

Social Exclusion through Legal Naming Events:

The case study of violence against women by male partners

By
Natalie Ohana

*Submitted in Accordance with the Requirements for the
degree of Doctor of Philosophy*

Faculty of Laws
University College London
August 2015

The following image was created in an art workshop I designed and held in a London refuge for women fleeing domestic violence. I conducted the workshop with Sue Challis, a community-based artist. Using visual art and dialogue as mediums of expression, the workshop aimed to reveal the subtle and multi-layered perceptions held by women in times of trauma and crisis, towards the legal system.

Legal Translation

Large-scale imprint of a legal affidavit, collage, chalk pastels on card.



The image is of a cut and covered legal affidavit. It was made by J to recreate the legal affidavit submitted to court by her lawyer in legal proceedings regarding her partner's violence against her. Although the lawyer wrote the affidavit on the basis of a summary of facts that J had written in her own words, J felt that, in the process of translating her words into legal language, what was meaningful to her was erased and that the final affidavit no longer represented her own reality of violence.

This dissertation is dedicated to the women whom I have had the privilege to represent during the course of my work as a lawyer in Woman to Woman – The Jerusalem Refuge for Women Fleeing Domestic Violence, between 2004 and 2010.

You have taught me the meaning of human strength.

I, Natalie Ohana confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.

Abstract

My research investigates the relationship between mechanisms of legal-knowledge production and the meanings accepted or excluded by legal discourse. I explore this relationship by focusing on the act of legal naming: the act of granting a legal name to a social phenomenon or constructing the legal meaning of a name already given. I investigate how mechanisms of knowledge production, operated in legal naming events, influence the legal name produced and legal meaning constructed.

Through researching this relationship, I aim to reveal the nature of the act of legal naming as social struggle between meanings that compete to become accepted by legal discourse. Through revealing the struggle nature of legal naming acts, I examine the ability of women who are the subjects of legal proceedings to take part in the process of constructing legal meaning, and on the ability of actors from non-legal disciplines to alter legal meanings according to their disciplinary knowledge.

I am researching this question by analysing the legal naming of violence against women by male partners as a case study. I analyse 67 judgments given by courts in England between 1972 and 2012, in which courts named violence against women by male partners or constructed, altered or reinforced the meanings of the name granted.

Through the research, I aim to contribute to feminist legal scholarship which revealed the gap between the way women experience domestic violence and the way it is legally represented by revealing the role of discourse mechanisms in constructing and enforcing legal meanings. Furthermore, I aim to be able to contribute to socio-legal thought on how legal meanings are formed and become accepted and how other meanings are dismissed or marginalised.

Table of Contents

Abstract.....	5
Table of Contents	6
Table of Cases.....	9
Acknowledgements	14
Introduction.....	16
Chapter I: Theoretical Framework.....	21
Part I: Social Power, Knowledge and Naming	21
Part II: Recognition and representation	26
Luce Irigaray - The invisible system of representation	28
Judith Butler – two levels of representation in one system	31
Pierre Bourdieu- Habitus	34
Part III: Disciplines	40
Act of naming conducted by a discipline.....	40
Dynamics between disciplines.....	43
Law as a naming discipline.....	46
Part IV: Powerful and diverse effects of naming	52
Naming as an act of formation and creation	52
The destroying and eliminating effects of naming	53
Naming as an act of domination	54
Naming as a device for social resistance and liberation struggle	55
The act of naming separates the named element from the bigger entirety to which it belongs	57
Naming as remembering and as forgetting	58
Conclusion.....	60
Chapter II: Methodology	62
Part I: Selection of case study	62
Part II: Method of Analysis.....	64
Fundamental Concepts.....	64
History and discontinuity:	64
Statement and discourse	66
Tools of analysis	70
1. Classification	70
2. Continuity	71

3. Translation.....	72
Selection of judgments.....	74
Conclusion.....	75
Chapter III: Multidisciplinary Reading	77
Introduction	77
Part I: Social landscape at the end of 1960s and beginning of 1970s	77
Part II: Sociology.....	79
Meaning of violence against women by male partners during the ‘formation stage’	79
The formation stage: The meaning of violence against women by male partners according to family-violence texts	81
The formation stage: The meaning of domestic violence according to feminist scholarship texts	84
Meanings of violence against women by male partners after formation stage.....	89
Domestic violence is physical violence	90
Domestic violence as several types of behaviour.....	92
Domestic violence is coercive control	93
Part III: The Mental Health Field	103
Women’s reactions to domestic violence as the defining elements of the phenomenon	103
Domestic violence is episodes of physical, sexual and psychological violence.....	111
Domestic violence is coercive control	113
Conclusion.....	125
Chapter IV: Analysis of Empirical Data	128
Part I: Division and Classification	130
Dominant Discourse	130
The centrality of episodes to the legal meaning of domestic violence: scattering a violent relationship into isolated episodes.....	131
Specifics of episodes perceived as bearing crucial legal significance	135
Decontextualization.....	138
Assessment of severity of violent relationship according to specifics of episodes.....	141
Addressing all relevant legal questions of the judgment – conduct, harm and risk - according to the specifics of separate episodes.....	142
Second layer of classification: forms of violence- physical, sexual and emotional violence	147
Hierarchy between forms of violence	153
The episodic understanding of domestic violence governs differences of opinion regarding the meaning of domestic violence.....	154
Signs of discontinuity	156
Understanding domestic violence as an entirety	157

Relevant context	161
Assessing legal questions	163
Conclusion	166
Part II: Continuity	169
Dominant discourse	169
Domestic violence is understood as the infliction of physical injury in intimate relationships	170
The concept of ‘violence’	174
Continuity mechanism responsible for the splitting of legal discourse	181
Hierarchizing between degrees of physical violence	190
The acknowledged harm	192
Signs of Discontinuity	196
Conclusion	205
Part III: Translation	209
Translation I: coercive control presented by women subjects of legal procedures	210
Translation II – coercive control presented by non-legal professionals	221
Conclusion	233
Conclusion	236
Bibliography	253

Table of Cases

Case name	Page number
A (Capacity: Refusal of Contraception) [2010] EWHC 1549 (Fam), [2011] Fam. 61.	185
A [2010] EWCA Crim 2913.	216
Adam Shipton [2001] EWCA Crim 2840.	137
AG (India) v Secretary of State for the Home Department [2007] EWCA Civ 1534.	149, 185, 199
Ahluwalia (Kiranjit) [1992] 4 All ER 889 (CA).	134, 177
Alder (Marcus) [2009] EWCA Crim 1995.	165
Ali Abbass Khan [2011] EWCA Crim 2782.	140, 145, 193
Amanda Jane Grant v Matthew John James (CA Civ, 16 December 1992).	132, 144, 191
AS (Pakistan) v Secretary of State for the Home Department [2007] EWCA Civ 703.	137, 171
Ashbourne (Nigel Ian) [2012] EWCA Crim 1092.	215
Attorney-General's Reference No 12 of 2009 [2009] EWCA Crim 1438, [2010] 1 Cr App R (S) 54.	225
B v B (Domestic Violence: Jurisdiction) [1978] Fam. 26 (CA).	131, 161
Bentall (Andrew Peter) [2007] EWCA Crim	141, 163, 201, 227.

879.	
Broxbourne BC Ex p. Willmoth (1989) 21 H.L.R. 415 (HC QB).	132, 191
Burstow [1997] 1 Cr. App. R. 144 (CA (Civil Division)).	161
D [2006] EWCA Crim 1139, [2006] 2 Cr. App. R. 24.	148, 158
Davis v Johnson [1978] 2 WLR 182 (CA).	170, 179, 190
Davis v Johnson [1979] AC 264 (HL).	171, 187, 190, 196
DF [2011] EWCA Crim 2168.	216
DT v LBT (Abduction: Domestic Abuse) [2010] EWHC 3177 (Fam); [2011] 1 F.L.R. 1215.	134, 150, 151
E (Children) (Abduction: Custody Appeal) Re [2011] UKSC 27; [2012] 1 A.C. 144.	186, 217, 218
Elam David Winter [2005] EWCA Crim 3385.	159
F-K (A Child) (Contact: Departure from Evidence), Re [2005] EWCA Civ 155; [2005] 1 F.C.R. 388.	181, 223
██ ████████████████████	████████
H (A Child) (Contact: Domestic Violence) Re [2005] EWCA Civ 1404, [2006] 1 F.L.R. 943.	133, 172

H (A Child) (Interim Care Order) Re [2002] EWCA Civ 1932, [2003] 1 FCR 350.	224
Horner v Horner [1982] Fam. 90 (CA Civ).	144, 181, 182, 188, 210
Ireland (Robert Matthew), Burstow (Anthony Christopher) [1998] A.C. 147 (HL).	160, 188
Jacob (Brenda) (CA, 03 May 2000).	140, 172
Kathleen Hobson [1998] 1 Cr. App. R. 31 (CA).	212
Khan (Uzma) [2009] EWCA Crim 2, [2009] 1 W.L.R. 2036.	135, 149, 177
Khorasandjian v Bush [1993] Q.B. 727 (CA Civ).	158, 159
L (A Child) (Contact: Domestic Violence) Re, V (A Child) Re, M (A Child) Re, H (Children) Re [2001] Fam 260 (CA).	176
Lewis (A. H.) v Lewis (R. W.) [1978] Fam 60 (CA).	143
Locke (Simon Mark) [2012] EWHC 2354 (QB).	161, 189, 215
MA [2012] EWCA Crim 1646.	226
Mark Cockburn [2009] EWCA Crim 600.	192
Miller (Darren) [2007] EWCA Crim 2852.	161, 201
Mitchell (Gary Francis) [2008] EWCA Crim 1351.	161, 182, 213
Moses Brown [2010] EWCA Crim 1103.	231, 232, 233

Murray (Robert Owen) [2006] EWCA Crim 3159.	135, 164, 200
Myles v Myles (CA, 14 October 1980).	132
O-S (Children: Care Order), Re [2001] EWCA Civ 2039; [2002] 1 F.C.R. 689.	176
O'Grady (Ricky Stephen) [2006] EWCA Crim 2216.	139
Parker (Kevin David) [2009] EWCA Crim 1226, [2010] 1 Cr. App. R. (S.) 32.	193
Parra v Rones [1986] Fam. Law 262.	183
Pithiya (Yatin) [2010] EWCA Crim 1766.	177, 230, 231
Pressdee (Robert Christopher) [2007] EWCA Crim 1289, [2008] 1 Cr. App. R. (S.) 25.	163, 201
R (Breach of Order) [2001] EWCA Civ 2098.	148, 180, 184, 189
R v London Borough of Ealing, Lambert v London Borough of Ealing Wyre Borough Council (1981-82) 2 H.L.R. 45 (HC (QB)).	175
R. (on the application of Balakoochi) v Secretary of State for the Home Department [2012] EWHC 1439 (Admin).	199, 218, 219, 220
Randle (Steven John) [2007] EWCA Crim 957 (CA Crim).	146
Raphael (Herbert) (1985) 7 Cr. App. R. (S.) 275 (CA Crim).	139, 176
Regina v Stephen Williams [2004] EWCA	139, 146, 192, 201

Crim 660.	
Rennick v Rennick [1977] 1 W.L.R. 1455 (CA).	139, 181
S (Minors) Re (CA Civ, 15 July 1988, Case no. 86 D 0024).	172
Said (Riad Mohammed) [2007] EWCA Crim 1932.	200
Shuttleworth-Long (Darren) [2006] EWCA Crim 1931.	214
Spencer v Camacho (1984) 12 HLR. 130 (CA).	175, 182
Stannard v Stannard (CA Civ, 28 November 1989).	136, 171
Thompson (Stuart) [2011] EWCA Crim 3278.	180, 198, 214
Thornton (Sara Elizabeth) (No.1) [1992] 1 All ER 306 (CA).	162, 211, 222
Vikki Tracey Holmes v Craig Creighton Clarke (CA Civ, 06 April 1990).	136, 142, 157, 191
Whitaker (Ryan Paul) [2009] EWCA Crim 1502.	141, 142, 180
Yemshaw v Hounslow (Court of Appeal) [2009] EWCA Civ 1543, [2010] H.L.R. 23.	155, 176
Yemshaw v Hounslow (Supreme Court) [2011] UKSC 3, [2011], 1 W.L.R. 433.	145, 151, 152, 153, 154, 155, 173, 178, 195, 197, 202, 203, 204
Zelder (Mitchell) [2009] EWCA Crim 2958.	140, 145, 229, 229

Acknowledgements

My dissertation is a culmination of a meaningful, exciting and enriching – but also difficult and challenging – five-year journey. I wish to thank sincerely the people who surrounded me throughout this time, and enabled me to not only reach this stage of submission, but also to make this period one of real personal growth.

I would first like to express my deepest gratitude to my supervisors. Prof. Alison Diduck, who has been my foremost source of academic guidance and inspiration and who directed me rigorously and thoughtfully. I am not less grateful for Alison's emotional support without which I am certain that my journey would have been many times more difficult. I feel privileged to have been supervised also by Prof. Michael Freeman, whose encouragement set me on this path and who has been an inspiring source of limitless knowledge.

My special thanks go to Prof. Jane Holder, my PhD Research Program convenor and public engagement mentor, who encouraged me continuously, placed faith in my ideas and confidence in my abilities.

The Faculty of Laws in UCL provided me with unfailing support. I also appreciate the backing of the Public Engagement Unit in UCL throughout the PhD period.

This research would not have been possible without the Graduate Research Scholarship (GRS) and the Overseas Research Scholarship (ORS) I received from UCL, The Avi Foundation Bursary and The Goodenough College Bursary. I am truly grateful for this support.

I extend my sincere gratitude to the people in Israel who guided me academically, whose efforts enabled me to arrive at UCL and who were involved in the PhD process throughout. Dr Miriam Markovitz-Bitton from Bar-Ilan University, my inspiring mentor, advisor and ally, and Dr Yifat Bitton, a role model and an enthusiastic

advocate of my work. In addition, I am thankful to the Hebrew University in Jerusalem for providing me with a rigorous intellectual foundation.

Woman to Woman – The Jerusalem Refuge for Women Fleeing Domestic Violence, where I worked as a lawyer between 2004 and 2010, will always have a special and warm place in my heart. The refuge taught me the value of being part of a multidisciplinary team and provided me with a rare space of clarity from which I shaped my perspectives on the relationship between law and society.

I feel tremendously grateful for an added amazing gift that the move from Jerusalem to London has brought with it: new true friendships and the strengthening of family connections with members of my family who live in the UK. I felt embraced and supported by close friends and family from both Israel and the UK throughout the PhD years. A special thank you to my much-loved cousin Charlie Carrick, for dedicating many hours to proofreading this dissertation.

I want to thank my mother for her continuous help, encouragement and support. I know that my father, who sadly passed away when I was in the middle of writing the dissertation, would have been very proud to see me fulfil this dream.

Finally, my PhD marked a parallel journey for my beloved children, Erran and Adi, who moved from Jerusalem to London at ages 5 and 3. Through them I learn how to recognize that which is meaningful and to separate it from the insignificant. They are the rays of light that shine in my heart at all times.

Introduction

In my research I examine the relationship between mechanisms of legal-knowledge production and the resulting meanings accepted or excluded by legal discourse. I aim to reveal how the operations and effects of these mechanisms monitor which meanings would become legal knowledge and which would be dismissed, and how they operate to control and order legal discourse.

Through that investigation, I look at the ability of non-legal actors – women who are the subjects of procedures and professionals from different disciplines – to participate in a meaningful way in those events: whether women are able to render legal discourse reflective of their own reality and whether professionals are able to alter legal meanings in a way that will reflect their own disciplinary knowledge.

I explore the relationship between discourse mechanisms and accepted legal knowledge by focusing on the act of legal naming: the granting of a legal name to a social phenomenon or constructing the legal meaning of a name already given. I investigate how mechanisms of knowledge production operating in legal naming events, influence the legal name produced and the legal meaning constructed.

The act of naming is an act of power. To name is to create, to recognize, to give life to the named element, to make it real. On the other hand, to name a phenomenon is also to conceal, erase and render other elements forgotten or invisible. A name is able to define, transform, legitimize and delegitimize the named element, be it an object, a subject or a social phenomenon.

A name is significant not only to the present, revealing the current power relations that produced it, but also to the past and the future. Every name is given on the basis of what is already named, and is therefore rooted in the past whilst also positioned to direct the names that will follow it in the future.

Naming is never a singular or final act. Through numerous moments in time and space and as long as the existence of the element is acknowledged, its name can always be reshaped, disappeared, recreated and scattered. Socially accepted names are foundational bricks in the creation of accepted knowledge, around which disciplines, institutions, professions and policies are formed.

Naming events - those occasions on which acts of naming take place - are political by their nature. They are encounters between different social actors, who may or may not be aware of the power struggle in which they are engaged, to have their preferred name accepted by society. As products of struggle, names can go through ruptures and thresholds, shifts and discontinuities and as the balance of power between actors shifts, different names may be produced and accepted.

Legal names are a form of social names. They are distinctive names when compared to names given by other disciplines and actors in society. The legal system is vested with a unique power to produce socially authoritative names, which also become the foundation of legislation and policy. Legal names are thus able to transcend the borders of the legal system itself and construct the meanings accepted by society as a whole .

“Law is the quintessential form of the symbolic power of naming that creates the things named.”¹

Legal naming is an act of knowledge production by which a social phenomenon is granted a name accepted by legal discourse. It is also the act of reinforcing, constructing or changing the meaning of a name already accepted by legal discourse. The legal naming act is one through which we can see a struggle between different possible meanings and explore the dynamics of that struggle. The actual effects and operations of monitoring meanings accepted by or excluded from legal discourse are at the core question of this research.

¹ Pierre Bourdieu, ‘The Force of Law: Toward a Sociology of the Juridical Field’ [1986 - 1987] 38 Hastings Law Journal 814, 838.

I explore the relationship between mechanisms of legal knowledge production and accepted or excluded legal meanings by analysing events in which courts in England named, constructed a meaning, altered or strengthened the existing meaning of violence against women by male partners.²

The dissertation includes an introduction, four chapters - theoretical framework, methodology of analysis, multidisciplinary reading, and analysis of judgments - and a conclusion.

The theoretical framework presented in the first chapter is divided into four parts, along the lines of the overall aim of the research. In the first part I discuss the relationship between knowledge, naming and social power and reveal the nature of naming events as struggle. Through revealing the essence of naming events as struggle, I set the ground for my argument that by analysing legal naming events we are able to uncover the operations by which meanings are accepted by or excluded from legal discourse. In the second part, I set a theoretical framework for identifying and recognizing the significance of legal recognition, an element crucial to legal naming events. I concentrate on theories of recognition, where the intangibles of perception, experience and judgment reside. I argue that mechanisms of knowledge production establish the level of recognition: what might be called the legal unconscious. The level of recognition is contrasted with the level of representation-platforms from which one can voice and express her opinion and experience, such as a legal procedure. According to these theories, recognition, covered and invisible, determines what can be voiced and expressed through representation. In order to evaluate one's ability to shape accepted meanings, the impact of both levels – recognition and representation - should be acknowledged. In the third part of Chapter I, I provide a theoretical frame within which to interrogate the extent to which the legal discipline is open or closed to different meanings presented to it by considering

² My research analyses the legal naming of violence against women by male partners. Throughout the research, in order not to repeat the entire sentence many times, I often refer to the same phenomenon by using shorter concepts such as 'domestic violence' or 'domestic violence against women'.

the roles of the disciplines and the dynamics between disciplines in naming events. The last part of the theoretical chapter explores the significance of naming in society. I reveal names as powerful elements in the construction of meanings in society by exploring their varied, contradictory and simultaneous effects.

In the second chapter I present the methodology of analysis. In the first part of this chapter I explain my choice of legal naming of violence against women by male partners as a case study. In the second part, I present the research method, tailored to enable me to analyse the judgments according to the aim of the research. I adopt several central elements from Foucault's archaeological analysis as I find it to be most effective in enabling the revelation of the crucial relationship between discourse mechanisms and the formation of knowledge. I adopt four fundamental concepts from the archaeological analysis into my research method - statement, discourse, history and discontinuity. Through these concepts, I explain my method of analysing sentences within judgments as separate statements rather than accepting judgments as units of discourse that connect sentences to each other. After explaining the fundamental concepts I introduce the three mechanisms of legal knowledge production I adopt as my tools for analysing the statements: classification, continuity and translation. I aim to reveal how these mechanisms operate within the judgments, their dynamics with the level of legal recognition, and their effects in determining which meanings are accepted by or excluded from legal discourse.

In the third chapter I explore the meanings of violence against women by male partners in two fields: sociology and mental health. The purpose of revealing different meanings of violence against women by male partners is dual. The first purpose is to enable me to analyse legal naming events as struggle between possible meanings. By looking at judgments alone, I cannot uncover meanings that were not accepted but can see only the ones that were. In order to reveal legal naming events as struggle I must be aware of other social meanings of violence against women by male partners and reveal whether these meanings were able to penetrate the discourse. By knowing that other possible meanings exist, I can examine how the mechanisms of knowledge production I analyse operated to enable or prevent their participation in the discourse. The second purpose of the multidisciplinary chapter is to provide a reference that will enable me to compare the legal discipline with other disciplines in regard to their

degree of openness or closedness to different surrounding meanings. This degree is relevant for the analysis of the dynamics in legal naming events elaborated on in the third part of the theoretical chapter.

In the fourth chapter, I present the analysis of sentences within judgments. Based on the archaeological analysis, I analyse sentences within judgments as separate statements in order to reveal the discourse to which they belong and its rules. The chapter is divided into three parts, according to the three mechanisms of legal knowledge production: classification, continuity and translation. In each part I reveal the effects of these mechanisms in constructing the meaning of violence against women by male partners accepted by legal discourse and in preventing other meanings from being acknowledged and given legal significance.

In the conclusion, I integrate the different parts of my research and reflect on the main question asked: the relationship between mechanisms of knowledge production and accepted or excluded legal meanings. Through examining this relationship, I aim to be able to shed light on the ability of women who are the subjects of legal proceedings to participate in the process of meaning construction and to shape accepted meanings according to their own realities, as well as on the ability of actors from different disciplines to alter legal meanings to reflect their own disciplinary knowledge.

The goal of my research is twofold: to contribute to socio-legal thought on how legal meanings are formed and become accepted and to reflect upon the effectiveness of legal responses towards women at risk of their male partners' violence in light of the accepted legal meaning and the meanings it excludes.

Chapter I: Theoretical Framework

The theoretical framework is divided into four parts. In the first part I discuss the relationship between knowledge, naming and social power and reveal the nature of naming events as struggle. Through revealing the essence of naming events as struggle, I set the ground for my argument that by analysing them as such we are able to uncover the operations by which meanings are accepted to or excluded from legal discourse. In the second part, I set a theoretical framework for studying the dynamics between the level of legal recognition and discourse mechanisms in legal naming events. In the third part, I provide a theoretical frame within which to interrogate the impact of law as a naming discipline and the impact of the relations between law and other disciplines on legal naming events. In the last part, I explore the significance of naming in society, revealing names to be powerful elements in the construction of social meanings by revealing their varied, contradictory and concurrent effects.

My theoretical framework does not consist of theories applied in their entirety. Rather, I draw upon elements taken from several theories and make connections between them in order to tailor a framework able to analyse the data according to my research questions. I am aware that the elements I chose are derived from theories that differ from each other in significant respects and that if I were to apply the theories in their entirety the application would not be free from tension. However, I was not aiming to find a common ground between theories but to find the research potential embedded in connecting elements of them without being bound to the entire theories to which they belong.

Part I: Social Power, Knowledge and Naming

The social act of naming is symbiotically connected to knowledge and social power; it cannot be understood separately or in isolation from these two elements. Furthermore, the core of the triangular relationship between naming, knowledge, and social power lies in the nature and location of social power.

One analysis of social power views society as being governed by a single, unified sovereign. This analysis is based on the perception that power is exercised only in the sovereign/subject relationship and its image of society portrays power as an actual instrument or mechanism that is centred in one place and is applied in a single direction from that sovereign source towards subjects who lack it.

Foucault attributes this understanding of social power to the theory of sovereignty, which dates from the Middle Ages and which corresponded to social structure until the sixteenth and seventeenth centuries. Foucault claims that this theory is still largely accepted despite the occurrence during the nineteenth century of a crucial phenomenon that changed entirely the face of social power: the emergence of disciplinary power.³

Foucault reveals and analyses *accepted knowledge* as a non-sovereign crucial mechanism around which power is concerted, produced and transmitted in society.⁴ In his analysis, Foucault uncovers how knowledge is enmeshed in social structure, focusing on the relationship between accepted knowledge and the manners in which society is divided and organized. According to this theory, accepted knowledge directs the establishment and existence of social institutions and professions and creates rigid separations between areas of knowledge or disciplines. Social analysis is then based on these borderlines between disciplines. Interdisciplinary analysis is still bound by disciplines and conducted upon the grounds of their separation.

Knowledge, transmitted through language and practice, is formless and can be spread limitlessly and endlessly, transmitted and produced from moment to moment in all social locations, unbound by space and time.⁵

Being conscious of knowledge should not only mean to be aware of its contents but also of its *effects* on social power. One should be aware of the link between accepted

³ Michel Foucault, *Society Must Be Defended, Lectures at the College de France 1975-1976* (David Macey tr, Penguin Books 2003), 34-36.

⁴ .Ibid, 36 – 38.

⁵ Michel Foucault, *The Will to Knowledge, The History of Sexuality: Vol I* (Robert Hurley tr, Penguin Books 1998), 93.

knowledge and the centralisation of power around a 'scientific' discourse.⁶ One should also be aware that the dichotomy known and unknown is ultimately the dichotomy true and false, recognised and invisible, excluded and included.

The crucial power-effect that is attached to knowledge creates a struggle in every location of knowledge production. Therefore, in analysing moments of knowledge production, one can reveal these struggles and the social circumstances and conditions that they uncover. By ascertaining who can speak and who is silenced, what can be said and which speech is forbidden or disregarded, such an analysis reveals the 'winners' and 'losers' in the struggle, the knowledge that was accepted and acceptable and the possibilities of knowledge that were not. Research that uncovers these social struggles through analysing knowledge production is termed a 'genealogy of knowledge' by Foucault.⁷

Genealogical research is in itself an act of social power. It emancipates buried and marginalised knowledge, which is the physical form or image of social actors who propounded it. It renders them "capable of opposition and of struggle against the coercion of a theoretical, unitary, formal and scientific discourse."⁸ By revealing them, genealogical research renders marginalised social actors present, visible and voiced, demanding awareness of their existence.

A genealogy focuses on the hostile encounters between actors who struggle to produce accepted knowledge. It is not engaged with the question of right and wrong but with the links between the meanings that are considered to be right and social power. It questions the perception that accepted knowledge is a unitary scientific body and shifts attention to the knowledge possibilities that were not accepted in the

⁶ Michel Foucault, *Power/Knowledge Selected Interviews and Other Writings In 1972-1977* (Colin Gordon ed, Knopf Doubleday Publishing Group 1980): "When I was studying during the early 1950s, one of the great problems that arose was that of the political status of science and the ideological functions which it could serve... a whole number of interesting questions were provoked. These can all be summed up in two words: power and knowledge". 106.

⁷ Foucault, 'Society Must Be Defended, Lectures at the College de France 1975-1976', (n 3), 8-12.

⁸ Foucault, 'Power/Knowledge Selected Interviews and Other Writings In 1972-1977', (n 6), 85.

struggle; that were considered ‘anti-sciences’, disqualified and discontinuous.⁹ Foucault terms these ‘subjugated knowledges’.

“It is surely the following kinds of questions that would need to be posed: what types of knowledge do you want to disqualify in the very instant of your demand: ‘Is it a science’? Which speaking, discoursing subjects...do you then want to ‘diminish’ when you say: ‘I who conduct this discourse am conducting a scientific discourse, and I am a scientist’?”¹⁰

‘Subjugated knowledge’ is the term Foucault uses to name buried, marginalized and silenced knowledge. He typologises two categories of subjugated knowledge: historical and disqualified. Historical knowledge is content that was present at the time of struggle but was systematically concealed. Disqualified knowledge is content that is referred to as naïve, ‘primitive’, popular, beneath the required level of scientificity and, therefore, inadequate. Both types of knowledge, once revealed, have the potential to uncover struggles over discursive meaning.

As both a reflection of power balance in society and a product of struggle, the function of knowledge in society is contradictory. In reflecting the balance of power, it maintains and reinforces that balance. On the other hand, as a product of struggle, it is never completely static or stable. Through genealogical research, threshold, marginalized and silenced knowledge is uncovered and repositioned at the centre of struggle. The mere act of uncovering hidden knowledge renders it heard and therefore changes its chances in the recreated struggle. Through knowledge, therefore, power balance in society can be both maintained and disturbed; reinforced and changed.

Whilst the *genealogy* is a type of research – a research that reveals social struggle through the analysis of knowledge production, the *archaeological analysis*, on which

⁹ Ibid, 83.

¹⁰ Ibid, 85.

I will expand in Chapter II, is the research method with which the genealogy is uncovered.¹¹

What is the role of a name in the relationship between social power and knowledge and in a genealogical research?

I see a name as an expression of the symbiotic relationship between knowledge and social power. A name can be described as the *product*, *signature* or *mark* of knowledge. The struggle over naming is located inside the struggle over knowledge. Naming is dependent on the accepted knowledge that creates it. However, the name is capable of producing new knowledge too and is not only produced by it. Further knowledge will always be dependent on existing names that direct its channels of production. In this sense a name is not only the product but also the brick upon which further knowledge is created.

These continuous and dynamic relationships between social power, knowledge and naming form the foundation of Foucault's main argument that social power cannot be perceived as being located solely in the central, identified space of the sovereign but must be acknowledged as omnipresent, able to spread and manifest through accepted knowledge, which is produced in endless conduits that can be observed only if one is aware of their existence.¹²

Thus, the relationship between social power, knowledge and naming does not take a single direction but circulates. All three elements are influenced by and influence each other; they are produced by and produce each other. They allow and cause each other's change, a process that continues to shape the dynamics of their relationship.

My research therefore focuses on the struggle over a name, remaining attuned to the symbiotic relationship between social power, knowledge and naming in the process of law's naming of violence against women by male partners.

¹¹ Ibid, 85.

¹² Foucault, 'The Will to Knowledge, The History of Sexuality: Vol 1', (n 5) 93 -102.

Part II: Recognition and representation

Recognition is the system that governs the rules that regulate the spaces of speech and determine which subjects, objects and social phenomena exist and which meanings they bear. I would like to shift the focus of attention from platforms of speech, such as legal procedures, to the sphere of recognition, where the intangibles of perception, experience and judgment are at play. The capacity of a person to change the accepted discourse, liberate subjugated groups, and render invisible identities and social phenomena visible, is dependent on her awareness of and ability to question and shift the meanings embedded in recognition.

Recognition can be defined as the deepest and most foundational layer of perception. The link between recognition and perception is illustrated in Genesis, as God commands the woman and man: “You may freely eat of every tree of the garden; but of the tree of the knowledge of good and bad you shall not eat, for in the day that you eat of it you shall die.”¹³ When they then eat the fruit, God inflicts on them, on humankind, relentless punishment: “To the woman he said, ‘I will greatly increase your pangs in childbearing; in pain you shall bring forth children, yet your desire shall be for your husband, and he shall rule over you.’”¹⁴ And to the man God says, “cursed is the ground because of you; in toil you shall eat of it all the days of your life; thorns and thistles it shall bring forth for you; and you shall eat the plants of the field. By the sweat of your face you shall eat bread until you return to the ground, for out of it you were taken; you are dust, and to dust you shall return.”¹⁵

When I studied this story as a child in primary school and high school in Israel, the tree was referred to as the ‘tree of knowledge’ and not as the ‘tree of knowledge of good and bad’. I remember being unable to understand why God should react with such rage to the eating of fruit that ostensibly lead to wisdom, understanding and knowledge and why such severe punishments should be inflicted upon humankind as a consequence.

¹³ *Torah*, Genesis 2: 9.

¹⁴ *Ibid*, 3: 16.

¹⁵ *Ibid*, 3: 17-19.

I listened to a recorded interview from 1986 with Professor Yeshaayahu Leibowitz¹⁶ in which he referred to the relation between the tree of knowledge of good and bad and human beings as entities of wisdom.¹⁷ Leibowitz presented the Rambam's¹⁸ interpretation of that meaningful text, which proposes that the perception of the world according to categories of good and bad –the outcome of eating the fruit – disrupted and damaged profoundly the wisdom of woman and man. Prior to perceiving the world according to these categories humans were entities of pure wisdom. After eating, their wisdom became impaired: “perception is not part of wisdom... perceiving the world according to these categories is a malfunction”.¹⁹

Categories of perception, all of which are derived from the division between good and bad, are embedded deeply in our frameworks of recognition and perceived as objective truths despite being human creations and constructs. Social categories such as culture, religion, gender, class and race were all created and are perceived and evaluated according to these deepest, embedded categories of perception.

Recognition is deeply embedded in our consciousness. It is almost impossible to identify the original layers of recognition, the grounds upon which countless additional layers were formed. However, one is able to examine the categories of perception which underlie every accepted or forbidden speech and render it possible or impossible to be voiced, and to reveal them.

I focus on three theorists who differ from each other in different respects but in my reading of their texts I found a shared ground between them. They acknowledge, each one in its own way, the existence of a level of recognition – a crucial element that underlies the visible layer of representation – that is foundational to one's ability to

¹⁶ Prof. Yeshaayahu Leibowitz: 1903 Riga- 1994 Jerusalem. An Israeli-Jewish-Orthodox thinker, a natural-sciences scientist mainly in biochemistry, professor in the Hebrew University, known as a sharp critic of Israeli society.

