Another harmful dimension of discourse in relation to child support can be seen through the daily discursive interface between single parent family violence victims and the Child Support Agency. Studies indicate that the general negativity expressed by Agency officials towards mothers seeking help with child support issues follows systematic discriminatory patterns and is underpinned by strong sexist undercurrents (e.g. Branigan 2007; Cameron 2014; Natalier et al 2014; Natalier et al 2015; Cook 2015). These studies document Agency representatives' frequent expressions of annoyance with mothers' enquiries, and their labelling of any expectations regarding accurate assessments or consistent payments as unrealistic and presumptuous. In line with a prevailing societal belief that single mothers receive lucrative child support payments to the detriment of fathers, it was common for staff to insinuate that requesting entitlements was greedy. The fact that child support evasion represents parental neglect, social security fraud, economic abuse, and family violence, was consistently overlooked or dismissed by the Agency and its staff. In subtle but powerful ways, these discursive interactions serve to legitimate economic abuse and obscure the links between child support non-compliance, Agency policy and practices, and the production of gendered inequality.

These studies (e.g. Branigan 2007; Cameron 2014; Natalier et al 2014; Natalier et al 2015; Cook 2015) also show that interacting with the Child Support Agency often served to reinforce single mothers' subordinate position and the state's disinterest in assisting them. Many women were actively discouraged from using the system to pursue their claims. 'Ida', for example, was repeatedly told by different Agency officers that "you'll never get what you want [and] you

should just give up" (in Natalier et al 2015: 42). Natalier et al's (2015) findings led them to conclude that women are expected to accept without question any child support payments, no matter how paltry or irregular. These findings reflect broader patterns in both the Australian and United States contexts, where state agencies tend to treat single mothers with criticism and contempt, communicating an underlying belief that they, like other stigmatised and dependant state subjects, are morally irresponsible and undeserving of support (Bumiller 2008; McArthur et al 2013). Together, I argue that this data demonstrates how the state not only excuses men's harms against women, but it also engages in insidious victim-blaming, as women are told that their claims are invalid, and are remonstrated for being troublesome irritants to the system. This treatment further reinforces family violence survivors' subordination and demonstrates how state institutions actively participate in the structurally violent ideologies and practices that underpin sexual inequality and family violence.

Conclusion

This chapter has considered how the social service arm of the state, through the lens of the Australian Department of Human Services, Centrelink, and the Child Support Agency, are complicit in family violence. I opened by outlining the centrality of family violence to the Departments' work, but identified that, contrary to the Department's claims, it does not respond effectively to family violence or victims. I identified how its dysfunctional and oppressive bureaucracies create a service from which many vulnerable people end up disengaging and missing out on much-needed entitlements. I also considered how it can prolong family violence situations by creating significant impediments for women attempting to leave abusive partners. I also identified that single mother intimate partner violence survivors experience the system as particularly oppressive. They are common targets for poor treatment by Department staff, who often express sexist, stigmatising attitudes that confirm single mothers' subordinate status. The controlling, intrusive and emotionally-abusive treatment of clients also frequently reflects and reinforces the abuse that many victim-survivors experienced in their intimate relationship.

I looked in some detail at the Child Support Agency and the issue of child support, as this is central to the persistent poverty of single mothers and their children. I discussed how the system produces inadequate assessments that fail to reflect the real costs of raising children, and how low levels of compliance and inadequate enforcement of child support obligations facilitate

economic hardship for single parent families. I also identified how child support evasion is a key tool in abusers' arsenal of harms, and that the Child Support Agency demonstrably fails to recognise or prevent this as a form of economic abuse. I also outlined how the system inappropriately places the onus on family violence victim-survivors to pursue child support non-compliance issues. This places unfair burdens on these vulnerable clients and also directly jeopardises their safety and well-being.

In the final section, I looked at some of the discourses and ideologies that operate through the child support system. I identified that child support policy is underpinned by powerful patriarchal ideologies which normalise a gendered division of parental responsibility and a framework which emphasises men's authority, innate value, and their perceived right to financial autonomy and independence. I considered the most recent child support policy reforms, which further disadvantage mothers and children by extending fathers' capacity to avoid their obligations and generally function to further entrench men's material advantages. I finally looked at the discursive interface between the Child Support Agency and payees, which revealed systematic discursive discrimination of women, single mothers, and family violence survivors, and prevalent oppressive and victim-blaming attitudes.

Overall, I argue that the Department of Human Services is complicit in family violence. By failing victims and entrenching the socio-economic disadvantage of family violence survivor families, this state institution plays a demonstrable role in exacerbating harms against this vulnerable social group. By providing specific tools for perpetrators' abuse, privileging their needs and interests, and indeed by participating in abuse itself, this state institution is demonstrably implicated in family violence harms.

The end of Chapter Six also marks the conclusion of Part II of the thesis. This completes the first substantive contribution, which has involved identifying state complicity in family violence through the policy, practice, and ideology of three particular state institutions. These were the criminal justice system, family law, and in this chapter, state social services. Each of these chapters identified a spectrum of state criminality in relation to family violence.

The contributions of each institution are to some extent distinct, yet there is also overlap and continuity between all. One crucial continuity across the three institutions is the role of the state not just as facilitator of individual perpetrators' abuse, but as direct perpetrator of abuse. In all

of the institutions I have examined, I have identified that the institutions and their officials sometimes replicate and extend the role of family violence perpetrator. By constructing a similar controlling and coercive dynamic to that in abusive families, and by oppressing and violating victims in the same ways as individual perpetrators, these state institutions are perpetrating direct state violence. This abuse ranges from systematically discrediting and denigrating mothers who attempt to protect their children by testifying to fathers' abuse, to stigmatising and victim-blaming mothers who seek social security assistance, to bullying and physically coercing children into contact with parents who have abused them. As a seamless extension of their previous victimisation, this direct state abuse constitutes part of victim-survivors' whole 'family violence experience'[69]. These and other forms of direct state institutional abuse of family violence victims constitute a blatant form of state crime.

Direct state institutional abuse has distinct effects. As well as mirroring, replicating, and reinforcing abuse perpetrated by individual men, it has a distinctly powerful impact on individuals' sense of disenfranchisement and injustice. Having been interpersonally subjugated and violated by an individual is undeniably harmful; however, the replication of this victimisation at the institutional and state level has an entire other level of meaning. For one, it represents a clear symbolic statement of family violence victims' sub-citizen status. By being treated as dishonest, manipulative, unreliable, undeserving, blameworthy, or indeed invisible and mute, their dignity and worth is profoundly devalued. It communicates that they do not deserve the full advantages of citizenship: for instance receiving respectful, fair, impartial, or equitable treatment, legal protections, and basic support and assistance. As Balint (2012) argues, when the state fails to protect certain individuals, it conspicuously communicates who is a valued citizen and who is not. Through willingly enabling, and indeed participating in men's family violence, the state clearly conveys to family violence victims that the harms perpetrated against them, and the consequent suffering, disadvantage, and hardships they experience, are insignificant and unworthy of attention. It also communicates that, in some sense at least, they deserve to be directly oppressed and violated by other citizens and the state.

Taken together, I argue that the three chapters comprising Part II illuminate the inter-connected, cross-institutional, mutually-reinforcing, and cumulative harms that all contribute to

[69] My thanks to colleague and friend William Arpke-Wales for suggesting this apt phrase during a very helpful discussion of my Part I analysis.

positioning family violence a state crime. I also intend them to illuminate the impact of complex webs of both overt and subtle institutional authorisation of and support for family violence. Like in an abusive relationship, where a crude sum of single incidents of physical or sexual violence cannot capture the cumulative and pervasive effect of relentless and reinforcing forms of coercion and abuse (see Stark 2007; Sheehy 2018), family violence as state crime cannot be understood as a single incident or moment in time, nor as a single policy or specific action by one state official. As Lasslett (2012a: 127) notes, state crimes often play out through a "strategic field" of power networks and "broad alliances" of loosely-associated institutions and actors. Wolfe (1994: 96) also emphasises that some state crimes need to be understood as structures which unfold over time, rather than as discrete moments or events. This is the case with family violence manifesting as a state crime.

For an individual victim-survivor, the experience of family violence as state crime begins in the home through the state-reified institutions of marriage and the family, before extending over time and expanding to encompass multiple encounters with various state institutions, agencies, and representatives. Emanating from the personal trauma and violation by a supposedly trusted individual, the family violence experience often grows to include hostile and disempowering interactions with state agents, futile attempts to receive financial and other entitlements, traumatic and costly civil and criminal legal proceedings, persistent state-facilitated victimisation by the original perpetrator, and ongoing struggles to receive recognition and secure personal safety (see e.g. Cameron 2014; Kelly et al 2014; Coy et al 2015; Conte 2018; Natalier 2018). For some women, this experience also extends to being compelled into protracted coercive and abusive relationships with state institutions, where the state itself takes on the role of intimate abuser and causes them serious further trauma (see e.g. FCA 2014; Laing 2017; Douglas 2018; Gutowski and Goodman 2019). These wide-ranging oppressive experiences often culminate in debilitating chronic health issues and wide-ranging, long-term hardships (see Guggisberg 2018), and I argue that they cannot be regarded as separate or distinct forms of family violence victimisation. Rather, it is the convergence and amplification of this cohesive network of patriarchal and institutional harms which illuminates my rationale for nominating family violence as a state crime.

The next chapter commences Part III of the thesis. In Chapter Seven, I address the second substantive contribution by presenting my theoretical model of family violence as state crime. This feminist framework contains three types of what I term 'family violence state crime'.

‘Structural family violence state crime’ refers to the broad structural, institutional, social, economic and cultural frameworks and conditions which underpin family violence. ‘Micro-institutional family violence state crime’ expands key state crime concepts in order to facilitate new ways of conceptualising the state and state governance, and for understanding the site, actors, and dynamics of family violence. This, in turn, offers a way of conceptualising family violence as state crime. ‘Macro-institutional family violence state crime’ offers a way to better understand the complicity of nation-state institutions in family violence. This provides a way of mapping the types of state institutional complicity in family violence which I have identified throughout Part II. Family violence as state crime ‘by proxy’ and ‘reverse proxy’ are further theoretical frames which I nominate to understand family violence as a state crime. Together, all parts of my feminist model highlight the continuities between different and mutually-reinforcing patriarchal violence, demonstrating why family violence should be theorised as a state crime.

7

A feminist theory of family violence as state crime

Introduction

This chapter develops the second substantive contribution of this thesis: generating theory through which to conceptualise family violence as state crime. I commenced this contribution in Chapter One by explaining how intimate partner violence can be understood as a state crime against humanity. In the present chapter, I offer an elaborated and expanded theoretical contribution through a unified and overarching feminist theory of family violence as state crime. This theoretical model consists of three types of what I term 'family violence state crime'. This typology provides a framework for identifying, naming, and conceptualising the complicity of the state in Western liberal-democratic societies in family violence, as it functions through state structures and institutions.

I commence the body of this chapter by presenting a diagram and brief explanation of my overarching feminist theory of family violence as state crime. The diagram depicts the three types of family violence state crime that together constitute the whole, and visually indicates the relationship between all parts of the model. The chapter then proceeds to elaborate on each of the three types of family violence state crime in turn. In the sequence subsequently discussed, these are structural state crime, micro-institutional state crime, and macro-institutional state crime. For each type, I explain what it means and entails. Next, because each was developed through the methodological process of upcycled appliqué I outlined in Chapter Three, I explain the component layers that contributed to its development, and how these facilitated my conceptualisation of the state's role in family violence. I then provide illustrative examples.

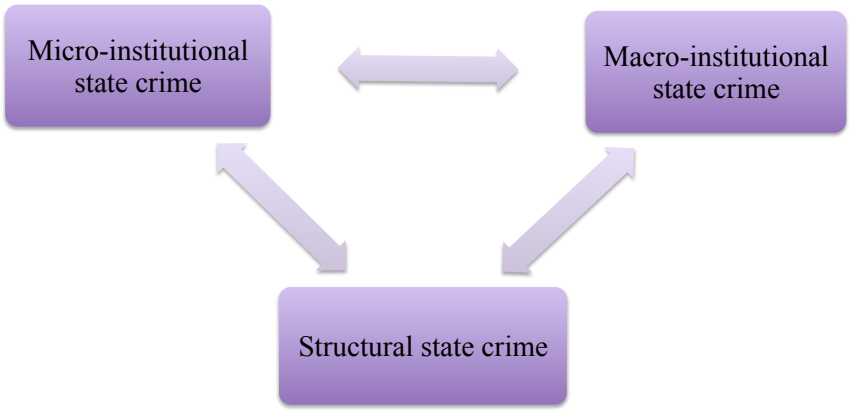
After detailing each of the three types of family violence state crime, the subsequent section puts forward two further theoretical frames for understanding family violence as state crime: 'proxy state crime', and 'reverse proxy state crime'. These lenses further enhance the overarching feminist model by illuminating the relationship between the three types of family

violence state crime; additionally, they offer stand-alone theory for understanding family violence as a state crime.

The final substantive section of the chapter looks more closely at the interplay and overlap within and between all the parts of my overarching feminist framework for family violence as state crime. Through unpacking and analysing a particular legal case example, I show how the model offers a holistic and integrated way of understanding the state crime dimensions of family violence.

A feminist theory of family violence as state crime

The following diagram depicts my overarching feminist theory of family violence as state crime. It shows the three types of family violence state crime I will elaborate throughout this chapter, indicates their relationship and connections, and emphasises the inter-connected nature of the model's component parts.



Structural state crime is positioned at the centre and base of the model, emphasising that it is at the foundation of the harm itself, and also that it underpins the other types of family violence state crime. Visually and conceptually, it indicates that the two types of institutional state crime flow upwards and outwards from this base of structural harm. It also highlights that without the structures that produce and sustain family violence, specific institutional forms of family violence state crime would not be possible.

The bi-directional arrows in the diagram indicate important connections between the three types of family violence state crime. The two arrows emanating from structural state crime depict how the two types of institutional state crime emanate from, and are continuously supported by, state structures. The fact that these arrows also point from the institutional back to the structural indicates the supportive nature of the institutional state crime types for the wider state structures. The single bi-directional arrow between micro- and macro-institutional state crime also indicates the mutual support they provide each other. This arrow also represents the two further ways of understanding family violence as state crime which I subsequently unpack: proxy, and reverse proxy. All the arrows in the diagram highlight the inter-connectedness of all parts of the model, and their bi-directionality indicates interplay and overlap, which I will also elaborate in the final substantive section of the chapter.

This model offers a new iteration of state crime through both an expanded and more inter-connected notion of state criminality. The centrality of structural harm within the model emphasises the structural origins of all state crime, as well as how historical harms can endure in the present. This promotes a more comprehensive theorisation of state crime by showing the identifiable thread of connection between structural violence, and both historical and contemporary manifestations of the harm as they function through various institutions. Although applied to family violence here, this model offers utility for the theorisation of other systematic harms in which the state is implicated. For instance, it could be useful for conceptualising gender-based harms such as sex trafficking or forced marriage. Elements of the model could also be drawn on to better understand state crimes as diverse as slavery, genocide, mass incarceration, famine, and climate change. Now, however, I will proceed to detail the model as I conceived of it: to theorise family violence as state crime.

Structural state crime

Structural family violence state crime refers to the state-created structures and structural conditions which underpin family violence. First and foremost, structural state crime in relation to family violence refers to how the state creates and maintains structures of sexual inequality. It looks beneath the violence itself to state action and inaction which produces and sustains the structural, symbolic, ideological, normative, economic, cultural, social, and material sexual hierarchy. These conditions ensure that men collectively occupy a superior position to women in society. As official state accounts themselves acknowledge, gender inequality is the "root"

of the problem of family violence (e.g. RCFV 2016: 2). Since the state is responsible for creating the structures and conditions of gender inequality, and because it directly underpins family violence, family violence can be understood as structural state crime.

This lens draws on theory and data from structural violence, state crime, transitional justice, and feminist studies. Combining and extending these materials through the method of upcycled appliqué which I developed in Chapter Three facilitates a coherent frame through which to theorise the state-created structures and structural conditions that produce and perpetuate family violence, as a form of state crime.

Structural violence scholarship identifies that when states create structural, cultural, social, and economic conditions that generate systemic disadvantage for certain groups, this constitutes structural violence (e.g. Galtung 1969; Uvin 1998; Zizek 2008). These systematically unequal conditions also underpin more specific violent phenomena. As Zizek (2008) in particular highlights, structural violence often goes unnoticed because of its historical embeddedness in society, and because it functions along ideological lines which frame it as natural and normal. Structural violence is also frequently overlooked because it is overshadowed and obscured by its more visibly violent symptoms: interpersonal crimes like assault, robbery, weapons offences, and indeed family violence. Structural violence scholarship identifies state policy action and inaction which causes systematic inequality as a serious state harm, although not as explicitly criminal. Its focus is also primarily on socio-economic structural violence, rather than how it can function along sex or gender-based lines.

The state crime and transitional justice field recognises structural violence as state criminality (e.g. Barak 1994; Green and Ward 2000; 2004; Kauzlarich et al 2003; Tatz 2003; 2011; Manne 2004; Miller 2008; Laplante 2009; Muvingi 2009; Balint and Evans 2010; Balint et al 2014; 2016). This is because structural violence causes systematic disadvantage and suffering for certain oppressed groups, and because it originates in, and is maintained by state policies. In this literature, structural violence can be termed "omission-implicit state crime" (Kauzlarich et al 2003: 247). However, I nominate the term 'structural violence state crime' to more clearly indicate its characteristics and to emphasise its violent implications. The state crime scholarship comprehensively identifies economic, racial, ethnic, cultural, and regional dimensions of structural violence state crime. However, it does not adequately attend to the sexual and gendered dimensions of this state criminality.

Augmenting the notion of structural violence state crime with a feminist overlay illuminates its operation along sexist lines. A feminist lens identifies women as an oppressed group which is structurally harmed by various discriminatory state policies, practices, and ideologies. Broadly, states have been shown to provide symbolic, cultural, material, and industrial support for violence against women (e.g. Enloe 1983; 2000; Dobash and Dobash 1998; Stark 2007; MacKinnon 2011; DeKeseredy 2016). Caulfield and Wonders (1993: 91), for example, suggest that "the state's support for violence toward women … operates at both an institutional and an ideological level", as well as through its support for harmful industries and socio-cultural practices. Some feminist contributions specifically illuminate how state economic, social, and cultural policies converge to both directly and indirectly contribute to family violence (e.g. Boonzaier 2005; Hattery 2009; Hattery and Smith 2012; True 2012). Without explicitly naming the state's role as criminal, these contributions clearly identify state complicity in family violence through the production of persistent sexual inequality, discriminatory policies, and conducive conditions for family violence.

Through upcycling and appliquéing this material into a hybrid state crime lens, I nominate structural state crime as a form of family violence state crime. This identifies that the state is responsible for creating various structures and frameworks which both maintain sexual inequality, and directly contribute to family violence. I will now divide structural family violence state crime into three sub-types which will I elaborate in the following sub-sections. First, states directly contribute to family violence by producing and maintaining the socio-economic structures of sexual inequality which underpin women's vulnerability to family violence. Second, states directly contribute to family violence by supporting cultural structures which reinforce sexual inequality, normalise sexual objectification and harms against women and girls, and both directly and indirectly correlate with family violence. Third, states directly contribute to family violence by structuring state institutions around sexual inequality and patriarchal principles. This produces institutions which embody, normalise, and reproduce pervasive discrimination against women and children, as the previous three chapters have demonstrated. Now, I will consider each of these three sub-types of structural state crime in turn.

Structural family violence state crime		
Socio-economic structures	Cultural structures	Institutional structures

Socio-economic structures

One way that states have created and maintained structural sexual inequality is through socio-economic policy. Historically, women were systematically subjugated by powerful symbolic and substantive policy which deprived them of socio-economic rights and opportunities. Emanating from women's "effective exclusion, in practice, from the basic citizen's right of self-government in Western democracies" (Lake 1996: 197; also Park 2015), women were barred from independent citizenship, excluded from holding public office, and severely constrained in their ability to hold consistent paid employment. Contemporary state policy generally positions women as symbolically equal with men. However, substantively, this is not the case. In developed capitalist countries, data from the last fifteen years shows notable and persistent disparities in wealth and income between men and women. In 2005, men's average incomes in the United States were approximately double women's (Connell 2005). In 2012, wage discrimination was causing American women to earn around 25% less than their male counterparts (Hattery and Smith 2012). In 2014 in Australia, wage disparity in full-time employment was over 20% in favour of men, and this had actually increased during the decade prior, suggesting that policies were exacerbating the problem (Chang et al 2014). During the past year, Amado et al (2018: 357) confirm that recent studies across European Union countries show that women continue to be paid "considerably less than men". Group-based inequality on this scale reflects structural factors, as it involves "a massive dispossession of social resources" along patriarchal lines (Connell 2005: 83). It is directly linked to state policies which converge to produce women's collective socio-economic disadvantage.

