

Gendered Violence, Intersectionalities and Resisting Gender Neutrality

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Abstract

Developments in feminist theory and research towards a more complex approach to gender relations and a more differentiated understanding of gendered violence have been positive but also have been the subject of significant debate. Some debates have long histories, while others mark more newly emergent concerns. In this paper I reflect on three areas of debate: intersectionality, complex gendering and complex inequalities; differentiating between forms of gendered violence (with a focus on intimate partner violence (IPV)), and criminalisation. In each of these areas, feminist frameworks and knowledge concerning gendered violence have been challenged and the resurgence of gender neutral accounts has been notable. I argue that keeping a structural analysis to the fore provides the best way forward for constructive debate in the field aligned with feminist aspirations for the achievement of substantive equality.

Key words

Gendered violence; intersectionality; intimate partner violence

Resumen

El desarrollo de la teoría feminista y la investigación hacia un enfoque más complejo de las relaciones de género y una comprensión más diferenciada de la violencia de género ha sido positivo, pero también ha sido objeto de un importante debate. Algunos debates tienen una larga historia, mientras que otros marcan preocupaciones emergentes surgidas en los últimos tiempos. En este trabajo se reflexiona sobre tres áreas de debate: interseccionalidad, configuración de géneros compleja y desigualdades complejas; diferenciación entre formas de violencia de género (fijándose en la violencia de pareja (VP)); y la criminalización. En cada una de estas áreas, se han cuestionado los marcos feministas y el conocimiento relativo a la violencia de género, y ha sido notable el resurgimiento de cuentas de género neutro. Se defiende que fomentar un análisis estructural ofrece la mejor forma de fomentar un debate constructivo en el campo alineado con las aspiraciones feministas para el logro de una igualdad sustantiva.

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Palabras clave

Violencia de género; interseccionalidad; violencia de pareja

Table of contents

1. Introduction.....	1436
2. Gendered violence	1436
3. Intersectionality, complex gender and complex inequalities	1437
4. Differentiating forms of gendered violence.....	1441
5. Debates about criminalisation.....	1444
6. Conclusion.....	1446
References	1446
Legislation.....	1451
Cases	1451

1. Introduction

In the domain of gendered violence, the present is marked by a good deal of critical reflection among scholars, activists and policy makers on theory and method, the conceptual tools used and the strategic choices that have been made in advocacy and law reform. Critical reflection is of course desirable for a multitude of reasons. Re-thinking gendered violence in the light of theory, empirical findings and politics can help identify impasses, challenges and opportunities. Developments in feminist theory and research towards a more complex approach to gender relations and a more differentiated understanding of gendered violence have been positive but also have been the subject of significant debate. Some debates have long histories, while others mark more newly emergent concerns. In this paper I reflect on three areas of debate: intersectionality, complex gendering and complex inequalities; differentiating between forms of gendered violence (with a focus on intimate partner violence (IPV)), and criminalisation. In each of these areas, feminist frameworks and knowledge concerning gendered violence have been challenged and the resurgence of gender neutral accounts has been notable. I argue that keeping a structural analysis to the fore provides the best way forward for constructive debate in the field aligned with feminist aspirations for the achievement of substantive equality.

I recognise that these debates and the concepts that they invoke are played out in different ways within different disciplines and in different places and political contexts. This paper draws on my experience as a criminologist in Australia, and on my research with women in criminal justice who are victims, offenders and sometimes both, as is the case for many incarcerated women. Australia is a settler society with a neo-colonial legacy; it is also a country with considerable diversity built on immigration, but which is currently afflicted by a disturbingly narrow debate and cruel policies applied to asylum seekers who arrive by boat. There has been belated recognition that analysing gendered violence in Australia requires engaging with diversity, and recognition of colonisation and its effects and various forms of state violence in the making of gendered orders (Connell 2014, p. 556). There is much that remains to be done toward that end.

2. Gendered violence

Sally Engle Merry called her important book *Gender Violence: A Cultural Perspective*. Merry (2009, p. 2) defined gender violence as 'violence that depends on the gendered identities of the parties'. She was clear that '[u]nderstanding gender violence requires a situated analysis that recognizes the effects of the larger social context on gender performances' and that the forms of gender violence differ in different social settings and may change over time (Merry 2009, p. 3). However, the term gender violence is too often used as if gender is fixed and the meanings of gender and violence are stable (Merry 2009, p. 4-5).