¹⁷ *Genesis Encounters* (1986). , http://www.23tv.co.il/1932-he/mefgasy_beresit.aspx, accessed 3.8.15.

¹⁸ Rabbi Moses ben-Maimon: 1135, Cordoba- 1204, Tiberius. One of the most important Torah scholars, a social leader, physician and philosopher.

¹⁹ Leibowitz, *Genesis Encounters* (n 17).

participate in, maintain or change discourse. These theorists observe that the level of recognition is a social construct and is the foundation upon which social divisions are created, maintained and strengthened. The three theorists upon whose work I draw are Luce Irigaray, Judith Butler and Pierre Bourdieu.

Luce Irigaray - The invisible system of representation

Irigaray, a psychoanalyst and philosopher, was engaged with the question of whether one could clearly define women's identity. In answering that question, Irigaray created a fundamental division between two systems of representation: the visible and the invisible. The visible consists of available tools, like language, with which subjects and objects are represented. The invisible system is the underlying layer that governs and constructs the visible layer. It is the underlying system that creates and enforces the rules that determine what can be said.

Although Irigaray's theory relates to her analysis of women's ability to define their identity, her differentiation between visible and invisible systems of representation is, in my view, a fundamental step towards granting visibility and presence to subjects, objects and social phenomena.

Irigaray perceives the invisible system of representation as the most foundational structure upon which perception in society is built.²⁰ It is the embedded set of categories of perception and judgment, that determines whether and in which way society can be named and understood. Every act of construction of a subject, object or social phenomenon is bound and limited by this mental structure.

Irigaray argues that this foundational system is masculine at its roots and has shaped the visible system of representation in a way that renders it impossible to use for the representation of women's identity. The set of tools that one can use in order to represent subjects is incapable of describing and defining the identity of women, relying as it does on invisible fundamentals of masculinity. A whole "rethinking,

²⁰ Luce Irigaray, *The Irigaray Reader* (Blackwell Publishers 1991), 14-15.

transforming centuries of socio - cultural values”²¹ is needed in order to adapt the invisible system in a way that will render the visible system capable of reflecting and representing the identity and realities of women.

Irigaray uses the word *absence* in describing women in the invisible system of representation.²² She understands that not only are women absent from that system as subjects but that the categories that create and articulate subjects are inadequate to allow them to exist.²³

Language is Irigaray’s main site of research. She argues that language cannot serve as a tool with which to define identities or social phenomena because it is shaped according to the barriers on representation positioned by the invisible system. Therefore, in order to use language to make visible an invisible subject, object or social phenomenon, one must first identify the impact and operations of the invisible system on language.²⁴

The outcome of the absence of women - both as subjects and from categories of perception - from the invisible system of representation, is that women’s identity is constructed in a fragmented and scattered way.²⁵ Importantly, even when their voice is heard in the visible system, it is a reflection of their absence from the invisible system, and therefore their own voice cannot define their own identity.

“For the work of sexual difference to take place, a revolution in thought and ethics is needed. We must reinterpret the whole relationship between the subject and discourse, the subject and the world, the subject and the cosmic, the microcosmic and the macrocosmic.”²⁶

²¹ Ibid, 31.

²² Ibid, 14-15.

²³ Ibid, 15.

²⁴ Judith Butler, *Gender Trouble* (Routledge 1990), 14-15.

²⁵ Irigaray, ‘The Irigaray Reader’ (n. 20), 3.

²⁶ Ibid, 10.

The division between the invisible and visible systems of representation is well demonstrated by a comparison of the feminist critique of Irigaray and Simone De Beauvoir.

De Beauvoir's account of the history and dynamics of gender relations accepts and draws upon Hegel's theory on the development of self-consciousness.²⁷ According to Hegel, the foundational defining characteristic of self-consciousness is the relationship between Self and Other, which he perceives as the primordial human experience of the world. The creation of Self and Other in consciousness is the outcome of social struggle between opposing forces, a process which Hegel describes through the relationship between master and slave.²⁸ On that basis, De Beauvoir conducted an analysis of the position of women in society and demonstrated how throughout history the same dialectic existed between men, the Self, and women, the Other.²⁹

De Beauvoir does not question Hegel's statement that the categorization between Self and Other is as original as consciousness itself. She calls for a social struggle that will release women from their position as Other without questioning the validity of the division itself.

When reading De Beauvoir through Irigaray's eyes, the categorization between Self and Other is in itself a masculine construct deeply embedded in the invisible system of representation. It is neither organic to human existence nor eternal. It is an example of a category of perception that seems to be absolute but is in actuality an exclusionary element that limits the possibilities of representation available to subjects, objects and social phenomena.

²⁷ Georg Wilhelm Friedrich Hegel, 'Phenomenology of Spirit. 1807' [1977] Trans. AV Miller. Oxford: Oxford UP.

²⁸ David Duquette, 'Hegel's Social and Political Thought ' <<http://www.iep.utm.edu/hegelsoc/>>., <http://www.iep.utm.edu/hegelsoc/>, accessed 26.6.14.

²⁹ Simone De Beauvoir, *The Second Sex* (Constance Borde and Sheila Malovany-Chevallier. tr, Alfred A. Knopf 2010).

Judith Butler – two levels of representation in one system

In my reading of Judith Butler's texts I found that she is engaged with the exclusionary operations of the layer that underlies the level of representation. She reveals the power structures that are embedded within norms and presumptions that inform the set of tools with which society is represented: thought, language, practices and speech. These power structures even form and shape our bodies. All of these elements subsequently reinforce the power structures that produce them.

Butler exposes as violent the power structures that inform the system of representation. They determine and dominate the very thought of what is possible in life, the very field of description that we have for existence. According to Butler, one should focus on exposing the violent operations of these power structures that are reflected in norms, language, thought patterns, speech and practices.

“I grew up understanding something of the violence of gender norms: an uncle incarcerated for his anatomically anomalous body, deprived of family and friends, living out his days in an “institute” in the Kansas prairies (...)”³⁰

To call for identity recognition or for the naming of a social phenomenon without exposing the constructed and constructing system of representation is to accept, follow and strengthen existing power structures. The unavoidability of construction does not mean that violent construction should be accepted. Every construct can be made differently “and indeed less violently.”³¹

Butler exposed the exclusionary and constructed nature of the *gender* category. One should not search for the ‘real’, substantial content of this category because such content does not exist. Butler asks how gender is produced and reproduced, probes its possibilities and borders. How do embedded presumptions about the normative gender determine and govern in advance what will qualify as “human”?³²

³⁰ Butler, ‘Gender Trouble’, (Preface- 1999), (n 24) xx.

³¹ Ibid, (Preface- 1999), xxiii.

³² Ibid, (Preface, 1999), xxiii.

This is a crucial point on which Irigaray and Butler differ. Irigaray exposes the exclusionary operation of the invisible layer of representation and argues that once it is exposed, the 'true' identity of women could be manifested. Butler, on the other hand, focuses on the constructed nature of all elements, including gender, and does not agree that there is a layer beneath masculinity that once liberated would reveal the truth about women's identity. For her, revealing the exclusionary operation of masculinity will simply see it replaced with different power structures that will continue to construct all represented elements. She does not accept that those elements have an essential nature. According to Butler, all represented elements are and always will be an outcome of a construct informed by changing power structures.

Moreover, in my reading of Butler I observed that she breaks the dichotomy between the invisible and visible systems of representation that I located in my reading of Irigaray's texts. She does not accept that the 'invisible' shapes and governs the 'visible' or that the 'visible' is merely a reflection of the 'invisible'. She perceives the relationship between the systems as a continuous dynamic by which each shapes and is shaped by the other.

Butler perceives the visible system of representation as encompassing the various elements that constitute the human's *performance*. These include speech, practice and outward appearance. She argues that while these elements are shaped by the invisible system in which determined categories of perception reside, they also, in their existence, reinforce, produce, construct and are therefore able to change that system.

Butler argues that gender is not a stable category that generates practices, speech and physical appearance as its own reflection. She perceives these as performing elements that in themselves act as producers of the accepted meaning of that category. Whilst acknowledging the violent norm that underlies these elements, and therefore recognizing the existence of the level of recognition, the invisible system of representation, Butler views the visible elements as having the power to produce and construct and not merely as a shaped consequence produced by the invisible system.

She therefore perceives the two levels of representation not as separate systems but as belonging to one system.³³

This important insight, that levels of representation – visible and invisible - are not separate but belong to one system, leads to an understanding of the way in which to liberate oppressed realities. One should not try to isolate and focus on the invisible system of representation but rather to reveal and concentrate on regimes of power that limit the possibilities of these realities; that prevent their manifestations or dictate the manners and extent to which they could manifest. For example, we tend to think that the various differences between ‘men’ and ‘women’, in appearance, bodily movement, behaviour, practice, speech etc., stem from and reflect the underlying dichotomy between them. Butler, however, believes that this division is not fixed or stable and that these manifestations of the dichotomy are by themselves constructing and producing it. Therefore, one should not only be aware of the dichotomy on the level of embedded norms and perceptions, but should also trouble and disturb the different manifestations of it on the outer level.

Butler focuses on *drag* as a performance of gender that troubles and disturbs the two main embedded power structures that limit the category of ‘gender’: phallogocentrism and heterosexuality.³⁴ Through drag as a manifestation of gender, she reveals the unstable and contingent nature of the concept of gender and the dichotomies that form it.

“And this is the occasion in which we come to understand that what we take to be real, what we invoke as the naturalized knowledge of gender is, in fact, a changeable and revisable reality.”³⁵

Butler deepens her argument that the acts that represent gender actually produce it by presenting juridical systems, which she also perceives as performances, as elements

³³ Judith Butler, ‘Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory’ [1988] 40 *Theatre Journal*.

³⁴ Butler, ‘Gender Trouble’ (Preface, 1990), (n 24) xxvii – xxxiii.

³⁵ *Ibid*, (Preface 1999), xxiii.

that are located on the visible level of representation. Butler challenges the notion that these systems represent subjects that come before them, rather, perceiving their operations as in themselves forming, producing and constructing the subjects that are represented by them. The subjects are produced in accordance with the requirements of the system that appears to represent them. Butler claims that the notion of “a subject before the law” is an illusion. It is the law that produces the subject that comes before it.

Butler perceives feminism as a juridical system, which produces the subjects named ‘women’ in correlation with the accepted form that would grant the system of ‘feminism’ its legitimacy. The woman is thus constituted by the very system that seeks to represent and emancipate her. Butler argues that feminism’s claim to be representative has often motivated the creation of a singular form of *women* and *men* and argues that categorization of identity will always be exclusionary and thus cannot be the solidifying ground of feminism.³⁶

Butler does not argue that politics of representation can be neutralized. She focuses on the violent operations of these politics on both levels of representation and on unmasking the realities and identities that these politics “engender, naturalize and immobilize”.³⁷

Pierre Bourdieu- Habitus

Bourdieu adds two meaningful contributions to my analysis thus far of the system of recognition, which he termed *habitus*. The first is his elucidation that the system of recognition, *habitus*, is in fact what links objective and subjective structures and the second is his argument that the field itself is internalized into the *habitus*, an argument on which I base the understanding that a separate *legal* recognition exists.

Habitus is the set of models, thought-patterns, dispositions, sensibilities and taste that is structured within the mind and by which people perceive, understand and judge the

³⁶ Ibid, 3-5.

³⁷ Ibid, 8.

social world. People act out of the framework of their habitus, which is constructed within them. Therefore, they do not act out of awareness, independent discretion and calculation but out of a low level of consciousness and reflexivity.³⁸

Through the habitus, Bourdieu overcame the division between objective and subjective perspectives.³⁹ An objective perspective analyses social structures without acknowledging the impact of knowledge, perception and recognition on their creation and existence. A subjective perspective reduces the social world to its representation in the eyes of actors, without acknowledging the ways representation is shaped by social structures. Habitus reconciles these two seemingly separate perspectives.⁴⁰

The habitus is the objectification of social structure into the level of individual subjectivity.⁴¹ It is acquired through the activities and experiences of everyday life and is therefore specific to the certain set of social conditions and atmospheres to which one is cumulatively exposed.⁴² The lasting experience of a social position is instilled into one's sense of the constraints of external reality.⁴³ In other words, the habitus is the internalization of social structures into the mind.⁴⁴

“(…) a sense of what one can or cannot “permit oneself”
implies a tacit acceptance of one's place, a sense of limits
(“that's not for the likes of us”, etc), or, which amounts to

³⁸Rosemary J Coombe, 'Room for Manoeuvre: Toward a Theory of Practice in Critical Legal Studies' [1989] 14 Law & Social Inquiry, 104.

³⁹ Pierre Bourdieu, 'Social Space and Symbolic Power' [1989] 7 Sociological Theory 14 Bourdieu on the division between objective and subjective perspectives: “the most steadfast (and, in my eyes, the most important) intention guiding my work has been to overcome it.” 14-15.

⁴⁰ Ibid, 14-25.

⁴¹ Coombe, 'Room for Manoeuvre: Toward a Theory of Practice in Critical Legal Studies', (n 38) 100-105.

⁴² Bourdieu, 'Social Space and Symbolic Power', (n 39) 19.

⁴³ Pierre Bourdieu, Wacquant, L.J.D *An Invitation to Reflexive Sociology* (Polity Press and Blackwell Publishers 1992), 13.

⁴⁴ Coombe, 'Room for Manoeuvre: Toward a Theory of Practice in Critical Legal Studies', (n 38) 104, 105.

the same thing, a sense of distances, to be marked and kept, respected or expected.”⁴⁵

Importantly, the habitus is shaped by and shapes the *social field* to which one belongs. Bourdieu perceives the social world as a space of endless battle in which various actors compete and struggle for the acquisition of social capital. The battle is conducted between and within the social fields into which actors are divided. Fields are structured spaces of context with their own particular logic and rules that are effective and have value in the social struggle over power.

Actors from shared fields act similarly according to the distinct characteristics of their field and by their actions over time render stable the practices of the field and the sense of identity they engender. Fields such as the legal, psychological, and economic ones, are objective structures embodied into individuals' habitus, creating an internal resemblance between actors that belong to the same field.

Much as Butler observes that performative elements operate as producers and not merely as reflections of the underlying system of representation, Bourdieu focuses on the nature of habitus as not only an internalization of fields but also as an active element that shapes and constructs realities in recognition. The habitus is neither stable nor fixed. It is a platform that allows for change to occur.⁴⁶ It is the dynamic interactions between the objective and subjective, in which “two moments, the objectivist and the subjectivist, stand up in a dialectical relationship.”⁴⁷

When the objective structure is fully embodied and absorbed into the subjective one, a *doxic* relationship emerges between them. People then perceive the social world as evident, natural, taken for granted, and understood. They accept it as an evident reality. A doxic relationship between the objective and subjective is responsible for

⁴⁵ Pierre Bourdieu, ‘The Social Space and the Genesis of Groups’ [1985] 14 *Theory and Society* 723 , pg. 729.

⁴⁶ Yves Dezalay and Mikael Rask Madsen, ‘The Power of the Legal Field: Pierre Bourdieu and the Law’ in *An Introduction to Law and Social Theory* (Hart Publishing, Oxford 2002), pg. 191.

⁴⁷ Bourdieu, ‘Social Space and Symbolic Power’, (n 39) 15.

people's reluctance to rebel and fight for other possibilities.⁴⁸ All perceptions and actions become adapted to these so-called objective realities. The harmonic relationship between structure and subject bears a significant political meaning. It is the explanation for the acceptance by dominated actors of their subjected positions, and is the critical element required for the continuation of social order in its arbitrary form.⁴⁹

The existence of separate fields, and the strong connection between field and habitus, point at the existence of a level of recognition that is unique to the field. Based on Bourdieu's fields theory I acknowledge the existence of *legal recognition*. I acknowledge the ability of the legal field to develop, and to operate upon, its own level of embedded recognition, which is unique to the legal field.

Irigaray, Butler and Bourdieu recognise the complexity of the questions 'what can one express?' and 'what renders that voice effective in altering accepted meanings?' According to these theorists, the ability to voice one's reality and, by doing so, alter accepted meanings, is not dependent only on the availability of a platform from which one's voice can be expressed. For example, the participation of women in legal proceedings that concern their lives does not guarantee that their experience of violence will be heard and perceived as relevant and powerful enough to shape accepted legal meaning. Rather, that voice is controlled by other, invisible elements that begin at the level of recognition, that which informs our perception, our unquestioned divisions between good and bad, right and wrong, normal and mad, true and false.

The three theorists complement each other, and together assemble a fuller and deeper image and understanding of recognition as an underlying element that governs the space of thought, speech and practice. Irigaray contributes the differentiation between visible and invisible systems of representation and the identification of absence of identities and realities from the invisible system. Butler offers her analysis of the

⁴⁸ Bourdieu, 'The Social Space and the Genesis of Groups', (n 45) 728.

⁴⁹ Pierre Bourdieu and Angela Znaniecki-Karp, 'Structuralism and Theory of Sociological Knowledge' [1968] 35 Social Research 681 ; *ibid*, 705-706.

dynamics between the invisible and visible systems and her understanding of the violent operations of both systems. Bourdieu, through the concept of habitus and its relation to the field, enabled me to identify the level of legal recognition.

I see Foucault, Irigaray, Butler and Bourdieu as structuralist thinkers in the sense that they analyse human's behaviour in terms of its relationship to a larger, overarching system or structure. They all look at how the internalisation of larger systems influence human's conduct. The 'system' Foucault focuses on is the discourse, Irigaray's larger structure is the invisible level of representation, Butler looks into the violent operations of constructed categories and norms and Bourdieu looks specifically at the internalisation of fields into the subjects' minds.

My use of all four theorists, including Irigaray, will focus on revealing the internalised, constructed structures that prevent certain experiences from being voiced and heard and render only other experiences valid. They will all be interested in an experience of domestic violence shared by many women but remains excluded from social acceptance, not because they think there is one, rigid and unifying experience of domestic violence but because that marginalisation can reveal the existence of these internalised structures that prevent this experience from being heard.

My analysis draws a connection between mechanisms of legal knowledge production and the level of legal recognition. I argue that legal knowledge produced through various mechanisms is derived from but also strengthens the level of legal recognition. As such, this knowledge is able not only to determine what a phenomenon is, but also to limit other possible meanings from taking part in events that produce knowledge, which are the only sites from which they can be voiced, heard and accepted. Awareness to the operations of these mechanisms and their link to the level of legal recognition - a result of the genealogical research - can result in the disruption of both mechanisms of knowledge production and recognition and in the production of new knowledges, not accepted previously.

The theoretical framework I have built so far consists of two connected dimensions: the site of knowledge production as a site of struggle, and the level of recognition as the embedded layer able to monitor the knowledge produced. The third dimension,

added in the part to follow, is the dimension of disciplines, which I see as the context in which the naming struggles I analyse take place. It explores the significance of the legal discipline, as a naming body, over naming events.

Part III: Disciplines

In this part, I first explore the importance of the conduction of the act of naming by a discipline⁵⁰. I then discuss the impact of the dynamics and struggles between competing disciplines over naming events before shifting my focus to the unique influence of the *legal discipline* as the naming discipline in my research.

In investigating those questions, I aim to uncover the legal discipline's degree of openness or closedness in relation to social meanings that surround it and argue that this level is relevant to our understanding of the dynamics at work within legal naming events.

Act of naming conducted by a discipline

A discipline is a system of unique rules, methods, instruments, language and mechanisms that together create a specific grid. Entry to the discipline's domain requires the acceptance and adoption of this complex web of elements, or 'regime'.⁵¹

The process of naming – be it of objects, subjects or social phenomena – will, when being performed by a discipline, follow the rules of that discipline's regime. The name given will necessarily satisfy and correspond to the discipline's requirements.

However, the relationship between the discipline and the named element is complex: is the named element only shaped by the discipline or is there also a dynamic between them in which the named element has some power to shape the discipline that names it?

⁵⁰ In the dissertation, the terms *system*, *field*, and *discipline* bear the same meaning and are used alternately.

⁵¹ Michel Foucault, 'The Order of Discourse, Inaugural Lecture at the College de France, 2 Dec 1970' in Michael Shapiro (ed), *Language and Politics* (Basil Blackwell Publisher 1984), pg. 118- 120.

Foucault researched the social reaction to various forms of sexuality in nineteenth century Europe.⁵² Popular perception held that society suppressed, banned and prosecuted forms of sexuality that did not conform to the values represented by the Victorian Family, namely, heterosexuality between the married man and woman. It was perceived that aggressively delegitimizing and prosecuting these forms prevented their existence. Foucault's research, however, revealed this common perception to be erroneous and that actually, the aggressive social restrictions on forms of sexuality had opposite outcomes:⁵³

“The nineteenth century and our own have been rather the age of multiplication: a dispersion of sexualities, a strengthening of their disparate forms, a multiple implantation of “perversions”. Our epoch has initiated sexual heterogeneities.”⁵⁴

Foucault's study sheds light on the relationship between a discipline and a name, adding an important layer to the understanding of the dynamics of naming events.

The process in which a discipline names subjects, objects and social phenomena is continuous; lasting for as long as these elements are recognised within society. The naming process consists of various acts by which the named element becomes subjected to the discipline's regime but also becomes the platform upon which the discipline grows: the discipline imposes corresponding discourses and devices for observation and understanding of the named element; research on the subject is multiplied; a domain of expertise is declared and corresponding institutions are formed.

The named object becomes the support and grounds for a lively expansion of the discipline. This process can never eliminate the phenomenon, which becomes the condition for the existence of the discipline itself with its new expanded boundaries.

⁵² Foucault, 'The Will to Knowledge, The History of Sexuality: Vol 1' (n 5).

⁵³ Ibid, 36-49.

⁵⁴ Ibid, 37.

The named phenomenon strengthens, advances, and multiplies the discipline's lines of penetration into everyday life.

The relationship between the named object and the discipline causes waves of influence. One wave is the expansion and strengthening of the discipline itself. This wave is attached to and occurs simultaneously with a second wave, in which the named element is classified, multiplied and divided; a process that changes it continuously. The discipline embraces the named element and uses it as a device for expansion.

Within this process, the meaning of the named element cannot stay fixed and stable. It must provide material for the discipline's growth. In these dynamics, the named element is constantly shaped, split and multiplied, subdivided and specified.⁵⁵ In this process, the named element can change not only its form, but also its essence, its contents. The element is constantly recreated and reproduced. It becomes established as an element with which reality is drawn and changed.⁵⁶

Even when the stated aim is to eliminate or suppress the named element (homosexuality in the nineteenth century for example), these extraordinary efforts are in fact causing the exact opposite result: the intensification of the element.⁵⁷

“The power which thus took charge of sexuality set about contracting bodies, caressing them with its eyes, intensifying areas, electrifying surfaces, dramatizing troubled moments.”⁵⁸

There is therefore a circular movement between the naming discipline and the named element: the discipline expands through the growth of the elements which it names. Elements change in form and essence through continuous acts of renaming by classification and multiplication. These two waves - the expansion of the discipline and the production/subdivision/multiplication of the named element - are

⁵⁵ Ibid, 42.

⁵⁶ Ibid, 43-44.

⁵⁷ Ibid, 47.

⁵⁸ Ibid, 44.

interdependent. The endless acts of classification and expansion give life to the named element, which is an effective device with which the discipline can remain relevant and powerful.

This relationship reveals the interest of a discipline in preserving for itself the privilege of naming. For the discipline, a name is a device for expansion and a platform for growth. Also revealed is the symbiotic attachment between the formed name and the particular requirements of the discipline that created it. These two elements can impact the willingness of a discipline to accept the participation of actors from other disciplines in naming events as well as its degree of openness to different meanings presented to it by other disciplines

Dynamics between disciplines

How do the dynamics between disciplines influence the dynamics within naming struggles? The relations between disciplines play a meaningful role in the process of naming. These relations have the potential to monitor the access of different content to legal naming events. It is not the existence of different disciplines that influences the act of naming but the nature of social space existing between them and inhabiting them.

The theoretical framework thus begins with Foucault but then incorporates Bourdieu's fields theory, which analyses the nature of social space and the dynamics between fields that it generates.⁵⁹

Social actors are struggling endlessly in an effort to acquire a share and increase their share of the limited resources that exist in social space. This perpetual struggle generates the creation of social fields, which actors perceive as an effective way to survive and improve their chances in the struggle. These fields are created as a social reaction to scarcity of resources in society.

⁵⁹ Bourdieu, 'An Invitation to Reflexive Sociology', (n 43) 7.

Fields are relatively autonomous spheres with unique sets of rules, established on the grounds of their effectiveness in social struggle. Disciplines are types of fields, but fields can also be other types of sphere.⁶⁰

Fields, through the actors they inhabit and who inhabit them, are involved in external and internal struggles. Externally, they compete with each other over social resources. They protect their field from being taken over and continuously act to preserve and strengthen their power status within social space. Internally, the fields themselves are spaces of conflict and competition, where actors vie to accumulate, preserve and increase their share within the field.⁶¹

Constructed according to their effectiveness in social struggle, fields undergo constant transformation. They can become ineffective and irrelevant in reaction to changing social perceptions. They are unstable; can change their internal or external borders and disappear.⁶²

Social space is therefore an ensemble of *relations* between fields and between actors within fields. These relations reveal social space to be an arena of competition more than a homogenous unit of a sole systematic logic.

Bourdieu recognised several types of element that determine the strength of social actors within social struggles. The possession of these elements, which he termed *capital*, influences the actors' chances in accomplishing their goals. Bourdieu named three major types of capital: economic, cultural and symbolic (prestige, honour, respect, reputation, and membership in groups).⁶³ Actors understand that types of capital serve them in their struggles and therefore seek to accumulate them continuously.⁶⁴

⁶⁰ For example, it can be argued that consumers or workers form differentiated fields that are not disciplines.

⁶¹ Menachem Mautner, 'Three Approaches to Law and Culture' [2010-2011] 96 Cornell Law Review 839, 863-865.

⁶² Bourdieu, 'Social Space and Symbolic Power', (n 39) 20-21.

⁶³ Bourdieu, 'The Social Space and the Genesis of Groups', (n 45) 724.

⁶⁴ Mautner, 'Three Approaches to Law and Culture', (n 61) 864.

Capital can be understood as a trump card that increases the chances of the player that holds it to win the game.⁶⁵ Different types of capital exist and operate in social space exactly like different types of trump card: they influence the game differently but all of them benefit the position of the player that holds them.⁶⁶ Types of capital differ in value; every field has its own hierarchy of types of capital. For example, in some fields, symbolic capital will be the strongest type, whilst in others, economic capital will be the one that gives its holder the most power. Also, the influence a capital will have on its holder is dependent on its weight, meaning the measure or amount of capital one has. The social capital of an actor, meaning its strength in social struggle, is the sum of the value and weight of the various types of capital it holds.

The ability to name is acknowledged by social actors as a powerful resource of social power. The power to name, not name, un-name and to rename is perceived as the power to construct the meaning of life itself.⁶⁷ Therefore, the privilege of naming is a centre of struggle and competition between fields and actors who strive to control it, in order to adapt the given meaning to their perspectives and interests.

“The categories of perception, the schemata of classification, that is, essentially, the words, the names which construct social reality as much as they express it, are the stake par excellence of political struggle, which is a struggle to impose the legitimate principle of vision and division.”⁶⁸

The power of naming, a formidable social power, has a unique nature. To name is a privilege in the hands of the most powerful actors in society; those with the right types, values and weights of capital. On the other hand, since it has the capacity to construct social perceptions, naming can change the value and weight given to existing capitals by rendering them ineffective or less effective and by creating

⁶⁵ Bourdieu, ‘Social Space and Symbolic Power’ (n 39) 17.

⁶⁶ Bourdieu, ‘An Invitation to Reflexive Sociology’ , (n 43) 98.

⁶⁷ Bourdieu, ‘The Social Space and the Genesis of Groups’, (n 45) 729.

⁶⁸ Bourdieu, ‘Social Space and Symbolic Power’, (n 39) 20-21.

entirely different types of capital. It therefore bears the capacity to alter balances of power between fields and between actors within fields.

Fields struggle over the power to name, acknowledging, consciously or unconsciously, the act of naming as a powerful act with influence on their power in the larger social field. This can explain a discipline's effort to preserve its autonomy and its reluctance to allow actors from other disciplines to interfere and participate in these acts.

Law as a naming discipline

How do the particular characteristics of the legal discipline influence the dynamics within legal naming events?

The legal discipline is, like any other, a domain of objects, methods, propositions, rules and mechanisms that together constitute a system. It surrounds itself with boundaries of language, practices and institutions that filter and monitor who and what can enter and participate within its space. Entry to the legal system requires the acceptance of its order.⁶⁹ The word 'discipline' means 'order and control' in one sense and 'a field of knowledge' in another. This is no coincidence - the two meanings are interrelated.

A clear borderline exists between the legal discipline and other disciplines, rendering the legal discipline a visible, separated system.

“In reality, the institution of a “juridical space” implies the establishment of a borderline between actors. It divides those who qualified to participate in the game and those who, though they may find themselves in the middle of it, are in fact excluded...”⁷⁰

⁶⁹ Foucault, 'The Order of Discourse', (n. 51), 118.

⁷⁰ Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field', (n 1), 829.

The legal discipline is constructive and formational.⁷¹ It is an important social player in constructing “individuals’ minds, practices and social relations”⁷² beyond the borders of law.

The legal discipline is invested with a particular power to name and to apply its name beyond the borders of the discipline.

“Law is the quintessential form of the symbolic power of naming that creates the things named.”⁷³

Legal names and accepted legal meanings are often perceived by society as not only accepted legally but also as accepted socially. Law has the power to render certain meanings *truths*⁷⁴ even if they are controversial or the product of a specific point of view.

The act of naming and of constructing the meaning of a given name, is an important tool with which the legal discipline constructs and produces subjects, objects and social phenomena, not only ‘legal’ ones.

For example, Nicola Lacey reveals how criminal legal discourse constructed the normal body, and what is meaningful and therefore meaningless in sexuality. Building on that insight, Lacey analyses and uncovers how the construction of the normal body informed law’s construction of the harm of sexual abuse, a construction that was based on very little understanding of its meaning.⁷⁵

⁷¹ Clifford Geertz, *Local Knowledge, Further Essays in Interpretive Anthropology* (Basic Books 1983): “Law, even so technocratized a variety as our own, is, in a word, constructive; in another, constitutive; in a third, formational...Law is constructive of social life, not reflective of them, or anyway, not just reflective”. 218.

⁷² Mautner, ‘Three Approaches to Law and Culture’ (n 61) 849.

⁷³ Bourdieu, ‘The Force of Law: Toward a Sociology of the Juridical Field’, (n 1) 838.

⁷⁴ Catherine Mackinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989), 237.

⁷⁵ Nicola Lacey, *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (Hart Publishing 1998), 98-124.

Bourdieu's fields theory explains why the operations of law, among which is the act of naming, cannot be understood if they are seen solely from within the discipline, as if completely isolated from society, or only from without, as if law is only a mirror of social order. These different ways of understanding legal operations represent a major distinction in jurisprudence between two approaches to law and society: the Formalist and the Instrumentalist.

Formalist jurisprudence perceives law as an autonomous system that develops and changes according only to its internal dynamics. This approach claims to find the identity of law entirely within itself and perceives law as completely independent of social constraints.⁷⁶ The Instrumentalist approach perceives law as a tool in the hands of the dominant parts of society, with which they reinforce their power.⁷⁷ It does not recognise the possibility that law can also operate in a different context, detached from the considerations of the more powerful parts of society.⁷⁸

Analyzing law according to either the Formalist or the Instrumentalist approach will necessarily result in a partial or even distorted understanding of law. According to the fields theory, perceiving law as being at once located inside social space, alongside other fields that compete with it, and also as a space inside which internal struggle takes place, can break the distinction between approaches and reveal that law can only be comprehended by combining them.

The integration of approach is the foundation for understanding that law operates between two contradicting forces. On one side, law is bound to be mindful of external considerations to preserve its legitimacy. Law's acceptance by society and its power

⁷⁶ Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field', (n 1) 814. Bourdieu perceives Kelsen's attempt to found a "pure theory of law" to be the extreme end of this approach.

⁷⁷ Marxist theory, which perceives law as part of society's superstructure is the point of departure for this approach. Karl. Marx, *A Contribution to the Critique of Political Economy* (SW Ryazanskaya tr, Lawrence and Wishart Translated from the German edition of 1859 on 1971). Mackinnon's analysis of the legal system draws upon Marx and sees it as an instrument in the hands of dominant forces in society. The dominant point of view is granted legitimacy by the law, transforming it from an angle of vision to a dominant institution that is enforced on society as a whole. Catharine MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press 1987), 39-45.

⁷⁸ Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field', (n 1) 816.

in social space is dependent on its ability to reflect the perspectives and interests of dominant sections of society. As such, it cannot be blind to external considerations and has no privilege to operate without taking them into account. At the same time, in order to maintain or increase its power, law must preserve its specific, particular nature. It cannot be a mere reflection of social images or allow external perspectives to dominate it, since its uniqueness as a separated system is essential to the continuation of its power. In order to remain a separated field in social space, law must preserve its legal language, procedures and practices.

One mechanism that influences the openness or closedness of law is the similarity between its actors. At first glance, the legal system appears diverse, consisting as it does of various and different legal actors, including legislators, judges, lawyers, prosecutors and legal scholars. It also comprises different legal realms- private, public, civil, criminal and international law. This diversity, it can be assumed, should allow difference to enter into the discipline.