Even when policies are superficially progressive, the pervasive and ongoing influence of sexist ideology can reproduce the same unequal conditions as those under previous and more explicitly sexist governance (see eg. Shelby 2014; Haslanger 2017; MacKinnon 2019). In the area of labour and employment, for example, traditional ideology concerning sex roles continues to both explicitly and implicitly influence the shaping and implementation of policy. Since, by its very definition, ideology consists of taken-for-granted assumptions and beliefs, it produces discourses which normalise discriminatory arrangements. Substantively, women

continue to bear a disproportionate burden of largely unpaid childcare and other domestic labour, female-dominated professions are still culturally and monetarily devalued, and women's incomes are unstable and inadequate compared to men's. These disparities reflect patriarchal values and ideologies around work and sex roles. In different professions requiring comparable education, training and skills, those traditionally occupied by men continue to be remunerated at significantly higher rates than those traditionally occupied by women. The persistent gendered division of child care and domestic labour also contributes to systematically devaluing women's contributions (Cook and Natalier 2013; 2016; Zuckerman 2014). The broad impact of state policy and ideology in this area is to structurally disadvantage women.

Structural constraints on women's collective economic independence have direct implications for family violence. Economic conditions which reproduce the feminisation of poverty and economic disadvantage (see True 2012; Zuckerman 2014) lead to the widespread reliance of women on others for subsistence. Since women's economic dependence is often on a male partner, it enhances male control, reinforces female subordination, and fuels inequality within the family. From a vulnerable socio-economic position, it can be difficult for women to escape violent domestic circumstances. Contrary to popular representations of victims as "somehow miraculously able to leave abusive partners and start new lives" (Alcalde 2010: 5), abused women often lack the economic capital to leave and establish a sustainable independent existence. Some disadvantaged women do manage to leave a violent partner, only to soon be relying on a new partner who is also violent (Hattery 2009). Constrained by the structural conditions which have produced their subordination, women can be literally imprisoned in domestic life and entrapped in abusive relationships (Johnson 2008).

For family violence victims who are also mothers, economic constraints have a particularly strong impact. Many mothers make the rational decision to stay with an abusive partner because leaving may condemn their children to poverty. The vast majority of mothers who successfully leave violent relationships become sole parents with the primary care of children (De Maio et al 2013; Qu et al 2014; Kaspiew et al 2015a; 2015b). Furthermore, single-parent families are amongst the most socio-economically vulnerable groups in society (Cook 2013; McArthur et al 2013). A number of studies show the difficulties faced by women who have left an abusive partner and are attempting to support themselves and their children through social security payments and unstable, low-paid, part-time or causal employment (Cook 2012; 2013; 2015;

Cook and Natalier 2013; Cook et al 2015; Cameron 2014; Natalier 2017; 2018). For single mothers with children under school age, childcare costs and lack of workplace flexibility often exclude them from employment entirely. The systemic problems separated women face in relation to custody and financial settlements, which I detailed in Chapters Five and Six, also contribute to the persistent disadvantage and hardship experienced by family violence victims. State-facilitated economic abuse and vexatious actions pursued through the family law and child support systems also directly contribute to long-term economic harms against women and children (Branigan 2004; 2007; Patrick et al 2008; Kelly et al 2014; Coy et al 2015; Douglas 2018; WLSV 2018).

When state policies perpetuate sexual inequality in the public and private spheres, and create socio-economic conditions under which women are systematically disadvantaged, the state is also responsible for the outcomes of these conditions. Various international studies show direct connections between state economic policies, material economic conditions, intensified sexual inequality in the home, controlling and abusive male behaviour, and increased reliance on narratives which excuse men's violence (e.g. Boonzaier 2005; Stark 2007; Hattery 2009; Hattery and Smith 2012; True 2012). Together, these elements demonstrate the connection between state policy, socio-economic structures of inequality, and family violence.

Cultural structures

Another way of identifying structural family violence state crime is through the state's support for cultural structures which are directly implicated in family and other violence against women. By allowing and inadequately regulating industries which culturally normalise violence against women, as well as produce specific violence themselves, the state plays a demonstrable role in these harms. As Caulfield and Wonders (1993: 91) explain, "the state's support for a culture of violence toward women [includes] failing to regulate industries that market violence against women as a commodity". These regulatory failures then directly contribute to the harmful cultural frameworks embodied within these industries and which normalise and endorse violence against women. Two lucrative industries which have played a particular role in violence against women, both directly and indirectly, are the media (referring here only to film and cinema) and the sex industry. These industries receive neither adequate, appropriate, nor consistent regulation by the state, which positions the state as a complicit actor in the violence against women that both directly and indirectly arises from these industries.

In the film media industry, lack of adequate state regulation of representations of male violence against women demonstrates the state's support for cultural structures that normalise and reproduce this harm. Classification frameworks which regulate film distribution in the United States indicate systematic lenience towards violent content, with steadily increasing levels of violence in films intended for young viewers since the late 1980s (Leon and Barowski 2011). Dick's (2006) investigation into these classification and regulation processes reveals a total absence of state involvement or oversight. The body which is responsible for film classification, the Motion Picture Association of America, is privately-funded by Hollywood studios and is not subject to any government or public scrutiny; in fact its processes are entirely arbitrary and opaque. This, in effect, gives the Motion Picture Association quasi-legal regulatory powers, given that its ratings dictate the frameworks for films' cinema release, audience admission, and retail sales across the country. Under the Association's classification system, the two most restrictive ratings for mainstream film distribution in the United States are R and NC-17. The former allows viewing by mature audiences with parent or guardian accompaniment. NC-17, on the other hand, prohibits any person under eighteen from cinema entry or product purchase, regardless of parental presence or supervision. By comparing the content of two film examples, I indicate the free dissemination of violent material that this state regulatory absence allows.

A comparative content analysis of two films with the most restrictive United States ratings illustrates the pervasive normalisation and toleration of male violence against women, yet extreme restrictions around depictions of non-violent but taboo subject matter. *Blue is the Warmest Colour* (Kechiche 2013) was given the most restrictive NC-17 rating for depicting full male and female nudity and explicit but fully consensual lesbian sex scenes. There is no doubt that this rating did not relate to violence, considering that the film's most extreme violent depiction is one person slapping another's face during an argument. On the other hand, *The Girl with the Dragon Tattoo* (Oplev 2009), also known by the original Swedish title *Men Who Hate Women*, received the lower American R rating, but features almost constant sexual violence. This film depicts extended, repeated, and graphic scenes of brutal oral and vaginal rape, sexual torture, and various sadistic violations of both a sexual and non-sexual nature. Through comparing the ratings and content of these two films, it is clear that violence against women is pervasively normalised. Allowing depictions of extreme male-on-female sexual violence, but not naked bodies nor loving sexual encounters between two women, clearly

indicates the existence of a problematic censorship hierarchy. If taboo subject matter such as queer sexuality is subject to strict regulation, whereas brutal and traumatising violence against women is freely disseminated, this suggests that the Motion Picture Association's classification system has no concern for disseminating violent content. In the absence of state oversight or intervention, the state can be seen as complicit in the ramifications of having easily-accessible violent content.

Extensive research shows direct correlations between the visual consumption of violence, and violent behaviour, particularly in relation to male perpetration and female victimisation. As wide-ranging research over time has shown (e.g. Dworkin 1981; 1985; Dines 2010; MacKinnon 2011; Tyler 2011; DeKeseredy and Corsianos 2016; DeKeseredy et al 2019), men's exposure to media depictions of degradation of and violence towards women, particularly early in life, demonstrably increases their likelihood of becoming perpetrators. This is because consuming this material has the effect of normalising the objectification of women, advocating men's sexual entitlement and use of violence, and cultivating attitudes which support sexual inequality and masculine violence, including in the family. Since this extensive research demonstrates strong links between men's media consumption of, and perpetration of sexual violence, the state's inadequate media regulation and the free availability of sadistically-violent films such as *The Girl with the Dragon Tattoo* implicates the state in violence against women.

Another industry which receives state support and is implicated in violence against women is the sex industry. Through legislating to allow various forms of prostitution, stripping, pornography, and pornographic advertising (and indeed encouraging these as lucrative capitalist enterprises), the state provides substantive support and cultural endorsement for these industries and the harms against women that result. The state's policy support for this industry has been identified by generations of feminist scholars as constituting the official legitimation of violence against women (e.g. Dworkin 1981; 1985; Jeffreys 1997; 2009; 2010; Rosewarne 2007; Coy 2008; Dines 2010; MacKinnon 2011; Tyler 2011). Violence is both endemic to this industry because its practices are violent in themselves (see Jeffreys 1997; Dines 2010; MacKinnon 2011), and the industry is also directly implicated in other violence against women. In addition to the many studies cited above, other recent research (e.g. Zeglin 2014; DeKeseredy and Corsianos 2016) confirms that men who consume pornography and the services of prostituted women are more likely to objectify women and girls, sexualise children,

and be sexually dominating, demeaning, aggressive, and violent. This shows demonstrable connections between the sex industry, the cultural normalisation of harmful male behaviours, and various forms of family violence, notably intimate partner rape and child sexual abuse. When the state neglects to regulate industries which are directly implicated in promoting female subjugation and violence against women, the state can also be seen as responsible for these harms.

Institutional structures

Another form of structural family violence state crime involves the structuring of state institutions around patriarchal ideology, values and interests. This produces pervasive and systematic institutional discrimination against women and children. A key example of the patriarchal structuring of a state institution is the comprehensive masculinisation of law. Common law systems are inherently patriarchal: that is, they are designed by men, about men, and operate in the interests of men (e.g. Smart 1989; Henderson 1991; MacKinnon 1994; Charlesworth 1995; 2000). Law is masculine, rational, and material in character, with its central subject being the abstract "reasonable man" (Hekman 1999: 13). Women have thus been remarkably invisible in law, despite constituting half the population. In fact, law has fundamentally struggled to conceive of women as human, such that "'human' and 'female' are mutually exclusive by definition; you cannot be a woman and a human being at the same time" (MacKinnon 1994: 6; also 1989; 2006). Since the institution of law is designed by, for, and about men, it structurally disempowers and discriminates against women and constrains their ability to receive state recognition or protection for harms they suffer.

Law structurally discriminates against women because its conception of harm is fundamentally masculine in character. The notion of harm is conceived within a male model of victimisation, where violence is most often a single event of physical assault by an acquaintance or stranger (see e.g. AIC 2009; Chan and Payne 2013). This means that law has evolved to focus on visible, tangible and measurable harms, with interpersonal crimes generally "defined in relation to whether the surface of the body has been violated" (Kelly and Radford 1996: 29). The "legal and cultural story that 'violence' means physical force" (Hunter 2006: 35) has created a model of harm which renders invisible the vast majority of family violence. This is because the most common forms of control, abuse, and aggression generally do not produce spectacular physical injuries (Johnson 2008; Stark 2008; 2010). What this model produces is a gendered hierarchy

of harm whereby women's most common victimisation is invisible or ignored (see e.g. MacKinnon 1982; Copelon 1994; Subedi 1997; Meyersfeld 2003; 2010; Henry 2011; Sifris 2014). It is a key way that law's structures have systematically discriminated against women and hindered their ability to assert victim claims.

Despite law's symbolic shifts towards sexual equality, its patriarchal structures reproduce persistent discrimination against women and family violence victims. This is because, although law reform generally reflects principles of sexual equality, the entrenched patriarchal foundations of law create a practice "lag" whereby the institution continues to reproduce discriminatory outcomes (MacKinnon 2019: n.p.). I nominate all enduring manifestations of sexist ideology which emerge through legal practice and which treat women discriminatorily, or dismiss, minimise or excuse family violence, as examples of structural family violence state crime.

The inherently sexist structures of law are evident in the adjudication of marital rape. One notable case which I detailed in Chapter Four clearly demonstrates law's entrenched and enduring sexism. It also exemplifies how law can directly excuse and endorse family violence. *R v Donald* (1993 in Hocking 1993) was heard in a jurisdiction which had officially criminalised intimate partner rape, yet in practice, the victim's pursuit of legal recognition for this crime was treated as illegitimate. Additionally, the judge's commentary thoroughly subjugated the victim and her claims through oppressive sexist discourse. Justice Bland expressed pervasive cynicism of the victim, her testimony, and allegations; in fact he extended the scepticism without favour to all women. By asserting that "'No' often means 'Yes'" when it comes to women and sex (Bland in Kaspiew 1995: 367), the judge relegated women to the status of fickle and deceitful, dismissing their capacity to think, feel, or express themselves rationally. This is entirely consistent with law's original framing of men as normal, rational and reasonable, and women as fundamentally unknown, unknowable, and Other. This discourse reproduces and reinforces the sexism of law, thereby actively reconstituting the inequalities that underpin family violence, and reinforcing the tropes that endorse men's intimate partner violence.

Law's patriarchal structures also powerfully endure in family law. A notable example is the powerful ideological and discursive sexism which produces systematic discriminatory outcomes in family courts. As I detailed in Chapter Five, family law continues to be

underpinned by patriarchal ideology which generates sexist policy narratives which strongly influence policy and practice. The critical importance of fathers to children's lives is consistently emphasised in custody discourses, with little regard for the competence or quality of this fathering (Laing 2010; 2013; Flood 2012b). Even in the presence of a documented history of violence and abuse, family law generally holds men in high regard and considers them suitable parents (e.g. Patrick et al 2008; Coy et al 2015; Conte 2018). Men are also consistently treated with respect in family court settings, and their testimony is considered rational, reasonable and credible (Laing 2010; 2013; 2017; FCA 2014; Fehlberg et al 2015; Kaspiew 2015a; 2015b; 2015c). In stark contrast, family law discriminates against women by constructing and perpetuating negative and critical attitudes towards women and mothers (Laing 2010; 2013; Nichols 2013; FCA 2014; Conte 2018; Ferguson et al 2018). When women raise allegations of paternal child abuse in family courts, they are routinely dismissed as liars and manipulators, despite evidence suggesting that allegations are likely to indicate actual abuse (Nichols 2013; Conte 2018; Gutowski and Goodman 2019).

In sum, this section has looked at the type of family violence state crime which I term 'structural state crime'. This comprises three components: socio-economic structures, cultural structures, and institutional structures. Together, these demonstrate the state's involvement in creating and maintaining the foundations and conditions which underpin sexual inequality and family violence.

Micro-institutional state crime

This second type of family violence state crime challenges and expands current definitions of key state crime phenomena in order to produce an innovative way of understanding family violence as state crime. Essentially, micro-institutional family violence state crime refers to family violence itself, but through a lens which reconceptualises the state, institutions, sovereignty, and the family. By developing more flexible notions of these key concepts, state crime theory can be advanced into the domestic sphere, enabling family violence to be conceptualised as a state crime. In brief, this is achieved through reframing the family as a 'micro-state', or 'state micro-institution', the individual patriarch as sovereign of this micro-state, and the patriarch's family as his subjects. Hence, family violence constitutes a state crime because it is perpetrated directly by a sovereign against his subjects.

This lens brings together early English political theory on the state, radical feminist scholarship, and modern political and criminological analyses of nation-state regimes. This combination of materials facilitates an expansion of key state crime and family violence concepts, enabling the conceptualisation of family violence as a state crime. I will now proceed to explain the framework in an integrated way, identifying the components that I upcycled and appliquéd together to produce it, and expanding the relevant concepts as I go. Throughout the section, I consider the key elements of micro-state ideology and governance in concert, before discussing some illustrative examples.

Micro-institutional family violence state crime	
Micro-state ideology	Micro-state governance

Notions of the state and sovereignty are generally associated with geographic and legal boundaries and political and cultural interests. These are often reflected in the state crime field. For example, Rothe and Mullins (2006) regard the state as a reified entity governing a territory and a people, and the sovereign as the figurehead of this state entity. State crimes, according to these authors, are those "committed by a sovereign polity to advance its interests" (Rothe and Mullins 2006: 3). The notion of what constitutes a state therefore generally focuses on these traditional definitions and boundaries.

By introducing early English legal and political theory, the family can in fact also be considered a state-like institution. Thomas Hobbes (1651 in Chapman 1975), for example, saw the state as the structural and political model for the family, and thus the family as a diminutive state. Like the English monarch, the head of the family was considered a sovereign with absolute authority over his micro-jurisdiction. This is reflected in Blackstone's (1765: 1053) commentaries on common law, which nominate the family patriarch as the "sovereign", "baron", or "lord" of the family, and women and children as his subjects. Within his jurisdiction, the family sovereign, just like the nation-state's monarch, was responsible for "mak[ing] laws", "judg[ing] … disputes", and could even legitimately order his own children's death (Hobbes 1651 in Chapman 1975: 78). In terms of hierarchical structure and political legitimacy, the family therefore closely resembled the nation-state. By challenging conventional notions of the state and sovereignty with this political theory, I nominate the family as the patriarchal 'micro-state',

or ‘state micro-institution’, with micro-sovereignty denoting the male figurehead’s power to rule over his family.

Adding a radical feminist overlay to this framework facilitates uncovering and interrogating the purpose of the patriarchal micro-state, and of family violence. Feminist critique first enables us to challenge the construction of both macro- and micro-patriarchal power structures as normal, natural, and rational (see Hobbes 1651 in Chapman 1975), and to reveal this instead as an ideological process of legitimation and hegemonic maintenance (Shelby 2014; Haslanger 2017). This then enables us to see the family as a state institution which was purposefully created, sanctified and maintained by the nation-state for specific reasons (Mill 1869; Taylor Mill 1869; MacKinnon 1993; 1994; Romany 1993; Copelon 1994; Mertus and Goldberg 1994). As a mirror and model of the nation-state, the key role of the micro-state and its sovereign was to oversee the maintenance of patriarchal power, values and interests in the private sphere (Barry 1979; Mertus and Goldberg 1994; Malley-Morrison and Hines 2004; Hildebrandt 2006; Katz 2006; Bumiller 2008). Micro-sovereigns were responsible for enforcing this patriarchal order in the family through any means necessary. To support the individual patriarch’s regime, the nation-state designated the family an official zone of non-interference; effectively, a “parallel state” (see Romany 1993: 100; also Copelon 1994). Micro-sovereigns were then able to administer their power as they chose. Men who aggressed against, abused, and violated their subjects had the nation-state’s support. This positions family violence as micro-state crime.

Through this model, family violence can be understood as a mode of micro-state governance, since men’s violence was an important tool of power and discipline within the micro-state regime. Men’s capacity to use violence with impunity positioned them as an “absolutist state” in women and children’s lives (Copelon 1994: 297). Understanding the family patriarch as a sovereign state in himself – and a potentially totalitarian one at that – also illuminates the power dynamics which underpin family violence. A sovereign, or monarch, is a figure who simultaneously inspires both terror and adoration in their subjects. With supposedly divine authority, a sovereign is revered, but feared, since they have unmitigated power to determine the fate of their subjects.

By drawing parallels between men’s sovereign power in the micro-state, and repressive nation-states’ techniques of governance, we can further illuminate the purpose and function of family violence. It is well-documented that repressive states use systematic and calculated forms of

oppression, threat, and violence to subjugate their citizens (e.g. Cohen 1995; Balint 2012; Robertson 2002; May 2005; Geras 2011). Two particularly common tools of repression are terror and torture. State terrorism is a unique form of violence produced by the state which involves various forms of measured violence which function as messages of intimidation to the populace, creating mass fear and submission (Kolin 2008; Green and Ward 2004). Torture and terror are tools which repressive nation-states use to ensure conformity and compliance of their subjects. Torture can also be understood as a "mode of governance" (Chomsky and Herman 1979: 361) when it involves calculated and deliberately-administered forms of violence, designed to subjugate and control citizens through a process of terror.