In this article the term *gendered* violence is used in preference to *gender* violence because the former gives greater emphasis to the ways in which institutions and practices are gendering, rather than simply responding or giving effect to pre-existing categories. A focus on *gendering* may counter to some degree a tendency that has been described by some scholars (e.g. Montoya 2013, p. 16) for gender violence or gendered violence to be 'degendered'. The concept of gendered violence helps us draw connections between interpersonal violence and structural inequalities that provide the context for interpersonal violence and are reinforced by that violence as well as to institutions and practices that give meaning to gender and violence. There is no single meaning of the concept and over time it has been used in many different ways. As Liz Kelly (2005) has noted, an expanded use of the term gendered violence has been associated with the long overdue acknowledgement of violence against sexual minorities. However, she laments the use of the term for any form of violence that is patterned by gender. For instance,

the use of the term to include violence experienced by men and boys detracts from the strategic feminist use of the term to focus attention on the structural inequalities faced by women and girls (see also Manjoo 2014).

3. Intersectionality, complex gender and complex inequalities

While intersectionality is not the only influence on the shift to more complex and nuanced accounts of gender and inequalities, over recent decades it has had a very significant influence. Intersectionality has been said to address 'the most central theoretical and normative concern within feminist scholarship: namely, the acknowledgement of differences among women' (Davis 2008, p. 70). It has been described as 'mov[ing] beyond static conceptions of inequality' to recognise 'forms of inequality that are routed through one another, and which cannot be untangled to reveal a single cause' (Grabham *et al.* 2009, p. 1). There is no one understanding of intersectionality. Some scholars have identified intersectionality 'as an attempt to trace and analyse a supposed fragmentation of identities within political movements of the twentieth century' while for others this development has opened up new possibilities for theory and practice, 'provid[ing] tools for complicating our understanding of the systems and processes that define the social' (Grabham *et al.* 2009, p. 1).

The concept, set out in the important work of Kimberlé Crenshaw (1989, 1991), builds on insights about the interlocking nature of oppression by other scholars, especially African American women (e.g. Dill 1983, bell hooks 1984, Collins 1986) and is used in a variety of different ways across disciplines and in different settings. The fact that the concept is open and not fixed may be a benefit and help explain its wide appeal (Garry 2011) but it may also be associated with misunderstanding or miscommunication. Also, as Barbara Tomlinson (2013, p. 254) observed,

[s]eemingly universal categories like race, gender, sexuality and class have specific local, national, and regional inflections. Interdisciplinary claims are mounted by scholars trained in distinct disciplinary traditions of description, exposition, analysis and arguments. Under these conditions, talking to each other entails risks of talking past each other.

There has been a great deal of critical reflection on the concept of intersectionality, some of it more sympathetic and some less so. Some commentators seem to have missed the point entirely as in Felson's jibe that intersectionality is about politics, not science because '[m]eaningful three-way statistical interactions are rare' (Felson 2014, 80). Debate is wide ranging, but the following questions are illustrative. Is the metaphor of an intersection helpful? Does it presume the intersection of pre-existing categories, or, are the categories mutually constituting? Is intersectionality locked into a categorical approach when other ways of theorizing gender relations might offer more nuance and complexity?

In a recent special issue of *Signs*, Sumi Cho, Kimberlé Crenshaw and Leslie McCall (2013) reviewed the diversity of approaches to intersectionality and offered their response to such debates. They noted three broad approaches in the use of intersectionality: an analytical framework to study specific issues; 'discursive investigations of intersectionality as theory and methodology'; and in terms of praxis – reflecting 'the normative and political dimensions of intersectionality' which 'embody a motivation to go beyond mere comprehension of intersectional dynamics to transform them' (Cho *et al.* 2013, p. 785-6).

On my assessment, intersectionality has proved very useful in research and praxis concerning gendered violence, although I agree that while there has been a strong focus on gender and race, other key aspects of social relations (e.g. class, sexuality, disability) have been less developed (Sokoloff and Dupont 2005, p. 40). Age, too, often has been neglected although intersecting social relations and gendered violence may be experienced differently by young people (Miller and Mullins 2006, p. 42). In the discussion that follows I draw on some of the issues or

challenges raised in debates about intersectionality and provide examples of Australian research concerning gendered violence in fields such as criminology, social work and law that have used intersectionality in a manner that responds to those debates.