Bourdieu, however, claims that these agents and realms are not different from one another. The agents in every unit or realm of the legal system hold similar viewpoints because they are located in social positions that are approximate to one another. They do not guarantee heterogeneity because they share the same language, values, rules and logic and thus yield the same perspectives.⁷⁹

“Social space is so constructed that agents who occupy similar or neighbouring positions are placed in similar conditions and subjected to similar conditionings, and therefore have every chance of having similar dispositions and interests, and thus of producing practices that are themselves similar”⁸⁰

Legal language is another crucial mechanism in influencing the depth of dialogue between law and other disciplines. Language is not merely a system of

⁷⁹ Ibid.

⁸⁰ Bourdieu, ‘Social Space and Symbolic Power’, (n 39) 17.

communication, but also a mechanism of power.⁸¹ Although law's words sound the same as the everyday spoken language, they have different meanings and are interconnected in a particular way. Legal language is thus rendered distinct not only by an entirely different system of terms, notions and codes.

In every society, language connects speakers and divides them from non-speakers. In the same manner, legal language is a crucial mechanism of strengthening ties between speakers and creating distinction between legal and non-legal speakers.⁸² The distinct legal language might prevent a sincere dialogue between legal actors and actors from other disciplines because there is no joined language between them. Agents in other disciplines are in need of a legal representative in order for them to engage in such a dialogue. Although the legal discipline is rooted in society, it cannot communicate with its surroundings through a shared language. This absence of a shared language can cause distortions in legal and social understandings of various phenomena. Moreover, legal language, which governs legal function, makes it almost impossible for actors from different disciplines to review and criticize the legal system. To put the legal system under social observation and review obliges the observer to speak the legal language, embedding the legal logic within the observer and partialising the critique.

“Entry into the juridical field implies the tacit acceptance of the field's fundamental law, an essential tautology which requires that, within the field, conflicts can only be resolved juridically- that is, according to the rules and conventions of the field itself.”⁸³

The legal discipline therefore operates between two contradictory forces. It can be seen neither as completely autonomous, nor solely receptive. It can only be understood if located on a continuum on which complete self-determination is at one end and complete receptiveness is at the other.⁸⁴

⁸¹ Bourdieu, ‘The Social Space and the Genesis of Groups’, (n 45) 723.

⁸² Bourdieu, ‘The Force of Law: Toward a Sociology of the Juridical Field’, (n 1) 830.

⁸³ Ibid, 832.

⁸⁴ Bourdieu, ‘An Invitation to Reflexive Sociology’, (n 43) 177-178.

This insight into the legal discipline's operations is relevant to the analysis of its behaviour when presented with different meanings by actors from other disciplines. According to the analysis in this part, we can expect to see a more dynamic, non-homogenous reaction by the legal discipline in these situations, reflecting the understanding that with regard to other disciplines, the act of legal naming is a product of constant movement, meeting points, competition and conflict between internal and external actors.

Up to this point, I have sought to provide a framework with which to analyse the influence of the legal discipline over the dynamics that monitor the results of legal naming events. I argue that the degree of the legal discipline's autonomy – the extent to which it is insistent on producing its own knowledge or open and receptive to knowledges that surround it - sets the “tone” in which legal naming events take place and explains the overarching stance towards receiving or excluding new possibilities of knowledge.

In the theoretical chapter I have so far sought to provide a theoretical framework that will enable me to analyse the relationship between discourse mechanisms and production of legal knowledge in a deep and thorough way. My theoretical framework consists of an integration of three dimensions: understanding that knowledge is produced through struggle, being aware of the layer of legal recognition (the underlying level which determines what can be voiced, heard and accepted) and acknowledging the role of disciplines in influencing the overall attitude towards new possibilities of knowledge.

In the next building block of my theoretical framework, I analyse the foundational and varied social effects of the act of naming on society.

Part IV: Powerful and diverse effects of naming

The aim of this section is to uncover the powerful influence of the act of naming on society. I aim to reveal the profound social impacts of acts of naming together with their varied, simultaneous and contradictory effects.

In observing examples from varied areas of life, I demonstrate six profound influences that the act of naming has on society. I explore naming as an act able to form and create social elements (subjects, objects or social phenomenon); naming as an act that causes destruction and is responsible for the elimination of social elements; naming as an act of domination; naming as a device for social resistance and struggle for liberation; naming as an act that is responsible for a separation of a social element from a bigger entirety to which it belongs; and naming as an act of remembering and an act of forgetting.

Naming as an act of formation and creation

In the biblical story of creation, acts of naming are acts of creation. God creates the world by naming it: “And God said let there be light and there were light”...⁸⁵ Then God said, ‘Let the land produce vegetation: seed-bearing plants and trees on the land that bear fruit with seeds in it, according to their various kinds.’ And it was so.”⁸⁶ In Hebrew, the word for *name* is “Shem”, which is also the name for God. This demonstrates the powerful influence of naming as an act able to create, to bring subjects, objects and social phenomena into tangible existence.

Along these lines, Sally Engle Merry’s research on consciousness towards domestic violence against women⁸⁷ reveals how labels used by courts can shape people’s understanding of the way things are, as new legal terms used in court are slowly incorporated into people’s consciousness:

⁸⁵ *Torah*, Genesis, 1:3.

⁸⁶ *Ibid*, 1: 11.

⁸⁷ Sally Engle Merry, ‘Culture, Power, and the Discourse of Law’ [1992] New York Law School Law Review 210.

“Terms such as male privilege, emotional abuse, psychological battering, economic abuse, and intimidation became part of their everyday talk about human relationships.”

In his law and literature analysis of Albert Camus’s novel “The Plague”,⁸⁸ Dwight Newman focuses on the utterance of the name “plague”, expounding on its capacity to form and create realities. Newman makes note of the initial reluctance on the part of the characters that people the novel to uttering the name “plague” because of an unspoken understanding that “to grant it the force of its name seems to awaken its powers”.⁸⁹ The novel identifies the first utterance of “plague” as a significant event, but this first naming is nonetheless proceeded by continued reluctance to using the name again. In his reading of Camus’s novel, Newman outlines a constant awareness among its characters that to use the name “plague” would require the awakening of a certain legal response and spread alarm throughout the populace. The uttering of the name “plague” gives life to the reality of living under and epidemic, creating and defining the new reality. Newman perceives “The Plague” as a rare “work (that) contains a powerful meditation on the power to name”⁹⁰ and finds within it evidence of the complex and multifaceted socio-legal influence of naming.

The destroying and eliminating effects of naming

The act of naming is capable, as outlined above, of creating realities but also of impacting society in a contradictory way, by eliminating and destroying realities. Eckhart Tolle perceives the act of naming as an instrument with which humankind confronts the inconceivable complexity of existence.⁹¹ According to Tolle, a label given to subjects, objects and phenomena reduces their deep meaning to the level of their label.

⁸⁸ Dwight. Newman, ‘Existentialism and the Law-Toward a Reinvigorated Law and Literature Analysis’ [2000] Saskatchewan Law Review 87.

⁸⁹ Ibid, 57.

⁹⁰ Ibid, 98.

⁹¹ Eckhart Tolle, *A New Earth: Awakening to your Life's Purpose* (Penguin 2005).

Granting a name to any complexity creates the illusion that it is understood. Names divest realities of depth and life. Tolle theorises that in a naming culture in which everything is immediately conceptualized, we can only realize the tip of the iceberg, remaining blind to the immense being that lies beneath. For example, when we see a child look at a tree and tell him “this is a tree”, we immediately reduce the tree to its name and by doing so obstruct the child’s ability to see the tree beyond its name and to discover its wonder and depth.

Naming as an act of domination

Acts of naming shed light on relations of domination and realities of oppression. The power to name another is indicative of a relationship of domination and subordination.

The symbolic relationship between naming and domination is evident in biblical creation text.⁹² Man named woman by a power to name vested in him by God. The naming act was the constitutive act that established the dominance of man over woman: “Then man said, this at last is bone of my bones and flesh of my flesh; she shall be called Woman, because she was taken out of Man”.⁹³ The constitutive act of naming also established a similar relationship of domination of man over animal: “Now out of the ground the God had formed every beast of the field and every bird of the heavens and brought them to man to see what he would call them. And whatever the man called every living creature, that was its name.”⁹⁴

Naming is established as a fundamental act of domination,⁹⁵ the ability to name the other an emblem of master-slave relationship.⁹⁶ Examples of naming as a dominative

⁹² Mary Daly, *Beyond God the Father: Toward a Philosophy of Women's Liberation* (Beacon Press 1985), 8.

⁹³ *Torah* Genesis, 2:23.

⁹⁴ *Ibid* 2:19.

⁹⁵ Omi Leissner, ‘Naming the Unheard Of’ [1997] 15 *National Black Law Journal* 109 .

⁹⁶ Frank H Nuessel, *The Study of Names: A Guide to the Principles and Topics* (Greenwood Press Westport, CT 1992), 3-4.

act are widespread and include slaves denied their own names by their masters, women expected to replace their names with the names of their husbands and identified not by their names but numbers.

Naming as a device for social resistance and liberation struggle

Embedded in the operation of naming as an act of domination is the understanding that to reclaim the privilege to name one's *own* self and experience is an act of social resistance and of liberation.

"One's name is the closest thing she has to a way to define her individuality, in essence, shorthand for self-concept."⁹⁷ It is only when the slave names or defines her own identity and experience that she can begin to live and have power.⁹⁸

Liberation movements seek to take the power to name from those who hold it. During the mid-20th Century, the anti-slavery movement regarded the right of slaves to name themselves as being of primary importance.⁹⁹ Malcolm X¹⁰⁰, an influential advocate for the liberation of African Americans from American oppression, urged all African-Americans to reject their last names, which were those of slave-owners, and replace them with "X" to represent the lost African names of their ancestors.

The feminist movement perceives the act of naming as crucial to social struggle, contending that "women have had the power of naming stolen"¹⁰¹ from them, and, can only be truly liberated by reclaiming that power. Reclamation of the act of naming is

⁹⁷ Andrew M Milz, 'But Names Will Never Hurt Me: El-Hakem v. BJY, Inc. and Title VII Liability for Race Discrimination Based on an Employee's Name' [2006] 16 Temple Political & Civil Rights Law Review. 283 , 293.

⁹⁸ D Marvin Jones, 'No Time for Trumpets: Title VII, Equality, and the Fin de Siècle' [1994] Michigan Law Review 2311 , 2368.

⁹⁹ Leissner, 'Naming the Unheard Of', (n 95) 109.

¹⁰⁰ Lived between 1925 - 1965.

¹⁰¹ Daly, 'Beyond God the Father: Toward a Philosophy of Women's Liberation' , (n 92) 8.

necessary at every level of representation: identities, experiences, harms, and the measurements with which these are evaluated.¹⁰²

To reframe the vocabulary is seen as the most fundamental act of breaking social oppression of women.

“That which has no name, that for which we have no words or concepts, is rendered mute and invisible; powerless to inform or transform our consciousness of our experience, our understanding, our vision, powerless to claim its own existence.”¹⁰³

The naming of rape, for example, underwent a discontinuity in which the understanding of rape as an act that can be conducted only by a stranger against a woman was abandoned and replaced by the understanding, based on women’s accounts, that it is an act conducted mainly by intimate partners.¹⁰⁴ The adoption of this as the accepted meaning of the name ‘rape’ gave women the terminology needed to describe their situation, blame the perpetrator and demand protection and compensation.¹⁰⁵

The contradictory effect of naming, with its possibilities for domination and liberation, is in evidence in Camus’s “The Plague”. By uttering the name ‘plague’, the people of Oran surrendered to it and put the town under the control of the

¹⁰² Diana M Poole, ‘On Merit’ [1983] 1 *Law & Inequality* 155 , on the meaning of the concept ‘merit’ as excluding and devaluing people.

¹⁰³ Barbara Du Bois, ‘Passionate Scholarship--Notes on Values, Knowing and Method in Feminist Social Science’ in Renate Duelli Klein Gloria Bowles (ed), *Theories of Women's Studies* (Routledge and Kegan Paul 1983) 108.

¹⁰⁴ Martha R Mahoney, ‘Legal Images of Battered Women: Redefining the Issue of Separation’ [1991] *Michigan Law Review* 1 , 69.

¹⁰⁵ Ibid 304; Stephanie M Wildman, ‘Ending Male Privilege: Beyond the Reasonable Woman’ 98 *Michigan Law Review* 1808 ; and see William LF Felstiner, Richard L Abel and Austin Sarat, ‘The Emergence and Transformation of Disputes: Naming, Blaming, Claiming’ [1980-1981] 15 *Law and Society Review* 631.

uncontrollable epidemic.¹⁰⁶ But at the same time, only by naming the plague, were they able to act against it.

The act of naming separates the named element from the bigger entirety to which it belongs

The word ‘name’ derives from the Latin word ‘nomos’, which means to divide, to separate. The word ‘definition’ in Hebrew is ‘hagdara’ (הגדרה), a variation of the Hebrew word ‘gader’, which means fence or barrier.

The act of naming separates and detaches the named element from the entirety it had been a part of. After being named, the object becomes the centre of a newly formed space, creating the illusion that it has its own logic, causes and characteristics.

Martha Mahoney’s article “Legal Images of Battered Women: Redefining the Issue of Separation”¹⁰⁷ offers an example of the operation of naming serving to separate a phenomenon from the larger entirety to which it belongs. Mahoney argues that violence committed during the stage of a couple’s separation should be acknowledged as an assault and named ‘the separation assault’. She claims that the acknowledgement of ‘separation assault’ would make apparent the domination factor that underlies a violent relationship. I disagree with Mahoney’s argument. By naming a single manifestation, we cannot hope to understand better the entirety to which it belongs but only to distance ourselves further from that understanding. The crucial role of the domination factor in a violent relationship *must* be acknowledged in order to provide effective protection from it. However, naming a single manifestation as an assault is not required in order to acknowledge domination in general. Detaching that manifestation and making it a separate assault would inevitably generate particular responses with which to address it. The naming of one distinct expression would unavoidably create a relatively autonomous space around it. In my opinion, it would

¹⁰⁶ Newman, ‘Existentialism and the Law-Toward a Reinvigorated Law and Literature Analysis’, (n 88) 97.

¹⁰⁷ Mahoney, ‘Legal Images of Battered Women: Redefining the Issue of Separation’ (n 104).

result in further scattering of the violent relationship and obscuring of the social understanding of it.

Naming as remembering and as forgetting

Naming is commonly perceived as an act that has the capacity to prevent history, people and events from being forgotten.

Naming is often related to commemoration. In Israel, for example, Holocaust Remembrance Day is commemorated, among other ways, in a national memory project called “Every Person Has a Name”.¹⁰⁸ Public institutions such as governmental ministries, schools, local councils, universities and army bases dedicate one part of their commemoration ceremony to the reading of the full names of several Holocaust victims. The act of reading names is perceived as bearing the potential to restore lost worlds and thus to prevent the forgetting of the Holocaust. The naming project is described as follows on Yad VaShem’s¹⁰⁹ website:

“Each of the Holocaust victims - women, men and children, had a name: private names, given by parents, and family names, which continued the legacy of their family line. The incomprehensible number of victims that were murdered in the Holocaust, six million, obscures our capacity to capture the meaning of each individual's loss as a loss of an entire world. By reading names of victims on Holocaust Remembrance Day we intend to restore the lost worlds of each individual victim as a human being, an identity-owner. By reading their names, we aim to honour and commemorate the memory of the victims who do not have relatives; to illustrate the tragedy; to prevent the forgetting of the Holocaust; to fight its deniers and to help the young generation to feel more related to the subject.”¹¹⁰

¹⁰⁸ Named after a poem written by the poet Zelda - “Every Person Has a Name”.

¹⁰⁹ Yad VaShem is Israel’s official memorial of the Holocaust.

¹¹⁰ http://www1.yadvashem.org/yv/he/remembrance/2011/every_person.asp, my translation from Hebrew.

But every act of remembering entails an act of forgetting too.¹¹¹ As a name is engraved in memory, it causes the forgetting of other meanings and prevents the possibility of contradicting meanings from being accepted. Gil Anidgar analyses the relationship between naming and forgetting in the context of texts on circumcision in Judaism and by aiming to *cite the silences* in them.¹¹² In doing so, Anidgar reveals how naming circumcision as being *about* men or males is an act that encapsulates another act or many acts of forgetting.

“One can see – and one should note the amount of *violent* forgetting involved – how loaded the assertion is, that circumcision is a “male event”.”¹¹³

Anidgar shows how the male intimate body is erased through the naming of circumcision as a “male event”. Through naming, the act of circumcision becomes a symbolic act, charged with immense social meaning, which covers the male body as an intimate, individual body.

¹¹¹ Gil Anidjar, ‘14/On the (Under) Cutting Edge: Does Jewish Memory Need Sharpening?’ [1997] *Jews and Other Differences: The New Jewish Cultural Studies*, pg. 362.

¹¹² Ibid.

¹¹³ Ibid, 373.

Conclusion

In this chapter I tailored a theoretical framework with which to analyse the relationship between discourse mechanisms and accepted or excluded legal knowledge. The framework consists of three interrelated dimensions. The first reveals the site of knowledge production as a site of struggle. I focused on Foucault's theorization of the relationship between social power, knowledge and naming, as well as on the acknowledgement that accepted knowledge has a meaning and social role that go far beyond knowledge itself: as a reflection of power dynamics within society; as a brick upon which social power is founded and maintained and as a tool with the potential to alter power balances within society. I defined *genealogical research* as research able to reveal power dynamics encapsulated in knowledge production events and I explained *subjugated knowledge*, integral to genealogy, as knowledge concealed, marginalised or dismissed. The discussion in this part fuelled the realisation and acknowledgement that knowledge is a product of intense struggle that bears crucial social importance.

The second dimension explored from several angles the layer of legal recognition, which determines the rules of what can be said and the capacity to hear and accept. The theoretical discussion aimed to challenge the notion that one is able to influence meanings by voicing her opinion from a recognized platform, such as a legal procedure. By integrating theories authored by Irigaray, Butler and Bourdieu, I investigated this layer of perception from three different but complimentary frames of reference that together provide an in-depth understanding of its meaning. In order to examine our ability to alter legal meanings, it is necessary to unearth the level of recognition that limits the content that can be expressed and determines what content will be considered effective and relevant. The aim of this part was to be able to analyse later on the dynamics between discourse mechanisms and legal recognition in legal naming events.

The third dimension of my theoretical framework addressed the significance of the discipline in legal naming events, as I argued that the discipline has an important role in setting the tone of legal naming events and in constructing a stance towards new

possibilities of knowledge. The theoretical discussion in this part was based on the analysing of three aspects of in the relationship between naming and disciplines: the role of a discipline in naming operations, the impact of dynamics between disciplines on the act of naming, and the influence of the characteristics of the legal discipline on the act of legal naming.

The fourth and final part of the chapter explored the social significance of naming by engaging with six effects of naming that reveal the substantial, varied and contradictory ways by which names operate in society.

In the next chapter, I present the methodology of my research. I explain the reasons for choosing the legal naming of violence against women by male partners as a case study and present my method of analysis, which consists of four underlying concepts and three tools of analysis.

Chapter II: Methodology

The first part of this chapter is an explanation of my selection of violence against women by male partners as the case study of the research. I then present the method of analysis according to which I analyse the empirical legal data. This section is divided into two parts: foundational concepts and tools of analysis. At the end I detail the process of selecting the 67 judgments that constitute the empirical data of the research.

Part I: Selection of case study

My reason for selecting violence against women by male partners as a case study is based on my work before commencing the research, as a lawyer in a Jerusalem refuge for women and children fleeing domestic violence.

During the six years of my practice I sensed a crucial gap between the way women experience violence by their partners and the way courts understand it. I witnessed the difficulty women faced when trying to render their own experience valid in the eyes of courts.

The staff that worked in the refuge, my colleagues, came from different disciplines: social work, psychiatry and psychology. I was engaged in constant multi-disciplinary discussions regarding my legal representation of the women residing in the refuge. I learned from that experience that different meanings of domestic violence coexist, and that some of them do not correlate with and even contradict the legal ones.

In my research, my aim is not to answer the broad question of ‘what is the legal meaning of violence against women by male partners?’ Nor is it to determine the courts’ meaning for that violence. My aim is to understand legal - discourse operations that render meanings accepted or excluded. The judgments serve me as *documents* that illustrate local legal naming events; events in which legal (not necessarily the only legal) knowledge is produced, dismissed or becomes accepted. I

am interested in the dynamics that produce that knowledge without aiming to conclude that this is the meaning the entire legal system or even courts adopt. However, by establishing groups of meaning from local naming events I can uncover the process of knowledge production, including the subjugation of knowledge.

In my analysis I remain mindful of the courts' place within the legal system. The courts are a component, though not an independent component of the legal system, bound by legislation, precedents, rules of procedure and evidence, the arguments of the parties and, in criminal proceedings, the prosecution service. On the other hand, the courts are a space in which accepted legal meanings are constructed and dismissed; they have the power to exercise discretion, determine relevance and admissibility of evidence and to shape and identify the legal issues before them.

Part II: Method of Analysis

My method is tailored to enable me to reveal the relationship between mechanisms of knowledge production and the formation of knowledge. Michel Foucault's archaeological analysis¹¹⁴ is at the foundation of my method. I adopt from the archaeological analysis the fundamental concepts of my method: history, discontinuity, statement and discourse. Through these concepts I uncover legal naming events as struggle, I reveal the order and rules of the discourse to which statements belong and the subjugated knowledge that this discourse excludes. I incorporate into my method elements from Pierre Bourdieu's fields theory¹¹⁵ through which I analyse how the relationship between law and other disciplines affect legal naming events.

In the first section I introduce the basic concepts that underlie my method: *history and discontinuity* and *statement and discourse*. In the second, I present the three mechanisms operating in legal naming events, that serve as my tools of analysis: *classification*, the acts of organising, dividing and distributing the named phenomenon; *continuity*, the act of attaching the phenomenon to previously named phenomena; and *translation*, the act of translating a name or meaning of a name, acknowledged by non-legal actors into legal language.

Fundamental Concepts

History and discontinuity:

The redefinition of the concept history is central to Foucault's research. He theorises that the will to represent history as a homogenous process explained through the occurrence of major events is a disciplinary act that eliminates voices and events that do not correlate with that portrait. The nature of different events in time as essentially

¹¹⁴ Foucault developed the archaeological analysis method and used it as a method in various research projects. It was described and explained in: Michel Foucault, *The Archaeology of Knowledge* (A.M. Sheridan Smith tr, Tavistock 1972).

¹¹⁵ Bourdieu, 'An Invitation to Reflexive Sociology' (n 43).

battle zones over social meaning is masked by this representation of history. It also reduces the richness, complexity, and changeability of the ways in which events occur in reality.¹¹⁶

“It seems to me that in certain empirical forms of knowledge like biology, political economy, psychiatry, medicine, etc., the rhythm of transformation doesn’t follow the smooth, continuist schemas of development which are normally accepted.”¹¹⁷

The epistemology of such a representation is based on unrealistic assumptions

“(…) that words had kept their meaning, that desires still pointed in a single direction, and that ideas retained their logic”¹¹⁸.

As it explores legal naming events that occur at different points in time, my research permits a historical observation of legal discourse. I follow Foucault’s understanding of history, whereby history is not perceived as a gradual, linear and monotonous curve, in which one event leads in harmony to the other. I am therefore disinclined to analyse the legal naming of the researched violence according to paths, processes, periods or tenets. There is no distinction in my analysis between ‘major’ and ‘minor’ events since this judgement does not reflect a division between the meaningful and the insignificant. I do not assume that naming events are necessarily connected to each other or that one event leads logically to another, but rather consider events independently and only then identify whether, and in which way, they might be connected.

¹¹⁶ Foucault, ‘Power/Knowledge Selected Interviews and Other Writings In 1972-1977’ (n 6) ; Michel Foucault, ‘Nietzsche, Genealogy, History’ in Paul Rainbow (ed), *Foucault Reader, The* (Penguin Books 1991).

¹¹⁷ Foucault, ‘Power/Knowledge Selected Interviews and Other Writings In 1972-1977’, (n 6) 111-112.

¹¹⁸ Paul Rainbow and Hubert L. Dreyfus, *Michel Foucault: Beyond Structuralism and Hermeneutics* (Harvester Wheatsheaf 1982) 76.

Discontinuities are instances of breaks, transformations or interruptions that disturb the harmonious path of events and that indicate a change in the balances of social power that govern the ability of meanings to become the accepted ones. In my analysis I look for signs of discontinuities in legal naming events.

“How is it that at certain moments and in certain orders of knowledge, there are these sudden take offs, these hastenings of evolution, these transformations which fail to correspond to the calm, continuist image that is normally accredited”.¹¹⁹

“I have decided to ignore no form of discontinuity, break, threshold, or limit.”¹²⁰

Statement and discourse

A statement is the atom of the method. It can be a word, a sentence or a few sentences together. However, in order for these to be considered as statements they should be able to reveal something relevant about the struggle over naming.¹²¹

The statements that form the empirical data are sentences taken from the 67 English judgments I have analysed. The following types of questions are asked as part of all tools of analysis: Which statements did courts continuously repeat? Which statements vanished immediately after their first appearance? Which statements indicate a sign of discontinuity since they did not vanish despite contradicting dominant groups of statements?

Foucault’s analogy between the appearance of statements and shining stars clarifies these questions:

¹¹⁹ Foucault, ‘Power/Knowledge Selected Interviews and Other Writings In 1972-1977’ , (n 6) 112.

¹²⁰ Foucault, ‘The Archaeology of Knowledge’, (n 114) 34.

¹²¹ Ibid.

“(Which rules determine that statements) do not withdraw at the same pace in time, but shine, as they were, like stars, some that seem close to us shining brightly from afar off, while others that are in fact close to us are already growing pale.”¹²²

It is important that at the outset of analysis, statements are analysed separately, free from any assumptions about their connections with other statements. Only after statements are analysed separately can the researcher examine the relations between them, observing whether they are in fact isolated, or if they form a group or several groups. If they are connected, one can then identify the rules of grouping that connect them. A group identified in this way is a *discourse*. It is contrasted with a group of statements that is assumed before studying the statements separately. In analysing statements taken from English judgments, I make no assumption at the outset that they are part of a unified ‘legal discourse’, but study the statements separately to see which types of unities they form between them. This enables me to examine whether they form a group that is unique to the legal system and can therefore be titled a ‘legal discourse’ or whether they connect with other groups that transcend the legal system’s borders.¹²³

“I shall accept the groupings that history suggests only to subject them at once to interrogation; to break them up and then to see whether they can be legitimately reformed; or whether other groupings should be made; to replace them in a more general space which, while dissipating their apparent familiarity, makes it possible to construct a theory of them.”¹²⁴

I examine the shape of these discourses without seeking to find a group that has a coherent and linear shape. Discourses are not necessarily coherent or stable.

¹²² Ibid, 145-146.

¹²³ Rainbow and Dreyfus, ‘Michel Foucault: Beyond Structuralism and Hermeneutics’ , (n 118) 45-50.

¹²⁴ Foucault, ‘The Archaeology of Knowledge’, (n 114) 29.

Statements can seem very different from one another and still be connected deeply in one discourse. The rules that group statements together are varied and need to be identified.¹²⁵ Statements seemingly divided between competing discourses may, upon deep analysis, reveal themselves to belong to the same discourse.

Discourse, a formless entity that expands through practice, speech and the written word, is a crucial conduit through which social power passes. It has the ability to establish bodies of knowledge – disciplines, professions and institutions. As a unit of power, the discourse is not organised and developed by chance events, but its creation, existence and future direction are controlled and ordered.¹²⁶

“In every society the production of discourse is at once controlled, selected, organised and redistributed by a certain number of procedures whose role is to ward off its powers and dangers, to gain mastery over its chance events, to evade its ponderous, formidable materiality.”¹²⁷

In my analysis, which draws on these concepts, I extricate sentences from the specific circumstances of each judgment and analyse them as isolated statements before concluding which rules connect them to each other. My analysis draws on the foundational idea of the archaeological analysis according to which the order of discourse can be revealed only when statements are analysed without attaching them from the outset of the analysis to any form of unity. By seeing statements not in attachment to the circumstances of each case, and by not assuming that the unity of the judgment is relevant to the question of the order of discourse, I am able to reveal the rules that connect them to each other beyond the particulars of circumstances and by that uncover the order of discourse of which they are a part.

Having said that, it is important to explain that the statements I selected are not statements that were written as an inevitable result of the specific circumstances of

¹²⁵ Ibid, Rainbow and Dreyfus, ‘Michel Foucault: Beyond Structuralism and Hermeneutics’, (n 118) 71-72.

¹²⁶ Foucault, ‘The Order of Discourse’ (n 51) 108-138.

¹²⁷ Ibid, 109.

each case. I was aware of the binding effect of circumstances in my selection of statements and focused on statements that could have been written differently within the given circumstances. I focused on aspects of the judgment in which courts have broad discretion to include different relevant factors or to point at absence of relevant factors from the information presented to them. For example, I focused on the factors included in what is seen as the relevant background of the case; on the considerations included in the description of harm inflicted for the purposes of sentencing in criminal trials and on the information included when estimating the severity of conduct in civil procedures. By choosing these parts of the judgments, I was able to reveal the rules that connect statements to each other beyond the specifics of each case.

The definitions of *statement* and *discourse* mean that many meanings of domestic violence might not be revealed in my analysis. Domestic violence can have different meanings for women who suffer from it. However, these might not be strong enough to become, firstly, statements, and secondly, repeated statements that can form a discourse. I am therefore aware that my methodology will only enable me to capture meanings which became statements and discourses.

Tools of analysis

Having set out the basic concepts upon which my analysis relies, I turn now to a presentation of the tools with which I analyse the statements. They are discourse mechanisms operating in naming events.

1. Classification

In naming events, a social phenomenon goes through a series of classification acts. Through these acts the phenomenon is being affiliated to certain domains and disciplines. Its limits are drawn, it is divided, distributed and, in the example of domestic violence, as will be seen in the analysis chapter, scattered into pieces.¹²⁸

Classification is a discourse mechanism, a mechanism of knowledge-production, prevalent in most disciplines but particularly foundational and crucial within legal practice. Classification acts are inherent mechanisms in the effort to achieve accuracy or an image of accuracy when defining concepts. Through classification acts, defined concepts are granted clear, definite borders and limits.

Classification is a discourse mechanism able to construct legal meaning since it sets the space in which a phenomenon can be understood. In legal naming events of a newly defined phenomenon, preliminary acts of classification set the possible future possible paths along which further understandings can move. Additional acts of classification abide to the preliminary ones and consequently strengthen and solidify them. Continuous classification acts imposed upon the social phenomenon render it almost impossible for new, different meanings to penetrate and alter the accepted understanding towards it.

Classification is therefore a continuous process. Acts of classification influence the social phenomenon throughout its existence, beginning at the point in time when it is first recognised and continuing for as long as it is acknowledged.

¹²⁸ Foucault, 'The Archaeology of Knowledge', (n 114) 44-47.

I analyse statements through the lens of classification in order to reveal the relationship between this mechanism and the meanings that come to be accepted as legal meanings. Through this lens I examine whether the mechanism of classification plays a role in constructing the meaning of the researched violence in legal naming events and the effects it has on excluding other possible meanings that are not accepted.

2. Continuity

Continuity is also a discourse mechanism, another knowledge-production technique. It is the act of affiliating or attaching a newly acknowledged phenomenon, in the process of constructing its meaning, to existing phenomena and concepts previously recognised and named.¹²⁹ This is a particularly prevalent mechanism used by the legal system, mainly because of its hierarchical structure and the primacy of the precedent, which compels courts to abide by previously accepted meanings. Its exclusionary operation is similar to the operation of the classification mechanism. The new phenomenon is attached to and governed by previous meanings, which control the possible meanings it can accept. These previously accepted meanings limit the space in which the new phenomenon can be understood and excludes other meanings that do not conform to this space.¹³⁰

“Symbolic acts of naming achieve their power of creative utterance to the extent, and only to the extent, that they propose principles of vision and division objectively adapted to the pre-existing divisions of which they are the products...”¹³¹

Through acts of continuity, the social phenomenon is named and renamed by positioning it relatively to other existing concepts. The relationship between the

¹²⁹ Bourdieu, ‘The Force of Law: Toward a Sociology of the Juridical Field’ (n 1); Foucault, ‘The Archaeology of Knowledge’ (n 114).

¹³⁰ Ibid 24-33.

¹³¹ Bourdieu, ‘The Force of Law: Toward a Sociology of the Juridical Field’, (n 1) 839.

emerging name and its surrounding concepts can take various forms: the name can be synthesized into an existing group of concepts; it may inherit previously named concepts, which become enmeshed in its own name; it can be posited in *co-existence* to another concept; and it can be shaped by existing concepts to which the name is compared or defined as antonym.

“We must question those ready-made syntheses, those groupings that we normally accept before any examination, those links whose validity is recognised from the outset; we must oust those forms”¹³².

I seek to analyse the statements through the lens of continuity in order to reveal the impact of this discourse mechanism on the accepted or excluded legal meanings of domestic violence.

Classification and continuity are two different discourse mechanisms and therefore I analyse statements first through the lens of classification and then through the lens of continuity. Classification is the series of dividing acts that separates knowledge to distinct categories and continuity is a set of actions that grounds the attachment of one meaning to another meaning that was previously accepted. However, even though these operations are different, my analysis might show that the mechanisms operate within discourse symbiotically. Knowledge can be divided according to a form of continuity that governs the acts of classification, and the attachment between one meaning to another can be grounded through acts of classification that enforce it. In my analysis, I will be aware of the dynamic between the two mechanisms and explore the effect of that dynamic on the formation of knowledge.