Parallel oppressive and violent techniques are also used by micro-sovereigns to maintain control over the family. In fact, it has already been established that certain family violence constitutes torture and terror. As I detailed in Chapter Two, intimate partner abuse has already been conceptualised as torture through the lens of international human rights law in the Universal Declaration of Human Rights (UNGA 1948) and the Convention Against Torture (UNGA 1984) (see MacKinnon 1993; Copelon 1994; Meyersfeld 2010). Systematic coercive controlling violence in the family has also been named intimate terrorism (Stark 2007; 2010; Johnson 1995; 2005; 2008; 2010; 2011; also see Sheehy 2018) and "patriarchal terrorism" (Johnson 1995: 283)[70]. Feminist analyses have identified clear parallels between international terrorism and the domestic terrorism in everyday lives and homes (e.g. Kelly 1988; Finn 1989; Marcus 1994), with "fear, terror and control" operating in consistent ways across these contexts (Pain 2012: 8).

Continuities in the power dynamics exercised by totalitarian regimes in both the macro- and micro-states further highlight how family violence functions as a state crime. Both utilise "well-developed tactics of intimidation and coercion" to impose "discipline and a strategy of … governance" over victims (Marcus 1994: 31-2). Coercive control regimes involve a

[70] Johnson (2008) later amends this terminology in favour of 'intimate terrorism', due to concerns that the former term "implies that all such intimate terrorism is somehow rooted in patriarchal structures, traditions, or attitudes" and because "there are women who are intimate terrorists in both heterosexual and same-sex relationships … (and) it is not necessarily the case that all intimate terrorism, even men's, is rooted in patriarchal ideas or structures" (115). I fundamentally disagree. As discussed throughout this thesis, marriage and the family are patriarchal institutions, and sexual inequality within these institutions firmly entrenched in patriarchal structures and ideologies themselves. Furthermore, law itself has explicitly endorsed violent patriarchal control within marriage as a method of ensuring male control within the family. I therefore argue that, even if the gender dynamics or individual psychology in particular cases might indicate otherwise, patriarchal structures, institutions and ideologies remain at the root of the problem.

constellation of abusive tactics which together aim to maintain the perpetrators' absolute control over the family (Stark 2007; Johnson 2008; Sheehy 2018). In this sense, family violence perpetrators operate in a comparable manner and with comparable aims to totalitarian nation-states. Although analysing entirely different harms and sites of harm, Chomsky and Herman's (1979) and Marcus' (1994) analyses of torture perfectly align. They accurately identify and analyse how both family violence perpetrators and criminal states use torture as a strategic mode of governance. This demonstrates that these different sites and perpetrators of harm share parallel aims, strategies and modes of operation. This highlights the parallels between the totalitarian nation-state and the micro-state and positions systematic family violence regimes as totalitarian regimes.

Understanding individual family violence victims as the subjects of a repressive, terrorist, or totalitarian state regime also illuminates the state crime features of family violence. Both macro- and micro-state regimes of this type require absolute loyalty and deference from their subjects, and construct a similar power dynamic between sovereign and subordinate. In early English common law on the family, it was stipulated that women could not question the authority of their sovereign (see Blackstone 1765; c/f e.g. Mill 1869; Taylor Mill 1869). The law provided grave consequences for women who questioned or challenged their patriarch in any way. Based on male sovereignty over the family, any offence by a woman against her husband was thought to constitute "a sort of *petty treason*" (Cobbe 1878: 47). In fact, any circumstances in which a woman contravened her husband's wishes or interests would provide a legitimate explanation for his use of extreme and even lethal violence against her. For this reason, Mill (1869: 156) referred to state-sanctified marriage as "a law of despotism" because anything a woman said or did that questioned her husband's authority or contradicted his orders or interests was considered treachery. Furthermore, if a victim of domestic abuse killed her husband in order to protect herself, it was considered an act of treason and was punishable by death.

The power of family violence as a micro-state crime is reinforced by its location and role within the broader patriarchal framework. On the one hand, family violence is just one of many manifestations of the continuum of interpersonal violence against women (see e.g. Kelly 1988; 2010; Mrsevic 2000; Moser 2001; Enloe 2012). Together, this continuum of harms functions to maintain broad female subjugation in society. However, family violence also has certain features which make it a uniquely powerful form of gender-based violence. It not only occurs

within a private and relatively hidden context, but is perpetrated by those closest to the victim. In this sense, the abuse of trust inherent in any act of family violence makes it unique and all-encompassing in its impact. Abuses of power in the domestic sphere therefore rival that of any other source (McQuigg 2011), and particularly so when conceptualising family violence as a crime perpetrated directly by a micro-state sovereign against his subjects. Additionally, the fact that this micro-state crime operates within and beneath the broader institutional and structural systems of patriarchy also means that it receives consistent bottom-up and top-down reinforcement.

Micro-institutional family violence state crime is not only a relevant framework for understanding the historical origins, purpose and function of family violence. It can also illuminate the ways that family violence is treated and responded to by the nation-state. I argue that micro-state ideology can be identified in the recent practice and discourse of nation-state institutions, and that it functions to actively support patriarchal micro-sovereignty and, in turn, family violence.

The enduring principle of state non-interference in family violence represents a vestige of original micro-state ideology. This shows how nation-states continue to perceive the family as an inviolable space which should be subject to no, or minimal, intervention or oversight. It is a key reason why family violence has struggled to receive appropriate recognition or attention, and hence why it has become such a significant and unaddressed problem. As I demonstrated throughout Chapter Four, family violence was only recently criminalised, and even since then, police and courts continue to treat it as a private matter and as less serious than comparable non-domestic crimes (Mertus and Goldberg 1994; Peach 2000; Howson 2006; Fernandez 2010; Tifft 1993; Dobash and Dobash 1998; Bedont and Martinez 1999; Charlesworth and Chinkin 2000; MacKenzie 2010). The reluctance of state institutions to intervene in family violence or to treat it as a serious crime can be understood as an enduring manifestation of micro-state ideology.

Micro-state ideology and governance can also be specifically identified in judicial narratives of marital rape. Although this harm was officially criminalised at the time of the following case's adjudication, the presiding judge clearly expressed support for men's use of violence to impose their will in the family. In *R v Johns* (1992 in Kaspiew 1995), Justice Bollen's comments clearly articulated the notion of the man as sovereign entity, and both the family and

his wife's body as sovereign territory. By stating that there is "nothing wrong" with a man using force against his wife when she refuses sex, Justice Bollen (1993 in Kaspiew 1995: 350) articulated and promoted micro-state ideology which constructs the man as sovereign and his wife as subordinate subject. In accordance with the critical analytical perspective of ideology which I have utilised throughout this thesis, these judicial comments can be understood as an expression of normative beliefs which are regarded as inherently valid and self-evident but which specifically function to rationalise unjust relations (see Shelby 2014; Haslanger 2017).

Justice Bollen's statement expresses a number of normative assumptions that reflect micro-state ideology. Firstly, he makes the normative assumption that men have the right to make sexual demands of women. Also, he implies that women are and should be sexually subservient to men, that they should make themselves permanently sexually available, and it is not possible or legitimate for them to have preferences that do not align with their male partner's. Finally, this lens suggests that that male sexual violence against his partner, should she not be appropriately compliant, is inherently normal and justifiable. This ideological discourse also supports family violence as micro-state crime because it positions the woman's body as sovereign territory. I draw here on radical feminism's interrogation of marriage and the family as sites of women's colonisation (e.g. Burris 1973; Barry 1979). Through this lens, women constitute "the first colonised group" (Burris 1973: 247) and their bodies are considered their husband's territory and property, to be occupied or plundered as he chooses. I therefore argue that this positions the judicial commentary in *R v Johns* as the discursive excusing of the defendant's violence through positioning his wife's body as colonised territory. This negates the possibility of the man's violence constituting a criminal act, and expresses micro-state ideology.

The judicial commentary in this case can be understood as official support for micro-institutional state crime. It communicates that a sovereign has, and should have, unfettered authority and autonomy to choose how to manage his subjects. The idea that a man's choices and conduct in the family should be free from oversight or interference also reinforces as micro-state ideology. As a macro-state institution, law has the state power to legitimise and reinforce the micro-state and the position of the individual male sovereign. In this case, it exercised this power by authorising and excusing the defendant's violence. This occurred despite marital rape being a criminal offence, exemplifying MacKinnon's (2019) observation that prohibiting an

act does not ensure that it ceases, because the pervasive structures, institutional and cultural ideologies and practices which initially allowed it to remain in place.

This section has looked at the type of family violence state crime which I term 'micro-institutional state crime'. This lens put forward alternative conceptualisations of the family, the state, sovereignty, and family violence, such that family violence can be understood as a state crime. By understanding the family as a micro-institution of the patriarchal nation-state, individual men constitute the sovereign, and other family members subjects; thus, violence perpetrated by a man against his family constitutes a state crime. By highlighting the parallels between the exercise of power in repressive and violent regimes of the family and the nation-state, this lens helps highlight the continuities between patriarchal power at the macro and micro levels.

Macro-institutional state crime

This type of family violence state crime refers to the state complicity in family violence that operates through institutions of the nation-state, or 'macro-state'. I specify these as macro-state institutions here in order to differentiate between the micro-state institution of the family which I explored above.

Macro-institutional family violence state crime encompasses the spectrum of state criminality perpetrated by state institutions that I have considered throughout this thesis: ranging from passive inaction against a harm, to active agentic participation in it. In this section, I nominate and discuss these two ends of this spectrum as two types of macro-institutional family violence state crime. On the passive end, I nominate omissive macro-institutional state crime; on the active end, agentic macro-institutional state crime. After explaining each end of this spectrum, I situate examples from Chapters Four to Six within each, showing how this spectrum of institutional complicity in family violence operates in recent and contemporary practice.

Macro-institutional family violence state crime	
Omissive institutional state crime	Agentic institutional state crime

Omissive institutional state crime

Omissive macro-institutional family violence state crime refers to state failures, inaction and negligence which directly relates to family violence and which causes the repetition or exacerbation of the harm. It can involve failing to prevent the harm, protect victims, or to appropriately censure perpetrators. This lens brings together material from human rights, feminist politics, and state crime studies.

State omissions in relation to family violence have been theorised as human rights violations. This is based on the understanding that states are obligated by international human rights law to protect citizens from abuses by others. This concept has been applied to family violence and state failures, with states considered "indirectly responsible" for family violence when they refuse to intervene and protect women in the private sphere (MacKinnon 1993: 23; also 1994; Romany 1993; 1994; Copelon 1994; 1995a; 1995b; Mertus and Goldberg 1994; Charlesworth 1995; Sullivan 1995). Additionally, international human rights case law has established that when states fail to respond adequately to harms that disproportionately affect a particular social group – in this case, women – the state is guilty of perpetrating systematic discrimination (e.g. *Opuz v. Turkey* 2009; *Lenahan (Gonzales) v. United States* 2011[71]). These human rights-based principles position specific state omissions in relation to family violence as systematic and meaningful state failures.[72]

Feminist politics scholarship provides for a broader conceptualisation of these state failures in relation to family and other violence against women. For example, violence against women can be considered a "'political crime" when it is an outcome of states' refusal to criminalise certain harms, provide full legal protections to women, or address systematic sexual inequality (Caulfield and Wonders 1993: 92).[73] In the United States, the systematic failure to prevent and

[71] See Libal and Parekh (2009), Hakimi (2010) and Andrews and Khavinson (2013) for further discussion of the Turkish case. See Bettinger-Lopez (2008; 2013; et al 2011), Goldfarb (2008), Meyersfeld (2010), Andrews and Khavinson (2013) and Cabrera (2015) for further discussion of the Inter-American Court of Human Rights case, including the 2005 Supreme Court action that preceded it.

[72] For further discussion of the human-rights based notion of state complicity in harms through acquiescence, see for example Hakimi (2010) and Duramy (2013).

[73] Some state crime authors have used the label 'political state crimes', but with different connotations and limited conceptual development. According to Barak (1991), 'political state crimes' are committed by state agents and have distinctly political aims in that they are designed to maintain the political *status quo* or to repress change. I would suggest, in line with Balint's (2012) broad perspective on what constitutes state crime, that *all* state crimes are political in this sense, because they are perpetrated with the aim of creating and maintaining the state in a particular political image or according to particular political ideologies.

protect women from family violence has been considered a systematic deprivation of citizenship rights, since the violence, plus the state inaction, prevent women from being able to exercise their constitutional rights to equality, liberty, safety and integrity of the person (Beasley and Thomas 1994; MacKinnon 1994; Naranch 1997; Stark 2007). These perspectives highlight the patriarchal ideology and power involved in state failures around violence against women.

State crime scholarship identifies these types of systematic and deliberate state failures as state criminality (e.g. Barak 1994; 2008; Green and Ward 2000; 2004). This is because states, particularly in societies which are founded on principles of equality and democracy, are understood to have responsibilities. There is a basic expectation that governing bodies and officials will act in accordance with broad human rights principles: providing the same rights, safety, and protections to all citizens, regardless of race, ethnicity, class, religion, sex, gender or other identifiers. When state's selective neglect or inaction results in violations of the basic rights of a particular social group, the state is considered implicated in, and responsible for these harms.

The hybrid human rights-based feminist state crime lens that I develop through combining and extending these materials shows how, if state institutions demonstrably fail their specific law enforcement and rights protection responsibilities, they are complicit in any harms that result. In relation to family violence, since institutional failures to protect or prevent disproportionately affect women, they also constitute state criminality as a human rights failure. Through this lens, when family violence results directly from these state failures, I nominate it as a direct omissive macro-institutional state crime.

Omissive macro-institutional family violence state crime can be illustrated by the many examples of institutional failure and neglect I identified in Chapters Four through Six. As I demonstrated throughout these institutional analysis chapters, testimony from family violence victim-survivors commonly reveals struggles to receive recognition and protection from the state which amount to systematic state failure and neglect. In relation to the criminal justice system, any and all cases of official negligence or deliberate disregard for family violence I identified can be understood through this lens. Specific examples include when police witness a family violence offence but purposefully ignore it (Bumiller 2008; Estcourt 2018; Farnsworth 2018), when they neglect basic duties and codes of practice (Bettinger-Lopez 2008; 2013;

Cabrera 2015; Ulbrick and Jago 2018; VSC 2019), or when their responses are grossly insufficient or inappropriate (e.g. Meyer 2011; 2016; Birdsey and Snowball 2013). Another example is when police refuse to enforce family violence protection orders, in the full knowledge that this places victims at risk of further serious harm (e.g. *Lenahan (Gonzales) v. United States* 2011; Andrews and Khavinson 2013; Cabrera 2015; VSC 2019).

Omissive macro-institutional family violence state crime can also be seen in the policy, practice, and ideology of family law, as demonstrated in Chapter Five. Examples of this include when court officials fail to fulfil their mandated responsibility to actively enquire about intimate partner and child abuse in custody cases (e.g. De Maio et al 2013; Kaspiew et al 2015a; 2015d), or when judges contravene principles in the *Family Violence Amendments 2012* (Commonwealth of Australia 2015) by dismissing relevant documented histories of violence when determining child custody and contact (e.g. Laing 2013; Nichols 2013; Kaspiew et al 2015a; 2015c; Conte 2018). It can also be seen in the discriminatory treatment of women and their testimony during custody proceedings, where lawyers and judges fail to show women the same level of respect and regard given to men and dismiss their allegations without adequate consideration or investigation (e.g. FCA 2014; Coy et al 2015; Laing 2017; Douglas 2018; Gutowski and Goodman 2019).

Chapter Six offers many examples of omissive macro-institutional state crime. These include the Department of Human Services' failure to deliver promised services which adequately account for family violence victims' needs for assistance, financial support, privacy and safety. Notably, when family violence victims are attempting to leave an abusive situation, the Department's obstructive policies and practices are implicated in prolonging abusive relationships and extending harms to victims (e.g. McArthur et al 2013; Cameron 2014; Cook 2015; Cook et al 2015; Natalier 2017; 2018). The systemically inadequate standards or accountability mechanisms surrounding child support are another example of state social services' omissions. These institutional failures are directly implicated in family violence because they allow perpetrators to continue long-term control and abuse of their victims. One way this occurs is through failing to enforce child support dues, thereby enabling perpetrators to economically abuse their ex-families and dictate the quality of life of their ex-partner and children. The state and the Department's failure to institute adequate assessment, accountability, or enforcement processes for child support, means that they not only support

perpetrators' abrogation of financial obligations, they also provide them with the tools and the impunity to continue their abuse.

Omissive macro-institutional family violence state crime refers to systematic and negligent failures of state institutions around fulfilling basic family-violence-related responsibilities. These include upholding citizens' human rights, enforcing criminal and civil law and policy, and providing appropriate basic services to address victim-survivors' needs. Since omissive patterns occur along specific discriminatory lines, they reveal demonstrable state inaction which directly correlates with the systematic toleration and exacerbation of men's family violence against women and children.

Agentic institutional state crime

Agentic macro-institutional state crime is the most active and direct manifestation of macro-institutional family violence state crime. It refers to instances where the state institution or its officials directly order, exacerbate, extend, or participate in family violence harms. Direct involvement in harming victims can range from the relatively subtle daily "micro-aggressions" (see Natalier 2017: 622) perpetrated by institutional representatives, to state institutions actively supporting, assisting, and even co-perpetrating abuse against family violence victims. The epitome of agentic macro-institutional state crime is when the state institution, in all respects, *becomes* the family violence victim's intimate abuser.

This lens brings together state crime material, socio-legal analyses of discourse and oppression, and grounded qualitative feminist theory. The resulting upcycled appliquéd lens enables harms perpetrated by state institutions and their representatives to be understood as a form of family violence state crime.

State crime literature notes that its central object of study – state crime – is often abstract and invisible, and therefore there is some concern for how state crime might be rendered visible and analysed more directly. That is, how might we be able to identify state crime in concrete form and in everyday life? Some authors (e.g. Rothe and Mullins 2006; also Kauzlarich et al 2003) have suggested that state crime can be identified and analysed by conceptualising institutions *as* actors and agents. Also, since these institutions are composed of individuals entrusted with its operation, these institutional representatives can also be regarded as state

agents. This work identifies that state policy and power, and indeed state oppression and criminality, can be identified through looking at the state institution's 'behaviour', and also through examining everyday interactions between state agency officials and citizens. Critical socio-legal contributions also add to this picture by highlighting the subtle but powerful impact of everyday "speech acts" (Reyes 2011: 783; also Constable 2014) when they emanate from state officials. Feminist analyses of discursive experiences between family violence victim-survivors and state institutions provides extensive qualitative data and theory that reveals the coercive and abusive relational dynamics between victims and state institutions. My hybrid combination and extension of these materials identifies that, when state institutions function as abusers of family violence victims, this constitutes a form of family violence state crime.

Agentic macro-institutional family violence state crime is illustrated by many examples of state involvement in family violence which I analysed in Chapters Four to Six. On the subtle end of the spectrum, one example is the "micro-aggressive" (Natalier 2017: 622) treatment of family violence victim-survivors by state institutional officials. This refers to words and actions which oppress and aggress against vulnerable citizens at the micro-level of interpersonal interaction. Micro-aggressions can involve critical, sceptical, or demeaning attitudes, derogatory language, verbal harassment, and generally disrespectful behaviour towards people seeking assistance from the state. In the qualitative studies I drew on (e.g. Patrick et al 2007; 2008; Cook 2012; 2013; 2015; McArthur et al 2013; Cameron 2014; Harris 2015; Natalier 2017; 2018), many family violence survivors recounted the repetitive oppressive encounters they had with state social service officials. They testified to hostile responses, words and actions which confirmed their subordinate status and social stigma. When attempting to communicate about child support issues in particular, such as their ex-partner's payment evasion, single mothers faced derision, contempt, victim-blaming, and irrelevant and invasive questioning and criticism of the micro-details of their lives. State agency's micro-aggressions are a powerful way that state oppression functions at the level of daily interpersonal interactions (Graham and Schiele 2010). Micro-aggression is a subtle but pervasive form of state crime because it occurs in everyday life through seemingly insignificant human communication, but can be a repetitive and relentless form of subjugation. As structural violence analyses show (e.g. Galtung 1969; Uvin 1998; Zizek 2008; Hirschfeld 2017), micro-oppressive experiences also tend to express and reinforce pervasive underlying social, political and economic inequalities. For family violence victims, micro-aggressions have an amplified and cumulative effect, because this treatment

reflects and reinforces the psychological, emotional and verbal abuse that is common within family violence regimes.