Gail Mason's (2002) research on homophobia-related violence against lesbians in Australia is notable for several reasons, including the way in which she demonstrates that an intersectional framework can be used with a fluid and constitutive conception of identity. She describes how using an intersectional framework helped challenge the tendency in the literature at the time to reduce violence towards lesbians to 'a problem of *either* gendered violence *or* homophobic violence' (Mason 2002, p. 11). She also describes how she resolved deeper conceptual challenges that she confronted in her research as she worked to integrate empirical research of the experiences of lesbian women from different racial or ethnic backgrounds with insights from post-structural theory. Her participants' accounts highlighted the way in which they experienced the interaction of gender, sexuality and racial hierarchies differently across time and place and as 'embodied' (Mason 2002, p. 77). However, building on post-structural theory, Mason was wary of treating experience as the foundation of a superior form of knowledge and of treating identity as a 'natural' category – rather she saw experience as involved in constituting identity (Mason 2002, chapter 1).

Some critics suggest that intersectionality is (too) focused on 'infinite combinations and implications of overlapping identities' (Cho *et al.* 2013, p. 797). Sokoloff and Dupont (2005, p. 59) raise a related concern that a focus on interlocking identity characteristics may 'unwittingly undermine structural analysis'. By contrast Cho *et al.* (2013, p. 797) contend that '[i]ntersectionality is inextricably linked to an analysis of power' and 'emphasizes political and structural inequalities'.

Clearly an intersectional framework can facilitate a structural analysis. For instance, in research critically assessing battered women syndrome, my colleague Julia Tolmie and I were attuned to concerns that the 'psychological individualism' of the criminal law works to 'seal off' the social context of offending (Norrie 2001, p. 224). In researching homicide cases in which Aboriginal women had killed an abusive partner (Stubbs and Tolmie 1995, 2008), we drew from Crenshaw's (1991) framework of structural, political and representational intersectionality. This provided a way to keep in view the enduring impact of colonisation and each of the following: the social and economic marginality commonly faced by Indigenous people in Australia and its gendered effects; the manner in which Aboriginal women were often made invisible at the political level within some Aboriginal organisations that privileged male voices, when dominant institutions consulted with Aboriginal men but not women and when mainstream feminist accounts failed to consider differences among women; and how media and other cultural representations omitted Aboriginal women or resorted to stereotypes. We found that at trial, and likely also in plea negotiations, evidence based on battered women syndrome did not necessarily work to make the broader context in which an accused acted evident and explicable to courts. On the contrary, such evidence often focused attention narrowly on the individual characteristics and perceived inadequacies of the accused, reinforcing stereotypes of Indigenous women. We argued that lawyers and judges need to give greater attention to the social context of Indigenous women's offending as one way to work towards fairer and more just outcomes, however, Toni Williams' (2007, 2009) research discussed below provides a cautionary note about the limits of this strategy.

While some commentators have suggested that intersectionality has been associated with the neglect of those who are in dominant positions (Walby, *et al.* 2012, p. 230) or has focused on violence by individuals but not collective or state violence, that is not a necessary outcome of using an intersectional approach. Indeed Garry (2011, p. 829) identifies the capacity to engage with 'both privilege

and oppression' as a strength of intersectionality. For instance, sociologist Jeff Hearn has used intersectional analysis to examine 'the plural ways of being men that perpetrate violence' (Hearn 2013, p. 163) and how '[m]en's domination persists in violent institutions and state control of violence, in constructions, identification, naming and defining of violence'.

Concerns have been raised that intersectionality has failed to engage with globalisation and, for instance, with transnational dimensions of crime and crime control (Hennie and Troshynski 2013). While that may be an accurate observation about much of the literature that relies on intersectionality, it is not universally the case. Bob Pease and Susan Rees' (2008) research on men's violence towards women in refugee communities provides an Australian example of research that engages with both privilege and oppression in a transnational context. They identified the compounding effects that refugees face which may increase the risks and render refugee women more vulnerable to domestic violence during flight, in refuge and on resettlement. The intersectional approach that they used allowed them to recognise cultural differences, and the effects of racism and colonialism while also holding men accountable for their violence.

Another example of engaging with privilege and oppression across national boundaries is provided by a study into violence against Filipino women in Australia (Cunneen and Stubbs 2004). At the time of our study Filipino women were almost six times over-represented as victims of homicide in Australia. Most were killed by a partner or former partner who was not Filipino, many of whom had sponsored the woman's immigration to Australia. The study worked across levels and also engaged with *material* and *discursive* dimensions of the problem. We recognised the importance of political economy and national immigration laws that shaped gendered migration patterns, the relative privilege of sponsoring men and the local factors in the Philippines and Australia that constrained women's choices and limited their access to protection. The meaning of the violence could not be grasped by reference to masculinity alone; men's use of violence both reflected and sought to reimpose a racialised order that authorised the entitlement of 'first world' men to 'third world' women discursively constructed as available to meet their desires. Media reports and court decisions often deployed similar gendered and racialised stereotypes, which suggests that such discourses are deeply embedded across a range of institutional settings.