3. Translation

Upon entry to the legal system, an acknowledged social phenomenon will go through a process in which it is outfitted in new ‘clothes’ tailored to suit the legal space it is entering.¹³³ Its admission requires more than it merely becoming measurable and

¹³² Foucault, ‘The Archaeology of Knowledge’, (n 114) 24.

¹³³ Bourdieu, ‘The Force of Law: Toward a Sociology of the Juridical Field’, (n 1) 832.

provable. Social phenomena must go through transformations that enable them to harmoniously join the legal system and become an integrated part of it.

“Entry into the juridical implies the tacit acceptance of the field’s fundamental law, an essential tautology which requires that, within the field, conflicts can only be resolved *juridically* – that is, according to the rules and conventions of the field itself.”¹³⁴

This is essentially a process of translation: processing a social phenomenon in order to render it legal in its form and nature, an integral part of the legal discourse. This process is a crucial part of the legal naming act.

The significance of judicial translation is emphasised and analysed by critical feminist theorists:

“Law is unlikely to deliver the outcomes that feminist law reformers seek, because objectives must be translated into existing legal forms and concepts, which don’t adequately respond to women’s concerns. Moreover, once translated, they take on a different life and their meaning is controlled not by feminists but by legal actors with their own agendas.”¹³⁵

The acts of translation are clearest when courts encounter new meanings not yet acknowledged legally, presented to them by non-legal actors. In these meeting points, different possibilities exist: the court might ignore the new meaning altogether, preventing it from entering the discourse; it might change its form or essence in the process of allowing its entry; or it might accept the meaning as it is.

¹³⁴ Ibid, 832.

¹³⁵ Rosemary Hunter, ‘Narratives of Domestic Violence’ [2006] 28 Sydney Law Review 733, 739.

“For this reason, such entry completely redefines ordinary experiences and the whole situation at stake in any litigation.”¹³⁶

In the context of violence against women by male partners, acts of translation can be identified whenever actors from different disciplines present the court with the understanding that domestic violence is something other than an episodic phenomenon defined by the seriousness of physical violence.

Selection of judgments

The process of selecting the judgments was as follows:

I conducted my search of cases in the Westlaw UK database.

In the first search, which was conducted in 2012, I searched for cases containing the two key terms “domestic violence” and “women”. I did not limit the search to years or to certain courts or procedures. The purpose of using the term “domestic violence” in quotation marks was to filter the cases in which the courts perceived the circumstances discussed *as* the social phenomenon that they named ‘domestic violence’ and titled them in this way. I added the word “women” for two reasons. Firstly, this was done in order to filter the cases that discussed the issue of domestic violence against women and not other forms of violence in the family such as violence against children. Secondly, by using the plural word ‘women’, and not the singular ‘partner’, ‘wife’ or ‘woman’, I aimed to reach cases in which the courts connected the particular circumstances of the case to the broader social phenomenon. I assumed that courts would use the plural tense ‘women’ when referring to domestic violence as a social phenomenon and category. This search generated 452 cases.

I then conducted a second search of cases, using the terms: “coercive control” *or* “controlling behaviour” *or* “control” *and*, in conjunction with the terms “marriage” *or* “relationship”. The objective of this search was to find all cases in in which the courts

¹³⁶ Bourdieu, ‘The Force of Law: Toward a Sociology of the Juridical Field’, (n 1) 832.

grant any significance to controlling behaviour within a relationship. I chose not to narrow the search by adding the word 'women' or the word 'violence' since I wanted to capture all the different significances the court attribute to a controlling behaviour within a relationship. This second search generated an additional 73 cases. Together, the first two searches generated 525 cases.

In the next stage, I studied the 525 cases in order to identify the judgments in which I could most clearly see the relationship between the three discourse mechanisms and the construction of name or meaning of domestic violence.

At the end of this stage, 67 cases remained. The decisions in these cases were given between 1972-2012 and form the empirical data of my research.

I read each case three times in order to refine my analysis of naming events according to the tools. In the first two readings, I refined my search of statements. Each statement was marked and analysed as an effect of one or several operations of discourse mechanisms. At the third reading I returned to each of the marked statements and identified those statements which formed groups between them, those which remained isolated and those which marked a discontinuity in the identified groups of statements.

Conclusion

In this chapter I have presented a methodology of research that correlates with the research aim and with the theoretical frameworks presented in the previous chapter. In the first part, I explained my choice of violence against women by male partners as the case study of the research and of judgments as its empirical data. In the second, I presented my method of analysis, which consists of four concepts and three tools of analysis. In the third and final part of the chapter, I detailed the process of selecting 67 judgments as the empirical data of the research.

The next chapter is a review of the meanings of violence against women by male partners in sociology and the mental health field. The purpose of the chapter is

twofold. Its first purpose is to inform awareness of other social meanings that surround the legal procedure in order to be able to analyse legal naming events as struggle between different possible meanings. Its second is to provide a reference that will enable me to compare the degree of openness or closedness of the legal discipline to that of other disciplines. As was detailed in the third part of the theoretical chapter, the discipline's degree of openness or closedness influences the dynamics at work within legal naming events and a comparison between disciplines enables us to determine whether law's degree of openness is unique to the legal discipline or characterizes other disciplines as well.

Chapter III: Multidisciplinary Reading

Introduction

This chapter aims to identify the meanings of violence against women by male partners in disciplines other than law and the manner and pace by which those disciplines dismissed or accepted into their discourses different meanings of violence against women by male partners.

The multidisciplinary review will reveal the meanings of domestic violence, which became *discourses* in the disciplines. As such, other possible meanings held by women who suffer from domestic violence but which did not form a discourse, will not be revealed in my review.

The chapter reviews the sociological and mental health (in this instance psychological and psychiatric) disciplines. The review is carried out under the proposition that several discourses might coexist in each discipline and that these can transcend their borders so that the same discourse can be found in both disciplines.

Part I: Social landscape at the end of 1960s and beginning of 1970s

The second half of the 1960s and the beginning of the 1970s is a period which represents a crucial point in the analysis of domestic violence against women. A new discourse erupted and flooded public awareness. For the first time in history, domestic violence became acknowledged as a phenomenon that required social response.

In a global context, the 1960s was the decade of the breakdown of European colonialism, which collapsed during this time in Africa, the Caribbean, parts of Latin America and Southeast Asia. The United States' war in Vietnam (1955-1975) began to be perceived by a growing part of the public, domestically and internationally, as futile and unjust. This growing recognition grew stronger and generated mass protests worldwide.

The sixties saw mass protests in European capital cities like Paris, London, Berlin and Rome against injustice in its different manifestations. These protests revealed an important shift in discourse as embedded, structural injustice began to be recognised and voiced through the use of key terms such as ‘equality’, ‘discrimination’, ‘sexism’, ‘racism’, ‘anti-war’ and ‘civil rights’.

At the same time, globally and in the United Kingdom, existing political campaign groups, such as the feminist movement and the civil rights movement, strengthened, and new groups emerged, such as the anti-war movement and the gay rights movement. In the UK, The Homosexual Law Reform Society was formed in 1958, the Campaign Against Racial Discrimination in 1964, the Disablement Income Group in 1965 and The Women’s Liberation Movement in 1969. And in 1966 the UK accepted the jurisdiction of the European Court of Human Rights.

Feminist movements worldwide had an important impact on the social landscape in which domestic violence was acknowledged. The early 1960s have come to be known as the start of second-wave feminism’, a period in which the women’s liberation movement, having strengthened globally, shifted its focus points of activity. The second wave was focused on achieving equality in all spheres of life and ending subtle and concealed forms of discrimination against women.

In Britain, the sixties and seventies were decades of vigorous feminist activism during Labour and Conservative governments.¹³⁷ During the sixties, small groups of women formed across the country and created the platforms needed to bring about various legal reforms. In 1967, abortion was made legal under certain criteria.¹³⁸ In 1968, 850 women sewing machinists at Ford in Dagenham went on strike for equal pay and against sex discrimination, leading to the beginning of several important changes to the status of women in employment. The first National Women’s Liberation Conference, in which around 500 people participated, took place at Ruskin College,

¹³⁷ Conservative governments between 1957-1963, 1970-1974 and 1976-1979 and Labour governments between 1964-1970 and 1974-1976.

¹³⁸ The Abortion Act 1967.

Oxford, in 1970, and is considered one of the biggest landmarks in British women's history.

In that landscape, domestic violence soon became one of the main focal points of feminist activism. The first women's refuge was established in Chiswick, London in 1971. By 1974, 35 Women's Aid groups were formed and had established the Women's Aid Federation. At the same year, the House of Commons appointed the Select Committee on Violence in Marriage and began to take evidence in the purpose of legislating and enacting required policy changes in the subject of domestic violence.¹³⁹

It is within the context of this vast social upheaval that sociology and psychology began to pay attention to domestic violence.

Part II: Sociology

In the context of this chapter, sociology is the study of the social conditions and structure responsible for domestic violence against women by male partners.

I divide my review into two parts. The first examines the meanings of domestic violence at the stage at which it began to be acknowledged as a social phenomenon and was named by the sociological discipline. I call this the 'formation stage'. The second part examines the meanings of domestic violence from the formation stage until today.

Meaning of violence against women by male partners during the 'formation stage'

The discourses on domestic violence within the sociological discipline began to form at the end of the 1960s and the first half of the 1970s. Interestingly, at this stage these

¹³⁹ Michelene Wandor, *Once a Feminist : Stories of a Generation* (Virago 1990) Liza Filby and Pat Thane, *Unequal Britain: Equalities in Britain Since 1945* (Bloomsbury Publishing 2010) Ali Tariq, 'Where Has all the Rage Gone' *The Guardian* (22 March 2008) <<http://www.guardian.co.uk>>.

discourses were not engaged directly with the question of what domestic violence was. It was assumed that the answer to this question was clear and obvious.

As I will show, texts written at the formation stage operate upon the unquestioned understanding that violence against women by male partners is essentially physical violence. This meaning thus became the foundation of the discipline. As scholarship on violence against women by male partners expanded, this initial meaning became increasingly grounded, solidified and uncontested. Discourses on domestic violence gradually formed and developed upon this meaning.

During the 1970s, several central sociological texts followed large studies that were conducted on this subject. These texts differed in their theoretical grounds and social perspectives and soon the discipline looked as if it were divided into two approaches: feminist theories on the one hand and ‘family violence’ theories¹⁴⁰ on the other.¹⁴¹

¹⁴⁰ Which can be also entitled the ‘non –feminist approach’. See for example: Hunter, ‘Narratives of Domestic Violence’, (n 135) 750-754.

¹⁴¹ These two approaches can be described broadly in the following way: according to feminist scholarship, the historical and current subjection of women by male dominance is the foundational social structure responsible for domestic violence. It reveals domestic violence as merely one manifestation among many others, such as rape, sexual harassment, pornography, trafficking of women, and other expressions of gendered inequality that stem from the same structure. These expressions stand in a dual relationship with social structure: the social structure enables and maintains their existence while the expressions strengthen the structure itself and enable its continuity. According to feminist scholarship, a rigid dichotomy between private and public spheres does not exist: all dominating expressions of women subjection are intertwined and stem from one source. Domestic violence is a mirror of society; its existence reveals that inequality endures. Based on the understanding that there is an immediate relationship between male domination and domestic violence, this scholarship provides the foundation for the understanding that domestic violence is male violence against women, rather than an act in which men and women are both potential perpetrators and victims. The names of the phenomenon in feminist scholarship are ‘domestic violence against women’, ‘wife abuse’ and ‘battering’. See on the feminist understanding of violence against women by male partners: R. Emerson Dobash and Russell P. Dobash, *Violence Against Wives : A Case Against Patriarchy* (Open Books 1980); Mildred Daley Pagelow and Lloyd W. Pagelow, *Family Violence* (Praeger 1984); Linda Gordon, *Heroes of Their Own Lives : The Politics and History of Family Violence* (Virago, 1989 1988) Demie Kurz, ‘Social Sciences Perspectives on Wife Abuse: Current Debates and Future Directions’ [1989] 3 Gender and Society 489 ; Kersti A. Yllo, ‘Through A Feminist Lens: Gender, Power, and Violence’ in Gelles R.J. and Donileen R (eds), *Current Controversies on Family Violence*

I argue that despite their foundational differences, both feminist and family violence perspectives shared the same understanding of what constitutes domestic violence during the formation stage. Each perspective perceived domestic violence as the use of physical force and saw the violent episodes as the core indicators of the existence and severity of the violence. But while this meaning is entirely evident in the family violence texts, it is revealed only upon closer reading in the feminist texts.

The formation stage: The meaning of violence against women by male partners according to family-violence texts

The family violence approach at the time of the formation stage is associated with the sociologists Richard Gelles, Murray Straus and Suzanne Steinmetz. They have stated that at the time they started their research, “so little had been written on child abuse

(Sage Publications 1993) 47-62; R. Emerson Dobash and Russell Dobash, *Women, Violence, and Social Change* (Routledge 1992), Rosemary Hunter, *Domestic Violence Law Reform and Women's Experience in Court* (Cambria Press 2008).

Family violence researchers reject the crucial correlation between domestic violence and male domination and ground their understanding of domestic violence in conflict theories. They perceive domestic violence as one tactic among others (like negotiation or persuasion) which members of the family use to resolve conflicts between them. In any human association, family included, conflicts inevitably arise and are actually crucial since they bear the capacity to bring about vital changes. The family unit is not fundamentally different to any other social unit, such as a military unit or an academic department. The research according to this approach is focused on situations in which members of the family choose to use violent tactics to resolve conflicts between them instead of using other tactics. Understanding domestic violence according to this approach requires the examination of social structures that contribute to the use of physical violence in the context of conflicts. Domestic violence against women is grouped together with other types of family violence, such as violence against children, between siblings and against parents, without perceiving them as different in a meaningful way. This approach perceives women and men as both perpetrators and victims of domestic violence. The terms used by this approach are ‘spouse abuse’, ‘marital abuse’, ‘domestic violence’ or ‘family violence’. See: Richard J. Gelles, *The Violent Home. A Study of Physical Aggression between Husbands and Wives* (Beverly Hills, London: Sage Publications 1972); Steinmetz Suzanne K and Straus Murray A, ‘Violence in the Family’ in *Violence in the Family* (Dodd, Mead & Company, Inc 1974); R.J. Gelles, ‘Family Violence’ [1985] 11 Annual Review of Sociology 347 ; Richard J. Gelles and Murray A. Straus, *Intimate Violence* (Simon and Schuster 1989).

and wife abuse that the entire literature could be read at one sitting. Worse, much of what we read was flawed, biased and unsound”.¹⁴² Many texts written separately and jointly by them were considered to be the foundational texts of this approach during that time and are remain frequently cited.¹⁴³

Gelles, Straus and Steinmetz’s primary motivation for researching this topic was the rise in violent crime in the United States at that time. Their work seeks to investigate the roots, nature and causes of social violence. It perceives social violence as the use of physical force in society to inflict bodily injury and does not question that meaning. The authors assumed the root of social violence to be domestic violence. Thus, according to their perception, in order to understand the former, they had to first research the latter.¹⁴⁴

Reading of their texts immediately reveals an unquestioning acceptance of the meaning of domestic violence as the use of physical violence between family members, measured by the frequency and severity of discrete events. This is apparent, for example, in the title of one of Gelles’ first publications, “The Violent Home: A Study of Physical Aggression Between Husbands and Wives” published in 1972.¹⁴⁵ In “Violence In The Family”, a book edited by Steinmetz and Straus the meaning of domestic violence is made unequivocal:

“The central focus of this book is on physical violence between family members...[We] should stress that our focus is not just on cruelty or aggression but on the expression of aggression and cruelty by physical means.... For our purposes, we think of violence as the intentional use of physical force on another person...Our choice of

¹⁴² Gelles and Straus, ‘Intimate Violence’ , (n 141) 11.

¹⁴³ Gelles, ‘The Violent Home. A Study of Physical Aggression between Husbands and Wives’ (n 141) ; A Gelles, ‘Family Violence’ (n 141); Gelles and Straus, ‘Intimate Violence’ (n 141); Kurz, ‘Social Sciences Perspectives on Wife Abuse: Current Debates and Future Directions’ (n 141); Lawson, ‘Sociological Theories of Intimate Partner Violence’ (n 141).

¹⁴⁴ Gelles and Straus, ‘Intimate Violence’ (n 141).

¹⁴⁵ Gelles, ‘The Violent Home. A Study of Physical Aggression between Husbands and Wives’ (n 141).

physical violence as the central focus does not mean that destructiveness, aggression, cruelty and non-physical coercion are omitted from consideration altogether. Rather, it means that we will consider them only in so far as they are related to physical violence. We are concerned with the man who batters down a door but only if it is related to his battering down a person.”¹⁴⁶

Steinmetz and Straus’s decision to consider only the events in which physical force against a person was used is neither explained nor justified. They assume the use of physical violence to entail distinct characteristics and logic that must be studied separately. There also exists in their work a premise that studying events of physical violence separately will provide the foundation with which to understand the phenomenon as a whole.

During the formation stage, the meaning of domestic violence as physical violence penetrated the main research methods with which the prevalence of domestic violence was measured. Straus developed the ‘conflict tactic scales’ (CTS) questionnaire, which was formed upon the same meaning, in 1974¹⁴⁷. The CTS questionnaire was given to couples, asking them, how they resolved conflicts that arose between them. The questions were focused on physical events - their nature, frequency and severity. Separate questions were directed at different types of physical violence: slapping, kicking, biting, hitting, hitting with an object and using a gun or knife.

It is clear that at the formation stage the family violence approach conceived of domestic violence as episodes of physical violence between family members. This understanding then controlled the methodology used for research, creating a situation in which future could be mistakenly perceived as strengthening the validity of the definition itself, whilst it was in actuality designed according to that definition, and could not therefore produce alternatives to it.

¹⁴⁶ Steinmetz and Straus, (n 141) pg. 4.

¹⁴⁷ M.A. Straus, ‘Measuring Intrafamily Conflict and Violence: The Conflict Tactics (CT) Scales’ [1979] 41 *Journal of Marriage and Family* 75 .

The formation stage: The meaning of domestic violence according to feminist scholarship texts

The understanding of domestic violence as episodes of physical violence was not genuinely challenged but rather accepted as consensus in early feminist texts. The assumption that domestic violence *is* physical violence was not directly questioned at that stage.

“Violence Against Wives, A Case Against the Patriarchy” by Dobash and Dobash, 1979,¹⁴⁸ is one of the most cited texts on domestic violence and is considered to be the first groundbreaking feminist work on the subject.¹⁴⁹ The comprehension of physical violence as the essence of domestic violence is apparent from the introduction of the book.

“The use of *physical violence* against women in their position as wives is not the only means by which they are controlled and oppressed but it is one of the most brutal and explicit expressions of patriarchal domination...The fact that violence against wives is a form of a husband’s domination is irrefutable in the light of historical evidence...Throughout this book we will be focusing on the persistent direction of physical force against a marital partner or cohabitant.”¹⁵⁰

¹⁴⁸ Dobash and Dobash, ‘Violence Against Wives : A Case Against Patriarchy’ (n 141).

¹⁴⁹ Examples of several meaningful texts that cite the book are Judith Lewis Herman, *Trauma and Recovery* (Basic Books 1992); P.M. Johnson, ‘Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence Against Women’ [1995] 57 *Journal of Marriage and the Family* 283 ; Carol Smart, *Feminism and the Power of Law* (Routledge 2002); Lenore E. Walker, *The Battered Woman Syndrome : With Research Associates* (3rd edn, Springer Pub. Co. 2009); Jean Baker Miller, *Toward a New Psychology of Women* (Beacon Press 2012).

¹⁵⁰ Dobash and Dobash, ‘Violence Against Wives : A Case Against Patriarchy’ (n 141) IX, *Italics added*.

There is an evident assumption on the part of the authors that the phenomenon can be thoroughly understood through an investigation of the physically violent events themselves:

“[In the 1970s] there was little systematic information about what actually happens during violent episodes or how they effect a couple’s relationship”.¹⁵¹

Perceiving physical violence as a distinct phenomenon leads the scholars to assume that the violent events must be classified internally in order to master the understanding of the phenomenon. They argued that these violent events should be divided according to the type and severity of physical violence:

“[T]here is the tendency to define almost all acts involving physical force by a single term such as “violence”. This means that a statement about violence includes such diverse behaviours as a slap or shove, a blinding punch in the face, a crushing kick in the stomach or spine, or a wound from a knife or bullet...it would be ...misleading, inaccurate, and uninformative to refer to all uses of *physical force* between members simply as ‘family’ violence or to all uses of *physical force* between husbands and wives simply as ‘marital’ or ‘spousal’ violence.”¹⁵²

Dobash and Dobash perceive the severity and frequency of violent episodes as signifiers with which to differentiate between women who are victims of domestic violence and women who are not. The definition of domestic violence should not be so broad, they argue, as to include “minor physical incidents” and “once in a life time shove or push” but only the “systematic, frequent and brutal use of physical force”.¹⁵³

¹⁵¹ Ibid, 8.

¹⁵² Ibid 8-9, italics added.

¹⁵³ Ibid 11.

The authors' understanding of domestic violence as physical violence is also made apparent by their exploration of the history of social awareness towards domestic violence, which only acknowledges social awareness towards the use of physical force. They detail the legality of "wife beating" in the 19th century, the legal distinction made between brutal assault and non-brutal physical assaults in the latter part of the 19th century, and the struggle against wife beating taken up by the Suffragettes as part of their early agenda.¹⁵⁴

The theoretical framework of the book does not, however, resonate with the definition of domestic violence as physical force. In the section entitled "Theoretical Treatments of Violence in the Home", Dobash and Dobash emphasize that the perpetrator must use other means, beyond physical force alone, to achieve control within the relationship.¹⁵⁵ And yet while the authors go as far as to assert that "violence in the family should be understood primarily as coercive control",¹⁵⁶ this line of thinking is undermined and contradicted by the emphasis placed throughout the book on physical events by the use of statistics that solely measure the use of physical force, and chiefly by the methodology established to direct the study.

This essence of this contradiction can be found in the following passage, in which the authors at once acknowledge the distortion caused by the act of extricating the violent events from the context in which they occur and accept it as an inevitable consequence of methodological limitations:

"To assume that a violent episode can be easily encapsulated in time and space ignores the enduring aspects of relationships that contribute to verbal confrontations and physical violence. Violent episodes occur in the context of the on-going marital relationship and such episodes are inextricably bound up with the day to day activities of the men and women who live together.

¹⁵⁴ Ibid 3-5.

¹⁵⁵ Ibid 21.

¹⁵⁶ Ibid 15.

Thus, taking the beginning point of the violent event as that period immediately preceding it is in some ways artificial and misleading because the events are never ending. ... Unfortunately, social research is more like still photographs than motion pictures: certain aspects of social reality must be suspended in order to capture other selected aspects of that reality....therefore, we will treat a violent episode as if it does have an explicit beginning and end. We will consider a violent episode as a discrete event...The dynamics of a violent event will be explored by using these materials from our interviews with battered women, especially the information relating to first, worst, last and typical attacks”.¹⁵⁷

Dobash and Dobash perceived the academy as integral to feminist advocacy. Their understanding of domestic violence correlated with the way it was perceived by feminist advocacy groups for policy change. The Women’s Aid groups that led advocacy for policy change understood domestic violence in exactly the same terms as the authors, as episodes of physical assault, a position made apparent in the written memorandum submitted by Women’s Aid groups to the Select Committee on Violence in Marriage appointed by the House of Commons in 1974:

“A woman entering a refuge is brave and desperate... the decision that she must leave home has not been taken lightly, but over a length of time she has come to realize that the level of physical violence used against her is intolerable.”¹⁵⁸

The feminist movement’s attribution of this meaning to domestic violence might be explained as an act of expedience: an unprecedented opportunity arose to form social

¹⁵⁷ Ibid 97.

¹⁵⁸ Dobash and Dobash, ‘Women, Violence, and Social Change’ (n 141) 118, quoting from the *Report from the Select Committee on Violence in Marriage, session 1974-75, together with the proceedings of the Committee Vol.1.*

policy and legislation on this matter, the feminist movement identified that momentum, and felt compelled to act quickly. The meaning that was embraced was one that the public was prepared to adopt. Society was ready to accept that just as physical violence is prohibited in public spaces, it should also be prohibited in domestic spaces. The feminist movement may have recognised that any other meaning would not have been acknowledged at that time and might only have jeopardized the opportunity that had presented itself to raise awareness and bring about social change in the domain of domestic violence. At the risk of speculation, it is possible this decision was a tactical one, but whatever the reason, the meaning of domestic violence was firmly fixed.¹⁵⁹

The process of understanding what domestic violence *is*, after centuries of silence, was extremely rapid and had to be immediately translated into official and formal terms that were integrated into social policies and legislation. Feminist and family violence approaches both accepted that domestic violence was physical violence and this meaning was the one upon which future scholarship on domestic violence was founded.

The accepted meaning of domestic violence at the formation stage is an *episode-based understanding*. According to this understanding, violent episodes are seen as the core of relationship and as the measurement tools with which to investigate the severity of violence and the risk faced by the victim. The texts analysed above reveal that this meaning became the unquestioned bedrock of methodologies designed to research the phenomenon as a whole. As such, it governed all layers of understanding and formed an obstacle to competing meanings attempting to penetrate the accepted discourses.

¹⁵⁹ Compare Prof. Rosemary Hunter's differentiation between the rhetoric/strategic, descriptive and normative elements of the feminist use of the term 'unequal' and other terms which represent liberal values. By differentiating between those elements, Hunter showed that whilst the use of those terms had a certain strategic value, it caused descriptive and normative limitations that had detrimental effects on women. Rosemary Hunter, 'Alternatives to Equality' in Rosemary Hunter (ed), *Rethinking Equality Projects in Law: Feminist Challenges* (Hart Publishing 2008) 80, 83.

Texts written during the formation stage demonstrate that the first meaning of domestic violence within the sociological field - the meaning upon which discourses on domestic violence were founded – emerged as the result of an unquestioned assumption. Domestic violence was understood as episodes of physical violence within a domestic context. In the case of the family violence theory, this seems to be the result of the continuity mechanism of knowledge production; comprehension of a newly understood phenomenon by attaching it to a phenomenon previously understood and named. This operation is so deeply embedded in processes of knowledge production that its execution requires no justification and is in fact received as obvious and natural. In the case of feminist scholarship during the formation stage, I have speculated that the acceptance of the first sociological meaning of domestic violence might be explained as a tactical manoeuvre. In adopting a meaning that the public was ready to accept, the feminist movement hoped to exploit an opportunity to enable new legislation and the implementation of much-needed public policy in response to domestic violence.

Meanings of violence against women by male partners after formation stage

I identify three meanings of domestic violence in texts written after the formation stage.

Domestic violence is physical violence

The meaning accepted and solidified in the formation stage, which perceived domestic violence as episodes of use of physical force within the family, remained dominant in the discipline.

In 1979 Gelles and Straus continue to define domestic violence according to the same meaning: “an act carried out with the intention, or perceived intention of physically hurting another person.”¹⁶⁰ In his 1985 article “Family Violence”, published in the *Annual Review of Sociology*¹⁶¹, Gelles discusses the complexity of defining domestic violence and presents other possible definitions but nevertheless adopts his own existing definition as the accepted and “frequently used nominal definition of violence”¹⁶², asserting that “injurious violence or violence that has the high potential for causing an injury has captured the attention of scholars who measure the incidence of family violence”.¹⁶³ In doing so Gelles constitutes the meaning as the foundational one and strengthens its position of prevalence.

The conflict tactics scale continued to be used as the research tool in large national surveys in the United States,¹⁶⁴ and was also used in the UK¹⁶⁵, despite harsh and extensive criticism.¹⁶⁶

¹⁶⁰ Gelles, ‘Family Violence’, (n 141) 352.

¹⁶¹ Ibid.

¹⁶² Ibid, 352.

¹⁶³ Ibid, 352.

¹⁶⁴ Murray Arnold Straus, Richard J Gelles and Christine Smith, *Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8,145 Families* (Transaction Pub 1995).

¹⁶⁵ See Michelle Carrado and others, ‘Aggression in British Heterosexual Relationships: A Descriptive Analysis’ [1996] 22 *Aggressive Behavior*, 401-415.

¹⁶⁶ The main critiques were that it erased the relevant context that surrounded the physical events, that it overlooked other types of violence, and that it did not correspond with victims’ descriptions of the relationship. See: Jennifer Langhinrichsen-Rohling, ‘Controversies Involving Gender and Intimate Partner Violence in the United States’ [2010] 62 *Sex Roles*, 182.

This prevailing meaning also endured in parts of feminist scholarship.¹⁶⁷ The perception of Dobash and Dobash remains unchanged in their 1992 book “Women, Violence and Social Change”, which begins:

“For the women who have been physically abused in the home by the men with whom they live, the past two decades have seen both radical change and no change at all”.¹⁶⁸

The examples of women victims chosen by the authors throughout the book make it clear that they maintain the same perception regarding the meaning of domestic violence, a stance of which the book’s very first victim account is illustrative:

“I have had glasses thrown at me. I have been kicked in the abdomen when I was visibly pregnant. I have been kicked off the bed and hit while lying on the floor- again, while I was pregnant...It was punching, banging my head on walls. Kicking everything.”¹⁶⁹

During the 1990s child witnesses to domestic violence against their mothers became visible victims and the devastating long-lasting effects on them became apparent. Literature on the subject from that time makes clear that the harm acknowledged is the harm caused when children witness necessarily physical violence against their mother.¹⁷⁰ The trauma of child witnesses was perceived this way without any debate or doubt. Literature regarding children exposed to domestic violence had therefore strengthened the first meaning of domestic violence.

¹⁶⁷ See for example Linda Thompson and Alexis J Walker, ‘Gender in Families: Women and Men in Marriage, Work, and Parenthood’ [1989] 51 *Journal of Marriage and the Family* 845 .

¹⁶⁸ Dobash and Dobash, ‘Women, Violence, and Social Change’ (n 141).

¹⁶⁹ *Ibid*, 4.

¹⁷⁰ Jeffrey L. Edleson, ‘Children’s Witnessing of Adult’s Domestic Violence’ [1999] 14 *Journal of Interpersonal Violence* 839; Maria Eriksson, ‘Tackling Violence in Intimacy: Interacting Power Relations and Policy Change’ [2013] 61 *Current Sociology* 171 .

In 1989, Kurz wrote an article on the distinction that exists within the sociological discipline on the subject of domestic violence, between two camps of scholars: the feminist and the family-violence scholars.¹⁷¹ Her description of the difference between them reveals a contemporary perception that the two camps differ not in their perception of the meaning of domestic violence but only in regard to other questions. According to Kurz's article, both camps perceive domestic violence as "the problem of physical abuse of wives by husbands."¹⁷²

Domestic violence as several types of behaviour

A second meaning stream began to evolve after the formation stage and became increasingly prevalent within the discipline. This stream is based on the logic of the first meaning and continues that meaning's path by confirming its episodic nature, the perception of the phenomenon *as* violent events or episodes. However, according to the second meaning, other types of episodic behaviours, beyond only physical violence, are included in the definition of violence against women by male partners. According to this meaning stream, the phenomenon is perceived not only or mainly as the use of physical force but as a variety of negative behaviours suffered by a woman in a violent relationship, manifested in episodes that can be clearly identified and analysed. Through an act of classification, these behaviours are usually divided into several main types: physical, sexual, psychological and economic violence.¹⁷³

¹⁷¹ Kurz, 'Social Sciences Perspectives on Wife Abuse: Current Debates and Future Directions' (n 141).

¹⁷² Ibid, 489.

¹⁷³ J Brown, 'Working Toward Freedom from Violence: The Process of Change in Battered Women' [1997] 3 Violence Against Women 5 ; Walter S. DeKeseredy, 'Current Controversies on Defining Nonlethal Violence Against Women in Intimate Heterosexual Relationships: Empirical Implications' [2000] 6 Violence Against Women 728 ; Nabila El Bassel and others, 'Relationship Between Drug Abuse and Intimate Partner Violence: A Longitudinal Study Among Women Receiving Methadone' [2005] 95 American journal of public health 465 .

The first and second meaning streams that coexist within the sociological discipline are often referred to as the narrow definition and the broad definition respectively.¹⁷⁴

Domestic violence is coercive control

The third meaning stream began to develop at the beginning of the 1980s, approximately ten years after the formation of domestic violence discourses within the sociological discipline. According to the third meaning, domestic violence is coercive control, a term on which I elaborate hereinafter.

The literature on this meaning of domestic violence reveals it to be reflective of women's experiences and accounts of the violence inflicted on them by partners. The stream was developed simultaneously by scholars and practitioners who accompanied women in supporting relations and grew out of numerous encounters in which women conceptualized their experience openly, in their own words and at their own pace. It developed over a long period of time without a sense of urgency, after domestic violence had surfaced as a social problem and the first social policies and legislation were enacted. The circumstances in which these supporting relations took place were free from any external obligations such as a requirement to fill in an academic questionnaire or to draft a proposal for legislation. Professionals that accompanied women were able to listen to them without feeling obligated to adapt their words to any formerly accepted discourse. These relations took place in non-controlling settings, where no purpose existed other than to support women in their struggle to escape their partners' violence.

This developing meaning is therefore the outcome of prolonged, close, trust-based, safe, and respectful relations between survivors, activists, social workers, therapists and scholars. The approach, based on feminist fundamentals, perceives women as the true experts of their situations, as the only ones that have the legitimacy to define the accepted definition of domestic violence.

¹⁷⁴ DeKeseredy, 'Current Controversies on Defining Nonlethal Violence Against Women in Intimate Heterosexual Relationships: Empirical Implications' (n 173).