Another manifestation of agentic macro-institutional family violence state crime is when state institutions directly communicate support for family violence or its perpetrators, whilst simultaneously subjugating and oppressing victims. This can occur through discourses that excuse, minimise or downplay family violence. I provided many examples of these in Chapter Four. For instance, through official reports of intimate partner homicide, police engage in the systematic discursive erasure of relevant abuse histories such that lethal violence is dramatically recast as an isolated and unfortunate accident rather than the apex of a systematic abuse regime (e.g. Gloor and Meier 2013). Through victim-blaming tropes, these narratives actively frame victims as responsible for their own demise, thus writing perpetrator responsibility out of the picture. Similarly, in the criminal court system, prior male abuse is rarely recognised in homicide cases as indicative of a pattern of dangerous abusive behaviour, nor serial criminal offending (e.g. Douglas 2012; Wells 2012; McKenzie et al 2016; Sheehy 2018). Examples of judges' sentencing commentary in intimate partner murder cases provides striking examples of state officials' active participation in the discursive disappearance of family violence, amounting to its effective decriminalisation (Tyson 2011; 2013; Gloor and Meier 2013; McKenzie et al 2016).

Agentic macro-institutional family violence state crime includes instances where state institutions actively exacerbate and extend family violence harm and trauma. One example of this from Chapter Four is new legislation in Alabama, United States. In comprehensively criminalising abortion, the *Human Life Protection Act 2019* (State of Alabama 2019) deprives women and girls of their right to legally and safely terminate a pregnancy resulting from sexual family violence. This criminalises and stigmatises victims for attempting to deal with the effects of serious criminal violation, and also represents a gross violation of victims' human rights. It has already been established in international human rights law that forcing a woman or girl to carry an unwanted pregnancy to term, endure childbirth, and then deal with the long-term ramifications of having a child, is a violation of basic rights (Sifris 2014). These detrimental impacts are severely exacerbated when the pregnancy is a result of family violence. In fact I argue that the severe pain and suffering associated with the denial of this right constitutes state torture, since it imposes cruel, inhuman and degrading punishment upon the victim and thus violates the United Nations Convention Against Torture (UNGA 1984). This

legislation powerfully reveals the state as active and direct participant in the extension of family violence harm and trauma, and indeed illustrates state-directed torture of family violence victims. This example reveals the institution of law functioning as a direct agent and vehicle of state violence, thereby exemplifying agentic macro-institutional family violence state crime.

Agentic macro-institutional family violence state crime refers to the most active and direct forms of state institutional involvement in family violence harms. It can include micro-aggressive treatment of victim-survivors by state officials which denigrates individuals and confirms their subordinate status; it can also include the communication of direct support for family violence through official institutional discourse which blames victims and excuses perpetrators for their crimes. The most extreme forms of agentic macro-institutional family violence state crime involve the perpetration of direct state violence against victims, as occurs when the law removes their rights and directly orders them to endure severe additional family violence-related trauma.

Proxy state crime

Family violence as a state crime by proxy, and reverse proxy in the following section, are further feminist theoretical frames through which family violence can be understood as a state crime. They represent both stand-alone theory for family violence as state crime, and also reinforcement for the three-type model I have already detailed. As part of the overarching model and in the diagram I presented earlier, proxy and reverse proxy dynamics are represented by the horizontal bi-directional arrow that runs between micro-institutional and macro-institutional family violence state crime. The proxy and reverse proxy frames help to illuminate the relationship between these institutions, and emphasise how they function in a mutually-supportive way to reproduce sexual oppression broadly, and family violence specifically. As stand-alone theory, family violence as state crime by proxy is a variant and an extension of the lens of family violence as a micro-institutional state crime, which is complexified with the addition of proxy actor theory from the state crime field and feminist political theory, as I will now explain.

Earlier, I explained how family violence can be understood as a micro-institutional state crime by recognising that the nation-state created the family as a micro-jurisdiction, within which

individual men were to maintain patriarchal values and order in the wider state's interest. Having bestowed this power on individual patriarchs, the nation-state then took a step back and allowed them to fulfil their patriarchal responsibility without nation-state interference (Stevens 1999; Mrsevic 2000; Merry 2006; Leatherman 2011). Drawing proxy state crime theory into this micro-state framework allows us to see how the arrangement allowed the patriarchal nation-state to rule at a distance, through individual men. Proxy, outsourced, or surrogate state deviance is a diffuse and relatively obscure way that states can systematically harm and subjugate certain groups, by enlisting perpetrators with whom they collude (Jamieson and McEvoy 2005; Kolin 2008; also Lasslett 2012b).[74] It can be understood as state crime deliberately perpetrated at a distance, which allows the state's role in harms to be rendered indirect and obscure.

I argue that family violence can be considered a state crime 'by proxy' if individual men are understood as agents of the patriarchal state, and the family as the vehicle through which systematic oppression and violence is administered. This aligns with feminist analyses which identify the family as a key unit of patriarchal society which is designed by the state and administered through individual patriarchal representatives (see e.g. MacKinnon 1982; 1993; 1994; Romany 1993; Jeffreys 1997). It also aligns with the manner in which the patriarchal nation-state established the family so that it could continue to ensure its interests in the private sphere but could rule at a distance, through localised representatives. This positions individual men as proxy, surrogate, or outsourced state actors. Through this lens, family violence constitutes a state crime because it is a tool used by proxy agents of the patriarchal nation-state to subjugate women in a manner that directly aligns with wider patriarchal aims.

Administering state oppression and violence via proxies allows states to systematically evade responsibility for crimes for which they are ultimately responsible. This can be seen with family violence. First, since the state has no official connection to individual perpetrators who carry out this violence, the state maintains its distance from the harms (see Jamieson and McEvoy 2005). Second, because family violence occurs in a somewhat distanced and separate context, it allows the nation-state to advance its patriarchal interests "while keeping its hands relatively

[74] Jamieson and McEvoy (2005) discuss proxy and outsourced state crime in the context of states colluding with private-sector mercenaries or military firms which perpetrate atrocities on their behalf. Lasslett (2012b) also alludes to proxy state crime in the title and abstract of an article concerning Australia's covert sponsorship of the Papua New Guinean government's counterinsurgency campaign of the 1990s, however makes no subsequent reference to the term, and does not develop the concept.

clean" (Romany (1993: 111). Because the relationship between the state and its proxy agents is often indirect and fluid and proxies do not follow state directives on each and every act of violence, it is easy for the state to maintain official detachment from crimes (Lasslett 2012b). In fact, groups and individuals to whom state crimes have been outsourced often have a dynamic of their own in relation to operations, strategies, and practices, and "this space for innovative sadism … is useful in both distancing the state from its proxy actors" (Jamieson and McEvoy 2005: 512). This is indicated in family violence through the remarkably common yet simultaneously tailored tactics that each family violence perpetrator develops to control and abuse his victims (Stark 2007; Johnson 2008; Sheehy 2018). These features of family violence – its perpetrator group dynamics, and also its unique personal repertoires – further belie the connection of the violence to the state.

As with all state-proxy relationships, there is reciprocal benefit for both parties. The macro-state's benefit from this arrangement is substantial but simple: proxies assist it to maintain patriarchal order at the micro-level. The benefits for proxies are manifold. Firstly, offenders gain "a number of tangible as well as intangible benefits" through exercising dominance and control in the family (Stark 2007: 68). The benefits men obtain from assisting the state can also be understood in terms of the "patriarchal dividend" described by Connell (2005: 12). This refers to the diverse material, symbolic, and cultural privileges men gain directly from patriarchy. In a material sense, the patriarchal dividend can be identified through the direct economic benefits that state institutions give male family perpetrators, for instance through ensuring that, ideologically and substantively, socio-economic policies support men's financial advantage and autonomy (see e.g. Cameron 2014; Cook et al 2015; Natalier 2017; 2018). Connell (2005) also suggests that men also gain a collective cultural dividend from patriarchy in terms of being attributed masculine honour, symbolic superiority, and the perceived right to dominate and command. This can encompass subtle modalities of social and cultural life, like the default presumption that authoritative positions are, or should be, occupied by men, or that men's careers are more important than women's.

Proxy state crime theory is useful for understanding states' official responses to family violence. As Jamieson and McEvoy (2005) identify in their elaboration of outsourcing, states engage in sophisticated methods of obfuscating responsibility for crimes in which they are implicated. Discursively, states often engage in strident condemnation of violence perpetrated by their proxies in order to maintain their rhetorical distance. Through emphasising

perpetrators' 'Otherness', the state projects its moral integrity and its rhetorical opposition to the harms. I argue that official state discourse around family violence can be analysed through this lens and thus interpreted as part of the othering process used by states to conceal their connection with proxy agents and distance themselves from the harms. In the state discourses of family violence which I have engaged with throughout this thesis (e.g. RCFV 2016; DHS 2016; DHHS 2018), the state and its agencies express strong denunciation of family violence in a manner that 'others' perpetrators and designates responsibility as an individual matter. They repeatedly emphasise "the need to ensure that those who use violence take responsibility for their own behaviour", the critical importance of "holding perpetrators to account" (RCFV 2016: 3, 28, 106). These official accounts of family violence adamantly frame the problem as an interpersonal harm and position the state as neutral arbiter, deliberately distancing the state from the harm.

The lens of family violence as state crime by proxy shows how family violence can be understood as a particular mode of state power which is delivered through individual men who are entrusted to maintain domestic control. In addition to providing a stand-alone frame for understanding family violence as a state crime, the proxy framework supplements and strengthens the feminist model of family violence as state crime by emphasising the mutually-supportive relationship between macro- and micro-institutional patriarchal power.

Reverse proxy state crime

I have just explained how family violence can constitute a state crime by proxy if individual perpetrators are understood as agents of the patriarchal state. I now explore the possibilities of inverting this framework. Like the proxy framework, the reverse proxy framework can be understood as both stand-alone theory for understanding family violence as a state crime, and also as elaboration and reinforcement for the overarching three-part feminist model of family violence as state crime which I have already detailed. As reinforcement for the model, the reverse proxy lens illuminates the connections between state micro-institutions and macro-institutions, which operate through family violence. Critically, the arrow in the model's diagram which runs between the micro- and macro-institutional types indicates that this supportive dynamic operates in both directions. This is where reverse proxy family violence state crime comes in. This lens considers how it is not only individual men that support the

patriarchal nation-state's interests; the nation-state's institutions also support individual men and their patriarchal micro-state regimes.

What I term reverse proxy family violence state crime essentially involves the state acting as a proxy family violence perpetrator for the micro-state and for individual male sovereigns. It identifies and describes instances where the state, through an institution, department, agency, or an individual official who represents any of these bodies, directly replicates, participates in, and extends the individual offender's abusive and violent treatment of victim/s, thereby acting as his proxy agent. It can occur through macro-state institutions directly collaborating in family violence, and sometimes perpetrating abuse on behalf of individual perpetrators.

This lens is an inverted version of the feminist proxy state crime framework I developed above, which was a variant and extension of understanding family violence as a micro-institutional state crime. As well as being a stand-alone lens for conceptualising family violence as state crime, reverse proxy theory is an alternative way of understanding incidents where macro-state institutions act as intimate abuser, or, as I nominated in the previous section, when they perpetrate 'agentic macro-institutional family violence state crime'. In certain circumstances, the state institution actually temporarily replaces the individual micro-sovereign and commits abuse on his behalf when circumstances constrain the man's capacity to do so. For example, if a protective order is in place, or following separation from an intimate partner and their children, the perpetrator may have limited access to his victims. As I demonstrated throughout the institutional analysis chapters of Part II, under these constrained circumstances, macro-state institutions often function as a replacement or stand-in perpetrator for individual men, taking on the role of coercing and abusing victims on his behalf.

Reverse proxy family violence state crime can be identified in many examples in Chapters Four through Six. I identified how state institutions can function as stand-in agents for individual perpetrators when they are absent or otherwise constrained in their capacity to engage in ongoing abuse of their victim/s. In Chapter Five's analysis of family law and courts, I identified how, after separating from an abusive co-parent, this institution often effectively takes over the perpetrator's abusive role. By silencing, coercing, controlling, demeaning, and disenfranchising women and children (e.g. Laing 2017; Douglas 2018; Gutowski and Goodman 2019), family courts function as family violence collaborators, stand-ins, and proxies. In Chapter Six, I discussed how state social service agency officials' oppressive and

aggressive treatment of family violence victims (see e.g. Branigan 2007; Cook 2012; McArthur et al 2013; Cameron 2014; Natalier et al 2015; Natalier 2017) directly replicates the denigration and control exercised by intimate partner violence perpetrators, and thus also exemplifies the state acting as proxy perpetrator for individual men.

Another powerful manifestation of reverse proxy family violence state crime is when state institutions act as offenders' advocates by directly facilitating their recidivism, and also when the institution itself orders and perpetrates family violence-related abuse. This is exemplified when family courts takes on the role of coercer and abuser to enforce child contact rulings. As I demonstrated in Chapter Five, it is not uncommon for children to be compelled by family court decisions into ongoing contact with their father, against their will, and as a result of discounting the child's testimony of direct paternal abuse (e.g. Patrick et al 2008; Laing 2010; 2013; Coy et al 2015; Conte 2018; Ferguson et al 2018). Further, state-managed child contact centres sometimes enforce these judgements in manipulative and even violent ways (e.g. Laing 2010; Parker et al 2012). When child victims of family violence are silenced, coerced, manipulated and terrorised into unhealthy and possibly abusive parental contact, this clearly reveals these state institutions functioning *as* coercer and abuser. Here, the family court and the state facility which enforces its rulings not only aid and abet an alleged offender, but they perpetrate direct state violence against an already-traumatised child. This clearly shows the state, through family law, functioning as a proxy agent for both the patriarchal micro-state of the family and the individual perpetrator, as it advocates for, replicates, reinforces and acts as agent for his interests.

When macro-state power reinforces micro-state power in this manner, it also shows repressive patriarchal totalitarianism on full display, demonstrating its multi-dimensional and all-encompassing force. This is because the power of the micro- and macro-patriarchal states converge in order to impose their ideology, values, conditions and decisions. They subjugate and disenfranchise their 'subjects', coerce and even violate them into doing things against their will, and the various state structures, institutions and agencies function to police, enforce and support their authority. In this sense, I nominate an expanded version of Johnson's (1995) 'patriarchal terrorism' to convey not only the controlling male dynamic involved with family violence, but also the patriarchal cultures, structures, institutional arrangements and ideologies which surround and support it at the macro-institutional level. I suggest understanding the

mutually-reinforcing relationship between the patriarchal micro- and macro-states in this example as an overarching process of patriarchal totalitarianism.

An integrated model

Having explained the various parts of my feminist model of family violence as state crime, I will now illustrate the useful interplay and overlap within the model through a legal case example. This indicates how the different types of family violence state crime intersect and mutually reinforce each other, producing a powerful overall impact of family violence as a multi-faceted patriarchal state crime. The intimate partner murder trial of Stephen McPhee and its ensuing sentence appeal case (The Queen v McPhee 2013 and McPhee v The Queen 2014 in McKenzie et al 2016: 70-1)[75] illustrate family violence as state crime, via all facets of the above model. This case spans micro-state family violence state crime, structural state crime, and macro-institutional state crime, and demonstrates the simultaneous and mutually-supportive functioning of these. It also demonstrates family violence as proxy and reverse proxy state crime, as I will now explain.

Extensive evidence provided at Stephen McPhee's murder trial pointed directly to the intimate relationship typifying a micro-state family violence regime. Stephen's obsessive, jealous, controlling, aggressive, and threatening behaviour towards his wife Cathy over an extended period of time indicates a coercive controlling dynamic in which he took on the role of sovereign, designated his wife as subject, and perceived their marriage to entitle him to impose his will over her. Given that Stephen murdered Cathy after she expressed her desire to separate, he clearly deemed her punishable by death if she did not conform to his wishes. This relationship history is entirely consistent with the construct of the family as micro-state, the defendant as sovereign, and his violence as micro-state crime. The court also reinforced micro-state ideology by actively supporting the defendants' individual sovereignty and his domination of his wife. By failing to identify, question, or challenge the defendant's abusive reign, the court actively normalised and tacitly supported his controlling and aggressive methods of maintaining micro-state power.

[75] A more detailed account of the circumstances of this case was provided in Chapter 4.

Both the trial and the appeal case also represent structural state crime in a number of ways. Firstly, structures of sexual inequality underpin the whole case. The intimate relationship within which the murder was committed was one of extreme gendered inequality, underpinned by Cathy's socio-economic subordination and regional isolation, which afforded her little capacity to challenge her circumstances. Culturally also, case evidence pointed to strong gendered roles and behaviours, and to the defendant's objectification of women. Earlier in the relationship, Cathy had expressed her ambivalence about remaining with Stephen because of concerns about his excessive consumption of alcohol and pornography, and associated possessive and jealous behaviours. Institutional structures of inequality can also be identified in the case through the highly selective way in which evidence was received and interpreted by the court. Law's persistently masculine model of harm directly underpinned the effective erasure of Stephen McPhee's offending history. Given that his prior violence had not caused visible physical injuries to his wife, it was readily dismissed as minor and irrelevant to the murder. The discriminatory manner in which the cases were conducted in court also illustrates the ideological and discursive sexism of law. Through systematically dismissing evidence along gendered lines, reinterpreting and reconstructing history in order to minimise the defendant's culpability, and erasing his abuse history, the judicial discourses and the sentencing outcome normalise male control and dominance, justify male entitlement and condone male violence. This exemplifies the structuring of state institutional practice around patriarchal interests.

As macro-institutional family violence state crime, judicial conduct and commentary in the cases illustrates both omissive and agentic forms of institutional complicity. Omissions were clearly demonstrated through judges' failure to consider relevant criminal frameworks of harm in assessing the defendant's history, and their failure to appropriately and impartially consider all available evidence. By specifically ignoring evidence that demonstrated the defendants' history of abuse, the judges negligently failed to fulfil their professional responsibilities. Their actions also constitute agentic macro-institutional criminality. Judges are positioned as state officials, being highly-respected representatives of the state institution of law. Through reconstructing case narratives such that the defendant's history of violence was erased, these state officials actively participated in reframing the defendant's homicide as a first offence, significantly mitigating his culpability, and delivering an inappropriately lenient sentence.

This case study also illustrates the operation of proxy and reverse proxy family violence state crime. As a proxy for the patriarchal state, Stephen McPhee thoroughly fulfilled his mandated responsibility to maintain patriarchal order through the state micro-institution of the family. He controlled and coerced his wife, constrained her capacity for autonomy, threatened her into submission throughout their relationship, and when she ultimately questioned his patriarchal authority by expressing her desire to separate, he determined that she was uncontrollable and therefore murdered her. Reverse proxy family violence state crime can also be seen through the court, as a macro-state institution, discriminatorily siding with the perpetrator. Through judges' active participation in the discursive subjugation of testimony which may have disadvantaged the perpetrator, they functioned as his advocates. Finally, by adopting and reinforcing Stephen's perspective of the case and actively reconstructing his character in order to normalise and minimise his culpability, the court actively advocated on this individual male sovereign's behalf and delivered a gross miscarriage of justice.

This case example illustrates all the elements of my feminist model of family violence as state crime, and shows how they function in concert to mutually reinforce different levels of patriarchal power. This highlights the utility of my feminist model for producing a holistic understanding of how family violence functions as a state crime.

Conclusion

This chapter has presented the second substantive contribution of this research: creating a cohesive theoretical framework through which to conceptualise family violence as state crime. I nominated my overarching framework a feminist theory of state crime, due to the centrality of feminist analysis and patriarchal critique to all elements of the model. The model comprises three types of what I term family violence state crime. In the order discussed, these were structural state crime, micro-institutional state crime, and macro-institutional state crime. Before detailing each of these types, I first presented a diagram and broad explanation of the overarching model and the relationships between its component parts. I then proceeded to elaborate on each of the three types of family violence state crime in turn. For each, I explained what it means, and outlined the upcycled appliquéd components that contributed to its development into a lens for understanding family violence as a state crime. I also provided examples of this type of family violence state crime operating in practice.

The first type, structural family violence state crime, referred to the state-created structures and structural conditions which underpin family violence. I explained how this lens was developed by bringing together structural violence, state crime, transitional justice, and feminist theoretical material. In three sub-sections, I explored different but complementary ways that structural state crime operates to underpin and support family violence. These were socio-economic, cultural, and institutional. I provided explanations and examples for each, and emphasised how these function to support the structural arrangements and conditions that produce family violence and which therefore implicate the state in this harm.

The second type was micro-institutional family violence state crime. This referred to a way of understanding the state, sovereignty, and the family, such that the family is constructed as a state in itself, and family violence therefore becomes a state crime, since it is perpetrated by a head of state. This lens was developed by upcycling and appliquéing political theory with feminist critique of the state. Within the micro-state framework, I also explored the notion of family violence as micro-state governance by drawing parallels between family violence regimes and repressive nation-state regimes. The similar use of totalitarian tactics and tools across these different settings highlights the state crime features of family violence and underscores why this harm constitutes a state crime. I concluded this section with examples of criminal justice discourse which supports and promotes micro-state ideology and patriarchal micro-sovereignty and, in turn, family violence.