In several of the examples above an intersectional framework has been deployed in a context where the category *gendered* violence seems relatively unproblematic, and where intersectionality offers the potential for a richer understanding, more inclusive political engagement with the issues and more equitable outcomes. However, intersectionality also implies 'the need to question the primacy of gender' (Sokoloff and Dupont 2005, p. 44) in a given context or setting, although the questioning of gender primacy is not the same as subscribing to a gender neutral account. Strid *et al.*, (2013, p. 575) have identified a risk that while '[i]ntersectionality can strengthen the project of gender equality by taking the specificity of various groups of women into account... it is necessary to address the risk that gender might become invisible'. The authors argue that where the policy process is degendered, 'intersectionality may weaken the gender equality project by further reducing the visibility of gender itself' (Strid *et al.*, 2013, p. 575). They stress that in order to achieve effective violence against women policy, the policy *process* must be gendered.

The recognition of same-sex intimate partner violence (IPV) is sometimes interpreted as negating gender as an issue or as challenging feminist understandings of women's vulnerability to domestic violence, sexual assault or other harms (Felson 2002, p. 42). Others contend that studying same sex IPV can lead to more complex understandings of gender. For instance, Baker *et al.* (2013, p. 184) state that gender matters in same-sex IPV but 'it is not all that matters'. -

They argue that studying other factors - which may themselves be 'imbued with gendered meanings' - contributes to a richer understanding of IPV and gender.

However, while intersectionality offers a very useful manner of framing research, analysis and praxis in the field of gendered violence, concerning 'the problem of sameness and difference and its relation to power' (Cho *et al.* 2013, p. 795), it doesn't necessarily have an answer for the choices faced by researchers or political activists (Garry 2011, p. 830). For instance, in reflecting on her research described above, Mason (Mason and Stubbs 2012) lays bare the difficulties of maintaining a commitment to 'a sexuality-gender-race configuration' at each stage of the research let alone engage with other social categories such as class. In my research with Chris Cunneen on violence against Filipino women in Australia (Cunneen and Stubbs 2004), a commitment to an intersectional framework was not in itself sufficient - community activists helped us to identify the various forms of social relations that were most salient for our analysis.

In an adverse, unsympathetic or gender neutral political, legal or social context, knowledge produced through an intersectional framework can be used in counterproductive ways. Even well intentioned approaches, such as giving greater attention to cultural differences, can work to obscure gendered dimensions. This is evident in the manner in which some courts have minimised and trivialised violence against women by male offenders from racialised minorities (Razack 1998, chapter 3, Sokoloff and Dupont 2005, p. 46).

Toni Williams (2007, 2009) provides an important illustration of the way that an intersectional analysis which offers a great deal of promise in re-thinking punishment (Bosworth and Kaufman 2013) can be used in unintended ways. Her research focuses on Canadian sentencing reforms intended to benefit Aboriginal people and their affects for Aboriginal women. Aboriginal women appearing before the courts very commonly have a background of having been subject to gendered violence; this is also a common experience among women prisoners generally (Martel *et al.* 2011, Richie 1996). Williams analysed the effects of s. 718.2(e) of the *Criminal Code* of Canada which provides that 'all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with *particular attention to the circumstances of aboriginal offenders.*'¹ Thus, the provision requires the courts to engage in a form of intersectional analysis, attending to 'multiple subordinating relations' within the defendant's life experiences (Williams 2007, p. 284). The first case on appeal to the Canadian Supreme Court, *R v Gladue*, involved gendered violence; the appellant was an Aboriginal woman convicted of manslaughter of her abusive partner. The court affirmed that under the provision a different sentencing methodology was required to be used when sentencing Aboriginal defendants (Williams 2007, p. 277 citing *R v Gladue* paras 71-74). While the decision remains controversial it was hailed as very positive by some commentators who interpreted it as reaffirming the need to apply the least restrictive sanction, providing a basis for the further development of restorative justice and other alternative sanctions and for recognising the position of Aboriginal offenders (Balfour 2013, p. 90). However, the decision did not benefit Ms Gladue. While the Supreme Court of Canada found that the appropriate sentencing approach had not been followed in lower courts, they rejected the argument that she should have received a non-custodial sentence instead of a period of imprisonment due to the seriousness of her offence and because her offence involved domestic violence which was treated as an aggravating matter, despite the evidence of the abuse she had suffered (Balfour 2013, citing *R v Gladue*