According to this stream, domestic violence is *coercive control*, also defined as *captivity*, achieved by a *pattern* of behaviours used by the perpetrator against his partner. Only by looking at the *entirety* of the relationship can the harm of coercive control be identified. That harm will remain invisible upon observation of the relationship through only its violent episodes since behaviours that constitute a pattern of coercive control are not necessarily episodic in their nature. The indicator of a violent relationship, its severity and dangerousness, is this *pattern itself* and not the distinct violent episodes that comprise it. According to this stream, the fundamental and most *lethal* harm caused to women in a violent relationship is the harm of coercive control, or of being subjected to behaviours aimed towards reaching this state. The other harms caused by violent episodes such as physical or sexual attacks are not overlooked but are recognized as *additional* to the core harm.

While feminist scholarship perceives domination and control as the aim of gendered violence and the social structure that enables its existence and perpetuation, the third meaning stream recognizes coercive control as the *actual harm* suffered by women in violent relationships.

To overlook the pattern aimed at coercive control and define violence against women by male partners by and according to its episodes is to distort its understanding and leave women without a name for their experience. The harm of captivity should not be understood as the accumulation of harms caused by each violent episode but as the harm caused by a pattern of behaviours, some of which are not expressed in clear episodes and some of which would not, in isolation, be considered violent at all.

The Power and Control Wheel included below was created in Duluth, Minnesota, USA, in 1981. It was written and designed by women victims of domestic violence participating in an abuse intervention program¹⁷⁵ and is one of the first expressions of the development of this meaning stream. The wheel's resonance with women

¹⁷⁵ Domestic Abuse Intervention Project, *The Power and Control Wheel* (2013). On 14.6.2013 The Domestic Abuse Intervention Project provided me with a written permission to include the Power and Control Wheel in my dissertation.

worldwide is evidenced by its translation into more than forty languages in the time since it was created.¹⁷⁶



DOMESTIC ABUSE INTERVENTION PROJECT
202 East Superior Street
Duluth, Minnesota 55802
218-722-2781
www.duluth-model.org

In a clear visual image, the model emphasizes that power and control are at the center of defining a violent relationship. All the various expressions detailed are the means by which the core of the wheel is achieved and strengthened. The violent

¹⁷⁶ Yllo (n 141) 54.

relationship is not described by discrete events of violence (of any type), but by a *pattern* that characterizes the relationship as a whole. The expressions themselves do not bear a separate meaning or logic. Importantly, the wheel reflects the nature of domestic violence against women as an entity that rests upon social conditions that render its tactics possible.¹⁷⁷

In 1995, Johnson wrote an article entitled "Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence Against Women."¹⁷⁸ The article is an acknowledgment that the sociological discipline's understanding of domestic violence has been based on a distorting meaning that has led the discipline to obscure the harm of coercive control.

Johnson analyses the contradiction that arose from two types of data generated by large-scale American surveys. One data type was generated through surveys of the general public conducted by Straus, Gelles and Steinmetz and a second type through evidence given by victims of domestic violence who consequently needed medical treatment, legal protection or turned to a women's refuge for shelter. The latter type of data provided a solid ground for the understanding that domestic violence is an offence conducted almost exclusively by men against women, whereas the survey generated data type revealed that women as well as men use violence within relationships.

Johnson argues that the contradiction has arisen because "the two information sources deal with nearly non-overlapping phenomena",¹⁷⁹ a crucial distinction that had been hitherto largely absent from the sociological discipline.

"family violence researchers and feminist researchers do clearly disagree on some very important issues, and a case can be made that their differences arise from the fact that

¹⁷⁷ Ibid 59.

¹⁷⁸ Johnson, 'Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence Against Women' (n 149).

¹⁷⁹ Ibid 286.

they are, to a large extent, analysing different phenomena”.¹⁸⁰

Johnson creates a distinction between what he terms ‘common couple violence’, in which both partners use “minor” forms of violence in conflicts that escalate and “go out of hand” and ‘patriarchal violence’, which involves a systematic pattern of behaviours that includes economic subordination, social isolation and the use of different types of violence, as demonstrated in the Power and Control Wheel.¹⁸¹ He goes on to identify the crucial element that divides ‘common couple violence’ and ‘patriarchal violence’: in the first phenomenon, domestic violence is defined *by* its violent expressions, whereas in the second, domestic violence is not defined by expressions but by the *pattern* that establishes coercive control.

Johnson argues that physical force cannot be used as an indicator of the existence of a violent relationship since a state of coercive control can be achieved without the use of physical violence.

“It is important not to make the mistake of assuming that this pattern of general control can be indexed simply by high rates of violence. Although the average frequency of violence among cases of patriarchal terrorism may be high, there may well be cases in which the perpetrator does not need to use violence often in order to terrorize his partner. He uses multiple control tactics.”¹⁸²

Johnson’s article is important to my analysis of how a discipline reacts to the simultaneous existence of two very different discourses within it.. Not only does it reveal that the discipline enables the coexistence of different understandings but also that there are paths through which a dialogue between them can take place. Importantly, Johnson emphasizes that the discourses do not reflect different

¹⁸⁰ Ibid 284.

¹⁸¹ Ibid 284.

¹⁸² Ibid 287.

understanding of the same phenomenon, but actually analyse different phenomena altogether. This crucial point renders the dialogue that can potentially follow Johnson's work relevant and effective.

In 2000, Johnson and Ferraro wrote an article entitled "Research on Domestic Violence in the 1990s: Making Distinctions"¹⁸³. The article argues that the two main promising themes of the decade's literature on domestic violence are the understanding of control as the essence of domestic violence and the recognition of the need to make distinctions between common couple violence and coercive control and to address them with different policies and legislation.

Evan Stark concentrated on domestic violence for over forty years as an academic, social worker and advocate. His endeavor can be characterized as a prolonged effort to reframe domestic violence in a way that reflects the accounts of women who have experienced it. While conducting and publishing academic research, Stark has simultaneously worked directly and closely with victims of domestic violence to support them in their reality. His work as a forensic social worker in domestic violence cases in the United States has influenced the terms Stark has used in his endeavor to rename domestic violence.

Stark's academic research and practical experience have each directed and reinforced each other. His book "Coercive Control: How Men Entrap Women in Personal Life"¹⁸⁴, published in 2007, is a determined call for the renaming of domestic violence which is based on his practical work and research. In it, Stark states in his book that the prevalence of domestic violence against women in the United States has not changed significantly in thirty years, despite efforts to address and eliminate it by investing great amounts of public funds in numerous intervention programs. In his opinion, this situation can be explained by the continued absence of a definition of domestic violence that reflects its harm. The intervention policies that have been directed towards addressing domestic violence are based on a model that misperceives

¹⁸³ M.P. Johnson and K.J. Ferraro, 'Research on Domestic Violence in the 1990s: Making Distinctions' [2000] 62 *Journal of Marriage and the Family* 948 .

¹⁸⁴ Evan Stark, *Coercive Control : The Entrapment of Women in Personal Life* (Oxford University Press 2007).

the experience of victims and therefore fails to protect them. The model that directs American public response to domestic violence is based on the occurrence of *events* as an indicator of the existence and severity of a violent relationship.

Stark's call addresses the split within his discipline between those two very different discourses. Like Johnson, he does not perceive this split to be the result of differing perspectives or legitimate different opinions with regard to what domestic violence is, but rather the consequence of a profound misunderstanding.

Stark perceives coercive control, which he also terms 'entrapment' and 'captivity', to be the most lethal harm a man inflicts on his female partner in a violent relationship. He argues that despite its lethality, coercive control remains officially *invisible* and *marginal* to mainstream thinking. The model that dictates the American response to domestic violence is incompatible with the nature, essence and characteristics of coercive control.

“Our key finding is that the domestic violence revolution appears to have had little effect on coercive control, the most widespread and devastating strategy men use to dominate women in personal life”.¹⁸⁵

As a forensic social worker as well as a scholar, Stark reframes the offence of domestic violence in legal terms as a *liberty* offense that “prevents women from freely developing their personhood, utilizing their capacities, or practicing citizenship, consequences their experience as entrapment.”¹⁸⁶

In response to the claim that coercive control is too vague and formless to identify and prove, Stark exposes its actual, measureable and identifiable nature. He explains that the different tactics used by the perpetrator can be divided into three groups: intimidation, isolation and control, all of which can be evidenced and identified. Stark asserts that the primary and most dangerous harm that abusive men inflict upon their

¹⁸⁵ Ibid 8.

¹⁸⁶ Ibid 4.

partners is not the physical harm but the *erasure of self*, through the deprivation of resources, connections and rights. Once acknowledges as harmful, these tactics are all visible and provable.

Stark recognizes the crucial role of gender in the existence and perpetuation of coercive control. He perceives women's social subjection as the social structure that enables the existence and perpetuation of coercive control without being clearly noticed. While acknowledging the use of occasional violence by both women and men within relationships (thus supporting Johnson's claim that there are two types of domestic violence), Stark emphasizes that there is no counterpart in men's lives to women's entrapment by means of coercive control.

Significantly, Stark dismisses the dominant notion that domestic violence is about the conventional understanding of 'violence':

“Viewing women abuse through the prism of the incident specific and injury-based definition of violence has concealed its major components, dynamics, and effects, including the fact that it is neither “domestic” nor primarily about “violence”. ”¹⁸⁷

By abandoning the perception that domestic violence is physical violence between family members, Stark opens the study of domestic violence to literature that analyses violence as a form of domination, an expansion that can benefit greatly the understanding of domestic violence as a social phenomenon. In this light, I proffer two examples of scholarship on violence as a form of domination that become very significant for the study of domestic violence once the episodic meaning of violence is abandoned and domination as its foundation and essence are recognized.

Pierre Bourdieu's theory on *symbolic violence* can shed light on domestic violence as a social phenomenon. Bourdieu differentiates symbolic violence from violence in its traditional sense, i.e. concrete expressions of physical force. He refers to symbolic

¹⁸⁷ Ibid 10.

violence as relations and mechanisms of domination and power, which are not overt physical force, that are possible and acceptable because of social conditions that represent them as legitimate.¹⁸⁸ Symbolic violence is behaviour that maintains the domination-subordination relationship without appearing as such. It is the manifestation of power relations embedded so deeply in social structures that they operate unquestioned.

Iris Marion Young's analysis of oppression¹⁸⁹ also provides a theoretical framework with which to understand domestic violence once the understanding of violence as distinct physical force is abandoned. Young observes that traditional understanding of the concept of oppression was shifted in the 1960's by various groups of people demanding social change. She argues that the traditional meaning of oppression was the operation of physical power by a ruler or ruling group and usually carried strong connotations of conquest and colonial domination. The shifted meaning of oppression, however, does not necessarily include a ruler or the use of physical force: it is everyday practices and norms, embedded in social structure, that immobilize or reduce a category of people.¹⁹⁰ Relations of domination are enabled by social structures that are reflected and strengthened by peoples' practices. Studying domestic violence through the theoretical framework drawn by Young reveals that this phenomenon is a form of oppression perpetuated and maintained by social conditions, manifested by perpetrators within intimate relationships that oppress women as a group.

The violence identified by Stark corresponds with the discourse that acknowledges the harm embedded in domination practices and that understands domination itself as a harm and not only as the motivation of perpetrators or as a social structure that enables gendered violence. He reveals salient resemblances between victims of domestic captivity, which he understands as coercive control, and victims of political and other forms of captivity. By establishing a connection between violence and captivity crimes, Stark extricates domestic violence from its prior position as a family

¹⁸⁸ Pierre Bourdieu and John B. Thompson, *Language and Symbolic Power* (Polity Press 1991).

¹⁸⁹ Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press 1990).

¹⁹⁰ Ibid 40-41.

matter, surrounded by the boundaries of domesticity, and relocates it to a broader realm where these boundaries must be abandoned in order for the phenomenon to be understood. In doing so he establishes a strong connection between domestic violence and other forms of social violence, in defiance of the public-private barrier that has long artificially divided them.

Only by abandoning the traditional sense of the concept of violence, realizing the meaning of captivity and acknowledging the role of gender, can violence against women by male partners be understood.

The content of the texts made clear to me that the difference between meanings of violence against women by male partners is not the outcome of a legitimate difference of opinion but of a misunderstanding regarding the essence of coercive control. Johnson, Ferraro and Stark reveal that two different types of violence against women by male partners to exist: common couple violence and coercive control. The two phenomena are very different. The latter is a lethal phenomenon and yet the term 'domestic violence' does not acknowledge its existence at all, referring in its meaning only to the former.

My analysis of literature from the second, post-formation period enables important understandings with regards to the nature of the sociological field: the discipline permitted a discourse based on unquestioned assumptions to exist and develop within it; the discipline enabled two distinct discourses not only to coexist but also to develop to the degree that each represented a well-grounded body of knowledge; the discipline was open to women's accounts of their experience and enabled this knowledge to be the foundation of a meaning stream; within the sociological field, paths exist that enable a dialogue between two discourses to take place.

Part III: The Mental Health Field

In this part I examine the meaning streams of domestic violence against women that exist within the mental health field, particularly in psychology and psychiatry and the manner and pace by which this field's adaptation to differing meanings.

Like the sociological discipline, the mental health field began to address violence against women by male partners in the 1970s. However, in similar fashion to the sociological discipline, the mental health field began to form its first discourses on violence against women without first engaging directly with the question of what the phenomenon was. Until the 1990s, a prescribed phenomenon was already named 'domestic violence' and research in the field engaged instead with other questions, through which we can see how domestic violence was understood. After the 1990s, the question of what the phenomenon actually was began to be addressed directly.

I have identified four meaning streams in my reading. The first perceives domestic violence as being defined by the emotional reactions of its women victims. The second perceives it, much like the first stream in the sociological part, as outbursts of physical violence. The third correlates with the second stream in the sociological part in its understanding of domestic violence as episodes of different types of violence. According to the fourth stream, which correlates with the third stream in the sociological part, violence against women by male partners is coercive control.

Women's reactions to domestic violence as the defining elements of the phenomenon

The psychological reactions of women to domestic violence were considered the most urgent issue faced by the mental health field when it began to address the phenomenon. The reason that this subject – how women react mentally to domestic violence and why they react the way they do - was regarded as so pressing in the 1970s is related to dominant conventions (that can be still found today) which

perceived domestic violence as a deviancy and malfunction of both perpetrator and victim.¹⁹¹

Feminist literature addressed directly the convention that women victims are either masochistic or suffering from mental illness and are therefore partly to blame for the violence they suffer.¹⁹² Dispelling these harmful notions became the first target on the agenda of feminist scholarship within the mental health field.¹⁹³

The emphasis on women's mental health was so strong that it concealed an absence of discussion about what the essence of violence against women by male partners was. This stream was not concerned with the harm to which women were reacting and its limited focus served only to strengthen a tenet of the field that it had sought to uproot: that of understanding the phenomenon mainly through its victims and their mental reactions instead of understanding it by focusing on the mental disorder of the perpetrator.¹⁹⁴

¹⁹¹ "Dr Grayford: "Many of these women have a degree of inadequacy, whether this is something that has been a result of their poor genetic endowment, a result of their poor environmental upbringing or a result of the battering is very difficult to see. It is noticeable even in the more intelligent...A few women present an extremely damaged personalities who will need long term support with their children. Often they need protection against their own stimulus-seeking activities. Though they flinch from violence like other people, they have the ability to seek violent men or by their behaviour to provoke attack from the opposite sex." Quoted from a testimony given to the Select Committee on Violence in Marriage that was appointed in 1974 by the House of Commons, by Dr Grayford, a psychiatrist that gave a testimony on behalf of the Chiswick Refuge. Dobash and Dobash, 'Women, Violence, and Social Change' (n 141) 115-116.

¹⁹² Joan S. Meier, 'Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice' [1992] 21 Hofstra Law Review 1295, 1301.

¹⁹³ See for example Mildren Daley Pagelow, 'Adult Victims of Domestic Violence: Battered Women' [1992] 7 Journal of Interpersonal Violence 87, 107-108; Mary Ann Dutton and Lisa A Goodman, 'Posttraumatic Stress Disorder among Battered Women: Analysis of Legal Implications' [1994] 12 Behavioral sciences & the law 215, 218; C. Humphreys, 'Mental Health and Domestic Violence: 'I Call it Symptoms of Abuse'' [2003] 33 British journal of social work 209, 214.

¹⁹⁴ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders: DSM-IV-TR* (American Psychiatric Publishing, Inc. 2000). The DSM IV TR, the manual published by the American Psychiatric Association and used worldwide by mental health professionals for the classification of mental disorders, does not relate in its current version nor in any previous version to the classification of the mental disorders of domestic violence perpetrators. The literature on domestic

The field's scrutiny of the various possible mental diagnoses of women victims of domestic violence – diagnoses such as Post Traumatic Stress Disorder (PTSD)¹⁹⁵, Battered Women Syndrome (BWS)¹⁹⁶, depression and anxiety among others – inevitably supported pathologization of the victim and strengthened the perception that this form of violence is a phenomenon that exists only in the individual's personality.¹⁹⁷ In emphasizing women's reactions to violence rather than the violence itself, the field installed the clinical professional language as its dominant language, disbaring women from defining the phenomenon according to their own experience of it.¹⁹⁸

violence refers constantly to the DSM, but mainly with regard to the diagnoses of women victims. Examples of literature that refers to the DSM in the context of women reactions: Lenore E. Walker, 'Learned Helplessness and Battered Women' [1977] 2 *Victimology* 525 ; Mary Ann Dutton, 'Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome' [1992] 21 *Hofstra Law Review* 1191 ; Herman, 'Trauma and Recovery' (n 149) ; Dutton and Goodman, 'Posttraumatic Stress Disorder among Battered Women: Analysis of Legal Implications' (n 193); Cathy Humphreys and Stephen Humphreys, 'Domestic Violence and the Politics of Trauma' [2004] 27 *Women's studies international forum* 559 . Also, American Association of Health Data Systems and others, *The International Classification of Diseases, 9th Revision, Clinical Modification, 1991* (Ann Arbor: Comm on Profess & Hosp Act 1991). The ICD- 9 defines a separate mental diagnosis to explain women victims' reaction to the abuse- code 995.810 – Battered Spouse Syndrome – but does not classify the personality disorders of perpetrators.

¹⁹⁵ PTSD is a pattern of psychological symptoms caused by exposure to a traumatic event, described by the DSM-IV as a situation in which "the person had experienced, witnessed or been confronted with an event or events that involve actual or threatened death or serious injury". PTSD has a complex history within the mental health field in general and in relation to gender-based violence in particular. Despite evidence that a significant proportion of women who are abused suffer from PTSD, there remains controversy over whether this is a useful diagnosis on which to base intervention. See Dutton and Goodman, 'Posttraumatic Stress Disorder among Battered Women: Analysis of Legal Implications' (n 193) 220. In the UK the diagnosis was embraced mainly in clinical psychology and not in mainstream mental health services. Humphreys and Humphreys, 'Domestic Violence and the Politics of Trauma' (n 194) 559. Research shows that trauma is an emerging area for consideration in the UK but not in the context of gender violence and domestic violence specifically. Humphreys, 'Mental Health and Domestic Violence: I Call it Symptoms of Abuse' (n 193) 216.

¹⁹⁶ A psychological theory and diagnosis developed and termed by Lenore Walker that will be discussed hereinafter.

¹⁹⁷ Humphreys and Humphreys, 'Domestic Violence and the Politics of Trauma' (n 194) 565.

¹⁹⁸ Ibid 565.

Inevitably, the field's engagement with mental reactions *before* it had comprehended the meaning of this form of violence necessarily distorted understanding of the reactions themselves. This tendency created an absurd situation by which women's psychological reactions became the actual definition of domestic violence and also the indicator of whether they were victims of domestic violence. Expert testimony in American courts conveyed the message that if a woman was not reacting according to the model of Battered Woman Syndrome (a syndrome I will discuss further in the next meaning stream), she was not a victim of domestic violence.¹⁹⁹

At the beginning of the 1990s, Mary Ann Dutton, a forensic psychological expert in American courts and a preeminent American domestic violence scholar highlighted the necessity of drawing a separation between the essence of the phenomenon and women's reactions to it. She implied that forensic experts were frequently unaware of the need to distinguish between the two and thus, when asked to testify as to the existence of a violent relationship, wrongly based their testimony on the psychological reactions of women.²⁰⁰ In a different article, Dutton examined the suitability of PTSD as a diagnosis for women victims of domestic violence:

“When PTSD diagnostic criteria is not required for explaining the battered woman's behaviour, it does not mean that testimony concerning domestic violence is not relevant... A serious risk of utilizing the presence of PTSD *as an indicator that domestic violence occurred* is the unintended effect of establishing it as a threshold criterion.”²⁰¹

¹⁹⁹ Meier, ‘Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice ’ (n 192) 1306-1307.

²⁰⁰ Dutton, ‘Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome ’ (n 194), 1195 - 2000.

²⁰¹ Dutton and Goodman, ‘Posttraumatic Stress Disorder among Battered Women: Analysis of Legal Implications’ (n 193), 224, *Italics added*.

Domestic violence as episodes of physical violence

The second meaning stream perceives domestic violence as episodes of physical violence within a relationship. According to this stream, domestic violence is an episodic phenomenon characterized by outbursts of discrete, definite physical violent events. This meaning, despite coming under increasing questioning, continues to hold sway within the mental health field, shaping the direction of research and intervention programs.²⁰²

This meaning was developed by forensic experts and was thus heavily influenced by legal logic and language.²⁰³ Some of the dominant scholars in the field, such as Mary Ann Dutton and Lenore Walker, served simultaneously as practicing psychologists and forensic experts testifying in domestic violence cases.²⁰⁴ Walker and Dutton gave testimony in courts from the early 1970s, when their own discipline did not yet comprehend the meaning of domestic violence. They portrayed domestic violence as episodes of measurable, definite, discrete events, a perception influenced, in my opinion, by the language they had to adopt as forensic experts and by their own interpretation of what the legal system was able to understand and process.

I focus on Lenore Walker's theory and diagnosis, which was officially embraced and accepted, first by American states and later by many countries, including the UK.

²⁰² P. H. Smith, 'Beyond the Measurement Trap - A Reconstructed Conceptualization and Measurement of Woman Battering' [1999] 23 *Psychology of Women Quarterly* 177 .

²⁰³ Meier, 'Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice ' (n 192) 1300.

²⁰⁴ Lenore Walker and Mary Ann Dutton are prominent scholars in the field who wrote on the basis of their experience as forensic experts. Among their writings: Walker, 'Learned Helplessness and Battered Women' (n 194); Lenore E. Walker, *The Battered Woman* (1st edn, Harper & Row 1979); Lenore E. Walker, *The Battered Woman Syndrome* (Springer Publishing Company 1984); Lenore E. Walker, *Terrifying Love : Why Battered Women Kill and How Society Responds* (1st edn, Harper & Row 1989); Dutton, 'Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome ' (n 194); Dutton and Goodman, 'Posttraumatic Stress Disorder among Battered Women: Analysis of Legal Implications' (n 193); Lenore E. Walker, *The Battered Woman Syndrome* (2nd edn, Springer 2000) ;Walker, 'The Battered Woman Syndrome : With Research Associates' (n 149).

Lenore E. Walker is an American psychological scholar and forensic expert whose work rose to prominence in the 1970s and 1980s. Walker conceived a theory on the psychological reactions of battered women and termed it 'Battered Women Syndrome' (BWS),²⁰⁵ which is currently recognized in the ICD-9²⁰⁶, by most American jurisdictions and in the UK.²⁰⁷ In addition to conducting research on domestic violence based on a national survey that she had written and designed, Walker served as a forensic expert mainly in cases in which women victims of domestic violence were charged with murdering their abusive partners. Her theory and diagnosis were perceived as groundbreaking, establishing the understanding that women's reactions to abusive relationships were natural and normal and not the result of masochism.²⁰⁸

Walker's theory consists of two parts. One describes the dynamics of violence, which she described as a 'cycle of violence', and the other explains women's reactions towards it, which she termed 'learned helplessness'.²⁰⁹

Even though Walker learned from women's accounts that psychological abuse was central to the violence, her research and findings focused instead on the existence of physical violence incidents:

²⁰⁵ The theory was developed and explained in Walker, 'Learned Helplessness and Battered Women' (n 194); Walker, 'The Battered Woman' (n 204); Walker, 'The Battered Woman Syndrome' (1984) (n 204) and continued to be the foundation of her future writings, for example in Walker, 'Terrifying Love : Why Battered Women Kill and How Society Responds' (n 204) and Walker, 'The Battered Woman Syndrome' (2000) (n 204).

²⁰⁶ Code 995.810.

²⁰⁷ Palmen J (Ed), 'Battered Woman Syndrome Eleventh Annual Review of Gender and Sexuality Law: Criminal Law Chapter' [2010] 11 *Georgetown Journal of Gender and Law* 59 .

²⁰⁸ Meier, 'Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice' (n 192) 1305.

²⁰⁹ Walker adopted the understanding of 'learned helplessness' from Seligman's theory on victimization. See Martin E. P. Seligman, *Helplessness : On Depression, Development, and Death* (W. H. Freeman; New York : trade distributor, Scribner 1975).

“The details of the psychological abuse were never quantifiably measured very well in this study, even though the women’s reports were that it caused them the most pain. The physically abusive incidents were so compelling and overwhelming in the amount of overt violent behaviour that the psychological components got less attention. Further, it is easier to measure and count discrete units of physically violent acts than it is to quantify the subjective pain from psychological abuse”.²¹⁰

According to Walker, the dynamics of a violent relationship revolve in a cycle consisting of three stages,²¹¹ with each stage leading to the one that follows it. In the first stage, the tension between the man and the woman rises and the perpetrator uses, according to Walker’s terms, ‘minor’ physical force and other types of violence. This stage leads to a second stage, which is the ‘heart’ of the violent dynamics and the most relevant to this meaning stream. It consists, according to Walker, of one or several episodes of *acute* physical violence, which cause the victim major physical injury or present a threat to her life. The third and final stage before the cycle revolves again is ‘the honeymoon stage’, in which the perpetrator apologizes and convinces the woman not to leave the relationship. This interpretation of the cycle of violence strengthened the episodic understanding of domestic violence and anchored the perception that a violent relationship is characterized by not only physical violence incidents but by least one brutal episode of physical violence.

In the questionnaire Walker designed for the national survey, hundreds of women were asked about their psychological reactions to incidents of physical violence. They were asked to describe their reactions to four specific incidents: “the first, second, last

²¹⁰ Walker, ‘The Battered Woman Syndrome’, (n 204) 27.

²¹¹ Ibid (n 204) 2.

and “one of the worst”.²¹² Literature that cites Walker emphasizes that *extreme* long-term physical abuse forms a core part of her definition of domestic violence.²¹³

Walker’s theory was dominant in the construction of the meaning given to this form of violence in the mental health field. It shaped the understanding of domestic violence as episodic and strengthened the perception that acute physical acts are central to its dynamics. The theory directed research on domestic violence around the world,²¹⁴ in spite of criticism by scholars and advocates who argued that it did not reflect the experience of victims.²¹⁵

It is important to note that the mental health field, in an identical way to the sociological discipline, assumed, rather than explained and justified, its understanding of domestic violence as episodic physical violence. Domestic violence discourses within the mental health field were therefore founded on an assumption that was adopted without question.

²¹² Ibid, 227 and Walker, ‘The Battered Woman Syndrome’ (2000) (n 204), 30.

²¹³ See for example: “Walker’s research offered numerous powerful examples of extreme long term abuse of women by their male partners”. Meier, ‘Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice ’ (n 192) 1305.

²¹⁴ See for example research based on Walker’s theory: David A. Wolfe and others, ‘Children of Battered Women: The Relation of Child Behavior to Family Violence and Maternal Stress’ [1985] 53 Journal of Consulting & Clinical Psychology 657 ; Charles Patrick Ewing and Moss Aubrey, ‘Battered Woman and Public Opinion: Some Realities about the Myths’ [1987] 2 Journal of family violence 257 ; A. Browne, ‘Violence Against Women by Male Partners: Prevalence, Outcomes, and Policy Implications’ [1993] 48 Am Psychol 1077 ; J. McCauley, ‘The Battering Syndrome - Prevalence and Clinical Characteristics of Domestic Violence in Primary Care Internal-Medicine Practices ’ [1995] 123 Annals of Internal Medicine 737 . And see more recent research in the UK - M. Ellsberg, ‘Intimate Partner Violence and Women's Physical and Mental Health in the WHO Multi-Country Study on Women's Health and Domestic Violence: An Observational Study’ [2008] 371 Lancet 1165 .

²¹⁵ Meier, ‘Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice ’(n 192); Dobash and Dobash, ‘Women, Violence, and Social Change’ (n 141); Dutton, ‘Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome ’ (n 194); Humphreys, ‘Mental Health and Domestic Violence: 'I Call it Symptoms of Abuse'’ (n 193); Humphreys and Humphreys, ‘Domestic Violence and the Politics of Trauma’ (n 194); ‘Battered Woman Syndrome Eleventh Annual Review of Gender and Sexuality Law: Criminal Law Chapter’ (n 207).

Domestic violence is episodes of physical, sexual and psychological violence

From the beginning of the 1990s, psychological literature began to address the definitional issues of domestic violence more directly. Texts from that period reveal a meaning stream within the field according to which domestic violence consists of episodes of not only physical but also sexual and psychological violence.²¹⁶ It endures as a dominant stream within the mental health field today.²¹⁷

This meaning is identical to the second meaning stream presented in the sociological part of this chapter. As was explained there, this meaning stream does not challenge the episodic understanding of domestic violence but strengthens it. According to this stream, it is assumed that the abusive relationship is manifest in distinct events and it is believed that by researching these episodes the meaning and essence of the relationship can be understood. The episodic nature of the third meaning stream is demonstrated in the following example:

“[O]bviously, many actual scenarios involving abusive acts include elements of all three forms of abuse, physical, sexual and psychological. For example, one battered woman, after having been beaten by her husband, was raped at knifepoint by him while he called her sexually

²¹⁶ Dutton, ‘Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome ’ (n 194) Dutton and Goodman, ‘Posttraumatic Stress Disorder among Battered Women: Analysis of Legal Implications’ (n 193).

²¹⁷ Examples of research and literature in the mental health field that are based on this definition: Walter W. Hudson and Sally Rau McIntosh, ‘The Assessment of Spouse Abuse: Two Quantifiable Dimensions’ [1981] 43 *Journal of Marriage and Family* 873 ; Melanie F Shepard, Campbell, James A., ‘The Abusive Behavior Inventory: A Measure of Psychological and Physical Abuse’ [1992] 7 *Journal of Interpersonal Violence* 291 ; L. M. Howard and others, ‘Domestic Violence and Severe Psychiatric Disorders: Prevalence and Interventions’ [2010] 40 *Psychological Medicine* 881 ; Diana Rose and others, ‘Barriers and Facilitators of Disclosures of Domestic Violence by Mental Health Service Users: Qualitative Study’ [2011] 198 *British journal of psychiatry* 189 ; Krim Lacey and others, ‘The Impact of Different Types of Intimate Partner Violence on the Mental and Physical Health of Women in Different Ethnic Groups’ [2013] 28 *Journal of Interpersonal Violence* 359 .

explicit derogatory names, wrongly accused her of engaging in sexual behaviour with numerous others, and threatened to kill her...”.²¹⁸

Like its sociological equivalent, this meaning stream perceives different types of behaviour as different phenomena, different forms of abuse. This perception is reflected, for example, in research within the field that measures women’s ability to predict physical violence in their relationship and separate research that investigates their ability to foresee psychological violence.²¹⁹ The separation of these studies is indicative of the assumption that each type of violence represents a different phenomenon.

The following quotation is from a study that investigates women’s accuracy in assessing their risk of psychological abuse:²²⁰

“Though the few existing studies reviewed above have made crucial contributions to our knowledge base in this area, they have all focused exclusively on physical abuse. To our knowledge, no studies have examined battered women’s accuracy in assessing their risk of experiencing future psychological abuse.... Psychological abuse continues to be generally understudied.”²²¹

Interestingly, research that examines psychological violence separately from physical violence reaches the conclusion that the two “are highly experientially and conceptually intertwined”.²²²

²¹⁸ Dutton, ‘Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome ’ (n 194) 1207.

²¹⁹ Margret Bell and others, ‘Assessing the Risk of Future Psychological Abuse: Predicting the Accuracy of Battered Women's Predictions’ [2008] 23 Journal of family violence 69 .

²²⁰ Ibid.

²²¹ Ibid, 70.

²²² Ibid, 71

This meaning stream not only distinguishes between physical and psychological forms of abuse, but also continues to classify these two forms internally into subforms.²²³ In this continuing classification, controlling behaviour, which is the essence of the fourth meaning stream, is understood as merely one sub-form of psychological violence within a relationship alongside many other subforms, such as humiliation, degradation, verbal harassment and extreme jealousy.²²⁴

Domestic violence is coercive control

According to the fourth meaning stream in the mental health field, violence against women by male partners is essentially the harm of coercive control.

Coercive control as the meaning of domestic violence against women is perhaps explained most coherently and sharply by Judith Herman in “Trauma and Recovery”, first published in 1992.²²⁵

Herman is a leading scholar and psychiatrist in the field of trauma and abuse.²²⁶ She has worked for several decades with women victims of domestic violence and other victims of trauma.

“Trauma and Recovery” reflects two decades of clinical work with victims of sexual and domestic violence and with other traumatized people, particularly combat veterans and victims of political terror. One of Herman’s most intriguing approaches

²²³ Ibid, 70.

²²⁴ Ibid, 70.

²²⁵ Herman, ‘Trauma and Recovery’ (n 149).