The third type of family violence state crime was macro-institutional state crime, referring to the involvement of institutions of the nation-state in family violence. This type of family violence state crime included two sub-types: omissive institutional crime, and agentic state crime. The omissive sub-type was composed of the upcycled appliquéd layers of human rights, feminist politics, and state crime studies. It showed how systematic state failures and neglect in relation to family violence can constitute omissive state criminality. The agentic sub-type referred to the most active, direct, and participatory forms of institutional support for family violence. This lens consisted of state crime, socio-legal discourse analyses, and qualitative feminist materials. It identified a range of agentic harms, from subtle micro-aggressive oppression of family violence victims, to active collaboration with perpetrators, and indeed becoming the intimate abuser in itself.

After concluding the explanation of the three types of family violence state crime in the model, I then presented two further lenses for understanding family violence as a state crime. These were family violence as proxy state crime and reverse proxy state crime. To develop these lenses, I augmented proxy actor theory from the state crime field with a feminist political overlay. I explained how understanding family violence as a state crime by proxy involves seeing individual male family violence perpetrators as proxy actors for the patriarchal state, who administer violence in the family in aid of the wider state's aims. Family violence as state crime by reverse proxy refers to the inverted version of proxy theory. It identifies that the state sometimes abuses family violence victims itself, and can thus be seen as a proxy, or stand-in, for the micro-state and for individual male abusers.

In the final substantive section of the chapter, I emphasised the unifying and integrating possibilities of my whole family violence state crime model by showing how all its parts can function in concert through a single case example. Through analysing the adjudication of a particular intimate partner homicide case, I illustrated how different facets of the case exemplify all the aspects of family violence as state crime that I have identified in this chapter, and I showed how these operate in a mutually-reinforcing manner.

This chapter contributes towards the expansion of state crime theory and the conceptualisation of family violence. The feminist model of family violence as state crime which I have presented provides a productive framework through which to understand the harm and its state dimensions. Each facet of the model highlights a different but mutually-reinforcing way that states historically and contemporarily, indirectly and directly, passively and actively, produce and reproduce family violence. I hope that my model has achieved what new frameworks can, by providing "capacity to challenge existing social relationships and power structures" (Merry 2006: 180). By challenging the way family violence is currently understood, the work of this chapter points towards new ways of understanding state crime, family violence, and state responsibility for this harm. As I close this chapter, I also complete my second substantive contribution: generating theory for understanding family violence as state crime.

Having established a platform from which to embark on the third and final contribution, this is the task to which I now turn. In the following and final substantive chapter, I explore alternative avenues of family violence response, redress, and prevention, which are indicated by conceptualising this harm as a state crime.

8

Addressing family violence as state crime

Introduction

This chapter considers the implications of conceptualising family violence as a state crime. It represents the final substantive contribution of the thesis, which logically follows having first identified a spectrum of state institutional complicity in family violence, and then having developed a theoretical model for family violence as state crime. My final task builds on these previous contributions by considering how their insights may inform alternative responses to family violence.

The body of this chapter begins by outlining and critiquing some dominant contemporary responses to family violence in Australia and comparable international contexts. I note how these are constrained by an individualised model of offending which neglects the broader dimensions of the problem. In order to address family violence more accurately and comprehensively, I argue that we need to account for the state's central role in producing, reproducing, passively allowing, and actively participating in family violence. This means progressing beyond an individualised criminal model and conceptualising it as a state crime. Since state responsibility for violence occurring implies state responsibility for addressing it, this conceptual framework prompts consideration of how to acknowledge and address the multiple layers of responsibility for family violence at the state, institutional, and structural levels.

Following this critique, I explain how I developed what I term a 'family violence state crime justice toolkit'. This involved consulting the transitional justice field in order to explore how previously-recognised state crimes have been addressed. I explain the relevance and utility of this material for generating ideas about how family violence might be addressed as a state crime. The toolkit emphasises the responsibility of the state, and the historical, structural, and institutional dimensions of family violence. In this sense, it aligns with the types of family violence state crime I developed in Chapter Seven and constitutes a broadly structural,

institutional, and transformative approach to justice. The toolkit also aligns with the previous chapter, and indeed this whole thesis, in being underpinned by feminist ontology, philosophy and aims.

The remainder of the chapter then unpacks each element of the toolkit individually. These are a survivor tribunal, an institutional accountability framework, official acknowledgement and apology, lustration and expiation, reparations, and transformative justice. For each tool, I present an integrated discussion which considers what it means and involves, what facets of justice it addresses, why I nominate it to address family violence, and its possible value and implementation. None of these tools are intended to undermine or replace existing approaches to family violence. Rather, they offer ideas for complementing, extending and augmenting our current response repertoire.

Challenging omissive approaches

This thesis opened by critiquing the Victorian Royal Commission into Family Violence Report (RCFV 2016) and its account of family violence. Here, I return to this important document because it exemplifies a contemporary official family violence response framework. As with its account of the causes of this harm, the Royal Commission's corresponding model for addressing family violence is constrained by an individualised conceptualisation of the problem. This model is broadly three-pronged. The first part focuses on individual offenders. On the one hand, it promotes criminal justice accountability and punishment; on the other, it draws on medico-therapeutic discourse to justify treatment programs for combating what are perceived as direct causes or catalysts of men's violence. These include substance abuse and mental illness. The second part of the model advocates relationship, family, school, and community-wide education. This targets problematic "community attitudes towards women" which are labelled a "cause" of men's violence (RCFV 2016: 2).[76] The third key part of the Commission's prevention model aims to improve the efficiency and integration of funding, logistical, bureaucratic, and communication arrangements within and between criminal justice and other family violence response agencies (RCFV 2016; DHS 2016; DVRCV 2018).

[76] For instance, under the banner of organisational prevention strategies, the Commission advocates reform to the cultures of workplaces and sporting clubs through initiatives such as bystander action training programs. Although these do relate to collective change, they continue to be based on an individual model of harm, and the focus is on changing individuals' attitudes and behaviours, rather than on producing deeper structural and institutional change.

The three elements within the Royal Commission's model are valid and important. First, holding individual perpetrators to account and addressing proximate reasons for their offending is necessary. It is equally important to facilitate victim-survivors' access to various assistance and support. Second, we need education programs which challenge sexist attitudes and behaviours that contribute to male violence (e.g. Flynn 2011; State Government of Victoria 2019b; Commonwealth of Australia 2019; also UN Women 2019).[77] Programs which educate people about harmful gendered constructs and toxic masculinity are useful for both immediate violence-prevention and wider peace-building (Katz 2006; Kimmel 2010; 2013; Flood 2015b; 2016; Fulu et al 2013; Corboz et al 2016). Third, reforming the criminal justice and family violence systems is also broadly positive. This will contribute to better dealing with perpetrators, and better protecting and assisting victims.

However, a closer review of the Commission's model reveals an inconsistent and omissive framework for addressing family violence. The first part of the model does not pose any significant issues, although focusing on individuals can tend towards pathologising offenders, and sometimes victims also. It can also perpetuate the false assumption that once the system has delivered a criminal justice outcome, the family violence issue is resolved. The main issue with this first part of the model is how its individualised narrative distracts from a broader understanding of responsibility for family violence. By maintaining a micro-level focus on individual actors, the wider dimensions of family violence redress and prevention – for instance at the state, institutional, and structural levels – are neglected.

The second part of the Commission's response model is more problematic. This constructs attitude-change education as an effective way to address sexual inequality and family violence. Despite stating that family violence "is deeply rooted in power imbalances" which relate to "social and economic exclusion" and "intergenerational … trauma" (RCFV 2016: 2), the Commission's prevention policies focus on "attitudes towards women" (3) and frame these as effective "primary prevention strategies" (11). Attitudes and norms are treated as unfortunate social facts, disconnected from their historical, political, institutional, structural, and

[77] These local examples include the Victorian Department of Education's *Respectful Relationships* early childhood and school education program (State Government of Victoria 2019b), the VicHealth / Whitehorse Council program for expectant couples called *Baby Makes 3* (see Flynn 2011), and the Australian Government's *Violence Against Women. Let's Stop it at the Start* (Commonwealth of Australia 2019) media campaign. A useful international example is the United Nations' Global Solidarity movement *He for She* (UN Women 2019).

substantive origins. Further, state policy, practice, and ideology that have actively produced the sexist culture from which harmful attitudes develop are also overlooked. By neglecting to acknowledge or address the deeper origins of sexism and family violence, this response framework evades the true roots of family violence, and most notably, the state's complicity.

The third part of the model is problematic because it frames state responsibility for family violence purely around the obligation to improve existing response systems. System reform does not adequately address state responsibility for the problem of family violence itself. Nor does it consider substantive critique or change to the systems, institutions, and structures that are implicated in producing and reproducing the harm (Rose et al 2018). Framing the existing system as an adequate response framework for victims is also problematic. Many family violence victims are reluctant to engage with state systems, as they have been the source of significant harm and trauma. When institutions like law and the police have themselves been experienced as oppressive and violent, family violence victims are particularly unlikely to seek state help, as is the case for Indigenous, migrant, and refugee women in particular (Cohen 1995; Stanley 2014; Campo et al 2014; Blagg et al 2015; Campo and Tayton 2015; Vaughan et al 2015; Cunneen and Tauri 2016).[78]

Outside of the Victorian context, recent family violence response frameworks are similarly limited. Meyer (2011) suggests that across Australian states, there is a tendency to focus on singular victims and offenders, where, on the one hand, a medicalised approach prioritises victims' immediate health needs, and on the other, a criminal justice approach centres offender accountability and management. In the United Kingdom, recent policy commentary also focuses on individual remedy and prevention. With contradictory narratives reminiscent of the Royal Commission's, there is widespread recognition that family violence is closely associated with sexual inequality, yet in terms of responses, it is suddenly reduced to an individual problem (see e.g. Groves and Thomas 2014). Family violence prevention in the United States is also dominated by an inter-relational model of harm which focuses on promoting respect and non-violence in personal relationships (Breiding et al 2014a). Internationally, family and other

[78] For intersectionally-disadvantaged groups such as refugee women, state figures often represent oppression, fear and violence, rather than protection or assistance. The system is therefore perceived as something to be avoided rather than sought out, even when facing severe family violence (Campo et al 2014; Campo and Tayton 2015; Vaughan et al 2015). For Indigenous Australian women, the state is a destructive entity, having systematically devastated their lands, families, cultures and languages. This is a key factor in Indigenous women's reluctance to seek state help around family violence (Blagg et al 2015; Cunneen and Tauri 2016).

gender-based violence is often treated as a cultural issue which can be remedied with attitude education and change (Fernandez 2010; Tower et al 2011; Signorelli et al 2012). As Salter (2016a) explains, despite claiming to address the underlying causes of the problem, these programs target beliefs and attitudes and largely ignore structural and substantive issues. This produces a superficial and palatable focus on attitudinal change, which allows patriarchal structures to remain unchallenged (also see Mertens and Pardy 2017; Rose et al 2018).[79] These response frameworks from different contexts all resemble the Royal Commission's individualised framework through variously seeking to deter, process, treat, punish, or educate individuals.

Addressing the state's role

What is missing from these relatively micro-level approaches to family violence is a more macro-level approach that addresses the structural, institutional and substantive roots of family violence, and most notably, the state's complicity in the harm. Throughout this thesis, I have demonstrated how the state can be understood as complicit in family violence. This relates not only to technical oversights, bureaucratic failures, and state negligence, but also to deliberate, active state participation in the harm. Identifying these state actions and inactions as state criminality reconstitutes the harm and thereby creates a new starting point for responding to the problem. It "undermines the legitimacy of state power or protection" (Stanley 2014: 55) and calls for a different approach to justice. It requires us to look beyond individual models of offending, beyond attitudes and culture, and beyond reforming existing state criminal justice and victim assistance systems. It requires us to consider how to address family violence as a state crime and through state crime frameworks.

Identifying family violence as a state crime against humanity, as I did in Chapter One, highlights the collective and state dimensions of this harm. This framework draws attention to the deep and pervasive impact of family violence on all women and children, and indicates the need for survivor-centered restoration and repair. The state element I discussed in relation to

[79] Salter (2016a) explains that the early international discourse which instigated such programs did acknowledge the importance of "a dual focus on structural gender inequality and gender norms" (464). In addressing family violence, these discourses advocated policies and programs which would simultaneously address the systematic structural disadvantages which exponentially increase women's vulnerability, and also the cultural norms that allow men to justify their violence. However, these have shifted such that the structural and substantive elements of such programs have largely disappeared.

family violence as a crime against humanity also underscores the need for broad symbolic, political, and ideological shifts away from the patriarchal frameworks which underpin and reproduce family violence. Identifying family violence more broadly as a state crime also generates fresh obligation and impetus to act. It indicates an urgent need for official acknowledgement, victim recognition, and reparations. Recognising the direct complicity of the state and its institutional apparatus in family violence also points towards the specific accountability measures. Since family violence emanates from state-produced structures and conditions, this also generates state responsibility for structural and substantive redress. Overall, it suggests that significant societal transformation is needed to address the problem.

To develop a toolkit for addressing family violence as a state crime, I looked beyond traditional criminology and crime prevention policy to broader state crime and justice studies. I engaged with academic and practitioner materials from the transitional, reparative, restorative, structural, and transformative justice fields, in order to explore how various state crimes have been addressed, and what they might offer for considering how to respond to family violence as a state crime. Generally, this material considers how various investigative, accountability, and reconciliation processes can promote justice and peace following mass violence. Specific measures can include international or local criminal prosecutions, formal investigations into harm and culpability, state or civil society-led commissions of inquiry and reconciliation, public statements of apology, various local healing processes, and individual and collective victim reparations (Mani 2002; Lambourne 2009; Kent 2012). Although traditionally associated with the transition from war or dictatorial regimes, recent contributions to the field highlight the relevance of these frameworks and tools for addressing structural violence in liberal-democratic societies, notably in relation to systemic race-based harms (Balint and Evans 2010; Balint et al 2014; 2016; Henry 2015). This chapter considers the relevance of these approaches to responding to enduring structural injustice and violence against women. Applying these ideas to addressing family violence, I developed some transitional-justice-informed tools that could inform a more comprehensive framework of accountability and responsibility for family violence, in light of conceptualising it as a state crime.

A central aim for my family violence justice toolkit was to shift away from the focus on individuals and criminal justice remedies. In the previous section, I identified this limiting focus within local and international approaches to family and other gender-based violence.

Within transitional justice also, responses to systematic state crimes against women have also often been similarly constrained. Henry (2013: 372) critiques the tendency to treat such harms

> *as an individualised anomaly and problematically separated from the deeply entrenched and systemic nature of prejudice and human cruelty that is contingent upon the intersection of gendered (and other forms of) subjugation*.

Often, transitional justice processes focus on individual offenders and victims through, for example, prosecutions, conditional immunity processes, and various methods of personal atonement and reconciliation (Simpson 2007; Kent 2012). Without diminishing the potential value of individualised justice (see e.g. Krog 1998; Tutu 1999; Boraine 2000; Moon 2008; Cole 2010; Rose 2015b), focusing on this tends to neglect the wider dimensions of the harms. Most notably, the state's role can become obscured within narratives of "bad men doing evil deeds" (Simpson 2007: 157). With crimes with a state dimension, it is vital "to move beyond analyses that offending is individualised, to a more nuanced account that considers the role of institutional practices as well as structural relations of power in violence and harm" (Stanley 2014: 58). Similarly, with family violence, existing approaches already address individuals and groups of individuals; however, they neglect the broader picture. What is now needed is a multi-level approach that addresses structural, institutional, and state responsibility. I selected ideas from the transitional justice field which aligned with the theoretical model of family violence as state crime I developed in Chapter Seven, before investigating some specific state crime justice examples that could inform the development of my toolkit.

Three particular state crimes and their corresponding models of redress helped inform the development of my family violence state crime justice toolkit. These state crime examples each share common features with family violence. War-time sexual violence against women, being a systematic gender-based harm involving sexual violations, obviously shares common features with family violence. This example offered useful insights regarding survivor's individual and collective justice needs. Apartheid, a comprehensive system of race-based oppression, was also relevant because apartheid has been named a crime against humanity (SATRC 1998). If, as I have argued, family violence can be conceptualised along similar lines but through a feminist lens as a gender-based state crime against humanity, family violence justice processes could be informed by the South African transitional experience. Colonial genocide and enduring racist injustice in Australia was another state crime with relevance for addressing family violence. Both colonial genocide and family violence involve structural and enduring forms of oppression that are founded upon pervasive and normalised ideologies of

harm. Addressing these harms is also uniquely challenging because the peaceful contemporary façade of these societies belies the ongoing realities of violence against oppressed groups. Informed by holistic transitional justice approaches and a range of tools used to address war-time sexual violence, apartheid, and state crimes against Indigenous Peoples, I was ready to develop my multi-level toolkit for addressing some of the state crime dimensions of family violence.

A family violence state crime justice toolkit

Throughout the remainder of this chapter, I unpack my family violence justice toolkit in order to demonstrate what a more comprehensive, holistic and multi-layered approach to addressing family violence could look like. Consistent with Chapter Seven, these tools seek to address the state dimensions of the problem through a broadly historical, institutional, structural, substantive, and transformative approach. Also aligning with the previous chapter and indeed this whole thesis, the toolkit is underpinned by feminist ontology, philosophy and aims, so can be understood as a feminist framework. Some key feminist features of the toolkit include centering survivors and their voices, addressing women's symbolic and substantive oppression, and challenging and changing patriarchal structures of harm. None of the toolkit elements need necessarily undermine existing approaches to family violence. Rather, they offer ideas for extending our current response framework. As a whole, the toolkit aims to highlight how multiple layers of responsibility for a harm, along with multiple ways of addressing it, can coexist, complement, and even mutually reinforce each other (see Merry 2006).

The toolkit elements, and the order in which I present them, are informed by Cohen's (1995) phasic justice approach, which emphasises the sequential and inter-related processes involved with remedying state harms.[80] In relation to addressing family violence as state crime, the relevant justice phases I draw from Cohen's work are knowledge and truth, accountability and justice (which include apology and atonement), expiation and lustration, and reconciliation and reconstruction. These phases are inter-related and to some extent sequential, as many cannot

[80] Although Cohen (1995) refers to contexts involving well-recognised state crimes and a distinct transitional and reconstructive period, including post-war Germany, post-apartheid South Africa, and post-dictatorship Chile, his work is also relevant for contemporary liberal-democratic contexts in which structural violence continues to systematically harm certain social groups. If family violence is understood through the state crime framework I advocate, as a structural and institutional state crime, Cohen's work is also pertinent for responding to this harm.

occur without prior steps having first been addressed. For instance, without full and accurate knowledge and truth about the state's role in family violence, there can be no corresponding apology or accountability. With a phasic justice approach in mind, I will now proceed to elaborate the elements of my family violence justice toolkit in turn. These are a survivor tribunal, an institutional accountability framework, official acknowledgement and apology, lustration and expiation, reparations, and transformative justice. Within each section, I present an integrated discussion which outlines the tool, explains what informed my nominating it for addressing family violence, and considers its possible value and implementation for this harm.

Survivor tribunal

I nominate a survivor tribunal as an important starting point in a justice process for family violence as state crime. As I will explain, this tribunal could facilitate a clear and accurate account of the state's role in family violence and set the groundwork for subsequent justice initiatives. In Cohen's (1995) phasic justice model, knowledge and truth is the vital first step in pursuing justice for state crimes because it provides the basis for all subsequent responses. As Cohen explains, prior to confronting the reality of involvement in mass violence, states can engage in organised attempts to conceal the truth about them or, when complete denial becomes implausible, can involve recasting issues in a manner that obscures the systemic patterns of harm.

In relation to family violence, we have seen a great deal of progress in relation to knowledge and truth. For instance, there is now official recognition of the severity and prevalence of family violence, of important gendered patterns in its perpetration, and of its connection to gender inequality (e.g. RCFV 2016; DVRCV 2018). However, as I have already noted, this omissive narrative does not accurately account for the state's role in family violence. Although the Commission undertook to investigate systemic issues and to consider all levels of society including government and institutions (see Andrews 2014; RCFV 2015), what it delivered was a relatively conservative account that focuses on individual offenders, attitude education, and reforms to existing frameworks. In fact, this state narrative takes great pains to equate state responsibility for family violence with the obligation to address technical, bureaucratic, and funding issues, rather than to consider state responsibility for the harm itself. As I have shown throughout this thesis, state structures and institutions have played, and continue to play, a

demonstrable and active role in the perpetration and perpetuation of family violence. Currently, however, we are constrained by the lack of collective knowledge about this, and the state is hindering progress through strategies of obfuscation and denial.