¹ The Supreme Court of Canada in *R v Gladue* described the over-representation of Indigenous people in Canada as a crisis, and recognised systemic discrimination in the criminal justice system. The court found that the provision 'amounts to a restraint in the resort to imprisonment as a sentence, and recognition by the sentencing judge of the unique circumstances of aboriginal offenders' (*R v Gladue*, para 38) and it was affirmed in *R. v. Ipeelee*, 2012 SCC 13.

paras 96 & 97). Moreover, ten years later the capacity of Canada courts to reduce the over-representation of Aboriginal people in prison has been described as 'dismal' (Martel *et al.* 2011, p. 251). The percentage of Aboriginal women in Canadian prisons has grown more than that for men. Williams (2007, p. 286) found that s. 718.2(e) and the *Gladue* decision had failed Aboriginal women 'so abjectly', notwithstanding evidence that most judges tried to apply the required sentencing methodology and to take the social context into account. However, she noted that the hardships faced by many Aboriginal people can be interpreted by courts in various ways. Within the criminal justice system, when interpreted through the punitive logics and risk based discourses which predominate, the multiple disadvantages faced by Aboriginal defendants can be read not as reasons for sentencing restraint but rather as markers of risk or dangerousness 'thereby feeding stereotypes about criminality that render the stereotyped group more vulnerable to criminalization' (Williams 2007, p. 286) reinforcing rather than disrupting the individualism of the criminal law noted by Norrie (2001).

Williams' work demonstrates that while an intersectional analysis may be a necessary first step in giving recognition to the social context of women's lives, it does not necessarily determine how the knowledge produced is deployed. Political contestation as to how this knowledge is interpreted and applied is necessary, keeping a focus on power and its effects. Coalition building seems particularly important to bring the interests of those groups that are most marginalised to the fore.

4. Differentiating forms of gendered violence

A second significant development in research concerning gendered violence, but one that also may be associated with unintended consequences in practice and with political vulnerability, is differentiating between different forms of violence. Even within categories of gendered violence, such as domestic violence, there are differences (Osthoff 2002) and a 'one-size fits all' approach will not do. Here I focus on the development of typologies of intimate partner violence. As Wright and Hearn (2013, p. 24-26) have noted, the term domestic violence is typically analysed in feminist theory and practice through the lens of unequal gendered social relations, and the same applies to the concept intimate partner violence. However, resistance to feminist understandings in some settings has been associated with both terms being re-inscribed as gender-neutral and linked with discourses about women's violence towards men.

Michael Johnson (2008), together with other colleagues (Johnson and Ferraro 2000, Kelly and Johnson 2008), has developed the most well-known IPV typology which has been elaborated and refined over time. This work is grounded in feminist practice and has been very influential especially in responding to proponents of gender symmetry in intimate partner violence. Debates about gender symmetry are long standing and hard fought (Straus 1993, Moffitt *et al.* 2001, Kimmel 2002, Dobash and Dobash 2004, Hester 2009, Dutton *et al.* 2010). Work by Johnson and colleagues (Kelly and Johnson 2008) offers a way to reconcile the competing findings arising between studies conducted by proponents of a gender symmetry approach, and those framing their research with a gendered analysis. According to Johnson, each approach typically relies on a different type of sample - which has its own biases - and measures different forms of intimate partner violence. Gender symmetry proponents often use sample surveys and the Conflict Tactics Scale; they commonly find that the prevalence of men and women using intimate partner violence is the same or similar. This approach has been challenged on numerous grounds including that it focuses on incidents and not patterns of behaviour, and because it does not examine the context of the violence or its effects (Dobash and Dobash 2004). By contrast, feminist studies based on agency data (e.g. refuges, police, hospitals, helplines) or refinements to conventional survey designs (Johnson

2013) typically find that most perpetrators are men and that women are more likely to experience fear and to be injured (see overview at Johnson 2011).

Jane Wangmann (2011) has provided a very useful analysis of various approaches to differentiate types of intimate partner violence and the typologies that have been deployed, together with their underlying assumptions and their limitations. There are several iterations of Johnson's typology. One version has three major categories – *Coercive controlling violence* which is labelled *Intimate terrorism* in some publications, *Violent resistance*, and *Situational couple violence* (Johnson 2011). Kelly and Johnson's (2008) version of the typology included two additional categories - *Separation-instigated violence* and *Mutual violent control*. All five involve physical violence and the basis for differentiation relates to the presence or absence of coercive control, a concept elaborated in the work of Evan Stark (2007). They are (as extracted from Wangmann 2011, p. 3):

Coercive controlling violence 'primarily perpetrated by a man against his female partner in order to control her. It involves a 'pattern of emotionally abusive intimidation, coercion, and control coupled with physical violence...' (Kelly and Johnson 2008, p. 476); on average its violence is more frequent and severe' (Kelly and Johnson 2008, p. 482).