²²⁶ Herman was the recipient of the 1996 Lifetime Achievement Award from the International Society for Traumatic Stress Studies and the 2000 Woman in Science Award from the American Medical Women’s Association. In 2003 she was named a Distinguished Fellow of the American Psychiatric Association. She is a professor of clinical psychiatry at the Harvard University Medical School and the Director of Training at the Victims of Violence Program in the Department of Psychiatry at the Cambridge Health Alliance in Cambridge, Massachusetts and a founding member of the Women’s Mental Health Collective.

is to integrate clinical and social perspectives regarding coercive control in an effort to uphold the importance of individual experience *and* political context.

The book is considered revolutionary in the study of trauma and is viewed as the foundational platform upon which the body of knowledge named ‘Trauma Studies’ began to develop. Herman’s understanding of coercive control is very powerful for two reasons. Firstly, her theory is based upon accounts of survivors with whom she worked in her capacity as a therapist. Herman perceives their accounts as the only valid and legitimate source of information upon which understanding of the trauma can be constituted. Secondly, Herman’s theory connects two spaces, the public and the private, that are otherwise dichotomized:

“It is a book about commonalities: between rape survivors and combat veterans, between battered women and political prisoners, between the survivors of vast concentration camps created by tyrants who rule nations and the survivors of small, hidden concentration camps created by tyrants who rule their homes.”²²⁷

Herman establishes these crucial connections without overlooking the unique characteristics entailed by each type of trauma. She argues that concentrating on the differences between types of trauma whilst ignoring the crucial common denominator between them leads to a distortion in understanding any type of trauma. For the purpose of establishing this connection, she eliminates divisions between traditionally separated realms: private and public, individual and community, and men and women. Herman’s theory of trauma is founded upon the rejection of separation between the experience of domestic and sexual life – the traditional sphere of women – and the experience of war and political life – the traditional sphere of men.

In contrast to the tendency described earlier to muddle the essence of the abuse with the psychological reactions it provokes, Herman creates a clear distinction between them. In her view, in order to understand survivors’ reactions it is imperative to

²²⁷ Herman, ‘Trauma and Recovery’ (n 149), 2-3.

understand their realities, and any attempt to understand reactions without realities is futile, and more importantly, damaging for survivors. She therefore dedicates a chapter to describing the phenomenon of domestic violence, which she understands as coercive control, and only after refers to the psychological diagnosis that explains the survivors' psychological reactions towards it, which she termed Complex Post Traumatic Stress Disorder (CPTSD).²²⁸

According to Herman, coercive control, which she also terms *captivity*, is the element that distinguishes exposure to repeated, prolonged traumas from exposure to a single trauma. Whilst a single traumatic event can occur almost anywhere, a prolonged, repeated trauma could occur only in circumstances of coercive control.²²⁹

Herman establishes a crucial connection between domestic and political captivity. She highlights the conditions needed to establish a state of captivity which exist in both spaces, domestic and political:

“Repeated trauma occurs only when the victim is a prisoner, unable to flee, and under the control of the perpetrator. Such conditions obviously exist in prisons, concentration camps and slave labor camps. These conditions may also exist in religious cults, in brothels and other institutions of organised sexual exploitations, and in families.”²³⁰

The only difference between the two types of captivity – political and domestic – is the visibility of the conditions of captivity.²³¹ In political captivity, conditions include a hidden place or prison, as well as visible barriers such as locks and fences. Barriers used for domestic captivity are mostly invisible. They include a woman's own home

²²⁸ I do not further examine the CPTSD because the mental reactions of women to domestic violence is not relevant to my research.

²²⁹ Herman, 'Trauma and Recovery' (n 149) 74.

²³⁰ Ibid 74.

²³¹ Ibid.

and the social conditions that enable her partner to hold captive without society acknowledging her state.

While children are made captives by the condition of their dependency, women are made captives by a combination of the use of perpetrator's various tactics and the subordinating social, economic and legal conditions that allow these tactics to be perceived as normative and acceptable.

A state of total control can be achieved by creating a *willing victim*, an element that Herman identifies as the common denominator of all forms of tyranny:

“Totalitarian governments demand confession and political conversion of their victims. Slaveholders demand gratitude of their slaves. Religious cults demand ritualized sacrifices as a sign of submission to the divine will of the leader. Perpetrators of domestic battery demand that their victims prove complete obedience and loyalty by sacrificing all other relationships.”²³²

Herman's analysis of the tactics used by the perpetrator to achieve a state of coercive-control reveals them to be identifiable and measurable and not abstract or vague. She uncovers remarkable resemblance in the methods used by one human being to enslave another across all types of tyranny. Accounts given by hostages, political prisoners, survivors of concentration camps, and women victims of domestic violence, pornography and prostitution have an “uncanny sameness”.²³³ All types of tyranny share common ground upon the organised, systematic and repetitive techniques of *disempowerment and disconnection*, “designed to instill terror and helplessness and to destroy the victim's sense of self in relation to others.”²³⁴

²³² Ibid 76.

²³³ Ibid 76 - 77.

²³⁴ Ibid 77.

According to Herman, a state of coercive control is the combination of intimidation, control over bodily autonomy, and isolation. The various behaviours used by the perpetrator to subject his partner to a state of captivity can be divided into these three categories.

1. Intimidation:

A constant state of fear is the first essential element that the perpetrator seeks to attain. It is achieved by the establishment of a continual threat of death or serious harm to the victim or to one of her closest relatives. In order to achieve this state, physical violence is not necessarily needed; direct or indirect threats are sufficient. Threats against others are often as effective as direct threats against the victim.

The women victims of domestic violence whose accounts Herman shares often report that “their abuser has threatened to kill their children, their parents, or any friend who harbor them, should they attempt to escape.”²³⁵ The perpetrator heightens the constant state of intimidation by using various types of violence in an inconsistent and unpredictable way and by rigidly enforcing arbitrary rules. The effect of these fear-inducing techniques is to convince the victim of the futility of resistance and the omnipotence of the perpetrator.

2. Controlling basic bodily autonomy

The perpetrator also seeks to negate the victim’s sense of autonomy,²³⁶ an objective realized by controlling the victim’s body and bodily autonomy. Total control over the body’s most basic autonomy shames, demoralizes and negates the victim’s sense of self.

“Women victims of domestic violence often describe long periods of sleep deprivation during sessions of jealous

²³⁵ Ibid 77.

²³⁶ Ibid.

interrogation as well as meticulous supervision of their clothing, appearance, weight and diet.”²³⁷

3. Isolation:

The third crucial element of the state of coercive control is the isolation of the victim from any source of information, material aid or emotional support.²³⁸ Prisoners describe the prevention of communication with the outside world and the attempts of their captors to convince them that their closest allies have forgotten or betrayed them. The accounts of domestic violence victims are filled with descriptions of jealous examination of any connection with another human being and relentless accusations of infidelity, as part of a campaign of lengthy interrogations, stalking and eavesdropping. The perpetrator demands that his victim prove her loyalty to him by giving up her friendships, ties to her family, and with them her source of income.

The use of tactics aimed at intimidation, control over bodily autonomy, and isolation enables the perpetrator to achieve a state of coercive control over his victim. Herman adds a fourth element that occurs in the most extreme situations, which she describes as ‘total surrender’. When the perpetrator succeeds in forcing the victim to violate her own moral values and to betray her basic human connections, a state of total surrender is attained.²³⁹

“It is at this point, when the victim under duress participates in the sacrifice of others, that she is truly broken.”²⁴⁰

Women victims of domestic violence often report being sexually humiliated, being forced to lie or to cover up the dishonesty of their partner, and being forced to participate in illegal activities. One of the most psychologically harming situations

²³⁷ Ibid 78.

²³⁸ Ibid 79-81.

²³⁹ Ibid 83-86.

²⁴⁰ Ibid 83.

that a victims of domestic violence can endure occurs when the woman sacrifices her children by not protecting them from direct and indirect harm by the perpetrator.

These elements also account for the symbiotic relationship that is formed between the perpetrator and victim. The more the victim is isolated, dependent and in constant fear of death, the more she is compelled to cling to the sole permitted relationship in her life: her relationship with the perpetrator.²⁴¹

While the bond between a woman and a violent partner is greatly comparable to that which exists between a political hostage and a captor, the two relationships differ in an important regard. A political hostage is taken suddenly and initially perceives the captor as an enemy. Under abuse, the hostage gradually loses her belief system and begins to see the world through the captor's eyes. A woman who is a victim of a violent partner is taken hostage *gradually*. The state of domestic captivity is reached after a long-lasting process of small, systematic steps in a situation where the victim is emotionally attached to the perpetrator from the outset.

While the victim of a single traumatising event might afterwards report that she is “not herself”, the victim of chronic trauma feels that her personality has been changed irretrievably or even that she has lost her sense of her own personality completely.²⁴²

The disassembling of coercive control into the three elements outlined above – intimidation, control over bodily autonomy, and isolation – changes it from a phenomenon that might be perceived as vague and blurry to a phenomenon that can be identified, measured and proved.

Herman's presentation of captivity was accepted and embraced by scholars within the mental health field worldwide, as was the connection she drew between political and domestic captivities.²⁴³

²⁴¹ Ibid 82 - 83.

²⁴² Ibid 86.

²⁴³ Melissa Farley and others, 'Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder' [1998] 8 *Feminism & Psychology* 405 ; Angela Ebert, 'The Experience of Mental Death: The Core Feature of Complex Posttraumatic Stress Disorder' [2004] 24 *Clinical psychology review*

The meaning stream of violence as coercive control was also formed and developed by other leading scholars in the field. Smith, Smith and Earp²⁴⁴ dedicated their research to the conceptualization of domestic violence after identifying a foundational flaw in the prevalent meanings. Like Johnson in the sociological field, they identify the absence of acknowledgement of coercive control and argue that this crucial flaw gives rise to misleading data due to methodologies designed to address a different phenomenon. Through their research, Smith et al. created a path of potential dialogue between contradicting discourses within their disciplines.

As a methodological framework for their research on the conceptualization of domestic violence against women, they use the “measurement trap”, a research tool designed by Campbell and Graham.²⁴⁵ A measurement trap is created when a social problem is trapped inside a cycle of erroneous conceptualization and poor data sources, leading to distorted information and the neglect of victims. Smith et al. identify three main limitations in the existing conceptualization of domestic violence. The first is the emphasis placed on events of physical assault, which they argue has multiple implications for the level of conceptualization: research is based on the events themselves and not on the experience of the people involved; the events are evaluated regardless of their meanings to the victim or the perpetrator; and since the events are perceived as capable of portraying the entire phenomenon, social context is not perceived as relevant. The second constraint perceived by the three scholars is the

617 ; Humphreys and Humphreys, ‘Domestic Violence and the Politics of Trauma’ (n 194); Miriam Franco, ‘Posttraumatic Stress Disorder and Older Women’ [2007] 19 *Journal of Women & Aging* 103 ; Chris Cantor, ‘Traumatic Entrapment, Appeasement and Complex Post-Traumatic Stress Disorder: Evolutionary Perspectives of Hostage Reactions, Domestic Abuse and the Stockholm Syndrome’ [2007] 41 *Australian and New Zealand journal of psychiatry* 377 ; Howard and others, ‘Domestic Violence and Severe Psychiatric Disorders: Prevalence and Interventions’ (n 217); Ants Parktal, ‘Lost Chances and Prosperous Present? The Traumatic Past and Estonian Life Today’ [2012] 17 *Journal of loss & trauma* 350 ; L. J. Cohen, ‘Psychiatric Hospitalization as an Experience of Trauma’ [1994] 8 *Archives of psychiatric nursing* 78 .

²⁴⁴ Smith, ‘Beyond the Measurement Trap - A Reconstructed Conceptualization and Measurement of Woman Battering’ (n 202).

²⁴⁵ Campbell OM Graham WJ, *Measuring Maternal Health: Defining the Issues* (London School of Hygiene and Tropical Medicine 1990).

discounting of gender as a relevant element since the existing conceptualization perceives that women's meanings of the violence they suffer are identical to the ways men would experience it. The third constraint is the time considered relevant by the existing model. It perceives the time of the events themselves to be significant, and not the reality between the events.

“Thus, battering becomes equated with the time period defined by the beginning and ending of the assault, or set of assaults, be it a minute, an hour, or a day. This sharp bounding of battering in time and space implies that battering does not exist outside or between these intervals...”²⁴⁶

Smith et al. concluded that the survivors' standpoint was not part of the shaping of the concept of domestic violence.²⁴⁷ Consequently, they conducted research in which women were asked to describe their own experiences of abuse, based on the recognition that “women are the experts of their own lives”²⁴⁸. These women provided the sole data source for the conceptualization of domestic violence in the research and the researchers were conscious of remaining as true as possible to the women's accounts.

The survivors' conceptualizations describe domestic violence as a chronic state in which assaults are not isolated events but outcrops of an underlying condition of continuous abuse. The research generated the following definition, which the researchers called the Women's Experiences of Battering (WEB) framework:

“A process whereby one member of an intimate relationship experiences vulnerability, loss of power and control, and entrapment as a consequence of the other

²⁴⁶ Smith, ‘Beyond the Measurement Trap - A Reconstructed Conceptualization and Measurement of Woman Battering’ (n 202) 180.

²⁴⁷ Ibid 181.

²⁴⁸ Ibid 190.

member's exercise of power through the patterned use of physical, sexual, psychological, and/or moral force.”²⁴⁹

In the second stage the researchers derived an assessment tool from the WEB framework. The tool was designed according to the same data and consisted of ten items that were found to be unique to victims' experiences and therefore effective in distinguishing between victims and non-victims.²⁵⁰

1. He makes me feel unsafe even in my own home.
2. I feel ashamed of the things he does to me.
3. I try not to rock the boat because I am afraid of what he might do.
4. I feel like I am programmed to react a certain way to him.
5. I feel like he keeps me prisoner.
6. He makes me feel like I have no control over my life, no power, no protection.
7. I hide the truth from others because I am afraid not to.
8. I feel owned and controlled by him.
9. He can scare me without laying a hand on me.
10. He has a look that goes straight through me and terrifies me.

The research by Smith et al. strengthens the important clarification that the fourth meaning stream is based on the accounts of women who experienced domestic violence.

Recently there are signs that this fourth meaning stream is being received by mainstream scholarship. For example, Mary Ann Dutton criticizes the 'cycle of violence' defined by Walker because it negates the time periods between violent episodes and fails to recognise what women describe as a continuing state of siege.²⁵¹

²⁴⁹ Ibid 186.

²⁵⁰ Ibid 188-189.

²⁵¹ Dutton, 'Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome ' (n 194); Meier, 'Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice ' (n 192) in which the author describes the growing emphasis in the literature on understanding battering not as violence per se but

In a footnote, Dutton refers to “an important perspective for understanding violence and abuse” which “recognises the function of the violent or abusive behaviour beyond the typographical description of it”.²⁵² Dutton also refers in a footnote to The Abusive Behaviour Observation Checklist (ABOC), which is based on the Power and Control Wheel presented in the sociological chapter and which expands that model. The expanded description of tactics used by the perpetrator reveals them to be identifiable and provable. ABOC also clarifies that a pattern of behaviours includes behaviours that would not be considered violent episodes, even if violence is defined according to the third stream:

“Coercion and threats – making and/or carrying out threats to do something to hurt her; threatening to leave her, commit suicide, or report her to welfare; making her drop charges; Making her do illegal things. *Intimidation* – making her afraid by using looks, actions, and gestures; smashing things; destroying her property; abusing pets; displaying weapons. *Emotional Abuse* – putting her down; making her feel bad about herself; calling her names; making her think she’s crazy; playing mind games; humiliating her; making her feel guilty. *Isolation* – controlling what she does, who she sees and talks to, what she reads, and where she goes; limiting her outside involvement; using jealousy to justify actions. *Minimizing, Denying and Blaming* – making light of the abuse and not taking her concerns about it seriously; saying the abuse didn’t happen; shifting responsibility for abusive behaviour; saying she caused it. *Using Children* – making her feel guilty about the children; using the children to relay messages; using visitation to harass her; threatening to take the children away. *Economic Abuse* – preventing her from getting or keeping a job; making her ask for money; giving her an allowance; taking

rather as a larger pattern of dominance and control. Meier refers to Stark (n 184) but criticizes his theory based on the grounds that it “sounds more like advocacy and less like science”. 1320.

²⁵² Dutton, ‘Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome ’ (n 194), footnote 59.

her money; not letting her know about or have access to family income. *Male Privilege* – treating her like a servant; making all the big decisions; acting like the “master of the castle”; being the one to define men’s and women’s roles.”²⁵³

In later research Smith et al. look at the relations between physical violence, sexual violence and coercive control. They ask whether coercive control necessarily includes physical and sexual violence and whether the latter forms of violence can exist outside of a coercively controlling relationship.²⁵⁴

They observe both differentiation and co-occurrence between the three types of violence. Their research finds that physical and sexual violence are not necessarily present in a coercive control relationship, since 46% of women who were suffering from coercive control reported they were not physically or sexually assaulted during the last year. Just as importantly, 30% of women who were physically or sexually assaulted were not in a controlling relationship. These figures illustrate that physical and sexual violence can occur outside a coercive control context and coercive control can be achieved without these expressions.²⁵⁵

They conclude that the research supports the growing body of work indicating conceptual and empirical distinction between coercive control, physical assault and sexual assault.²⁵⁶ The effect is to define two phenomena of domestic violence against women: on the one hand, coercive control; and on the other, outbursts of violence of different types which are distinct and are not connected to each other in a pattern. This understanding is in keeping with Johnson and Stark’s realization that two forms of domestic violence exist – ‘common couple violence’ and coercive control.

²⁵³ Ibid footnote 60, refers to Ellen Pence and Michael Paymar, *Power and Control: Tactics of Men who Batter: An Educational Curriculum* (Minnesota Program Development Incorporated 1990).

²⁵⁴ Paige Hall Smith and others, ‘A Population-Based Study of the Prevalence and Distinctiveness of Battering, Physical Assault, and Sexual Assault in Intimate Relationships’ [2002] 8 *Violence Against Women* 1208 pg. 1211.

²⁵⁵ Ibid 1217.

²⁵⁶ Ibid 1222.

Conclusion

Leading texts from the sociological discipline and the mental health field demonstrate two main and very different meanings of violence against women by male partners.

According to the first meaning, evident in both disciplines, violence against women by male partners is an episodic phenomenon; the violent episodes within the relationship are the phenomenon itself. This meaning stream is based on the understanding of violence, in general, as a behaviour manifest in distinct episodes. It perceives violence as mainly the use of physical force, but also includes a second stream, which perceives violence as including sexually and psychologically harmful behaviours. According to both streams, the understanding of violence, in all forms, remains episodic.

According to the second meaning, revealed in a body of knowledge amassed over thirty years and found in both the sociological and mental health disciplines, violence against women by male partners is coercive control or, to use another term, captivity. Coercive control has been recognised as a lethal harm of a violent relationship. As a gendered harm, it is inflicted specifically on women by men and enabled by patriarchal social conditions. The perpetrator attains a state of captivity by using a systematic pattern of behaviours aimed at achieving three objectives: intimidation, isolation and control over bodily autonomy. Coercive control cannot be revealed by an episodic view of domestic violence since the pattern of behaviours used by the perpetrator includes acts that wouldn't necessarily be perceived as episodes, such as facial expressions, subtle gestures, and other acts that the victim would understand as relevant but which an outsider seeking to identify relevant episodes would not regard as relevant. The understanding of violence against women by male partners as coercive control is based on accounts given by women who described their partners' violence against them. By uncovering the common denominator between women in violent relationships and captives in other political contexts, this meaning stream breaks established dichotomies between spaces – political and domestic, public and private.

The understanding that two primary meanings exist in the sociological and mental health fields is important to my legal analysis, contextualizing legal naming events and enabling me to analyse those events as struggle between possible meanings. The presence of both meanings in legal naming events will enable me to analyse the dynamics of struggle between them. Conversely, the absence of one meaning will enable me to explore the operations by which a meaning is prevented from participating in the events, thus allowing the dominant meaning to prevail without struggle or challenge.

As explained at its outset, the second purpose of this chapter is to provide a reference that will enable me to compare the legal discipline to other disciplines with regard to its openness or closedness to different possible meanings. In the third part of the theoretical chapter I argue that the legal discipline's stance towards meanings presented to it by external actors will impact upon the dynamics at work within legal naming events. This chapter enables me to understand whether the legal stance is similar to that of other disciplines or unique to the legal discipline.

Literature from the sociological and mental health fields reveals the prevailing meanings in each to have been founded on unquestioned assumptions. In both fields, however, a competing meaning *based on women's accounts of the violence they have suffered*, was able to emerge, develop, and become a well-grounded body of knowledge. This is evidence of the natures of the fields, which allow for contradicting meanings and discourses to coexist. It is illustrative of the fields' openness to meanings presented by women and of the fields' acknowledgement of the importance of that knowledge in allowing it to become the foundation of the second discourse. Moreover, in both disciplines, I have found signs of communication between those contradicting discourses. Johnson in sociology and Smith, Smith and Earp in mental health alerted their respective disciplines to the existence of contradicting discourses, perceiving that the existing understanding of domestic violence as an episodic phenomenon was reflective of common couple violence but not coercive control. In the mental health field, signs exist of a dialogue between the two meanings. Marry Ann Dutton's article, for example, signifies the beginning of an acceptance of coercive control as the defining feature of domestic violence by a scholar who had previously understood the phenomenon as episodic. Therefore, texts from both the

sociological and mental health fields are reflective of disciplines which enable contradicting discourses to develop and co-exist within them, enable accounts shared by women to become the foundation of a competing discourse, and provide channels by which an influential dialogue between discourses can take place.

Additionally, this chapter has generated another important understanding to be taken into my legal analysis chapter: that the difference between the two discourses is not the product of a legitimate difference of perspective or opinion. While the first meaning was assumed rather than researched, the second is based on women's accounts of their experience; it is knowledge based on expertise. The two meanings cannot therefore be positioned on the same level or regarded simply as the product of legitimate differences in perception.

Through dialogue between discourses, several authors in both disciplines identified that two separate and different forms of violence against women by male partners exist. One is 'common couple violence' and the other is coercive control. However, this distinction is accepted only by a few authors and is yet to be granted widespread acknowledgment in either discipline. The first discourse is still based on the assumption that only the episodic phenomenon exists and it conceals the second discourse by neglecting to acknowledge its existence.

Crucially, I also take with me to the legal analysis chapter the understanding that coercive control is a lethal harm and as such cannot be explained as the nature or dynamics of the relationship in question. Coercive control is also the indicator most capable of predicting whether and to what extent a woman is under a life-threatening risk from her partner's violence. Both harm and dangerousness are highly relevant elements to any legal proceeding that concerns violence against women by male partners. Overlooking coercive control means overlooking a lethal harm inflicted on women. It also means that any evaluation of the present or future risk they face will be distorted and erroneous, and therefore dangerous to women.

Chapter IV: Analysis of Empirical Data

In this chapter I analyse the 67 selected judgments with a view to answering the main question driving my research: how do discourse mechanisms influence the meanings accepted by or dismissed from legal discourse? Through this analysis I aim to shed light on the questions whether women who are the subjects of legal procedures are able to play an effective part in the construction of accepted legal meanings so that those meanings may reflect their own realities and also whether professionals from other disciplines are able to alter accepted legal meanings to reflect their own disciplinary knowledge.

My analysis draws on the gap revealed in feminist legal scholarship between the harm of domestic violence experienced by women and the way it is legally perceived²⁵⁷. I aim to contribute to that discussion by inserting the role of discourse mechanisms as elements able to construct and reinforce that gap and reveal their importance.

In my analysis, statements²⁵⁸ from the judgments are isolated, as a method of identifying legal discourse,²⁵⁹ and searched for evidence of the relationship between mechanisms of legal knowledge production and accepted meanings of domestic violence and for signs of struggle over the accepted meanings.

My analysis is informed by the understanding generated in the multidisciplinary chapter that recognises coercive control, the second meaning of domestic violence, as

²⁵⁷ Rosemary Hunter, 'Domestic Violence Law Reform and Women's Experience in Court' (n 141) pg. 20, Jane Maslow Cohen, 'Regimes of Private Tyranny: What Do They Mean to Morality and for the Criminal Law' [1995] 57 University of Pittsburg Law Review, 762, Shannon Selden, 'Practice of Domestic Violence, The' [2001] 12 UCLA Women's Law Journal, pg. 18, pg. 21, Deborah Tuerkheimer, 'Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence' [2004] 94 Journal of Criminal Law and Criminology, pg. 959.

²⁵⁸ See Chapter II, in which I define statements as the atom of the research method, as the smallest part within the judgment that is able to reveal the relationship between a mechanism of knowledge production and an accepted legal meaning.

²⁵⁹ See Chapter II, in which I explain my perception of judgments as documents that illustrate legal naming events in which legal knowledge (but not necessarily the only legal knowledge) is produced.

not only the underlying essence and overall dynamic of the violent relationship but also as a lethal harm inflicted on women and as the primary indicator for evaluating the dangerousness of their situation. This understanding is critically relevant to legal procedures concerning violence against women by male partners.

The chapter is divided into three parts, according to the three tools of analysis: division and classification, continuity and translation.

Part I: Division and Classification

This section identifies where division and classification is used in legal naming events and analyses its role and operation in the formation of the legal meaning of violence against women by male partners.

Dominant Discourse

My analysis of statements reveals that the division and classification mechanism constructs, grounds and strengthens the episodic meaning ascribed to domestic violence – the understanding that domestic violence is a cluster of violent incidents inflicted by the perpetrator upon his partner. Statements reveal that the division and classification mechanism takes a meaningful role in the construction of the legal understanding of domestic violence as a collection of separated violent episodes.

My analysis corresponds with feminist legal scholarship on the episodic legal understanding of domestic violence and its devastating effects on legal remedies granted to women who turn to the legal system for protection²⁶⁰. I aim to add to that scholarship by showing the actual workings in legal discourse responsible for constructing, grounding and reinforcing that understanding and by revealing how through discourse mechanisms, the episodic understanding permeates the main legal questions asked in the judgment.

Statements from civil and criminal judgments reveal a perception of violent episodes as the phenomenon itself. These episodes are understood as the defining elements of domestic violence against women, and are thus granted legal significance. Other information, such as behaviour indicative of the existence of coercive control, goes largely unmentioned. As the only element of domestic violence that *exists* within

²⁶⁰See for example Martha R Mahoney, 'Legal Images of Battered Women: Redefining the Issue of Separation' (n 104) pg. 34, and Deborah Tuerkheimer, 'Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence' (n 257) pg. 966, Joan Erskine, 'If It Quacks Like a Duck: Recharacterizing Domestic Violence as Criminal Coercion' [1999] 65 Brooklyn Law Review pg. 1209.

judgments, the episodes are seen to contain the only information required for the assessment of the relevant legal questions.

Through acts of division and classification, the violent relationship is scattered, becoming a collection or cluster of specific and distinct violent episodes. The entire relationship is presented and described in judgments *as* a collection of separate violent episodes and every instance of this presentation, coupled with the absence of information about coercive control, contributes to the construction of the legal domestic violence as a phenomenon *that is about* those episodes; that can be understood and have its harm evaluated through an examination of those episodes.

The centrality of episodes to the legal meaning of domestic violence: scattering a violent relationship into isolated episodes

The following are representative statements that reflect how through the use of the division mechanism, the entire violent relationship is reduced to distinct episodes and presented *as* those episodes. They reflect the *centrality* of the violent episode to the legal understanding of violence against women by male partners. These statements show violent relationships to be understood and described according to the distinct episodes that occur within them. Importantly, these statements are sourced from judgments in which coercive control behaviour was not mentioned. Presentation of the violent relationship as *only* episodes, without the provision of additional information regarding coercive control, leads to an accordant construction of the legal meaning of domestic violence.

The statements below are the only statements in the judgments they are sourced from which described the violent relationship:

*“In the last year or two the relationship between the parties has seriously deteriorated. There have undoubtedly been incidents of violence between them.”*²⁶¹

²⁶¹ *B v B (Domestic Violence: Jurisdiction)* [1978] Fam. 26 (CA), 31. An appeal submitted by the husband against an injunction issued against him according to the Domestic Violence and Matrimonial Proceedings Act 1976.

*“Mr B gave evidence admitting certainly some of the incidents of violence of which Mrs. B had made complaint but seeking, if not to excuse, at all events to explain the circumstances in which those incidents had occurred, so as to minimise their significance.”*²⁶²

*“At this discussion the husband unfortunately lost his temper and made a severe assault on the wife; there is no question about that.”*²⁶³

*“There was one particular incident of violence which occurred in July 1991, that is when the mother was pregnant”.*²⁶⁴

*“In her first affidavit the mother asserted that the father had a history of violence towards her, although apart from the incident in July 1991, she did not identify any particular incident of violence.”*²⁶⁵

*“Their life together thereafter was unsatisfactory because he assaulted her on a number of occasions.”*²⁶⁶

The following statements are taken from a schedule of findings submitted to court in a child contact case and quoted by the court in its judgment. They reflect the centrality given to violent episodes within judgments and the practice of presenting the violent relationship as merely a collection of these episodes:

²⁶² Ibid, 32.

²⁶³ *Myles v Myles* (CA, 14 October 1980), 1. An appeal submitted by the husband against an injunction issued against him according to the Domestic Violence and Matrimonial Proceedings Act 1976.

²⁶⁴ *Amanda Jane Grant v Matthew John James* (CA Civ, 16 December 1992), 2. An appeal submitted by the husband against an injunction issued against him according to the Domestic Violence and Matrimonial Proceedings Act 1976.

²⁶⁵ Ibid, 2.

²⁶⁶ *R. v Broxbourne BC Ex p. Willmoth* (1989) 21 H.L.R. 415 (HC QB) , 416. A judgment given in a procedure under the Housing Act 1985 that considered whether an applicant suffering from her partner’s violence should be seen as a person who already has “accommodation”.

“1. Soon after his arrival in England in November 2000, the Applicant made a threat to kill the Respondent.

2. On one occasion soon after the Applicant pushed the Respondent onto the sofa.

3. Towards the end of February 2001 the Applicant slapped the Respondent twice across her face.

4. The Applicant locked H in the bathroom for 45 minutes.

5. Around March 2001 the Applicant beat the Respondent whereby he slapped and pushed her, causing her to bang her head against the door.

6. In March 2001 the Applicant threw the Respondent onto the floor.

7. On 13 June 2001 the Applicant slapped the Respondent on her face.

8. On 13 June 2001 the Applicant grabbed the Respondent by her hair and dragged her along the floor.

9. In June 2001 the Applicant beat the Respondent about her head and face with his shoe.

10. In June 2001 the Applicant beat the Respondent on her back with a shoe several times.

11. On 13 June 2001 the Applicant pulled the Respondent's hair.

12. On 13 June 2001 the Applicant punched the Respondent around her head.

13. On 13 June 2001 the Applicant beat the Respondent causing the small finger on her left hand to break.

14. On 13 June 2001 the applicant made threats to kill the Respondent and her daughter (H). ”²⁶⁷

The following statements are taken from a Chronology of Facts attached as an appendix to the judgment given by the Family Court in an abduction case. The chronology consists mainly of violent episodes, which are listed separately and chronologically. M stands for mother and F for father. Information on coercive control is absent from the document.

“2000

²⁶⁷ *Re H (A Child) (Contact: Domestic Violence)* [2005] EWCA Civ 1404, [2006] 1 F.L.R. 943, [1(1)] – [1(14)].

6.00 The parents began to cohabit in Rome. M states that F's behaviour changed and that the first incident of forced sexual intercourse and of violence took place at about this time, following which F apologised.

9.00 They moved to Ostia. M alleges that F raped her for the first time.

2002

8/9.02 F assaulted M, who was three months pregnant and unwilling to have sexual relations. He threw her on the bed face down, jumped on top of her and covered her mouth and nose with his hand.

*11.02 F hit M in the stomach when she was 16 weeks pregnant, but immediately apologised.*²⁶⁸

Statements reveal an entrenched practice of describing violent relationships in episodic terms to exist in criminal judgments as well:

*“Thus, in October 1981, there is a record of her being hit three or four times on the head with a telephone and thrown to the ground. In September 1983, a note states she was ‘pushed’ by her husband whilst pregnant and sustained a bruised hand. The next month she had a broken finger due to another argument.... In 1986 the deceased abused the appellant and tried to run her down at a family wedding. She obtained her second injunction from the court after the deceased had held her throat and threatened her with a knife. He threatened to kill her and threw a mug of hot tea over her. Despite the court order, the deceased continued his violence which intensified after January 1989.”*²⁶⁹

This statement is from a criminal judgment on an appeal against sentence, submitted by the appellant who killed her husband after many years of suffering his violence. Despite the obvious importance of identifying coercive control in any judgment of the criminal liability of women who kill their abusive partners, information regarding

²⁶⁸ *DT v LBT (Abduction: Domestic Abuse)* [2010] EWHC 3177 (Fam); [2011] 1 F.L.R. 1215, [Appendix 1: Chronology].

²⁶⁹ *R. v Ahluwalia (Kiranjit)* [1992] 4 All ER 889 (CA), 891. A judgment on an appeal against conviction submitted by a wife who killed her husband after many years of being subjected to his violence.

coercive control is entirely absent from this judgment, in which only the episodic understanding of a violent relationship is present.

In sentencing judgments, the courts have broad discretion to include any relevant consideration, even if it exceeds the borders of the components that form the conviction. The following statements from sentencing judgments illustrates that even when the courts' discretion is broader, the essence of a violent relationship is still presented as episodic:

*“On 21st May 2006 a young married woman, Sabia Rani, aged 19 years, a stranger in a foreign country, was found dead at her home in Leeds. She had been beaten to death, the victim of at least three distinct episodes of serious violence.”*²⁷⁰

*“The prosecution case was that there were regular instances of violence used by the appellant against Miss Gardiner and that the offences charged were representative of the worst of those incidents.”*²⁷¹

The statements above exemplify *naming as forgetting*, an operation of the act of naming introduced in Chapter I. The construction of an episodic meaning of domestic violence blocked any path within the discourse through which a coercive control meaning could pass and develop, leaving the latter meaning absent and forgotten.