In line with Cohen's (1995) analysis of state truth-avoidance techniques, the Victorian state has been employing evasive and scapegoating discourses which deflect and deny the state's implication in family violence. One stark example from the Royal Commission's Report (RCFV 2016) is its strong resistance to acknowledging the realities of patriarchy and the complicity of mainstream Anglo-Australian culture – and, by implication, our White Nation (see Hage 1998) – in family violence. The entire report contains only two references to patriarchy and a few to patriarchal, none of which are deemed applicable to contemporary Australia. This illuminates a central contradiction underpinning the report. On the one hand, family violence is acknowledged as a pervasive harm perpetrated by and against demographically diverse Australians. Further, the problematic norms, attitudes and behaviours which are directly linked to family violence are identified in mainstream contemporary society, sporting clubs, and organisations. Patriarchal structures, systems and practices are implicated in all of the cultural and attitudinal issues which the Report names as direct proximate causes of family violence. Yet the term 'patriarchy' is used only to label the racially, historically, culturally, and religiously inferior 'Other'.

In the whole report, the term 'patriarchal' is only used to describe Afghan culture, conservative religion, or Indigenous Australian culture. This illuminates a comprehensive reframing of the issue in order to minimise government or state responsibility for family violence itself. This discursive othering white-washes Anglo-Australian history and structures by explicitly associating family violence with racial, ethnic, cultural, and religious minorities. This is also in spite of the Report citing survey data which indicates a higher rate of victimisation for Australian-born women as compared to those born overseas, and for women from English-speaking backgrounds as compared to those from non–English speaking backgrounds (RCFV 2016: 28: 101). In line with Hage (1998), we seem to be witnessing the persistence of an Anglo-Australian fantasy in which white citizens assume the role of custodians and managers of problematic issues. In relation to family violence, by explicitly labelling Indigenous, non-white, and religiously-conservative peoples and their cultures as the regressively patriarchal other, the Australian state – and the dominant Anglo-Australian culture – discursively differentiates and distances itself from the harm, which, in turn, absolves itself of responsibility.

This narrative serves two important functions: first, it obscures and evades the fact that contemporary white Australia is a patriarchal colony built on racism, sexism and violence; second, it serves to further dissolve the state's ideological, structural, and substantive connections to family violence. To counter this avoidant narrative and move forward with addressing family violence, we require a full and accurate official account of the state's complicity in family violence. Without this, it is difficult to truly confront the problem or make progress in addressing it.

A survivor tribunal would be one tool to help counter omissive official narratives of family violence. Rather than being organised and administered by the state, like the Royal Commission, a family violence survivor tribunal would be an independent body. Although not part of the state structure, it would still hold symbolic, institutional, and narrative power, as do the many different types of "legal and political-legal" transitional bodies (Balint 2014: 147). Like other non-state tribunals, it would have the capacity to hear and adjudicate the state's role in the harm and thus to investigate and challenge state power (see Dolgopol 2018). 'Women's Tribunals' have been a prominent way in which non-state transitional justice processes seek to counter official narratives and enable survivors to tell their own stories, unencumbered by state control or oversight. This was the case for the Tokyo Women's Tribunal[81], which adjudicated responsibility for sexual atrocities perpetrated against 'Comfort Women' during World War II (see e.g. Henry 2013; Dolgopol 2018; Simm 2018). Since the Tribunal was adjudicating the Japanese emperor's and the state's responsibility for these crimes against humanity, it was necessary for the institution to be separate and distinct from the state apparatus. The Sarajevo Women's Court (see Clark 2016; Otto 2017) is another example of a non-state institution which maintained separation from the state. This institution eschewed a law-like approach and instead aimed to provide a safe space for women to tell their personal stories of sexual atrocities, suffering and survival associated with the Bosnian war of the early 1990s.

For a family violence survivor tribunal, it would be similarly important to retain independence from the state. This would help insulate it from state or government influence and interests and enable it to best fulfil its central task: to produce an accurate account of the state's role in family violence. The tribunal could operate as a quasi-judicial institution, adjudicated and staffed by

[81] The formal name of this tribunal was the Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery. However, it is rarely referred to by this title.

family violence survivors. The institution's processes could involve gathering a substantive academic and practitioner evidence base of the state's role in family violence, and also hearing testimony directly from survivors. In the interests of centering and catering to survivors' needs, tribunal adjudicators would only question or direct survivors' narrative in a gentle and supportive manner, in stark contrast to the routinely interrogative and traumatic subjection of victims in both local and international court settings (e.g. Hocking 1993; Kaspiew 1995; Lees 1996; Henry 2009; 2011; FCA 2014; Elizabeth 2015; Kleinman 2017; Conte 2018; Gutowski and Goodman 2019). Although the tribunal's key objective would be to build a thorough and substantiated account of the state's role in family violence, the principle of respecting and supporting survivors would always trump this objective. This would enable the tribunal to ethically construct a picture of the state dimension in family violence harms through insider survivor knowledge, whilst simultaneously supporting their well-being.

Peoples' tribunals tend to emerge from widespread perceptions regarding the shortcomings of the state system. They involve civil society, rather than the state, directing investigations and producing an authoritative narrative about the harm. In this sense, a family violence survivor tribunal could represent the generating of an official bottom-up account of family violence as state crime. This could also be understood as a process of civil-society-defined state crime (Green and Ward 2004; Ward and Green 2016; also Stanley and McCulloch 2012; Stanley 2014; Balint 2019). As Ward and Green (2016) argue, definitions of state crime do not only emerge from legal or academic frameworks; they can also emerge from the citizenry itself. For instance, through acts of challenge and resistance, citizen collectives can identify – and demand remedy and change for – what they perceive as systematic injustice and state-based harm. A family violence survivor tribunal could certainly enable this type of critical redefining of family violence through a feminist approach which privileges the voices of survivors (see Otto 2017). By enabling individual and collective survivors to bring together their experiential knowledge and show how, and why, family violence is a state crime, this tribunal could transform the way family violence is understood. Through bottom-up, reconstructive, and transformative discursive justice, family violence could be defined in a new way.

To consider the kind of account a family violence survivor tribunal might be able to produce, the South African post-apartheid transitional phase offers some useful lessons. South Africa's primary transitional justice institution was the Truth and Reconciliation Commission. The Commission and its Report (SATRC 1998) demonstrate some of the investigative and

discursive possibilities provided by a tribunal-like institution, therefore offering insights for how family violence might be narrated both as a crime against humanity in itself and as a symptom of patriarchal oppression. Although the South African Truth and Reconciliation Commission was a state institution and had to operate within a limited mandate (SATRC 1998; Boraine 2000; Rose 2015b), it managed to locate the specific atrocities it investigated within a broader account of the systematic oppression and violence of apartheid. Even though this was considered peripheral to its central mandate, the Commission's Report provides extensive detail of the history and structure of this system as a backdrop to the extreme human rights violations it directly investigated. It also contextualises specific violations by extensively discussing the apartheid context and providing a comprehensive indictment of the state's racist policies. Volume One of the Report alone contains twenty pages of 'Historical Context', in which it states that "the policy of apartheid itself was a human rights violation" (SATRC 1998: 1: 29). This Volume also engages in extensive explanation of discriminatory apartheid legislation and the systematic oppression of non-white peoples through law and policy. Later on, the Report includes an eight-page appendix about 'Apartheid as a Crime Against Humanity' (Rose 2015b: 7).

Along similar lines, a family violence survivor tribunal investigation and account could also address the systematically oppressive patriarchal system within which family violence has become a problem of epidemic proportions. It could contextualise family violence by detailing how state policy has produced systematic sexual oppression, and identify how family violence is a direct outcome of this. As I mentioned earlier, the Royal Commission carefully avoids naming mainstream Australian society as patriarchal. Instead, it confines this label to the racial, ethnic and religious Other. Yet, it contradictorily acknowledges that "gender inequality" is pervasive in Australia (RCFV 2016: 2) and that it is a primary cause of family violence. Having official documentation from an authoritative tribunal which dispenses with this kind of contradictory and avoidant discourse would be significant. It could, for instance, name Australia as a patriarchal society and explicitly identify how the state and its institutions have maintained the ideological, discursive, and material subjugation of women. It could also document how this produces society-wide sexual inequality and a problematic culture in which family violence is readily produced and excused. Such a statement could provide powerful impetus for a more thorough critical reflection on the ongoing patriarchal nature of society, having wide-ranging positive effects for victim-survivors, women, men, non-binary people, gender relations, violence prevention, and the whole of society.

Holding a peoples' tribunal can contribute to a number of justice aims. Firstly, it can provide survivors with a critical level of recognition. Survivor tribunal processes and their outcomes can offer personal catharsis, support, individual and collective validation, and survivor community-building. They can also prompt personal restoration and reconciliation for some victims, as was widely documented during the South African Truth and Reconciliation Commission's proceedings (Krog 1998; Tutu 1999; Boraine 2000; Moon 2008; Cole 2010; Rose 2015b). The Tokyo Women's Tribunal, which adjudicated mass sexual atrocities against 'Comfort Women' by Japanese military during World War II, also provided for some survivors' needs, as Dolgopol (2018) discusses. Despite the continued refusal of the Japanese state to fully admit state-level responsibility for these crimes against humanity, Dolgopol argues that the tribunal still offered a form of recognition and justice for survivors. Although it should never be presumed that "just revealing is healing" for victims of trauma and atrocity (Henry 2009: 124; also Hesford 2004; Schaffer and Smith 2004; Dawes 2007; Arieff 2011; Henry 2011), testifying in a formal setting can be valuable. Survivors of mass harms consistently express the basic desire for their suffering to be heard and acknowledged (e.g. Krog 1998; Porter 2007a; 2007b; Moon 2008; Henry 2011; Burgess-Proctor 2015; Balint 2018; Simm 2018). Provided that a tribunal consistently centres survivors, rather than a particular agenda, it can help fulfil a number of personal and collective justice aims. This could also be the case for a family violence tribunal.

A survivor-centered tribunal can also contribute to restorative justice principles and needs.[82] A central principle of restorative justice is that the victim be central to all processes. In relation to family violence, the current emphasis on perpetrator accountability through criminal justice processes can alienate victims, and particularly once the system has censured perpetrators, there is a perception that justice has been done. This can result in the disregard and neglect of victims' present or future needs.[83] Although the Family Violence Royal Commission (RCFV 2016) did accept written submissions from survivors, these were not consistently utilised in a

[82] Traditional restorative justice practices are generally problematic in relation to family violence (NCRVAWAC 2009), as group conferencing-style forums which bring victim and offender together can perpetuate rather than disrupt abusive patterns. Attempting to restore victim-offender relationships is often inappropriate or futile. However, certain restorative justice principles are still of use, as I will explain.

[83] I do note that a 'Family Violence Restorative Justice Service' pilot program is currently underway in Victoria, Australia (see State Government of Victoria 2019c). The program model does appear to address some of the concerns and aims I discuss in this section. However, to the best of my knowledge, it has not yet been subjected to a review or evaluation, and is only currently available to a particular selection of victim groups.

survivor-centered manner. Rather, testimony tended to be incorporated into the state's particular narrative of the harm. A survivor-centered space with the primary aim of illuminating the state's role in the harm through survivors' lived experience and expert insider perspectives on family violence (see Hartsock 1983; Zalewski 1993; Mertus and Goldberg 1994; Kelly 2010) would facilitate very different outcomes.

By firmly centering victim-survivors, a tribunal process can contribute to restoring their sense of recognition, involvement and agency in justice processes. Vitally, this relates to collective as well as individual healing. Characterising family violence as a state crime, particularly through the crimes against humanity lens, highlights the group dimensions of the harm and emphasises its wider impact beyond individual victims. Since family violence constitutes a form of mass persecution, directed at women "precisely because they are women" (True 2012: 9; also Jeffreys 1997; Copelon 1995a), responses need to recognise its fundamentally disempowering nature at the individual and collective levels. A key restorative aim would therefore be to address the common pervasive experience of disempowerment and vulnerability that family violence can cause. By generating a safe and supportive survivor community where everyone can separately and collectively express and process these experiences, a tribunal can go some way towards promoting a sense of restoration.

One possible restorative and redistributive outcome of a family violence survivor tribunal could be to create an official repository of family violence survivor memory. Having their experiences officially documented can been important for survivors of mass harms, as Dolgopol's (2018) research with 'Comfort Women' shows. For many of these survivors, the "repository of information" (Dolgopol 2018: 93) created by the Tokyo Tribunal helped to provide redress for the many decades of silence and official denial that obscured this crime against humanity, and was extremely important for promoting wider public knowledge about these atrocities. Based on research with family violence victims in the United States, Fernandez (2010) also notes the common desire amongst victims for formal recognition and official documentation of their experiences. For women who testified at the Sarajevo Women's Tribunal also, the process allowed them not only to narrate their victimisation, but also provided vital "opportunities for them to become cognisant of their own resilience and fortitude" (Clark 2016: 71).

A repository of survivor memory and information gained through a family violence survivor tribunal could significantly expand the knowledge and truth base from which we are currently

operating. It could not only allow survivors to speak their truth and testify to their experiences; it could also promote wider public knowledge and understanding about how family violence harms are embedded in state structures and institutions, and through state policy, practice, and ideology. It could therefore generate new forms of challenge and accountability in relation to family violence. A survivor information repository could also specifically redress the "odious narratives" of family violence that pervade criminal justice and other institutional discourse on family violence (Cummins 2016: n.p.). These narratives continue to systematically blame victims, exonerate male offenders, and reproduce the sexist cultural tropes that consistently minimise and excuse family violence. For family violence victims who have been subjected to sexist, discriminatory, and victim-blaming adjudication in the criminal courts, for example, the survivor tribunal process could offer the opportunity to re-narrate these cases from their perspective. This could be seen as a means of achieving survivor-driven discursive redress, not unlike the Australian Feminist Judgements Project, which I refer to in a subsequent section on expiative justice processes. As well as providing discursive justice to individual victims, the re-narration of family violence cases would also to contribute to a more accurate and balanced historical record of family violence crimes, and the structural, institutional and cultural context in which they occur.

A survivor tribunal can also be seen as a redistributive form of justice because it provides an avenue for challenging the state's monopoly discursive power over official narratives of family violence. The official account of the role of the state in family violence generated by this tribunal could help to address Cohen's (1995) knowledge and truth phase of state crime justice. It could challenge the state's structures of knowledge and offer a more complete picture of family violence, the state, and provide a better basis for addressing this problem. As one of many different manifestations of law, what a tribunal's account can achieve is to "implant itself in the institutional memory" and "provide a basis for prevention … through … the systematic and accurate accounting … of responsibility" (Balint 2012: 205). By publicly exposing the state's complicity in family violence, the tribunal could then open up possibilities for further progress towards other justice initiatives. Specifically, the findings and recommendations of the tribunal could provide a survivor-informed, civil-society-led map for progressing towards other justice initiatives. This type of feminist, survivor-centred approach to justice recognises that "women are not only a source of information, but agents and interpreters of history" (Zajović in Clark 2016: 68) and of the justice needs of the society.

Institutional accountability

The next element I nominate within a family violence state crime justice toolkit is what I term 'institutional accountability'. Institutional accountability primarily addresses Cohen's (1995) accountability and justice phase, and can also contribute towards the society's reconstructive and preventative needs, as I will soon explain. Institutional accountability logically follows on from the first and second key contributions of this thesis, and the family violence state crime framework I put forward in the previous chapter. Since this identified state institutions as key contributors to family violence, it therefore follows that institutional accountability must be integral to any justice response.

The institutional accountability framework is based on the understanding that institutions are central to the perpetration of state crimes (SATRC 1998; Boraine 2000; Christie 2000; Kauzlarich et al 2003; Green and Ward 2004; Stanley 2005; 2014; Rothe and Mullins 2006; Kolin 2008; Balint 2012; 2014; Jones 2013). It recognises that, for mass harms to be perpetrated against a particular social group, over time, and with systematically oppressive effects, requires extensive "scaffolding and support" by various institutions (Balint 2012: 168). Institutional accountability involves both investigative and redress processes, which I base on the civic liability model proposed by Balint (2012: 167-72; also 2008), and also on the South African Truth and Reconciliation Commission's institutional hearings (SATRC 1998).[84] In terms of pursuing institutional accountability for family violence, the investigative process could take place during a specific set of hearings within the survivor tribunal I outlined in the previous section.

The South African Truth and Reconciliation Commission's institutional hearings offer a useful model for considering how family violence institutional accountability could be investigated and addressed. These hearings were one part of the Truth and Reconciliation Commission's proceedings, and they considered the role of various state and non-state institutions in the maintenance of apartheid and the mass violations it produced (SATRC 1998). Through examining the role of criminal justice institutions, business, the media, and religious and health

[84] Although Balint's (2012) framework is built upon well-recognised examples of state crimes such as genocide in Nazi Germany or Rwanda, or apartheid violence in South Africa, it has definite relevance for family violence. If family violence is conceptualised as I propose, and we recognise it as a mass harm in which states and institutions are implicated, a broader accountability framework, inclusive of institutions, is essential.

sectors, these hearings helped to illuminate the institutional framework within which apartheid operated. They also contributed to constructing a more comprehensive picture of apartheid as a systematic, state-orchestrated harm (Tutu 1999; Boraine 2000; Christie 2000; Balint 2008; 2012). Testimony gathered during the business hearings, for example, enabled the Commission to make broader findings such as the fact that "capitalism in South Africa was built and sustained precisely on the basis of the systematic racial oppression of the majority of our people" (SATRC 1998 in Balint 2012: 158). These hearings offer a relevant model for how family violence institutional accountability investigation and redress could work. For instance, the investigative part of institutional accountability could be administered within a family violence survivor tribunal, in a similar manner to how the South African institutional hearings operated within the wider Commission.

The South African example also offers useful insight into how institutional complicity in injustice and violence can be identified. Chapman and van der Merwe (2008) explain how, during the institutional hearings, apartheid complicity was conceptualised and categorised by both type, and level of involvement. For example, businesses' involvement in maintaining apartheid was classed as first, second or third order. At one end of this spectrum, third order involvement referred to when businesses indirectly benefitted from the state's exploitative regime. At the other end of the spectrum, first order referred to direct participation in the development of oppressive policies or practices. This way of naming and classifying involvement has close parallels with the way I map institutional complicity in family violence in this thesis. The apartheid involvement classification range resembles the spectrum of state institutional complicity in family violence I identified throughout Chapters Four to Six, and also in Chapter Seven in my feminist model of family violence as state crime. This indicates that both ends of the state criminality spectrum I have identified are appropriate for institutional accountability processes. If, in South Africa, gaining indirect benefit from apartheid was considered an appropriate level of involvement to warrant investigation by a quasi-judicial transitional justice institution, this strongly indicates the need to call institutions to account for all the forms of involvement in family violence I have identified.

Institutional accountability begins with the recognition that addressing state crimes first requires identifying the institutional architecture that enabled them to be perpetrated. The initial task of institutional accountability is therefore to investigate and identify precisely how institutions have been involved in systematic injustice, as well as the specific atrocities that

emerged from this structural violence. This might point to specific institutional policies and practices that perpetrate harm, identifying political and ideological structures that drive policy and practice, and identifying the links between state governance and the institutions that were involved in the harm (Balint 2019). Part of this investigation could establish the various types and levels of institutional involvement, including knowledge, passive complicity, toleration, advocacy, logistical or ideological support. It could also explicitly identify the direct and active ways that institutions and their agents participated in the harms. Mapping institutional accountability can be understood as a deconstructive process and a necessary precursor to any institutional and societal reconstruction. Investigating and identifying institutional accountability necessarily untangles the webs of complicity that enabled the harm to be perpetrated. In relation to family violence, mapping the web of complicity would necessarily include the state institutions analysed in this thesis: criminal justice, family law, and state social services. It could also look at other institutions – both state and non-state – which have played an identifiable role in family violence. One notable institutional example which I explored in my research but did not end up detailing in this thesis, is medicine.