Violent resistance. 'This form of violence is used by a person [typically a woman] in response to coercive controlling violence...'

Situational couple violence. 'This form of violence is not motivated by control, rather it is used in response to a particular conflict or situation. It is perpetrated equally by men and women, and Johnson suggests that it is '[p]robably the most common type of partner violence' (Johnson 2008, p. 11)'... [It is] 'generally minor and infrequent' [but] 'can also involve serious violence that causes injury (Johnson 2008, p.11)'.

Separation-instigated violence. 'This category reflects violence that has occurred in the context of separation. There is no history of violence nor does it continue after separation, rather it is confined to the period of separation and reflects the trauma or context of that event. This type of violence is a sub-set of situational couple violence.'

Mutual violent control. 'This category describes relationships in which both partners use violence to control the other' and is rare.

Kelly and Johnson (2008, Johnson 2011) argue that large scale surveys commonly report gender symmetry because they are most likely to measure situational couple violence which is much more common than other forms of intimate partner violence. By contrast, agency data is derived from samples where the need to seek assistance or services is greater and, thus are more likely to include a higher proportion of cases of coercive controlling violence where perpetrators are more often men.

The typology developed by Johnson and colleagues, perhaps more than others, has been adopted by many researchers and practitioners and has been very helpful in promoting a more nuanced understanding of intimate partner violence. However, it also has been the focus of a strong attack, especially by Dutton and co-authors (e.g. Dutton *et al.* 2010, for a response see Johnson 2011) which seems largely based on a very partial reading of Johnson's work and of the research base for the typology. While the attack by Dutton *et al.* (2010) does not seem well founded, there are other more sympathetic and constructive debates about this and other typologies. These debates range over issues such as: the preferred way to operationalise concepts; measurement tools; whether physical violence is over-emphasised and other forms of violence diminished; who makes the assessment as to what cases fall into what category and questions about whether the meaning of the violence and its effects is readily discernible to a third party; and, whether violence has different meanings in different cultural or other contexts (see Wangmann 2008, 2011 for an overview). Kristin Anderson (2005, p. 854) has

suggested that gender is typically understood in a narrow way in debates about sex symmetry in intimate partner violence, commonly as an individual level variable, as 'traits' eliding the 'complex ways in which gender matters in social relationships'. Baker *et al.*, (2013, p. 190) identify a need to move beyond one-dimensional typologies and towards incorporating an ecological model that shifts beyond the individual level to analyse the multiple influences on gendered violence including at the macro-level.

These debates are valid and should be welcomed as they offer the prospect for refining typologies. However, my concern in this paper is with respect to the troubling manner in which that work is being received and used in some settings.

The use of typologies differentiating types of IPV is being institutionalised in some settings. For instance, the Family Court of Australia has adopted Family Violence Best Practice Principles, (Family Violence Committee 2013) which include a section on 'Different Types of Family Violence'. These state that there is 'growing acceptance that violence can generally be defined as being within four categories' – here they rely on the 2008 version of Kelly and Johnson's typology (mutual violent control is omitted, presumably because it is said to be rare). They state that '[i]t is no longer scientifically or ethically acceptable to speak of domestic violence without specifying loudly and clearly, the type of violence to which we refer' (Family Violence Committee 2013, p. 19, citing Family Law Council in 2010). The Best Practice Principles are said to provide 'a checklist of matters that judges, court staff, legal professionals and litigants may wish to have regard to at each stage of the case management process'. It is suggested that judges should use this literature to understand the facts of the case and determine appropriate orders (Rathus 2010, 2012, p. 112). While the principles 'are not a substitute for evidence in individual cases' they are said to be applicable *in all cases* involving family violence or child abuse or the risk of family violence or child abuse in proceedings before courts exercising jurisdiction under the FLA' (emphasis added, Family Violence Committee 2013, p. 3) and judicial officers are advised that 'when framing parenting orders, it is important to differentiate between the types of violence' (Family Violence Committee 2013, p. 6).