Specifics of episodes perceived as bearing crucial legal significance

A consequence of dividing the relationship into the episodes that occur in them and seeing the violent relationship *as* those episodes is the perception that the particulars and details of each episode carry crucial legal significance.

²⁷⁰ *R. v Khan (Uzma)* [2009] EWCA Crim 2, [2009] 1 W.L.R. 2036, [1]. Criminal appeals by family members of a husband who murdered his wife against conviction and sentence according to section 5(1) of the Domestic Violence, Crime and Victims Act 2004 for allowing the murder of the deceased.

²⁷¹ *R. v Murray (Robert Owen)* [2006] EWCA Crim 3159, [4].

In both civil and criminal law judgments, the specifics of the behaviour of the perpetrator are specified and the details of the circumstances that led to each episode are detailed. When possible, the time and date of each episode are noted.

The following statements are extracted from civil law judgments. In the first, the court not only presents a violent relationship *as* episodes but also details the circumstances that led to those episodes:

*“It appears that prior to the wife’s first divorce petition there were two occasions on which the husband had struck the wife – one being a dispute when the husband was teaching the wife to drive and the other was on an occasion when she lost her handbag.”*²⁷²

As can also be seen in the following statements, the particulars of every episode are detailed fully and form the entire factual segment of the judgments.

*“In February 1986 Mr Clarke used substantial violence on Miss Holmes, as a result of which she sustained a broken nose, black eyes and swelling of her legs. In July 1986, the parties were living in a caravan and he threw a glass at her, as a result of which she sustained a cut to her ear which needed stiches. The judge also found that there were other incidents of violence of a much lesser nature, such as pushing and shoving. A much more serious incident by Mr Clarke, that on that occasion in the course of an argument Mr Clarke threatened to kill her and tried to strangle her, forcing her to protect herself with a breadboard.”*²⁷³

²⁷² *Stannard v Stannard* (CA Civ, 28 November 1989), 2. An appeal by a husband against an ouster order issued against him according to the Matrimonial Homes Act 1983. The court refers in the statement to the first divorce petition the wife had submitted and which she had decided not to pursue, agreeing instead to a reconciliation attempt. She then submitted another divorce petition after acknowledging that reconciliation was not possible.

²⁷³ *Vikki Tracey Holmes v Craig Creighton Clarke* (CA Civ, 06 April 1990), 1. A judgment on an appeal submitted by a perpetrator against an order issued against him according to the Domestic Violence and Matrimonial Proceedings Act 1976.

*“Reference was made to two specific instances of domestic violence in 2004. The first, in January 2004, involved the forcible administration of poison, resulting in hospitalisation and treatment for organophosphorous poisoning; the second, in November 2002, involved AS's husband banging her head against a wall and causing her significant head injuries, which again resulted in hospitalisation and medical treatment referred to in a medical report.”*²⁷⁴

Violent episodes are described in a high level of detail in criminal law judgments:

“Mr Shipton jumped on his wife, grabbed her around the throat with both hands, so that she could not breath and she later told the police that she thought she was going to die. When he abandoned strangling he began to punch her. She curled into a ball to try to protect her unborn child. She remembered telling the appellant to think about that but he tried to strangle her again. She appears to have lost consciousness but regained consciousness on the floor of the living room while the appellant was still punching and kicking her, aiming blows at her head. It appeared to her that he had totally lost control.

Eventually, he sat in a chair, holding his wife down on the floor by her hair. She was crying and distraught, and he threatened her that if she did not keep quiet, but attracted the attention of people living upstairs he would kill her. Throughout the evening and into the small hours of the morning he continued to drink. At times he would punch his wife in the face; he would kick her, and then calm down and say he was sorry. He kept hold of her hair so she could not get away from him and took her everywhere with him when he went about the house.

*At another stage, saying he did not like the highlights in her hair, he cut large clumps of her hair off.”*²⁷⁵

²⁷⁴ *AS (Pakistan) v Secretary of State for the Home Department* [2007] EWCA Civ 703, [1]. An appeal against a decision related to an application for asylum for a woman and her three children on the basis of domestic violence.

²⁷⁵ *R v Adam Shipton* [2001] EWCA Crim 2840, [7] – [9]. A judgment on appeal against sentence, submitted by the offender who was convicted of inflicting grievous bodily harm on his wife.

The legal construction of domestic violence thus takes place through the detailing of violent episodes and the allocation of judgments' central spaces to episodes and their particulars, in the context of an absence of information regarding coercive control. Moreover, the focus on specifics reflects the existence of a perception that those details alone are capable of providing the information required to assess the relevant legal questions.

Decontextualization

Another effect of the division mechanism in charge of presenting a violent relationship *as* episodes is the creation of a perception that these episodes are isolated elements and the consequent concealment of the relevant context in which they take place.

Feminist legal scholarship revealed the legal decontextualization of domestic violence and pointed at the erroneous understanding of the harm of domestic violence it is based upon:

“Regarded in isolation, much abusive or threatening behaviour can be explained away, given a benign interpretation, or made to appear innocuous. The decontextualized examination of disaggregated incidents can leave a case in shreds.”²⁷⁶

In my analysis I aim to add to that scholarship by drawing a line between the classification mechanism and the act of decontextualization, to show how decontextualization is a direct outcome of the operation of that mechanism.

Untethered from other relevant information about the relationship in question, the violent episodes detailed in judgments regarding domestic violence are decontextualized and reframed as isolated events. They are presented without a

²⁷⁶ Rosemary C Hunter, ‘Gender in Evidence: Masculine Norms vs. Feminist Reforms’ [1996] 19 Harvard Women's Law Journal, pg. 131. See also Tuerkheimer, ‘Recognizing and Remedying the Harm of Battering: A Call to Criminalize Domestic Violence’ (n 257) pg. 960-961.

relevant background and without an explanation of the element that connects them to each other.

A background can potentially include any kind of information that the court perceives as relevant. Yet in most cases, the very short background that *is* provided pertains primarily to the existence of previous violent episodes.

The following statements are representative of the brief and limited backgrounds provided by the courts prior to detailing what they found to be the relevant facts of the case. These statements were the only information the courts provided in each case about the background or relevant context of the ‘relevant facts’:

“However in March 1977 there was a severe assault on her when she was punched in the face and he tried to strangle her in front of the children.”²⁷⁷

“This was a domestic dispute which spilled over into violence on Christmas Day 2005.”²⁷⁸

“The facts can be shortly stated. The appellant had lived with a young woman who had a child by him, but she left him and in October 1984 she was staying with a friend.”²⁷⁹

“The background to the offence was this. The appellant and complainant had been in a relationship for about ten weeks.”²⁸⁰

²⁷⁷ *Rennick v Rennick* [1977] 1 W.L.R. 1455 (CA), 1456. An appeal against a decision related to an application for a restraining order according to the Domestic Violence and Matrimonial Proceedings Act 1976.

²⁷⁸ *R. v O’Grady (Ricky Stephen)* [2006] EWCA Crim 2216, [2]. A judgment on an appeal against sentence, submitted by an offender convicted of inflicting grievous bodily harm on his partner.

²⁷⁹ *R. v Raphael (Herbert)* (1985) 7 Cr. App. R. (S.) 275 (CA Crim), 276. A judgment on an appeal against sentence submitted by an offender convicted of kidnapping his partner.

²⁸⁰ *Regina v Stephen Williams* [2004] EWCA Crim 660, [3]. A judgment on an appeal on sentence of imprisonment submitted by an offender convicted of inflicting grievous bodily harm on his partner.

*“The facts are these. The complainant, Ms Johnson, lived in a flat in Erith with her 4-year old son. She had been in a relationship with the appellant for a short while, but they had split up some time before the offence was committed.”*²⁸¹

*“The complainant, Mrs Khan, was and is the appellant's wife.”*²⁸²

The following statements are taken from a judgment in a criminal appeal against a sentence submitted by a woman who killed her abusive partner and was convicted of his manslaughter. The court summarized the case's context in two uninformative sentences:

“The victim, Sidney Hart, was almost 49 years of age at the time of his death. The applicant, who was aged 42 at the time of the offence, had started a relationship with the victim some five year earlier. ...

The court then detailed the facts regarding the violence the appellant had suffered:

*It was a violent relationship and the applicant suffered injuries which she reported to her doctor and on one occasion at least to the police.”*²⁸³

Despite the relevance of coercive control in such a case, reference to it is absent both from the background provided and from the ‘relevant facts’.

In the following judgment, the court provided a background consisting only of episodes of violence that had occurred in the past but which were not part of the matter it was hearing. The court found previous episodes to be the only relevant information that should be included in the case background outlined before presentation of the specifics of the current offence:

²⁸¹ *R. v Zelder (Mitchell)* [2009] EWCA Crim 2958, [2]. A judgment on an appeal against a sentence of life imprisonment submitted by an offender convicted of attempted murder.

²⁸² *Regina v Ali Abbass Khan* [2011] EWCA Crim 2782, [2]. A judgment on an appeal against a sentence of imprisonment submitted by an offender convicted of attempted murder.

²⁸³ *R. v Jacob (Brenda)* (CA, 03 May 2000), 1, an appeal against a sentence.

*“4 The appellant and the complainant, Audrey Bentall, were married in 1994. They had three children together. There was a long history of threats and domestic violence by the appellant towards the complainant, beginning within 3 years of the marriage and continuing thereafter. The police were called on a number of occasions to domestic disturbances, in the course of which the appellant is said to have attacked the complainant, though none of these incidents resulted in convictions.”*²⁸⁴

Below is an example of a judgment in which the court gives a broader background than that usually provided in similar cases and yet still fails to offer any information whatsoever regarding coercive control.

*“The complainant, a woman who is a year younger than he, and the appellant started a relationship about six years before the incident. He would often stay at her flat. They had only been going out for about eight months when he began to use violence on her, particularly when he had been drinking. In early 2007, because of his violence, they split up. The complainant moved to a new flat to make a new start. However, in February or March 2008 they got back together when she thought that he had changed for the better.”*²⁸⁵

Through mechanisms of division and classification, episodes are presented as separated elements devoid of context, the element that connects episodes to each other and that is the underlying layer explaining how the episodes form a pattern of behaviours potentially amounting to coercive control. The absence of context not only strengthens the episodic understanding of domestic violence in legal discourse, but also reinforces the absence of coercive control from that discourse.

Assessment of severity of violent relationship according to specifics of episodes

Statements reveal that the specifics of episodes are seen as indicators according to which the gravity of violence and degree of risk can be assessed. Episodes are described as “severe” or “less severe” according to the behaviour of the perpetrator

²⁸⁴ *R. v Bentall (Andrew Peter)* [2007] EWCA Crim 879, [4].

²⁸⁵ *R. v Whitaker (Ryan Paul)* [2009] EWCA Crim 1502, [2].

and the injury inflicted upon his victim. The use of these qualifying phrases serves to form a frame, or image, which sets the “tone” for the entire judgment:

*“The judge also found that there were other incidents of violence of a much lesser nature, such as pushing and shoving. A much more serious incident occurred in July or August 1989. The judge accepted Miss Holmes' evidence, which was denied by Mr Clarke, that on that occasion in the course of an argument Mr Clarke threatened to kill her and tried to strangle her, forcing her to protect herself with a breadboard.”*²⁸⁶

*“... as far as these offences go, it is by far the most brutal and prolonged incident of domestic violence as I have had the misfortune to deal with in recent times, and certainly in terms of the consequences it is right at the top of the league.”*²⁸⁷

Addressing all relevant legal questions of the judgment – conduct, harm and risk - according to the specifics of separate episodes

My analysis of the 67 judgments reveals the prevailing notion that the details of a violent episode provide sufficient information for answering the legal questions addressed in the judgment: the gravity of conduct, severity of harm, and level of risk presented.

The following statements from civil law judgments reflect the widespread tendency to assess a perpetrator’s dangerousness according to the existence and seriousness of violent episodes and the ensuing notion that dangerousness cannot be proved in the absence of recent violent episodes.

²⁸⁶ *Vikki Tracey Holmes v Craig Creighton Clarke*, (n 273), 1. A judgment on an appeal submitted by a husband against an order issued against him according to the Domestic Violence and Matrimonial Proceedings Act 1976.

²⁸⁷ *R. v Whitaker (Ryan Paul)*, (n 285) [12]. A judgment on an appeal submitted by an offender convicted of inflicting grievous bodily harm on his partner. The judge referred to a brutal incidence of physical violence that led to the victim fearing that she would not survive the attack, jumping out of a window and fracturing her spine.

The facts of the first judgment concern a wife who resided in a refuge for women fleeing domestic violence because of her husband's violence against her.²⁸⁸ She appealed against the refusal of the County Court to attach a power of arrest to an injunction, arguing that without such a provision she was unsafe and unable to return to her home. The County Court refused her application based on the absence of violent episodes during the time the wife was in the refuge. The Court of Appeal upheld the judgment. The wife's refusal to go back to her home was seen as "strange":

"As regards the affidavits in this case, there is virtually no evidence to enable a judge to make a finding on the second point – it would be pure speculation as to whether the husband was likely to do it again- and in fact here we are, sitting in this court on October 31, the order has been in existence since September 15, nothing has happened between these two parties, we are told, since the date of the judge's order and apparent peace exists, except that we are told that this young lady will not return to the matrimonial home, which is now empty and has been empty (because the husband obeyed the injunction to vacate it) since the date of the judge's order, or the date upon which it became effective. So the situation on a factual basis seems very strange... and in view of the lapse of time during which nothing seems to have happened, and in view of the fact that the house has remained empty for about six weeks, it does not strike me personally as being the kind of case in which a court would be disposed to treat this man as a continuing potentially violent husband, though it may be that the evidence will satisfy the judge to the contrary..."

*As far as I can see from the documents, there was before the judge no evidence that this man was likely to cause further actual bodily harm, although there was evidence that he had previously done so."*²⁸⁹

Likewise, the two following statements below are evidence of the notion that it is possible to ascertain the level of a perpetrator's dangerousness by assessing the severity and frequency of violent episodes.

²⁸⁸ Additional details regarding the violence she suffered were not provided in the judgment.

²⁸⁹ *Lewis (A. H.) v Lewis (R. W.)* [1978] Fam 60 (CA) , 62-64.

*“It is true that there is evidence in the past, now some nine months ago, of actual violence so it could perhaps be said that the wife may just be able to bring herself within the limits of section 2(1) – although I would be cautious about that, having regard to the lapse of time.”*²⁹⁰

*“...I would not have considered that incident alone as justifying the exercise of the discretion. Most significantly perhaps because it took place a long time ago, relatively....”*²⁹¹

In sentencing judgments in criminal law, courts are bound to ponder any consideration relevant to the question of the severity of the offence and gravity of harm inflicted on the victim. In contrast to the conviction stage of proceedings, the sentencing stage allows courts discretion in considering other factors that may be relevant to that determination.

Statements from sentencing judgments reveal that despite this potential for wider discretion, courts continually assess the severity of offence and gravity of harm predominantly according to episodes and their particulars. It can be seen in these examples that ‘aggravating factors’ are limited to the episodes themselves and do not include the crucial nature of the relationship and the underlying harm that lurks beneath violent conduct.

“It is thus clear that the question for the judge was whether this was an offence of the utmost gravity for which the notional determinate sentence would be a very long period measured in very many years, such as to justify a life sentence. In our view, the judge was entitled to take the view that it was. He spelled out in his sentencing remarks the aggravating factors. They included the fact that the victim came closer to death than any other case seen by the pathologist, the cunning way in which the

²⁹⁰ *Horner v Horner* [1982] Fam. 90 (CA Civ), 93. A judgment on an appeal submitted by a woman against the refusal to issue an injunction against her husband according to the Domestic Violence and Matrimonial Proceedings Act 1976.

²⁹¹ *Amanda Jane Grant v Matthew John James*, (n 264) 3. An appeal submitted by a husband against an injunction issued against him according to the Domestic Violence and Matrimonial Proceedings Act 1976.

appellant sought to lay a false trail immediately after the attempted murder so as to prevent any assistance coming to the victim that evening, the fact that he himself made no attempt to summon medical assistance, despite knowing or believing that his victim was still alive when he left the premises on that night, and the fact that he left the victim's four year old son alone in the flat with the victim overnight, as well as the subsequent attempts to intimidate the victim so as to avoid the consequences of his actions."²⁹²

"The judge further identified the following aggravating features of this offence. This was a prolonged attack with a weapon on a woman. She had no chance to defend herself. It lasted two hours and it was in effect a form of torture. The complainant was the mother of his children. The attack included not only great physical pain, but also a high degree of degradation, including his forcing her to strip for a continued deliberate beating."²⁹³

The following example reveals the perception that episodes are able to indicate a process of escalation in the gravity of violence and risk presented by the perpetrator. It is based on the previously noted notion that it is possible to construct from episodes a picture of a violent relationship whole enough to form a basis for the assessment of gravity.

"It has been recognised for a long time now that it is dangerous to ignore what may appear to some to be relatively trivial forms of physical violence. In the domestic context it is common for assaults to escalate from what seems trivial at first. Once over the hurdle of striking the first blow, apologising and making up, some people find it much easier to strike the second, and the third, and go on and on. But of course, that is not every case."²⁹⁴

²⁹² *R. v Zelder (Mitchell)*, (n 281) [16].

²⁹³ *Regina v Ali Abbass Khan*, (n 282) [13].

²⁹⁴ *Yemshaw v Hounslow (Supreme Court)* [2011] UKSC 3, [2011], 1 W.L.R. 433, [34]. A Supreme Court judgment on the meaning of domestic violence in the context of the Housing Act 1985 [hereinafter: *Yemshaw v Hounslow*].

This statement is also indicative of the view that future escalation of violence can be predicted through an examination of the frequency of episodes. It is a perception founded upon the perception of episodes themselves as the main relevant element in the relationship.

Bellow is a statement representative of the pervading notion that the main harm caused by domestic violence is the harm inflicted in the episode itself.

*“She sustained physical injury, a probable broken nose, a lost tooth, a fractured rib, and what makes matters more serious is that the attack took place when her little daughter, Chloe, was in the house, and whether or not the attack was in the presence of Chole, certainly by the time the police arrived Chloe was downstairs, kneeling over her mother who was prostrate on the floor.”*²⁹⁵

The statement is as illuminating of the harm it does not acknowledge as of the harm it does. Throughout the judgment from which this statement is extracted, coercive control is absent from consideration of the harm inflicted on the victim.

The same assumption is reflected in the following statement, taken from a judgment in which the facts describe an offender who was violent towards his previous partner and has subjected his current partner to a torturous attack. The probation officer assessed him as presenting high risk to any woman with whom he enters into a relationship. Yet the harm acknowledged for the purposes of sentencing was only the harm caused in the specific episode:

*“I am entirely satisfied that this was not an assault of the kind described by the defendant, but was a sustained bullying attack on Miss [RB], causing her a variety of injuries.”*²⁹⁶

²⁹⁵ *Regina v Stephen Williams* (n 280) [3].

²⁹⁶ *R. v Randle (Steven John)* [2007] EWCA Crim 957 (CA Crim), [7(ii)].

The only harm that was mentioned and thereby acknowledged as a relevant harm to the judgment was the injury the offender inflicted upon his partner in the specific episode.

Second layer of classification: forms of violence- physical, sexual and emotional violence

My analysis demonstrates the process by which isolated episodes come to be understood as the violent relationship itself. But these episodes also undergo an additional layer of classification, according to form of conduct. Statements reveal the division of episodes into categories of physical, sexual, and psychological violence.

As incidents are categorized in this way, each form of violence comes to be perceived as a separate phenomenon. Through these operations of classification, a relationship experienced by the woman involved in it as one entirety is scattered into many parts: first into episodes and then into separate phenomena named according to the nature of those episodes.

This second stage of classification strengthens the first. By reinforcing the episodic understanding of domestic violence upon which it is based, the second layer of classification puts further distance between the legal understanding of domestic violence and any understanding of the phenomenon as one entirety. Crucially, it also further removes the legal meaning of the phenomenon and the harm it causes from the way in which women experience it.

In the following statement, a court adjudicating a criminal appeal against sentence, describes the details of the offence in question by differentiating between types of conduct and naming them separately. The violent episode on which the offender's conviction was based is dispersed into the different types of conduct that constituted it. Verbal aggression is separated from physical violence carried out in the same episode and the two parts – verbal and physical – are clearly hierarchized by the court as causing different degrees of harm.

“He arrived at the former matrimonial home and instead of simply leaving what he had come to deliver, he persuaded one of the children to allow him to enter. Over the course of five hours he subjected the wife to a high degree of verbal aggression, pestering her and involving the children in some details of the breakdown of the marriage that were better left unsaid. More importantly, as the judge found, he grabbed the wife at one point, threatened to slit her throat and put his hand over her mouth. It was undoubtedly a terrifying ordeal for her and for the children. It came to an end when one of the children was able to get away from the husband and was able to phone the grandmother who wisely telephoned the police, and on their arrival at about 2 o’clock in the morning he was duly arrested.”²⁹⁷

What follows is a statement from a criminal judgment that represents the embedded practice of categorizing behaviours used in a violent relationship according to forms of abuse:

“After Mrs Ds death, evidence emerged which suggested that over a period of years she was subjected to various forms of abuse (mainly psychological, but including occasional physical assaults) by her husband.”²⁹⁸

The statements below are taken from the judgment on a criminal appeal by family members of a man who murdered his wife against their conviction for not preventing the murder. According to section 5(2)(d)(iii) of the Domestic violence, Crime and Victims Act 2004, criminal liability will arise only when the person was murdered in “circumstances of the kind that was foreseen or should have been foreseen by the defendant”. The judgment concerned the appropriate interpretation of this section.

“By this stage of their deliberations the jury would have been satisfied that at the time when the fatal act occurred each appellant was or ought to have been aware that Sabia was at significant risk of serious physical harm from Shazad. The jury were reminded that, in all the episodes of violence, the injuries suffered by Sabia were

²⁹⁷ *R v R (Breach of Order)* [2001] EWCA Civ 2098, [3], my underlining.

²⁹⁸ *R. v D* [2006] EWCA Crim 1139, [2006] 2 Cr. App. R. 24, [3].

*inflicted with Shazad's fist or boot, and that it was not suggested that the fatal incident involved the use of a gun or a knife.”*²⁹⁹

*“The act or conduct resulting in death must occur in circumstances of the kind which were foreseen or ought to have been foreseen by the defendants. They need not be identical. The violence to which Sabia was subjected on the night she was killed was of the same kind but it was violence of an even more extreme degree than the violence to which her husband had subjected her on earlier occasions.”*³⁰⁰

The family was convicted because the husband murdered the wife by using the same kind of violence that they were aware he had used against her before. While liability requires that the conduct causing death must occur in circumstances that ought to have been foreseen by the accused, the court's judgment found those circumstances to have existed only in the light of a history of incidents of physical violence involving “Shazad's fist or boot”. The court was not interested in the harm caused by the relationship as a whole. The operation of the classification mechanism in categorizing between forms of violence strengthens the perception that each form constitutes a different phenomenon.

The following statement from an immigration judgment is representative of the way in which women's accounts of the violence they suffer are presented by courts. The accounts are presented as divided between forms of conduct:

*“10. The appellant claims that after joining her husband she suffered both verbal and physical abuse at his hands and verbal and mental abuse at the hands of his mother.”*³⁰¹

The following statements, taken from a relocation judgment by the Family Division of the High Court, are emblematic of the same practice, to present women's accounts of domestic violence in accordance with the legal categorization of behaviours into

²⁹⁹ *R. v Khan (Uzma)*, (n 270) [38].

³⁰⁰ *Ibid*, [39].

³⁰¹ *AG (India) v Secretary of State for the Home Department* [2007] EWCA Civ 1534, [2(10)].

separate forms. This woman's accounts are presented as divided into three categories of violence – physical, emotional and sexual – assuming that her reality of experiencing violence was divided into three parts.

*“The reason for this state of affairs is to be found in the mother's evidence. I accept her account that she has been subjected by the father to sustained emotional, physical and sexual abuse stretching back to the early days of their relationship and continuing until its conclusion.”*³⁰²

*“The emotional abuse consisted of the father intimidating the mother by means of frequent and unpredictable outbursts of temper and shouting whenever he was displeased with her, accompanied by close control of her movements and actions when they were together. The father also frequently threatened violence against the mother if she did not fall in with his wishes. For example, when the mother started court proceedings in England in 2007, the father told her that if she went to a court hearing in September 2007 he would kill her.”*³⁰³

*“ Examples of the wider course of physical abuse are: throwing the mother, who was three months pregnant and unwilling to have intercourse, on to a bed and jumping on top of her while covering her nose and mouth with his hands so that she felt as if he was trying to suffocate her (June 2002); hitting the mother in the stomach when she was 16 weeks pregnant with D (November 2002); pushing her into a bedroom cupboard when she asked him to change a nappy (January 2004); placing his hand over her face so that she again felt as if she was suffocating, resulting in her vomiting on the floor (May 2004); assaulting her so that she had bruising on her arms and body (August 2009); pushing her into a corner and beating her around the head so that she urinated in her pants (August 2009).”*³⁰⁴

“Examples of the wider course of sexual abuse are: forcing the mother to have sexual intercourse within days of a miscarriage (June 2002); committing oral rape on the

³⁰² *DT v LBT (Abduction: Domestic Abuse)*, (n 268) [10(2)].

³⁰³ *Ibid*, [10(3)].

³⁰⁴ *Ibid*, [10(4)].

mother by pushing her on to the floor and forcing his penis into her mouth until he ejaculated, hurting her mouth and causing injury to her neck and back (October 2007); multiple occasions of oral, vaginal and anal rape during the course of the relationship, the last being on 22 February 2010 when he woke her at 5 a.m., pulled her out of bed by her hair and repeatedly forced her to have intercourse with him.”³⁰⁵

The perception that psychological and physical violence – taking place within one violent relationship - form different phenomena is also apparent in the following statements from the Supreme Court’s *Yemshaw v Hounslow*. The statements reveal not only the existence of that separation but also the court’s understanding of it as self evident and unquestioned.

*“It has long been known that psychological abuse within a domestic context can cause at least as much long-term harm to the victim (most commonly the woman) as physical abuse.”*³⁰⁶

Lady Hale, in the same judgment, makes explicit the consequent notion that these elements *should* be addressed separately by the legal system.

“The purpose of the legislation would be achieved if the term “domestic violence” were interpreted in the same sense in which it is used by the President of the Family Division, in his Practice Direction (Residence and Contact Orders: Domestic Violence) (No 2) [2009] 1 WLR 251, para 2, suitably adapted to the forward-looking context of sections 177(1) and 198(2) of the Housing Act 1996 :

“‘Domestic violence’ includes physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to the risk of harm.”

The judgment does not elaborate on what “any other form of abuse” might include. However, even if this additional category were to include coercive control, a

³⁰⁵ Ibid, [10(5)].

³⁰⁶ *Yemshaw v Hounslow (Supreme Court)*, (n 294) [48].

distortion of understanding would still remain. To perceive coercive control as one distinct phenomenon amongst several is to ignore its significance to all or at least most legal questions addressed in legal proceedings. Coercive control is not only a distinct harm but also the indicator according to which the future danger faced by a woman can be evaluated and the element that can explain the motive which underpins a perpetrator's behaviour. There is a danger that coercive control will be acknowledged as another separate phenomenon rather than as an element crucial to the main legal questions examined.³⁰⁷

*“There may also be a concern that an expanded definition is setting the threshold too low. The advantage of the definition adopted by the President of the Family Division is that it deals separately with actual physical violence, putting a person in fear of such violence, and other types of harmful behaviour.”*³⁰⁸

It is not explained why the ability to address separately parts of the same relationship is perceived as an advantage. It is certainly not clear how this practice is of any advantage whatsoever to women in violent relationships.

In my analysis of the judgment, the self-evident separation between physical and psychological violence was not a result of the constraints that were imposed on the court by the legislative framework or by previous case law. The decision to divert from the previous precedent³⁰⁹, according to which violence in section 177 of the Housing Act 1996 was limited to physical contact, meant that the court was free to attribute an entirely new meaning to the word ‘violence’ without any previous constraints. Lady Hale referred to internationally and nationally accepted definitions of domestic violence that were all based on the separation between types of violence

³⁰⁷ At the beginning of 2015 section 76 was added to the Serious Crimes Act 2015 titled “Controlling or coercive behaviour in an intimate or family relationship”. In my conclusion I will make a connection between the thesis and the new act. At this point I will add that the offence presents a risk that coercive control will be understood as another separate form of conduct and harm rather than as the underlying element through which conduct, harm and risk must be assessed. The difference between the two is crucial.

³⁰⁸ *Yemshaw v Hounslow (Supreme Court)*, (my underlining), (n 294) [34].

³⁰⁹ *Danesh v Kensington and Chelsea Royal London Borough Council* [2006] EWCA Civ 1404.

as a defining element of the term, but in her own words: “it is not for government and official bodies to interpret the meaning of the words which Parliament has used. That role lies with the courts.”³¹⁰ Therefore, the judgment was not a result of binding constraints imposed on the court. It was free to establish that coercive control was a defining element of domestic violence and instead it reinforced the definition that domestic violence is a set of manifestations separated by different types of violence.

Hierarchy between forms of violence

The classification of forms of violence is followed more often than not by an act of hierarchization whereby the forms of violence are ordered according to perceived levels of harm. While physical violence is seen as the form of violence requiring an urgent legal response to safeguard the woman who suffers it, emotional or psychological violence is not perceived to present the same urgency, harm or need for response. It is true that physical violence can cause lethal harm and necessitates immediate response. However, this act of hierarchization adds yet another obstacle to the acknowledgment of the violent relationship as one entirety and of coercive control as its potentially fatal risk.

The following are further statements from the Supreme Court’s *Yemshaw v. Hounslow*. They exemplify the existence of two important perceptions: that a violent relationship inflicts two separate harms and that the harm inflicted by physical violence is more severe than that inflicted by psychological violence.

*“If one considers just why it is that domestic violence (indeed, violence generally), in contradistinction to all other circumstances, has been thought to justify a deeming provision – a provision, that is, which deems it unreasonable that a probable victim of future such violence should continue to occupy his or her present accommodation, the explanation would seem to me to lie partly in the obvious need for the speedy re-housing of those identified as being at risk of violence in order to safeguard their physical safety, and partly in the comparative ease with which this particular class of prospective victims can be identified.”*³¹¹

³¹⁰ *Yemshaw*, Supreme Court, (n 294) [25].

³¹¹ *Ibid*, [57].

“With the best will in the world I find it difficult to accept that there is quite the same obvious urgency in re-housing those subject to psychological abuse...”³¹²

Coercive control can only be seen if the relationship is understood as one entirety. Through these acts of classification, however, the violent relationship is constantly divided and scattered. The consequence is that the violent relationship is being legally assessed using tools entirely unsuitable and inadequate to its essence.

The episodic understanding of domestic violence governs differences of opinion regarding the meaning of domestic violence

Yemshaw v. Hounslow demonstrates that the episodic understanding of domestic violence is so deeply entrenched that differences of opinion regarding the meaning of domestic violence remain within the borders of the same understanding. The differences of opinion revolve around the breadth of scope of legal understanding of domestic violence: should it be understood narrowly, as a meaning admitting only physical violence, or more broadly, as including other forms of violence as well? Yet both approaches rely upon the same understanding of domestic violence as a set of episodes and the same perception of different forms of violence as separate phenomena.

Statements from the judgments of both the Court of Appeal and the Supreme Court in the case of Yemshaw v Hounslow expose a debate between the ‘narrow’ and ‘wide’ definitions of domestic violence. But on both sides, the perception endures that domestic violence comprises separate incidents and separate phenomena.

“1 The sole but important issue on this appeal is the meaning of “violence” in section 177(1) of the Housing Act 1996 (“the Act”). The question is whether, for the purposes of that provision, “violence” requires some sort of physical contact or

³¹² Ibid, [57].

*whether, in the context of “domestic violence”, it should be understood more widely as including abusive behaviour such as psychological, sexual or financial abuse.”*³¹³

*“24 In my view, therefore, whatever may have been the original meaning in 1977 (and, for that matter, in the Domestic Proceedings and Magistrates' Courts Act 1978), by the time of the 1996 Act the understanding of domestic violence had moved on from a narrow focus upon battered wives and physical contact. But if I am wrong about that, there is no doubt that it has moved on now.”*³¹⁴

The following is the definition of domestic violence accepted by Lady Hale in the Supreme Court's judgment on *Yemshaw v. Houslow*. The definition, while ostensibly 'wide', remains rooted in an episodic understanding that perceives forms of violence as separate phenomena. The definition's episodic nature is preserved by the use of the phrase “any incident” and the categorical understanding of domestic violence is maintained by the naming of each form of behaviour.

*“ ‘Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.’ ”*³¹⁵

The 'narrow' definition of domestic violence is demonstrated by Lord Brown's statement in the same case:

“It has long been known that psychological abuse within a domestic context can cause at least as much long-term harm to the victim (most commonly the woman) as physical abuse. Certainly no one who has read the extensive material put before us by the Women's Aid Federation of England could fail to appreciate that fact. But I have nonetheless found this a much more difficult case than other members of the Court appear to have done and I cannot hide my profound doubt as to whether at any stage of their legislative history the “domestic violence” provisions with which we are here

³¹³ *Yemshaw v Hounslow (Court of Appeal)* [2009] EWCA Civ 1543, [2010] H.L.R. 23, [1].