Across Western liberal-democratic states, there are direct links between medicine, the state and family violence. In some contexts, there is a directly state-operated and state-funded arm of medicine – as with Australia's Medicare, the United Kingdom's National Health Service, and Health and Social Care in Northern Ireland – in addition to a state-regulated private arm. In all these comparable contexts, the state provides accreditation and close regulation for both public and private medicine. Emphasising the proximity of the state to medical harms against women, Sifris (2014) notes the "direct connection between the state and the pain and suffering experienced by a woman who has endured an involuntary procedure in a public hospital or by a state-employed doctor" (156). There is also clear evidence of medicine's complicity in family violence. Research I canvassed from a number of liberal-democratic contexts documents how medical and therapeutic professionals actively ignore, obscure, conceal, deny, minimise, excuse, justify and even support family violence (e.g. Stark and Flitcraft 1996; Torrecillas et al 2008; Tyler 2008; 2011; Lyerly et al 2009; Bacchus et al 2010; Hamberger et al 2010; Charles 2011; Tower et al 2011; Ramsay et al 2012; Sifris 2014;). With origins in common law which denied women's capacity for reason and autonomy (see e.g. MacKinnon 1994; 2006), medical discourses often continue to frame women as sub-citizens who do not deserve to be respected as independent and intelligent individuals with human rights. Consistently with the poor treatment women are often subjected to by other institutions, medicine models and mirrors the

abusive dynamic of systematic intimate partner violence, reinforcing and indeed participating in the harm.

Untangling the institutional web of complicity in family violence will necessarily involve holding to account both institutions as organisations, and institutions as composed of individuals. As with other mass harms, the complicity web involves institutional representatives like individual police, lawyers, and judges, who were "drawn into the regime" (Cohen 1995: 42). System gatekeepers, such as police for the criminal justice system, have played a particularly key role. Complicit individual and collective actors have willfully ignored, obscured, normalised, minimised, tolerated, excused and justified the harm, and institutional accountability needs to address their roles too. Beginning to address harms this organised and complex must involve a deconstructive process, before it can conceive of anything reconstructive. Untangling the web of complicity, systematically naming what different parts of this web look like and how they connect, and introducing policies that prevent these webs from being rebuilt, is of fundamental importance if we are to reverse the conditions under which these crimes were perpetrated (Cohen 1995). The key aim is obtaining transparency and clarity around institutional involvement, which can then result in specific accountability measures. This can then become a roadmap for specific subsequent redress initiatives, and also a map for helping guard against the re-establishment of this harmful architecture.

A key aim within institutional accountability is not just to obtain information or establish a narrative, but to generate outcomes. As mentioned above, the deconstructive process should be used to direct specific action towards redressing past harms and preventing future ones. The framework also recognises the need for institutional transformation, if the society is to successfully prevent future recurrence of injustice and atrocity. In the case of South Africa, the institutional hearings were used as a platform to nominate ideas for how complicit institutions could, in practical ways, atone for their complicity and contribute to societal repair, for instance through reparative, reconciliatory, and reconstructive initiatives. As Durbach (2016: 366; also 2018) explains, if institutions are to become truly "transformative institutions", they need to "alter the conditions that enabled, and continue to underlie, this violence, and to prevent its repetition". Therefore, a crucial aspect of institutional accountability is the expectation that institutions take meaningful action towards the creation of a transformed, rights-respecting future.

Official acknowledgement and apology

Holding a survivor tribunal and institutional accountability processes could pave the way for the vital next step in state crime justice: an official admission and apology from the state for its responsibility for family violence. Through Cohen's (1995) justice framework, state apologies can contribute towards addressing truth, acknowledgement, and accountability, and sometimes atonement. A formal apology by the state for precisely how it has contributed to producing and reproducing family violence could represent a significant turning point for survivors and the whole society. This would help to address the problematic tendency for victims to be blamed for family violence, to complexify the current focus on individual offenders, and to consider the state institutions and structures that play a demonstrable role in producing and reproducing this harm.

The pattern of official inquiry followed by state apology occurred in relation to acknowledgement for Australia's 'Stolen Generations'. This state crime involved the systematic, state-ordered, forcible removal of Indigenous children from their families throughout the 19th and 20th centuries (Auguste 2009). The Human Rights and Equal Opportunity Commission's investigation culminated in the 'Bringing Them Home' Report (Commonwealth of Australia 1997), which recommended an official acknowledgement and apology for the immense suffering caused by these state policies and practices. An apology was subsequently delivered by the country's Prime Minister in Federal Parliament (Rudd 2008). Similarly, a family violence survivor tribunal could potentially generate sufficient pressure on the state to issue formal statements of admission and apology that could represent a "foundational moment" (Balint 2001: 133), and thereby initiate the beginning of some important new directions in addressing the harm.

Based on her research with women survivors of sexual atrocities and the Tokyo Women's Tribunal, Dolgopol (2018) suggests that one of the most prominent needs for survivors of state crimes is formal admission from the state of its responsibility for their suffering. Although testifying in official fora like tribunals and truth commissions can help fulfil other justice aims, it does not diminish most survivors' desire for state-level admission, accountability, and possibly apology and atonement (Kévorkian 2011; Dolgopol 2018; Simm 2018). Without this

formal acknowledgement, many survivors are constrained in their ability to experience individual and collective healing. In the absence of a full and official recognition of state complicity in the harm, there is also a lack of collective discursive certainty around this history. It is therefore difficult for the society to accept the truth about the harms and to move forward and begin implementing other justice phases and initiatives. The negative impact of a state's persistent refusal to acknowledge state crimes is well-illustrated by the Armenian example. The systematic state-directed genocide of the Armenian people by the Ottoman state during and soon after World War I either directly or indirectly caused the deaths of up to 1.5 million people (Kévorkian 2011). It is a well-documented and widely-recognised state crime internationally, yet it continues to be spuriously denied by the Turkish government. Balint (2012) explores the impact of this state denial, noting how, without official acknowledgement, affected communities are stuck at the point of trying to "convince the world that it in fact happened" (204). This also means that they are stuck at Cohen's (1995) first justice phase of knowledge and truth, frustrated by the injustice of denialism, and unable to progress towards any other justice remedies or to cultivate collective healing and closure.

As I indicated earlier, the state continues to avoid admitting its role in family violence. In doing so, it constrains progress towards justice. A full and adequate acknowledgement and apology by the state for its role in family violence could be valuable. As Auguste (2009) outlines in relation to the Prime Minister's apology to the 'Stolen Generations' (Rudd 2008), a successful apology contains three immediate elements: acknowledgement of the harm, explanation of what is being apologised for, and expression of remorse. A fourth key element, reparations, is also necessary, but whether this is fulfilled or not generally unfolds later, as I discuss below. In relation to family violence, a successful state apology would necessarily fulfill all these elements. To generate appropriate content for the apology, the family violence survivor tribunal's account of the state's role in family violence could be used as a roadmap. Since this account would have incorporated various evidence, survivor accounts, and the detailed findings of the institutional accountability hearings, it would provide a comprehensive picture of what should be addressed in an apology.

A full and accurate apology, accompanied by genuine remorse, and clear intentions to atone for and repair these harms, might fulfil the symbolic requirements for qualifying as a foundational historical moment. Such moments signal an important collective turning point, a "break from the past", and the "basis for the transformation of state and society" (Balint 2001:

133). They can also bring "cathartic relief" and "critical recognition for many victims and survivors" (Balint 2012: 204). Balint (2012) suggests that the apology offered by the Australian government for the 'Stolen Generations' (Rudd 2008) can be understood as a foundational moment. Of course, this apology was also met with understandable scepticism by Indigenous and non-Indigenous Australians alike, particularly given the persistently appalling state of Indigenous citizens' collective health, well-being, quality of life, and the entrenched racism and systemic discrimination they continue to experience. However, the many positive responses from victims and survivors of this state crime to the apology illustrates the profound symbolic significance of an initial gesture of official acknowledgement (Auguste 2009). As an initial step within a broader justice process for addressing family violence as state crime, a similar official statement detailing and apologising for the state's role in this harm would be critical. This is particularly important for family violence because victim-blaming ideology and discourse is such an entrenched and enduring dimension of survivors' struggles to receive appropriate recognition, protection and justice. Accordingly, a clear official statement of state and institutional responsibility could signal the beginning of addressing some individual and collective needs for acknowledgement, accountability, cleansing, repair, and transformation.

Lustration and expiation

Once a society has established official knowledge and truth about state harms, and obtained the state's acknowledgement and apology, it then opens up possibilities for pursuing reconstructive and reconciliatory justice measures (see Cohen 1995). One method for pursuing these aims is lustration and expiation.[85] Lustration is a transitional justice tool which can screen, remove, or disqualify certain individuals from holding official positions under a new democratic regime, based on their collaboration with the repressive former state apparatus (Zieba 2012). Expiation is conceptualised by Cohen (1995: 37) as a more diffuse "making amends for previous sins" and a broader "purification" of society, but can be achieved through similar processes.

[85] I depart from Cohen (1995) somewhat in my conceptualisation of the justice phases. For Cohen, lustration is one element within the third phase of accountability and justice, and expiation constitutes the following fourth phase. I see expiative and lustrative processes as inextricably linked and driven by similar aims, which contribute not only to accountability and justice but also reconciliation and reconstruction. I also find Cohen's definitions of and distinctions between accountability, justice, reconciliation and reconstruction unconvincing. For instance, examples of what are labelled reconstructive efforts seem related more to accountability in my view, and are thus necessary at far earlier justice stages. I maintain, for example, that reconstruction must first involve a deconstructive and accountability process, before it can conceive of anything reconstructive.

Lustration and expiation are largely missing from current responses to family violence. As Cohen (1995) explains,

> *Expiation … requires more radical responses than merely appointing a commission of inquiry [or] punishing a few selected offenders … Some kind of ritual cleansing is needed … to remove … ways of thinking so that they will lose their power* (12).

This could be of vital importance in addressing family violence as state crime, and one target area for lustration and expiation could be the criminal and civil judiciary. As I showed throughout Chapters Four and Five, this profession continues to actively support family violence through conducting cases in a systematically discriminatory manner, siding with perpetrators, dismissing and derogating victims, producing erroneous rulings, and contributing to injustice and the extension of harm. An initial lustrative step could be to dismiss all judiciary who have been directly named by survivors as complicit in family violence harms. For instance, all judges involved in problematic cases such as those I cited in Chapters Four and Five would be prime candidates. These figures would likely have been identified during the institutional accountability hearings as highly problematic complicit state actors. Having a post survivor tribunal institution to direct and administer ongoing justice initiatives (such as expiative oversight) would be important. One of the initial tasks for this post tribunal body could be to vet all current judiciary against the tribunal's evidence base, and make direct recommendations to the government regarding the dismissal of all judicial figures who have actively contributed to family violence harms.

Judicial expiation could involve broader processes, aimed at significantly altering the composition of this influential profession. One way to achieve this could be to mandate a radical re-population of the judiciary with subjugated and minority groups. This could, for instance, require that the judiciary be re-composed with a minimum 75% of women and subjugated racial, sexual and gender minorities. Another way of achieving significant expiative change could be to compulsorily retire an entire generation of the judiciary. Those over the age of 60 would only be permitted to remain in their positions if they undertook, at their own expense, extended family violence training which would be delivered by feminist anti-violence practitioners. By contributing to a "ritual cleansing" (Cohen 1995: 12) of the "male, pale, stale" and heteronormative (Hulls 2017: n.p.) judiciary, these initiatives could represent a sudden and necessary unsettling of the white, male, heteronormative power that pervades the legal system. By radically reconstructing this powerful profession in opposition to its traditional makeup, it

would help limit the influence of the patriarchal ideologies and practices that have systematically privileged men, discriminated against women, and directly contributed to family violence. As part of a broader structural adjustment project, these initiatives could also contribute more broadly to limiting patriarchal dominance.

These initiatives could be particularly powerful if accompanied by appropriate official communication to the public about their symbolic and substantive purpose. Substantively, the aim would be to "remove … [harmful] ways of thinking so that they will lose their power" (Cohen 1995: 12) over the adjudication of family violence. But lustration is also "a symbolic act, marking discontinuity with the past as a means of rebuilding society" (Zieba 2012: 148). Symbolically, it could be particularly conciliatory, restorative, and reconstructive for survivors, women, and minority groups to see old, straight, white men relegated to minority status in one significant sphere of influence. These measures could also signal the beginning of positive shifts away from the hegemonic patriarchal power.

A crucial flip-side to this expiative approach would include redress for victims, for injustices perpetrated by the repressive state apparatus. As Cohen (1995: 3) explains, it can be important for a society to provide ritualistic processes which "cleanse the identities of those who were unfairly blamed". This would be a critical aspect of expiation for family violence as state crime, since state institutions continue to play such a harmful role in oppressing, labelling, stigmatising, and blaming victims for family violence perpetrated against them. In relation to the adjudication of intimate partner homicide cases in particular, courts have produced outrageous stories about women, which hold them responsible for provoking men's lethal violence. Cummins (2016: n.p.) argues that these "odious narratives" are "nothing short of character assassination" which deliberately remove responsibility from perpetrators and reallocate it to victims. Cohen (1995) suggests that "simple public declarations" can help to clear people's sullied names and reputations, enabling "'freeze-dried' stigmas [to] thus be unfrozen: an invaluable way of making reparation to living victims as well as their surviving families and friends". One practical way of achieving this would be to officially publish and promote the Australian Feminist Judgements Project[86] and provide ongoing funding for the

[86] This project involves feminist scholars, lawyers and activists rewriting Australian legal case judgements from a feminist perspective. The project has produced an edited book (Douglas et al 2014), a number of book chapters (e.g. Douglas and Bartlett 2016), as well as academic articles and conference papers (e.g. Hunter 2015). It has also inspired other academics to produce their own feminist judgements (e.g. Weston-Scheuber 2014).

continued production of feminist judgements, or at least until these perspectives have penetrated mainstream judicial practice.

However, "even if rituals of expiation are initiated and completed, this will not necessarily eradicate the political conditions which gave rise to gross abuses" (Cohen 1995: 40). This is precisely why further justice processes are needed, which I will now explore.

Reparations

Reparations are another important element in the family violence state crime justice toolkit. They either directly or indirectly address the needs for justice, atonement, and reconstruction (Cohen 1995). The concept of reparations is based on the idea that to repair any form of mass harm requires some form of substantive redress. This must represent a genuine and concerted attempt to return, repair, or compensate for what was taken from, or done to victims. As Tatz (1985: 170) explains in relation to mass state crimes perpetrated by the Australian colonial state against First Nations Peoples, the idea of substantive repair is crucial to genuine atonement for mass harms. It must involve "giving back that which can be given … restoration of that which can be restored … [and] recompense of that which can neither be given back nor restored".

Crime victims' right to compensation is established in both domestic and international law. For victims of sexual and domestic crimes at the local level, this can involve receiving specific financial restitution, rehabilitation, or counselling, aimed at compensating individuals for their suffering and assisting them with their recovery (NCRVAWAC 2009). For family violence crimes, most Western jurisdictions have some provisions for individual financial compensation. However, these are often extremely limited in their remit, and poorly suited to the diverse range of harms and impacts involved with family violence. For instance, the Victorian Victims of Crime Assistance Tribunal (see VOCAT 2016) only considers applications concerning criminal offences which are punishable by imprisonment and which involve assault, injury, or threat of injury. The Tribunal also stipulates that the violence must also have been promptly reported to police. It also does not offer financial assistance for expenses indirectly incurred by victimisation. In all manner of respects, these requirements automatically disqualify many family violence victims from even applying for compensation. Particularly when considering the vast spectrum of invisible and non-injurious harms involved with family violence (see e.g. Stark 2000; Johnson 2008; Flood 2015a; Sheehy 2018), and the

lifetimes of chronic ill-health and poverty that this type of abuse causes (see e.g. Harris 2015; Natalier 2017; Guggisberg 2018), such schemes are a manifestly inappropriate response to family violence victims' rights and needs for compensation.

Reparations that emerge from conceptualising family violence as a state crime would have a rather different meaning and function. Since family violence constitutes a patriarchal state crime, it would be appropriate for women victims to be recognised as a victim group deserving of state compensation, for their collective oppression through state structures and policies. Collective restitution for family violence could be a particularly appropriate form of reparations, because it recognises the group-based nature of the harm. Again, the South African example is informative. In this context, the notion of collective restitution was important, and specific social and economic policies were advocated to "compensate blacks for centuries of injustice" (Cohen 1995: 24). However, the South African example also illustrates the negative implications of failing to provide specific reparative recognition. In this context, Durbach and Geddes (2017) argue that the denial of reparations for victims of sexual violence under apartheid has significantly impeded progress around this issue. Reparative measures are a vital element in addressing the underlying conditions that initially enabled sexual violence against women to occur, and without these, Durbach and Geddes argue that the Commission demonstrably failed to appropriately address this harm. Indeed, Durbach (2018) more recently argued that the absence of substantive reparative measures to address sexual violence has resembled the tacit authorisation of this harm, and has contributed to entrenching the problem and its contemporary prevalence.

If family violence is understood as a crime that has been perpetrated with the complicity of the state and institutions, it implies a fundamental obligation on states and institutions to be involved in repairing the harms caused by family violence. As Stanley (2014) emphasises, when the state is complicit in the harm, it is also responsible for the legacy of harm. The idea of legacy for state harms is more complex than merely seeking to repair direct trauma caused by specific violations; it also requires efforts to somehow address the lost opportunities suffered by victims, which affect all aspects of life across the lifespan and even into subsequent generations (Guggisberg 2018). In this sense, Durbach (2018) suggests that material redistribution is a vital element of reconstructive and transformative justice processes, because it is the only way to readjust the structures of privilege and the structures of oppression that produced violence in the first place.

Reparative and redistributive justice for family violence as state crime could take the form of direct state compensation to individual or groups of women through a victims' compensation scheme which could supplement the limited existing provisions for individual victims' crimes compensation. This would naturally require deliberate and large-scale measures to fund such programs. One way of generating the financial capacity to pursue collective reparations in relation to family violence could be to impose a 'family violence levy'; the funds from which could then be used to support compensatory and redistributive justice efforts. Similar to the federally-administered Medicare levy, this fee would be imposed non-discriminately on all tax-paying Australians and administered through the annual tax return process. The levy amount could be determined along a sliding scale in accordance with the income, and levy funds could then be used to support restitutive and reparative efforts. Reparations could include monetary or non-monetary programs that target common challenges facing family violence victims, such as physical and mental health issues, and housing insecurity. They could be delivered to victim groups through direct financial assistance, or through service provision and funding, helping to promote victims' collective well-being and independence. This could also be a framework through which to direct and deliver the "reparative transformation" envisaged by Durbach (2016: 366; also 2018). Broader policies that seek to redress structural injustice and violence against women can also be understood as part of a wider reconstructive and transformative approach, which I will further explore in the following section.

Transformative justice

The crucial final element within the family violence state crime justice toolkit is transformative justice. Here, this centres structural and substantive justice. This tool underpins the more targeted elements within the toolkit, since its focus is addressing the primary underlying causes of family violence and over an extended period. It broadly addresses the society's reconstructive and reconciliatory needs, which facilitate its journey towards enduring justice (see Cohen 1995).

A transformative justice approach which includes substantive and ongoing strategies is necessary for addressing and preventing state crimes and other mass harms. This is because addressing problems with structural or systematic origins always requires transformation not

only at the symbolic level, but also the material level (Green and Ward 2000; Mani 2002; Kauzlarich et al 2003; Lambourne 2004; Stanley 2005; 2007; Barak 2008; Cunneen 2008; Miller 2008; Laplante 2009; Muvingi 2009; Balint and Evans 2010; Kent 2012; Balint et al 2014; Durbach 2016; 2018; Durbach and Geddes 2017; Mertens and Pardy 2017). Without reinforcing symbolic gestures or interim measures with substantive action, any positive impact can be limited, short-lived, or even counter-productive. In the Australian context, this problematic pattern played out in relation to addressing systematic state harms against First Nations Peoples. The official apology offered by the Prime Minister to the 'Stolen Generations' (Rudd 2008) had an initially positive symbolic impact. However, when it was not followed by tangible substantive outcomes which had been promised would "close the gap … in life expectancy, educational achievement and economic opportunity" (Rudd 2008: n.p.), initially positive perceptions of the apology quickly shifted. Without substantive measures to give practical meaning and impact to more abstract phenomena like recognition and acknowledgement, true societal transformation can be undermined.

