



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

Paper to the Stockholm Criminology Conference, June 2017.

Sandra Walklate (Monash and Liverpool University)

Kate Fitz-Gibbon (Monash University)


Jude McCulloch (Monash University)



Background



- Recourse to the law as a means of responding to intimate partner violence is highly contested
- That such policy responses travel the globe is also highly contested (Goodmark 2015)
- Yet the law remains as source of symbolism for many engaged with the feminist movement.
- One beacon of such symbolism is found in the concept of coercive control (inter alia Stark 2007) and the translation of this concept into the legal framework of England and Wales in December 2015.



Purpose of this paper

- To situate this particular policy response within its particular context
- To ask whether a concept derived from therapy be translated into a legal category.
- To reflect upon the unintended consequences of such a legal category.
- To consider whether or not framing women's experiences as 'coercive control' deliver justice.

This paper is one of a forthcoming Special Issue of Criminology and Criminal Justice edited by Kate Fitz-Gibbon, Jude McCulloch and Sandra Walklate: Is Coercive Control the Answer? (publication date 2018)



Context



- ▶ Since the early 1990s responding to intimate partner violence has move through a number of phases from positive arrest stance, to specialist domestic violence units, to a generic integrated policy response. (Walklate 2008)
- ▶ This has become an increasingly complex response including different kinds of violence(s) for example, female genital mutilation, stalking etc.
- ▶ Yet despite all this activity policies and practices are still failing women and indeed some men (see for the U.K. HMIC, 2014, 2015).
- ▶ Moreover the number of women murdered every year by their intimate (current or former) partners has remained constant (Brennan, 2016).

Coercive Control

- ▶ Stark (2007: 204) suggests:

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

- ▶). Section 76 of the Serious Crime Act 2015 states:

A person (A) commits an offence [of coercive control] if— a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive, (b) At the time of the behaviour, A and B are personally connected, (c) The behaviour has a serious effect on B, and (d) A knows or ought to know that the behaviour will have a serious effect on B.

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

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



Can therapy become law?

1. How to render coercion actionable in law.

Hanna (2009: 1468) suggests, 'the law forces the question of illegal coercion into a yes or no answer. The line between free choice and coercion gets drawn somewhere—and you are either coerced or not'.

2. Coercion and choice.


Kuennan (2013: 6) This presumption of involuntariness, when coupled with the practical challenges of measuring the impact of coercion, poses an enormous risk to victim autonomy.

3. What about love (Kuennan 2014): how to draw a line between abusive and non-abusive relationships?



Unintended consequences?

- From therapy to practice: the law requires victim engagement: women's reluctance is well documented
- Demands on police officers to see beyond the physical
- Can coercive control be reduced to a risk factor?
- Padfield (2016: 1) suggests, the new offence 'simply increases the difficulties facing police and prosecutors when deciding what charge or what charges to lay.'
- Distracts from other already existing options civil and criminal
- Fundamentally suffers from conceptual failure (Lewis and Green 1978)



Conclusion: imagining law differently

The purpose here is not to deny the value of coercive control as an explanatory concept but to ask questions about its efficacy as a legal one.

Other ways of delivering justice:

1. Hudson (2003) justice as discursive, relational and reflective. See Douglas (2008)
2. Recognising violence as ordinary and carries responsibilities for all of us.

Both require decoupling from the symbolic power of the law and reconnecting with ordinary lives.



References

Brennan D (2016) Femicide Census Profiles of Women Killed by Men: Redefining an Isolated Incident. London: Women's Aid.

Douglas H (2008) The criminal law's response to domestic violence: what's going on? Sydney Law Review 30(3): 439-69.

Hanna C (2009) The paradox of progress: translating Evan Stark's coercive control into legal doctrine for abused women Violence against Women 15(12): 1458-1476

Her Majesty's Inspectorate Constabulary (HMIC) (2014) Everyone's business: improving the police response to domestic abuse. London: HMIC.

Her Majesty's Inspectorate Constabulary (HMIC) (2015) Increasingly everybody's business. London: HMIC.

Home Office (2015) Controlling or coercive behaviour in an intimate or family relationship: statutory guidance framework. London: Home Office.

Hudson B (2003) Justice in the Risk Society. London: Sage.

Kuennan T (2013) Analyzing the impact of coercion on domestic violence victims: how much is too much?. Berkeley Journal of Gender, Law & Justice 22(1): 2-30.

Kuennan T (2014) Love matters. Arizona Law Review 56(4): 977-1015.

Lewis R and Greene JR (1978) Implementation evaluation: a future direction in project evaluation. Journal of Criminal Justice 6(2): 167-176.

Padfield N (2016) Editorial: controlling or coercive behaviour in an intimate or family relationship. Criminal Law Review 3: 149-151.

Walklate S (2008) What is to be done about violence against women? British Journal of Criminology 48(1): 39-54.