As Zoe Rathus points out, there is value in judicial officers and other legal professionals seeking to inform themselves by drawing on social science literatures. However, the Best Practice Principles give 'scientific' and 'ethical' authority to the typology, without any acknowledgement of the debates about typologies; nor is there any reference to 'the nuanced nature of the concepts, the qualifications applied by the authors and their own acknowledged limitations and constraints' (Rathus 2012, p. 111).

Thus, attempts to differentiate between different types of IPV for analytical or clinical purposes or to assist in service delivery and provide support are being given effect in legal settings with very significant consequences. Who makes the assessment? Are the categories easily distinguishable? There are risks attached to making the wrong assessment, and of reinforcing popular stereotypes such as 'that violence is a relationship issue, that men and women are equally violent, that much violence is sourced in particular incidents and conflicts, signifying that much violence is situational couple violence' (Wangmann 2014, p. 17). The principles adopted by the court reinforce the idea that coercive control is what matters, but that situational couple violence is the most common form of IPV. Yet practitioners within the Family Court of Australia would be ill-advised to expect that most commonly cases before the court will be situational couple violence, since the court deals with cases that are atypical. The court only deals with those cases where the parties have been unable to reach a resolution through other means, whether informally or through formal dispute resolution.

While Dutton *et al.* (2010, p. 3) criticise the Kelly and Johnson typology for introducing 'a gender paradigm mindset' into family court decision-making,

empirical research suggests that the typology has functioned more in accordance with a gender symmetry framework. Edna Erez and Tammy King (2000) found in their US study that 'lawyers predominantly viewed the cases that they dealt with as situational violence rather than coercive control' largely reflecting batterers' accounts that violence was limited to a particular incident and was perpetrated equally by both partners. However, this was at odds with the empirical research of Kelly and Johnson who found that most cases before the courts were not situational couple violence but more likely to be coercive control. Absent the qualifications offered by Kelly and Johnson (2008) that such violence may have serious consequences, terms such as 'situational couple violence' risk being interpreted to suggest that the violence is equally perpetrated by each person and not serious.

Thus, in some settings typologies may have the effect of downplaying violence, and reinforcing gender neutral accounts by providing a vocabulary and scientific justification to claims that most violence is situational couple violence. Recognition of the heterogeneity of violence, and that women too sometimes commit violence against intimate partners is important for many reasons. However, such recognition can obscure the structural inequality that underlies gendered violence where it is understood to suggest that gender is not an important focus and may result in political vulnerability for feminist activism.

5. Debates about criminalisation

A third area in which there has been a good deal of debate in recent years is related to the use of criminalisation as a strategy in response to gendered violence. Criticism of engagement with the criminal law takes different forms, in different disciplines, countries and contexts. For instance, Elizabeth Bernstein (2012) and Janet Halley (2006) each have used the term 'carceral feminism' to critically examine feminist engagement with the criminal law. Bernstein argues that 'feminist campaigns against DV [domestic violence] have not only been coopted, but have been integral ingredients to the evolution of criminal justice as an apparatus of control' (Bernstein 2012, p. 235). Within criminology Jonathan Simon (2007, p. 106) has argued that feminist advocacy and crime victims' movements, disconnected from civil rights, have contributed to 'the victim as idealized political subject' which legislators favour through 'vengeance and ritualized rage over crime prevention and fear reduction'.

I share some of some of these concerns but worry that these arguments are too over-arching and risk deflecting concern from debating the key issues, such as how best to increase women's options, and those of other marginalised groups, for living safely and for enjoying full social, economic and political participation. They may undermine gains from feminist research and advocacy that promotes women's full participation. They may also contribute to a context in which gender neutral accounts have added traction.

My argument is not to defend an over reliance on the criminal law, nor to resist well placed criticism that feminist interventions have at times been poorly targeted, inattentive to the needs of marginalised groups, and reinforced race and class privilege and heteronormativity. As a criminologist I know too well the limits of - and the damage wrought by - over-criminalisation and incarceration. But it is to argue for a more nuanced debate and understanding that does not over-generalise, nor gloss over the complexities and to look at what is happening in specific settings and contexts.

Much of this debate has been centred on the USA. However, the different political context for feminist activism regarding gendered violence in different settings needs to be recognised. For instance, in Canada (Rosenberg 2008) and Australia (Murray and Powell 2008) the state has been seen as having an obligation to promote women's equality. Those countries have had social welfare safety nets, feminist advocates within government, and funding of feminist service providers in women's

health centres, sexual assault services and women's refuges. Feminist engagement with the state has not been narrowly focused on extending criminalization, although I readily acknowledge that has also occurred. However, it is true that in Canada (Mosher 2010) and more recently in Australia, conservative governments have made substantial cuts to the funding of women's services motivated in part by financial stringency but also by an ideological commitment to mainstreaming services.