With violence against women also, justice efforts must be more than symbolic and proximate. To be genuinely restorative and preventative, they must transform the context by addressing the pre-existing structural inequalities that underpinned the violence (Durbach and Chappell 2014). Mertens and Pardy (2017) note that international organisations' programs for addressing conflict-related sexual violence are often inadequate because they overlook the harm's structural dimensions. Based on a superficial understanding of violence against women, so-called holistic responses generally provide medical, psychological, legal and economic aid for survivors. However, because the structural causes of violence are not addressed, the conditions that led to victims' vulnerability remain unchanged. These programs are therefore generally considered only a partial response by local communities. In relation to the apartheid-related sexual violence in South Africa, Durbach (2018) argues that the absence of transformative efforts to address gender injustice and sexual violence against women under apartheid has actually entrenched the problem and increased its prevalence.

Family violence prevention efforts also cannot be effective without fundamentally transforming structural sexism and women's substantive disadvantage in everyday life. As Brown et al (2014: 4) note, wicked problems (like family violence) are complex issues and they require not just changes in individuals or collectives of individuals. Because they are "part of the society that generates them, any resolution brings with it a call for changes in that

society". True transformation includes taking action to disrupt the unequal structures through which family violence emerges, and implementing substantive strategies to address inequality. Since structural violence underpins interpersonal harms like family violence, the most durable way to address them is to introduce structural justice initiatives. These address the everyday experiences of disadvantage and exclusion which underpin more direct and visible acts of abuse (see Zizek 2008). As Haslanger (2017: 1) notes, sexism and sex-based injustice involves "more than just bad attitudes … (it involves) unfair distributions of goods and resources". This highlights the need for tangible, substantive efforts to redress these imbalances. Addressing family violence from a structural justice perspective therefore involves attending to the multiple ways in which women experience inequality, subjugation, and discrimination, which, in turn, underpin their vulnerability to violence.

This task could begin by addressing areas of life in which women have experienced particular material oppression. Addressing the feminisation of poverty (see True 2012; Zuckerman 2014) would be a useful first step. Since poverty also correlates with disproportionate vulnerability to family violence (Breiding et al 2014a), pursuing substantive social and economic reform that economically protects and empowers women would be one route towards structural reform. This would not only be effective in preventing violence, but would benefit the society as a whole. Specific policy initiatives could, for example, target gender discrimination in employment, thereby addressing a key factor that limits women's capacity for economic independence and leads to their entrapment in abusive relationships. Policy that directly improves the quality, accessibility, and affordability of childcare would be another immediate way of enhancing women's ability to sustain independent lives without abusive partners. Improving social welfare provisions for single parents and overhauling the child support system would be another avenue into structural socio-economic change.

A proposal for an alternative child support system that I would like to advocate involves the state paying a standard rate of child support to sole parents, based on their income, circumstances, and realistic calculations of the costs associated with providing reasonable living standards for children. As a separate process, the state would recover the costs of this program through taxing non-custodial parents a similarly reasonable rate, based on their circumstances and income. The key difference with this system would be that child support debts are owed to governments with strong enforcement powers, rather than to vulnerable single parents with no capacity to recover lost entitlements. It would help ensure that single

mother family violence victims receive reasonable contributions to the costs of raising children, and are not pressured by the system into dangerous interactions with abusive ex-partners. It would also reduce the capacity for abusive parents to manipulate their victims and the current child support system through evasion and avoidance of their obligations. By enhancing women's socio-economic status, independence and resilience, these types of measures could enhance family violence victims' capacity to avoid, leave, or survive after leaving abusive relationships. Additionally, these policies would also work towards the broader aim of gender parity in everyday life.

Some promising innovations in the Victorian community legal sector could be understood as modest structural justice initiatives, and may be a useful guide for broader state-level policy development. Some innovative programs under the Victorian Federation of Community Legal Centre umbrella target diverse socio-economic factors directly related to women and children's vulnerability to violence. They also utilise indirect approaches to family violence prevention which do not necessarily directly target the violence, but rather endeavour to strengthen victim-survivors' capacity to avoid, prevent, resist, and escape family violence. The effectiveness of these programs is rooted in the community legal centre's broad, multi-faceted and structurally-grounded understanding of family violence (see Rose et al 2018). In line with progressive understandings of family violence regimes and their patterns of coercive control (e.g. Stark 2007; Coy et al 2015; Sheehy 2018), family violence is understood not as a singular physical assault or violent event; rather, it involves a range of pervasive and less visible forms of abuse and it occurs within the framework of the structural subordination of women. The community legal centre approach recognises that while family violence often involves physical injury, it does not occur on the body alone, and can relate to all aspects of everyday life. It recognises that an appropriate legal service for family violence victims must address diverse issues such as housing, education, employment, residency, citizenship, child custody, childcare, banking, bills, fines, credit, and debt.

A key strength of the community legal centre approach is its understanding that assisting and supporting women and increasing their capacity to resist, safely exit, and protect themselves and their children from further family violence involves addressing their vulnerability on various practical and substantive levels. For instance, the recognition of and focus on economic abuse both during and after an abusive relationship is a prime example of how community legal centres attempt to assist women in a direct and useful way. Financial counselling and financial

advocacy, for example, acknowledges the pervasive negative impact of economic abuse on victims' lives and the way it undermines their capacity to be independent, resist and escape violence (WLSV 2015; also Buck and Curran 2009; ECLC 2018). These types of community legal approaches usefully highlight the diverse range of policy areas in which structural justice family violence prevention measures are needed. They could serve as a checklist for a broader, society-wide model which addresses specific problems that have arisen from systematic and structural disadvantage, and which directly contribute to family violence.

Addressing the sexual inequality that underpins family violence will inevitably involve affirmative action and similar policies, which actively seek to redress the systematic imbalances that have led to men's dominance in the private and public spheres. If family violence is understood as a patriarchal state crime and approached through a transformative remedial lens, we cannot simply approach it with ordinary equality measures. This would erroneously imply that systematic injustice can be fixed by treating women as if they are the same as men. This may lead to claims that men are being unfairly disadvantaged by such policies. However, this is to deny that systematic discrimination was what first enabled their privilege, and that systematic measures are also required to reverse this injustice. Tatz (1985) also suggests that this opposition has a more profound and harmful meaning. For example, in the context of populist criticism of socio-economic provisions specifically for Indigenous Australians, Tatz argues that when people claim

> *that advantages cannot be offered to Aborigines that are not offered to all… this is to deny, negate, forget and forgive all past treatment of the Aboriginal minority: worse, perhaps, it is to imply that* ***nothing ever happened*** (Tatz 1985: 171; emphasis original)

Applying Tatz's logic to women's subjugation and family violence, to fail to provide unique provisions for women equates to the denial of sex-based harms and the denial that family violence has systematically victimised women as a group. An adequate approach to systematic injustice and violence entails the uncompromising pursuit of concrete and materially-significant measures that level the playing field in all aspects of life. For transformative redress for family violence, the focus must be on providing individual and collective women with the strongest basis for living genuinely autonomous, self-determining and self-sustaining lives. Addressing the substantive sexual inequality that underpins family violence will help limit men's power in the domestic and wider spheres, and is the most effective way to create a solid basis for family violence prevention.

Conclusion

This chapter has presented the third and final substantive contribution of the thesis: proposing new tools for addressing family violence, based on its conceptualisation as a state crime.

I began the chapter by offering a brief outline and critique of the Victorian Royal Commission's family violence response framework. This three-pronged approach centres individual offenders and victims, attitude-based education programs, and improvements to existing family violence response systems. I noted response frameworks from other national and international contexts which are similarly limited. I identified that none of these models adequately address the notion or the reality of institutional, structural, or state-level responsibility for family violence. I suggested that understanding family violence as a state crime provides a more comprehensive basis for responding to the problem. By more accurately depicting institutional, structural, and state-level responsibility for family violence, it provides a fundamentally different lens through which to conceive of redress and prevention. Accordingly, I turned to transitional justice approaches that have been used to address other state crimes, in order to inform how family violence might be addressed when understood as a state crime. This contributed to my developing a family violence state crime justice toolkit for addressing the unique justice needs that arise from recognising the central role of the state, structures, and institutions in family violence.

In the remainder of the chapter, I unpacked this family violence state crime justice toolkit, explaining in turn a survivor tribunal, institutional accountability framework, official acknowledgement and apology, lustration and expiation, reparations, and transformative justice. The toolkit elements seek to address the structural, institutional, ideological, discursive, and substantive inequality and injustice that I have identified throughout this thesis, which underpins, generates, exacerbates, tolerates, and excuses family violence. Informed by Cohen's (1995) phasic justice response framework for addressing state crimes, I consistently considered how these justice tools might best be sequenced and administered in order to be most effective. The various elements of the toolkit aim to validate victim-survivors in deeper and more meaningful ways, foster individual and collective healing, accurately identify family violence and the role of the state, promote broader accountability, and, crucially, challenge and change the institutional and structural conditions under which family violence has become a problem of epidemic proportions. I emphasise that family violence can only be addressed through a

range of comprehensive approaches which are underpinned by substantive and meaningful shifts towards a transformed society.

This chapter concludes the third and final substantive contribution of this research. In the following and final chapter, I conclude the thesis by briefly summarising and reiterating my key research contributions. I also locate my work more broadly, and reflect on avenues for further research that arise from this study.

9

Conclusion: Family violence in the contemporary context and beyond

Introduction

This concluding chapter provides a brief summary of the thesis, with an emphasis on my three key contributions and their potential implications for future thought and policy in the academic and practitioner fields. It also gestures to the broader implications of this work, and to possible future research which elaborates and extends this study. It concludes with a reflection on the relevance of feminist approaches to the study of contemporary social problems, and a vision for a future in which we have progressed some way towards addressing the problems I have wrestled with throughout this research project.

Summary of approach and key contributions

In line with the research questions guiding this study, this thesis has offered three key contributions:

1. Identifying state complicity in family violence across the state criminality spectrum
2. Constructing new feminist theory for understanding state crime and family violence
3. Proposing new tools for addressing family violence

In order to develop these contributions, I adopted a feminist transdisciplinary approach to studying family violence. This type of approach entails bridging not only boundaries of discipline, but also theory and practice across both the academic and professional fields (Brown et al 2010; Lawrence 2010; Owens 2016). Understanding and addressing "wicked problems" (Rittel and Webber 1973: 155) like family violence calls for a flexible, open, imaginative, problem-based manner of working, in order to "draw on all our intellectual resources, valuing the contribution of all the academic disciplines as well as other ways in which we construct our knowledge" (Brown et al 2010: 4; also Lazarus 2009; McCall and Burge 2016). Working in

this manner facilitated my development of methodologies which enabled me to fulfil my research aims.

The first key contribution was to identify state complicity in family violence. Towards this aim, I analysed three key state institutions in Australian and comparable Western liberal-democratic contexts in relation to family violence. These institutions were the criminal justice system, family law, and state-based social services. Using the Marxist Feminist Foucauldian analytical framework and the tools developed in Chapter Three, I looked through the lenses of policy, practice, and ideology to examine how these institutions conceptualise and respond to family violence, victims and perpetrators, and thus to explore a spectrum of state institutional complicity in the harm.

In Chapter Four's analysis of the criminal justice system, I identified how, through the state institution of law, the state created the sanctified boundaries within which male disciplinary violence in the home was not only tacitly allowed, but encouraged. State law also created the oppressive frameworks within which women and children were denied legal status and rights, and were designated the property of their patriarch. I also identified the enduring legislative endorsement of male violence through various iterations of provocation law, which continue to embody the notion of women as their husband's property. Looking at the contemporary legislation in the United States, I identified law's participation in family violence harms through the criminalisation of abortion. In relation to police and law enforcement, I identified systematic sexism and actionable neglect of basic duties in police responses to family violence. I also considered how, through written reports of intimate partner homicide, police discursively excuse, minimise, and justify men's family violence. Through examining criminal courts, I found that family violence is consistently treated as a less serious crime than comparable non-domestic offences, and that men's violence is treated more leniently than women's. In the adjudication of intimate partner homicide, my analysis showed that courts continue to discursively ignore, excuse, and minimise men's family violence.

In Chapter Five's analysis of family law and the family court, I identified a system based on patriarchal ideology which systematically privileges men's voices and interests, and dismisses or minimises men's violence. In contrast, women and children are generally silenced and their interests overlooked in family law discourse and practice. This occurs through courts' active dismissal of relevant histories of male violence to parenting arrangements, and through

systematically disbelieving and discrediting women and children's allegations of paternal child sex abuse. Through instituting and enforcing unsafe and unhealthy parenting arrangements, the family court facilitates the extension of family violence beyond parents' separation. These custody and contact arrangements both directly endanger women and children and allow for the harmful influence of unsuitable parents over children. I identified the emerging problem of child and adolescent family violence, which often develops through the modelling and encouragement of father-figures. Family law is directly implicated in this form of family violence through privileging father-child contact, even where these arrangements may produce further harm. I also identified how family courts are a particularly powerful source of harm for family violence victims: sometimes functioning to directly cooperate and participate in men's family violence, and even to *become* the victim's intimate abuser.

In Chapter Six's analysis of state-based social services and family violence, I identified a fundamentally inadequate system which does not adequately understand or respond to family violence. Through analysing the Australian Department of Human Services' Centrelink and the Child Support Agency, I identified systematic discrimination against and revictimisation of survivors, the provision of tools for male perpetrators to prolong and extend their abuse, and the consistent privileging of individual men and collective patriarchal interests over the basic rights and needs of single mothers and their children. I also identified how the overall oppressive power exercised by this state institution and its officials provides direct reinforcement of family violence perpetrators' power and control. This serves to further disenfranchise and marginalise victims, thereby exacerbating the effects of family violence.

To fulfil my second contribution by constructing new theory for understanding state crime and family violence, I developed in Chapter Seven an overarching feminist theory of family violence as state crime. This theoretical model centres structural and institutional harms and develops three types of what I term family violence state crime: structural state crime, micro-institutional state crime, and macro-institutional state crime. I also put forward further theoretical frames for understanding family violence as a state crime: proxy state crime and reverse proxy state crime. These elaborate the relationship between the previous types of family violence state crime, and also offer additional stand-alone theory for understanding family violence as state crime. My overarching feminist framework provides for the specific mapping of the spectrum of state complicity in family violence which I identify throughout this thesis.

The integrated model offers a comprehensive way of understanding the multiple patriarchal harms that converge to position family violence as a state crime.

To fulfil my third research contribution by proposing new tools for addressing family violence, in Chapter Eight I developed a family violence state crime justice toolkit. This toolkit proposed a range of complementary strategies for addressing family violence in light of its conceptualisation as a state crime. The tools I unpacked were a survivor tribunal, institutional accountability framework, official acknowledgement and apology, lustration and expiation, reparations, and transformative structural and substantive justice. This holistic justice toolkit is premised upon understanding and acknowledging that not only individual perpetrators and collective groups in society, but also states and institutions, are responsible for family violence. Accordingly, the tools I nominate aim to generate an accurate account and obtain official acknowledgement of the state crime dimensions of family violence, cultivate personal and collective healing from individual and group victimisation, address multiple levels of accountability for the harm, and engage in reparative, reconstructive and transformative efforts which will produce substantive, institutional and structural change.

Further research

Additional data which I gathered and analysed during this PhD research – which did not make it into the final version of Part II – also indicated the complicity of other institutions and industries in family violence. These varied in terms of their connection to the state: some having a very close connection through receiving direct state accreditation, authorisation and funding, others not directly connected to the state, but enjoying unfettered operation in the absence of state intervention, regulation, or oversight. Across this institutional and industrial spectrum, I looked at medicine, the education system, the sex industry, and various forms of media including traditional news media, television, film, and new media including social networking platforms and apps. Comprehensively analysing these institutions and industries and mapping their connections to the state and family violence would be a productive way of expanding my research beyond the present study.

Medicine's complicity in family violence is a particularly important area to further analyse and document. The proximity of medicine to family violence means that its responses have a unique

impact. Like other frontline and gatekeeping services, the responses of medicine are critical in shaping the subsequent experiences of family violence victims and perpetrators. If violence is obscured, overlooked, or tacitly condoned, as opposed to condemned, documented, and acted upon, this produces very different outcomes. My analysis identified that, across obstetrics and gynaecology to emergency medicine and psychology, there is clear evidence of complicity in family violence. I identified policy, practice, and ideology that actively ignores, obscures, conceals, denies, minimises, excuses, justifies and even participates in family violence (e.g. Stark and Flitcraft 1996; Torrecillas et al 2008; Hamberger et al 2010; Tower et al 2011; Ramsay et al 2012; Sifris 2014). As this data and analysis reinforces and extends the work of this thesis, I will prioritise its development and publication following submission.

Another important area I intend to further investigate and document is how law and medicine operate in concert to oppress and coerce women in relation to family violence. Particularly through psychiatry and its official admission and integration into legal discourse, medicine and law intersect powerfully to have an often oppressive impact on women and family violence victims. Ehrenreich's (2008 in Sifris 2014: 183) observation that "together, law and medicine operate to enforce coercive gender norms on women" has definitely been highlighted through my family violence research, notably through family court discourse and decision-making, and it is an important area of study I wish to pursue.

State crime, feminism and family violence into the future

I hope that my research has usefully contributed to the development of state crime theory through demonstrating the value of comprehensively incorporating feminist perspectives into state crime analyses. I believe I have established that family and other gender-based violence is appropriate for inclusion within state crime frameworks, and that this inclusion is a necessary way to progress this field. Specifically, I hope that my feminist theoretical model of family violence as state crime usefully contributes towards the reconceptualisation of other systematic gender-based harms yet to be defined as state crimes, and also that elements of the model contribute towards analysing and understanding other diverse state crimes.

I also hope that my study has highlighted the ongoing relevance – indeed the vital importance – of radical feminist theory and analysis. Aligning with the radical feminist tradition of

centering the study of domestic harms, I have intended to underscore how studying family violence can illuminate our understanding of other forms of gender-based violence. As Barry (1979) so eloquently expresses:

> *institutionalised sexism and misogyny – from discrimination in employment, to exploitation through the welfare system, to dehumanisation in pornography – stem from the primary sexual domination of women in one-to-one situations* (194).

This statement highlights the mutually supportive and bi-directional nature of inequalities and harms in different contexts, and underscores the far-reaching effects of control and violence within the family. It also emphasises the need to continue to examine the family as a core site of male domination and as an institutional vehicle for the maintenance of the subjugation of women and children.

Kelly (1988: 4) has argued that feminist research "must be predicated on both the theoretical premise and the practical commitment: its purpose being to understand women's oppression in order to change it". Deeply committed to these aims, I hope that the propositions I have presented in this thesis have both a theoretical and substantive impact in challenging and expanding the way that family violence is currently understood and addressed. Specifically, I hope to contribute to enhancing recognition of this crime, reframing it in a manner that more accurately depicts the immense harm it causes, cultivating a multi-level understanding of implication and responsibility, and prompting the development of more comprehensive responses to the problem.

More generally, one of the most important things I have intended to share through this research is the immense and enduring value of radical feminist theory and method for understanding and attempting to solve all manner of contemporary social problems. The ground-breaking ideas and creative modes of thinking employed by revolutionary women of different generations including Taylor Mill (1869), Barry (1979), and MacKinnon (1982; 1993; 2011) have opened my mind to a world of possibility in academic thought. Criminology in particular is, in my view, too often constrained by repetitive publications, theoretical orthodoxy, fads with limited real utility, and unimaginative approaches to our field of study. I hope to be part of a criminology that is more adventurous and dynamic, where we attempt intellectual leaps and take risks, not all of which pay off of course, but at least where the potential gains have the possibility of being genuinely innovative and impactful.

This study has confirmed my conviction that being feminist means "belie[ving] in the possibility of a better future, if not in utopia" (Ahmed et al 2000: 6). A short-term family violence utopia would of course see the formal acknowledgement of the state's complicity in this harm, a range of comprehensive accountability and justice measures aimed at recognition, individual and collective healing, a dramatic reduction in violence, and victims receiving every moral and material support they need. This would also be a society in which there is genuine recognition of – along with attempts to address and transform – the patriarchal histories, structures, institutions, ideologies, policies, and practices that so unjustly privilege men and so pervasively harm women and children. The state and its apparatus would be more genuinely democratic and representative of the diversity of its constituents, and state officials would have accurate knowledge of social problems and the genuine interest, motivation, and capacity to address injustice wherever it appears. And at the micro-level of this society would be people living in whatever independent or collective arrangements they chose, unconstrained by society-wide denialism, oppressive cultural expectations, material inequalities, or interpersonal coercion: the beginning of a generation able to live peacefully without constant fear of being abused and violated in their own homes.

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