These accounts of 'carceral feminism' often seem to describe feminist movements and campaigns in singular ways, and to provide what are sometimes simplistic, unrecognisable depictions that gloss over the variety and complexity of strategic interventions by feminist actors. They also accord too much influence to the feminist movement while eliding other developments that help explain the shift to a greater reliance on criminal justice responses to violence against women and others, such as neoliberalism and popular punitivism (O'Malley 2008). Lise Gotell (2015) has offered a detailed and nuanced examination of these issues as they pertain to sexual violence, especially in Canada. Shifts in the resort to criminalisation are not specific to feminist campaigns against gendered violence but are a feature of a more punitive turn across a range of domains and in criminal justice more generally. Feminist advocacy is not reducible to a narrow reliance on criminal law; and where the criminal law has been a focus, feminist advocacy has not necessarily been aligned with a more punitive approach. In the context of sexual assault reforms in Canada and Australia, one focus has been on a more communicative model of consent (Gotell 2015). In homicide law reform, improving prospects for women's self defence cases has attracted significant feminist attention (Sheehy 2013). Thus, in reflecting critically on criminalisation strategies, there is a risk that the resort to terms such as 'carceral feminism' detracts from more complex, multi-layered accounts of feminist engagement that also recognise local specificity.

It is valuable to focus on the way in which neo-liberalism has shaped the context in which these debates play out. Neo-liberalism and associated law and order politics profoundly shape how law reform and activist interventions and demands are interpreted and given effect (O'Malley 2008). However, while neo-liberal features such as the valorisation of markets, the reframing of citizens as consumers, the promotion of individualism, and the withdrawal of social services and welfare have been experienced to a greater or lesser extent in many countries, neo-liberalism is not monolithic and plays out differently in different contexts. For instance, Karen Rosenberg (2008) found that the different ways in which neo-liberalism played out in the US state of Washington and the nearby Canadian province of British Columbia helped explain different responses to violence against women in those locations.

Feminist reflection and debate about the resort to criminalisation strategies (Dobash and Dobash 1992, p. 209, Snider 1998) and what Carol Smart described as 'the siren call of law' (Smart 1989, p. 160) is longstanding, however, renewed attention to these issues is particularly necessary in an age of mass incarceration. In the book *Arrested Justice*, Beth Richie (2012; see also Bumiller 2008) provides a careful, intersectional account of the impact of gendered violence and criminalisation strategies on Black American women and their communities at a time when the US has shockingly high rates of imprisonment of women and men, especially minorities (Pew Charitable Trusts 2008). As she demonstrates, in contrast to critics who deploy the term carceral feminism, critical reflection on the place of criminalisation in response to gendered violence is possible in constructive ways that do not negate feminist knowledge nor offer support for gender neutral approaches. Instead Richie calls for greater attention to Black feminist theory in the pursuit of social justice (Richie 2012).

6. Conclusion

Over time feminist theory and research has developed a more complex approach to gender relations and a more differentiated understanding of gendered violence. Scholarly debates have been productive in refining concepts and applying these ideas in new ways. However, as the debates reviewed in this paper demonstrate, local politics and specific contexts shape the ways in which developments in conceptualising gendered violence and new empirical evidence are received and interpreted. To the extent that these developments are understood to de-centre gender, they may generate a level of political vulnerability, especially in those places and contexts where gender neutrality has traction or where policy approaches are not gender sensitive. If gender is seen as less central, the very complexity of gendered relations – for instance, as intersectional, fluid, relational, situated, performative – along with insights about the manner in which institutions and practices are gendered and gendering, may be set aside or lost. In the gap that remains, an older, simpler version of gender as a fixed, individual level construct or variable is likely to prevail along with a gender neutral account of violence.

As the UN Special Rapporteur on Violence Against Women has argued, gender neutral frameworks ‘tend to result in a depoliticized or diluted discourse, which abandons the transformative agenda’ that underpins work towards women’s substantive equality (Manjoo 2014, para 52). Recovering a feminist conception of gendered violence, with its emphasis on structural inequalities faced by women and girls, offers one way to counter the conceptual and political limitations offered by gender neutral accounts of violence. A concept of gendered violence infused with insights drawn from critically engaging with intersectionality provides conceptual and political tools for researchers and activists and a focus for coalition building, consistent with that transformative agenda.

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