³¹⁴ *Yemshaw v Hounslow (Supreme Court)*, (n 294) [24].

³¹⁵ *Ibid*, [24], quoted from the 2006 version of the Homelessness Code of Guidance for Local Authorities.

*concerned – now enacted as sections 177 and 198 of the 1996 Act — were intended to extend beyond the limits of physical violence.”*³¹⁶

The importance of this debate lies in its potential to indicate the possible future paths of the legal meaning of domestic violence. The debate reveals the limitations of the meanings generated by both sides, narrow and wide, and by setting those limits it indicates the possible future paths along which the legal meaning of domestic violence can pass. Both meanings, however, share the same episodic and categorical groundwork and neither acknowledges coercive control as the foundational, defining element of domestic violence. The wide definition might acknowledge coercive control as a form of emotional abuse but that would not reflect the foundational nature of coercive control in the understanding of domestic violence or enshrine its potentially lethal harm. Moreover, coercive control might not even be acknowledged as harm under the emotional violence umbrella at all since such a classification would be based on an act of interpreting the concept of ‘emotional violence’ and would depend on a judge’s subjective evaluation.

Signs of discontinuity

There are, however, signs of discontinuity in the dominant discourse laid out above. In my analysis of statements I searched for signs of breaks and departures from the dominant features of the discourse. As explained in Chapter II, a sign of discontinuity might represent a possible shift in the power balances that monitor the dynamics at work in naming events. I searched particularly for indications of a weakening of the classification mechanism in these events and considered how that weakening influenced the meaning that was constructed.

Statements indicative of discontinuity can be divided into three groups. The first group of statements represents a different perception of episodes in a violent relationship. According to the dominant discourse outlined in the previous section of this part, the violent relationship is a set of violent episodes and is viewed in terms of separated elements. According to the statements in the first group of discontinuous

³¹⁶ Ibid, [48].

statements, the violent relationship is one *entirety* that consists of episodes connected to each other in a pattern. The second group of discontinuous statements represents a realization that episodes must be located within the context of a perpetrator's controlling behaviour, signalling a shift from the dominant discourse in which context is largely absent. In the third group, statements signify a difference in perception regarding the assessment of legal questions. Whereas the dominant discourse assesses legal questions such as the gravity of conduct, evaluation of harm, and level of risk according to the specifics of episodes, this group of statements is emblematic of a dawning recognition that separate episodes contain insufficient information for an assessment of these core questions.

Understanding domestic violence as an entirety

The following two statements reflect a different understanding of episodes in a violent relationship. In them, episodes are perceived and understood not as separate elements but as part of an entirety.

The first statement comes from a civil appeal judgment on an order issued by a court of first instance against a perpetrator according to the Domestic Violence and Matrimonial Proceedings Act 1976. The Court of Appeal judge wrote the following in reference to the first instance judgment:

*“In the end he gave a judgment in which, having recited the history of the matter, he found proved the incidents of violence which I have mentioned. He said that all these matters had a cumulative effect and were not to be viewed in isolation.”*³¹⁷

The second is a statement from a judgment that concerned a murder charge against a husband whose wife committed suicide after many years of suffering his violence:

“But I do not see any reason in principle why the final assault which triggered the suicide should be looked at in isolation. If a defendant by his previous conduct has reduced the victim to a psychological state in which the ‘last straw which broke the

³¹⁷ *Vikki Tracey Holmes v Craig Creighton Clarke*, (n 273) 2.

camel's back' is liable to tip her (or him) over the edge, I would have thought there was some force in the argument that the 'last straw' played a significant part in causing the death."³¹⁸

There is an important point to be made with regard to the two statements above. When episodes are presented in isolation, as is prevalent according to the dominant discourse, it is done without any explanation, as if their nature as isolated elements is unquestionable and obvious. We can see in the statements above, however, that the understanding of incidents as part of an entirety has been specifically mentioned as important; it was by no means thought to be obvious or taken for granted. I argue that the unquestionability by which the relationship is presented *as* separate episodes and separate phenomena, reveals the role of the classification mechanism in the construction of the legal meaning of domestic violence. We perceive and accept classification as a mechanism that produces reliable knowledge and therefore do not question but rather assume the validity of classification-based knowledge, readily embracing it as accepted knowledge. Classification, as a mechanism of knowledge production, plays a significant role in lubricating the process by which an episodic understanding of domestic violence is accepted as obvious, and self-evident. The unquestioning manner of this acceptance is a clear sign that this meaning of domestic violence has been integrated into the level of legal recognition. It is an example of what Bourdieu defines as a doxic relationship³¹⁹ between subjective and objective realities, as the subjective fully merges with the objective. When a doxic relationship exists, people accept a certain constructed meaning as taken-for-granted and regard it as an obvious truth for which no justification or explanation is required.

The acknowledgement of harassment as a legally recognisable harm³²⁰ had the potential of being a point of departure from the episodic understanding of domestic violence. For the first time it was recognized, by the court and then by legislation, that harm can be inflicted by a *course of conduct* and not only by isolated incidents.

³¹⁸ *R. v D*, (n 298) [7].

³¹⁹ See Chapter I, part II –Recognition and Representation.

³²⁰ See *Khorasandjian v Bush* [1993] Q.B. 727 (CA Civ) and The Protection from Harassment Act, 1997.

*“Therefore, in my judgment, on the facts of this case and in line with the law as laid down in Javier v. Sweeney, the court is entitled to look at the defendant’s conduct as a whole.”*³²¹

*“The campaign of harassment has to be regarded as a whole without consideration of each ingredient in isolation, and viewed as a whole it is plainly calculated to cause the plaintiff harm, and can be restrained quia timet because of the danger to her health from a continuation of the stress to which she has been subjected”.*³²²

According to section 4(1) of The Protection from Harassment Act 1997 it is a criminal offence to use a “course of conduct” to cause another to fear violence. The following statements are an example of the manner by which this section was interpreted by courts:

*“Count 3 was the third count on the indictment, that is to say putting a person in fear of violence. That arose out of a course of conduct on the part of the appellant between, according to the indictment, 1st January 2004 and 13th April 2005. Over that period, the victim stated she would receive a beating or an assault as much as three times a week.”*³²³

*“Secondly, that in relation to count 3, the period over which Mrs Winter was repeatedly put in fear by threats from the appellant was a long one, whether it be 6 months, as Mr Palmer suggest, or 15 months as the indictment to which he pleaded guilty would suggest.”*³²⁴

The harm in this case lies not in the actual assault, but in the continued purpose to instil fear in the victim over the entire time period.

The legal recognition of course of conduct as causing harm was not designed to explicitly address the harm of coercive control but it nevertheless represents an

³²¹ Ibid, 736.

³²² Ibid, 739.

³²³ *Regina v Elam David Winter* [2005] EWCA Crim 3385, [4].

³²⁴ Ibid, [15].

important landmark in the legal capacity to abandon an episodic understanding when acknowledging harm.

However, The Protection from Harassment Act was soon revealed as unsuitable for providing protection from coercive control. Its influence was not strong enough to fracture the dominant episodic understanding of domestic violence. Perhaps the main reason for this is the legal understanding of ‘harassment’, as harm inflicted in *non*-intimate relationship contexts, such as the harm caused to celebrities by stalking. Consequently, when judging domestic violence harms according to the Protection from Harassment Act, courts did not include in their interpretation of harassment behaviours that would otherwise be acknowledged as violence in family proceedings addressing domestic violence. At the same time statements reveal that courts *did* include in their interpretation of harassment behaviours that would not be defined as violent episodes in those proceedings. In this way the courts continued the practice of scattering the violent relationship and creating several social phenomena from the pieces. Harassing behaviour was consequently perceived as another phenomenon to add to those already acknowledged – physical, sexual and psychological violence. This practice is demonstrated in the following example:

*“Burstow had a social relationship with a woman. She broke it off. He could not accept her decision. He proceeded to harass her in various ways over a lengthy period. His conduct led to several convictions and periods of imprisonment. During an eight month period in 1995 covered by the indictment he continued his campaign of harassment. He made some silent telephone calls to her. He also made abusive calls to her. He distributed offensive cards in the street where she lived. He was frequently, and unnecessarily, at her home and place of work. He surreptitiously took photographs of the victims and her family. He sent her a note which was intended to be menacing, and was so understood. The victim was badly affected by his campaign of harassment. It preyed on her mind. She was fearful of personal violence.”*³²⁵

³²⁵ *R. v Ireland (Robert Matthew), R. v Burstow (Anthony Christopher)* [1998] A.C. 147 (HL), 155. In the judgment given by the House of Lords there are no further details that explain the nature of the relationship between the offender and the victim. However, in the facts detailed in the judgment given by the Court of Appeal, on which an appeal was submitted to the House of Lords, it is clear that the

We can see that the behaviours included in the ‘campaign of harassment’ do not include physical violence but include other, non-physical behaviours. Instead of recognising the perpetrator’s behaviour as an expression of coercive control, the behaviour became acknowledged as a separate form of conduct, and named ‘harassment, further scattering the violent relationship and further distancing the legal understanding of domestic violence from the way it is experienced by women.

Relevant context

The following statements mark the potential beginning of a shift away from the practice of describing violent episodes without acknowledgment of their context and are illustrative of a growing awareness that controlling behaviour is key to that relevant context, whereas controlling behaviour is mostly absent in statements representing the dominant discourse. The following statements are quoted from judgments on appeals against sentence:

*“Over time their relationship had deteriorated and the appellant became more possessive and controlling of her. When he was drunk he would become violent.”*³²⁶

*“The appellant was married to Sandra Mitchell. They had a son aged 9. The marriage broke down due to the appellant's possessive and controlling behaviour.”*³²⁷

*“During the relationship, the Applicant was jealous and possessive, and there was evidence of controlling behaviour on his part.”*³²⁸

relationship was of an intimate nature. See: *R. v Burstow* [1997] 1 Cr. App. R. 144 (CA (Civil Division)).

³²⁶ *R. v Miller (Darren)* [2007] EWCA Crim 2852, [4]. This statement can be compared to the previous statement presented in the dominant discourse: “In the last year or two the relationship between the parties has seriously deteriorated. There have undoubtedly been incidents of violence between them.” *B v B (Domestic Violence: Jurisdiction)*, (n 261) 31.

³²⁷ *R. v Mitchell (Gary Francis)* [2008] EWCA Crim 1351 [3].

³²⁸ *R. v Locke (Simon Mark)* [2012] EWHC 2354 (QB), [3].

Reference to controlling behaviour in judgments marks the growing legal acknowledgment of its relevance to domestic violence. It is important to emphasize, however, that the legal significance attributed to controlling behaviour remains limited, as its inclusion is confined to the background of the case. These statements represent a sign of discontinuity in the perception of relevant context but not in the acknowledgement of controlling behaviour as the actual harm inflicted.

This limited significance is demonstrated in the following statement quoted from an appeal submitted by a woman who killed her violent partner after many years of abuse and was subsequently convicted of his murder. Her appeal was denied.

*“She met the deceased, Malcolm Thornton, in a public house in May 1987. He was an ex-policeman...From the start she realised he was a heavy drinker and was jealous and possessive.”*³²⁹

The legal significance attributed to the controlling behaviour was limited to the background of the case and mentioned cursorily in half a sentence. It bore no significance to the considerations that led to the woman’s conviction for murder.

³²⁹ *R. v Thornton (Sara Elizabeth) (No.1)* [1992] 1 All ER 306 (CA), 307.

Assessing legal questions

Statements quoted in the dominant discourse section of this analysis reflect the legal perception that encapsulated within the particulars of isolated episodes is the necessary information for the assessment of key legal questions in a domestic violence case: gravity of conduct, severity of harm, and degree of dangerousness. The following statements, from judgments given in criminal appeals against sentence, constitute a sign of discontinuity in the sense that they reflect a different outlook regarding the assessment of harm. The statements are indicative of an understanding that the entirety of the abusive relationship can cause a harm that cannot be seen when episodes are assessed separately.

*“I say that, not because the individual injuries or some of these incidents could have been described as serious, but because of the cumulative effect on Marie over this period in both psychological and physical terms.”*³³⁰

In several judgments, it was the ‘victim impact statements’ that were the basis of the acknowledgment that harm cannot be assessed episodically. This possible shift in the dominant discourse was enabled through listening to women’s voices.

*“The effect of the appellant's behaviour towards the complainant has been profound. A victim impact statement sets out the devastating consequences of what he has done to her, not least upon her relationship with the children of the family, who had begun copying the appellant's aggressive behaviour towards her and blamed her for the break up of the marriage. The children have been placed in care to manage their behavioural problems and in addition because of the complainant's concern that if they continued to live with her, they would reveal her whereabouts to the appellant. She feels desperate and alone. She is presently on antidepressant medication. She suffers from sleep deprivation and has repeated flashbacks of incidents where the appellant had been violent towards her.”*³³¹

³³⁰ *R. v Pressdee (Robert Christopher)* [2007] EWCA Crim 1289, [2008] 1 Cr. App. R. (S.) 25, [14].

³³¹ *R. v Bentall (Andrew Peter)*, (n 284) [18].

*“Miss Gardiner has made two victim impact statements in which she has made it clear that as a result of the violence she suffered at the hands of the appellant she has lost her self-respect; she does not trust anybody and she feels vulnerable and alone.”*³³²

These statements demonstrate the gap between the legal discourse’s episodic assessment of harm and women’s own assessment of the harm done to them. According to these accounts, Miss Gardiner experienced pain, destruction and harm not in terms of episodes but rather as an outcome of the entirety of the violent relationship. Her definition is a definition of harm in which the episodes themselves are not the core elements of the destruction wrought by the relationship. In Miss Gardiner’s experience, episodes become blurred within the entire picture of the period of a violent relationship.

The following statements are extracts from a judgment on an application for leave to appeal against sentence. They are exceptional and rare. They represent an outlook that totally abandons the episodic understanding of domestic violence and aligns itself instead with an understanding that perceives episodes as secondary to the main harm inflicted by the subjection of a person to a perpetrator’s total control. According to this understanding, in assessing the gravity of the perpetrator’s conduct and severity of harm caused to the victim, the pattern of behaviour is acknowledged as the core element that encapsulates the relevant information. The particulars of episodes are seen as important only for their contribution to establishing a full picture of that destructive pattern:

“This was Angela Greig. He met her in 2007. They married. She described his bullying and abusive controlling behaviour towards her, which although involving only low level violence such as pinching and grabbing her arms, led to her being terrified. Thus, he would grab her arm saying he could easily break it, causing her bruising. He threatened her, saying she could not leave him, or her son and

³³² *R. v Murray (Robert Owen)*, (n 271) [9].

granddaughter would “disappear”, having implied that he had killed people in the past.”³³³

*“He got out. He produced a blank imitation handgun, which he fired four or five times. Although he pointed it away from Miss Greig, it was all part of his scheme to maintain control over her. He was saying, “This is to show my gun does work and I will use it”. Not surprisingly she was terrified and believed he was about to kill her.”*³³⁴

It is important to note that the statements are taken from a sentencing judgment against an offender who was convicted for fraud offences against several people, including his partner, and not from a judgment which concerned solely domestic violence. This might explain the court’s completely different way of understanding domestic violence, as well as its liberty to depart from the dominant understanding of a violent relationship.

In abandoning the episodic basis for assessing the harm caused to the offender’s partner, the court was able to identify commonalities between the offender’s behaviour towards his partner and his fraud offences towards other parties:

*“On any view, this offending reflected a pattern of seriously reprehensible behaviour by the appellant over a number of years between 2003 and 2007, which had as its hallmarks serial dishonesty accompanied by the intimidation and exploitation of those whom he perceived as weaker than himself, including close friends, wives and partners, and all for his own financial gain. The offending has within it repetitive features, including threats made with firearms, elaborate lies, forgery of documents and the use of others’ personal details. The judge was right to label the appellant as someone who sought to dominate others by fear and fantasy or for his own personal gain.”*³³⁵

³³³ Alder (Marcus) [2009] EWCA Crim 1995, [10].

³³⁴ Ibid, [14].

³³⁵ Ibid, [31].

Statements from this case reveal the legal domestic violence discourse to be tightly controlled and ordered. The court in question, in delivering judgment of a fraud case, was able to present a much more reflective understanding of domestic violence precisely because it was not subjected to and limited by the rules of the legal domestic violence discourse.

Conclusion

The purpose of this part, the first of the Analysis of Empirical Data Chapter, was to analyse the role of classification and division as a mechanism of knowledge production in the construction of the legal meaning of domestic violence against women.

Through the use of this mechanism, the violent relationship, which is experienced as one reality by women who suffer from it, is divided into separate episodes, which then become the defining elements of the relationship; the only elements imbued with legal significance. The particulars of these episodes are understood to encapsulate the necessary information required for assessing all pertinent legal questions: gravity of conduct, severity of harm, and degree of dangerousness.

A second layer of classification is added to this foundational one and is responsible for the legal perception that domestic violence consists of several distinct social phenomena: physical, sexual and psychological violence. These phenomena are perceived as presenting different levels of gravity in terms of conduct, harm, and risk and they are hierarchized accordingly. Statements reveal that different opinions regarding the meaning of domestic violence exist but do not transcend the borders of the same episodic understanding.

Statements therefore illustrate the constitutive role of classification and division in the formation of legal meaning. The mechanism has a central role in both constituting and continually strengthening the foundational layer of the meaning, according to which all legal questions about domestic violence are assessed. The mechanism of

classification and division constructed the foundation of perception and strengthens and reinforces that perception through its constant operation in legal naming events.

Crucially, the episodic understanding prevents the harm of coercive control from being seen and acknowledged. The foundational rules of the discourse, formed and reinforced by the classification mechanism, have proved stronger than the actual ability of women to name their own experience. Acknowledgment of coercive control is missing from most of the judgments I have analysed. This absence exposes the violent nature of the classification mechanism steering a well-grounded and organized discourse that prevents a grave harm that contradicts its episodic foundation from being heard and acknowledged.

Nevertheless, some signs of discontinuity have been identified in statements that suggest a weakening of the classification mechanism as a foundational tool that constructs the meaning of domestic violence. Discontinuous statements revealed an understanding that a violent relationship should be comprehended in its entirety and not as separate elements. They reveal an awareness of the relevance of dominating behaviour in a violent relationship and a realization that an episodic understanding must be rejected in order to assess the harm inflicted on women.

These signs of discontinuity are few in number and limited in their reach. They do not represent an acknowledgment of the actual meaning of coercive control as the underlying harm of violence against women by male partners. They are nevertheless significant in the analysis of the role of classification in the construction of legal meaning. First, they reveal a crucial operation of the classification mechanism: when the understanding is episodic, it is presented as unquestionable and obvious. Conversely, when there is a departure from the episodic understanding, the court specifically mentions and explains this departure. These signs of discontinuity therefore demonstrate an important function of the classification mechanism. Since it is accepted as a mechanism of knowledge-production capable of producing reliable knowledge, the classification mechanism is in charge of the unquestionable, obvious and unequivocal manner in which the episodic understanding is presented and accepted. Secondly, the discontinuous statements reveal there to be no inherent barrier to coercive control being conceptualized and assessed legally. Finally, the negligible

occurrence of these signs, often outside of ‘traditional’ domestic violence contexts in, for example, harassment and fraud cases, serves to further illuminate the nature of the dominant discourse. While a competing discourse does exist, its development remains at a very preliminary stage.

My analysis of statements also enabled me to observe a link between classification and the level of legal recognition. Knowledge produced through classification is presented as obvious and self evident with no explanation or justification required for its acceptance. The presentation of a meaning as obvious is a clear sign of it being anchored within the embedded level of meanings. I could therefore acknowledge the existence of a strong link between a mechanism of legal knowledge production and the level of legal recognition.

In its development of discourse driven by the classification mechanism, the legal field shares commonalities with the sociological and the mental health fields but is also different in meaningful ways. The episodic understanding remains dominant in all three fields. Likewise, in all three fields, the episodic understanding was formed without questioning its validity in reflecting the actual harm of domestic violence. Moreover, in all fields, the episodic understanding was presented mostly as taken-for-granted. Crucially, however, a comparison between legal discourse and sociological and mental health discourses reveals that whilst in the legal field the competing discourse is still very marginal, in both other fields the competing discourses already form a founded body of knowledge, produced and developed over more than thirty years.³³⁶ The abandonment of the episodic understanding in sociology and the mental health field by the coercive control meaning stream, has given rise to an acknowledgment of coercive control as the defining element of domestic violence. In the legal field, while there are signs that a competing discourse might exist, its reach is far more limited and it does not yet represent a total abandonment of the episodic understanding or full acknowledgment of the actual significance of coercive control.

³³⁶ See for example: Johnson, ‘Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence Against Women’ (n 149); Stark, ‘Coercive Control : The Entrapment of Women in Personal Life’ (n 184) ; Herman, ‘Trauma and Recovery’ (n 149) ; Smith, ‘Beyond the Measurement Trap - A Reconstructed Conceptualization and Measurement of Woman Battering’ (n 202).

Part II: Continuity

In this part, I analyse the role of continuity in the construction of the legal meaning of violence against women by male partners. As classification, continuity is a discourse - mechanism of knowledge-production. As explained in Chapter II, through the operation of the act of continuity, new knowledge is produced in attachment or affiliation to knowledge already produced and accepted.

My analysis of statements revealed that classification and continuity are equally powerful and foundational in the legal discourse that produces the legal meaning of domestic violence. They operate in a symbiotic relationship. They are based on each other and complement each other.

The understanding that the dominant legal meaning is based on those two attached elements of episodes and physical violence is not new to feminist legal scholarship³³⁷. I contribute to that discussion by revealing this definition as a product of a symbiotic relationship between two discourse mechanisms that rely on each other in their operations.

Dominant discourse

Continuity, in the legal naming of domestic violence, is the attachment of the phenomenon 'domestic violence' to the phenomenon 'violence', understood predominantly as the infliction of physical injury by the use of physical force. Domestic violence has consequently come to be understood primarily as the infliction of physical injury in intimate relationships.

I seek to analyse the different ways in which this act of continuity has shaped and influenced the construction of legal meaning and the manners by which it prevented other possibilities of meanings from being accepted.

³³⁷ Tuerkheimer, 'Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence' (n 257) pg. 953.

Domestic violence is understood as the infliction of physical injury in intimate relationships

Many statements from both civil and criminal judgments reveal domestic violence to be understood predominantly as the infliction of physical injury in intimate relationships.

Furthermore, statements reveal the unquestioning manner in which this meaning was accepted at the outset of the discourse, allowing it to become a foundation of understanding able to dictate the future construction of meaning.

In my analysis I aim to draw a connection between the unquestionable understanding of domestic violence as meaning physical violence and the workings of the continuity mechanism. I aim to contribute to feminist legal scholarship³³⁸ that pointed at the primacy that physical violence receives in legal discourse on domestic violence, by suggesting that the continuity mechanism bears a crucial role in the construction of that meaning.

The following are representative statements from civil judgments, which demonstrate the predominant understanding of domestic violence as the infliction of physical injury in intimate relationships³³⁹:

*““Battered Wives” is a telling phrase. It was invented to call the attention of the public to an evil. Few were aware of it. It arose when a woman suffered serious or repeated physical injury from the man with whom she lived.”*³⁴⁰

“Having regard to the learned county court judge’s finding that the appellant who was twice the respondent’s age beat her frequently, on two occasions “used violence of horrifying nature”, threatened to kill her and dump her in the river and

³³⁸ For example Rosemary Hunter, 'Domestic Violence Law Reform and Women's Experience in Court' (n 141) pg. 20 and Tuerkheimer, 'Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence' (n 257) pg. 972.

³³⁹ Throughout the Continuity part, the underlinings within quotations are my addition.

³⁴⁰ *Davis v Johnson* [1978] 2 WLR 182 (CA), 187.

alternatively to chop her with a chopper he kept under the bed and then put her remains in the deep freeze, I should not be surprised if the council after terminating the joint tenancy allowed the respondent to remain in the flat as its sole tenant.”³⁴¹

*“It appears that prior to the wife’s first divorce petition there were two occasions on which the husband had struck the wife”.*³⁴²

“Reference was made to two specific instances of domestic violence in 2004. The first, in January 2004, involved the forcible administration of poisoning, resulting in hospitalisation and treatment for organophosphorous poisoning; the second, in November 2002, involved AS’s husband banging her head against a wall and causing her significant head injuries, which again resulted in hospitalisation and medical treatment referred to in a medical report.”³⁴³

The following schedule of findings was submitted to the court in a procedure regarding contact between a daughter and her father who was violent towards her mother. It provides evidence of the embedded understanding of domestic violence as mainly the use of physical force to cause physical injury, not least in the verbs it uses to describe the perpetrator’s conduct:

- “1. Soon after his arrival in England in November 2000, the Applicant made a threat to kill the Respondent.*
- 2. On one occasion soon after the Applicant pushed the Respondent onto the sofa.*
- 3. Towards the end of February 2001 the Applicant slapped the Respondent twice across her face.*
- 4. The Applicant locked H in the bathroom for 45 minutes.*
- 5. Around March 2001 the Applicant beat the Respondent whereby he slapped and pushed her, causing her to bang her head against the door.*
- 6. In March 2001 the Applicant threw the Respondent onto the floor.*

³⁴¹ *Davis v Johnson* [1979] AC 264 (HL), 343.

³⁴² *Stannard v Stannard*, (n 272) 2. An appeal regarding an ouster order issued against a perpetrator according to the Matrimonial Homes Act 1983.

³⁴³ *AS (Pakistan) v Secretary of State for the Home Department*, (n 274) [1]. An appeal against a decision by the Asylum and Immigration Tribunal regarding a legal status to remain in the UK.

7. On 13 June 2001 the Applicant slapped the Respondent on her face.
8. On 13 June 2001 the Applicant grabbed the Respondent by her hair and dragged her along the floor.
9. In June 2001 the Applicant beat the Respondent about her head and face with his shoe.
10. In June 2001 the Applicant beat the Respondent on her back with a shoe several times.
11. On 13 June 2001 the Applicant pulled the Respondent's hair.
12. On 13 June 2001 the Applicant punched the Respondent around her head.
13. On 13 June 2001 the Applicant beat the Respondent causing the small finger on her left hand to break.
14. On 13 June 2001 the applicant made threats to kill the Respondent and her daughter (H).³⁴⁴

Statements from criminal judgments reflect the same dominant understanding:

“This was demonstrated in an extreme way on the 27th April, 1987 when he made a serious assault upon the mother, one which the supervising officer said was vicious and sustained. There were photographs apparently taken of her. She was badly bruised in various parts of the body.”³⁴⁵

“It seems to me and it seemed to the psychiatrist and the probation officer that it is possible that this might happen again if you continue to drink and to associate with men who make it a habit of hitting you.”³⁴⁶

The assumption that domestic violence is primarily the infliction of physical injury was questioned for the first time in *Yemshaw v. Hounslow*, a case adjudicated by the Court of Appeal and the Supreme Court. Both judgments are important to my analysis because they were the first to challenge an assumption that had dominated the legal meaning of domestic violence without being questioned for four decades.

³⁴⁴ *Re H (A Child) (Contact: Domestic Violence)*, (n 267) [17(1)] – [17(14)].

³⁴⁵ *Re S (Minors)* (CA Civ, 15 July 1988, Case no. 86 D 0024), pg. 2.

³⁴⁶ *R. v Jacob (Brenda)*, (n 283) 3. The Court of Appeal quotes the Crown Court’s judgment.

The Court of Appeal held that domestic violence *does* mean primarily physical violence while the Supreme Court accepted that domestic violence could mean other forms of violence as well. The Supreme Court's judgment includes several statements that I will present as signs of discontinuity. However, most statements reinforce the understanding that domestic violence is predominantly the infliction of physical violence.

Lord Roger in the Supreme Court expressed his view that Parliament's first and principal purpose was to protect women from physical violence and justified it as "understandable".

*"The term "domestic violence" rose to prominence in the 1970s in connection with "battered wives" – women who, whether married or not, suffered violence at the hands of their husband or partner."*³⁴⁷

Lord Roger stated that the perception of the harm of domestic violence as primarily physical violence is the result of a founded view according to which physical violence is the only harm deserving of legal protection:

*"Of course, it was known that physical violence was not the only form of abuse which women suffered. For example, in 1974 Dr Elizabeth Wilson referred to a case where the husband's constant abuse in the form of offensive and cruel denigratory remarks had already damaged his wife's psyche "possibly in a more irreparable way than if he had broken her nose...": "Battered wives: why they are the born victims of domestic violence", The Times 4 September 1974, p 13. But, understandably, the predicament of women who were the victims of physical violence was at the forefront of demands for the law to be reformed."*³⁴⁸

"There can be no doubt that the main aim of Parliament in passing the legislation was to give some additional protection, by way of injunctions in the county court –

³⁴⁷ *Yemshaw v Hounslow (Supreme Court)*, (n 294) [39].

³⁴⁸ *Ibid*, [40].

and the possibility of including a power of arrest in certain cases — to women, whether married or cohabiting, who were likely to suffer physical violence at the hands of their husband or partner.”³⁴⁹

*“When, the following year, Parliament enacted the Housing (Homeless Persons) Act 1977 (“the 1977 Act”), it included provisions that were designed to provide additional help to victims of violence in the home. On this occasion it did not refer to cases where the woman was “molested”. Parliament therefore seems to have been concentrating on the paradigm case of battered wives, women who feared physical violence – understandably enough, since the new Act was imposing novel obligations on local authorities.”*³⁵⁰

Lord Roger’s judgment fails to actually challenge the unquestioned assumption to which it draws attention. The judge states that this assumed understanding of domestic violence is “understandable” but offers no tangible justification for it or for the hierarchization of harms that it fosters. The notion that women who experience domestic violence should be the ones to define and evaluate its harms is entirely absent from the discussion. Lord Roger does not question at all whether his assumption correlates with women’s accounts of the violence inflicted upon them by male partners or with other disciplines’ discourse about domestic violence.

The concept of ‘violence’

Violence is a complex social concept that can carry multiple meanings.³⁵¹ And yet, my analysis reveals its use in the legal discourse regarding domestic violence as an unquestionable concept that does not require interpretation.

Statements reveal that violence was integrated into legal discourse regarding domestic violence as a simplified concept, stripped of its multilayered social meanings. The

³⁴⁹ Ibid, [41].

³⁵⁰ Ibid, [42].

³⁵¹ See for example Bourdieu’s definition of ‘symbolic violence’ in Bourdieu and Thompson, ‘Language and Symbolic Power’ (n 188).

concept of violence was reduced to a single, uncomplicated definition – the infliction of physical injury – that fails to reflect its complex and unobvious meaning.

Feminist legal scholarship pointed at the dominant understanding of the word ‘violence’ in legal discourse on domestic violence as meaning primarily physical violence³⁵². I aim to contribute to that scholarship by inserting the continuity mechanism as a relevant factor in understanding the construction of that dominant legal meaning.

Perceiving the concept ‘violence’ as the infliction of physical injury was revealed as a dominant perception in both civil and criminal procedures and throughout the period analysed.

Below are representative statements from civil judgments:

*“The matrimonial difficulties increased and violence was used by her husband on her, not only with fists but with sticks, shoes and other weapons...”*³⁵³

*“But, the applicant said, the respondent treated her with violence, punching her, grabbing her by the throat and various acts of that kind between July 1981 and the beginning of 1982.”*³⁵⁴

“The outstanding feature of the relationship between the young couple has been the violence inflicted on the mother by the father. Certainly as long ago as the middle of 1998, during the course of a fight between them, the mother’s hand was cut severely, severing a tendon, and there have been many instances when she has been seen with either facial bruising or cuts to the face, which she has initially explained with some

³⁵² Hunter, ‘Domestic Violence Law Reform and Women’s Experience in Court’ (n 141) pg. 35.

³⁵³ *R v London Borough of Ealing, Lambert v London Borough of Ealing, R v Wyre Borough Council* (1981-82) 2 H.L.R. 45 (HC (QB)) , 48, a civil procedure under the Housing (Homeless Persons) Act, 1977.

³⁵⁴ *Spencer v Camacho* (1984) 12 HLR. 130 (CA) , 132, an appeal under the Domestic Violence and Matrimonial Proceedings Act, 1976.

spurious account of accident leading to an eventual admission that the father was responsible for her injuries.”³⁵⁵

“He heard evidence of violence alleged by the mother both before and during the latter part of her pregnancy which included slapping, hitting her with an umbrella and trying to strangle her which caused bruising to her neck.”³⁵⁶

The following statement is taken from the Court of Appeal’s *Yemshaw v. Hounslow*.

“I appreciate that a contextual meaning of a word is not of itself an entirely safe basis for interpretation; a particular word must be construed in its context. However, when an ordinary English word is used, one is entitled to assume that, in the absence of good reason to the contrary, it should be given its primary natural meaning and to my mind, when one is talking of violence to a person, it involves physical contact.”³⁵⁷

The following are statements from criminal judgments:

“There was violence in this case because the hammer was used.”³⁵⁸

“The appellant had suffered violence and abuse from the deceased from the outset of the marriage. He was a big man; she is slight. Her complaints of violence were supported by entries in her doctor’s notes. Thus, in October 1981, there is a record of her being hit three or four times on the head with a telephone and thrown to the ground. In September 1983, a note states she was pushed by her husband whilst pregnant and sustained a bruised hand. The next month she had a broken finger due to another argument.... In 1986 the deceased abused the appellant and tried to run her down at a family wedding. She obtained her second injunction from the court after the deceased had held her throat and threatened her with a knife. He threatened

³⁵⁵ *O-S (Children: Care Order), Re* [2001] EWCA Civ 2039; [2002] 1 F.C.R. 689, [2], care order proceedings.

³⁵⁶ *Re L (A Child) (Contact: Domestic Violence) Re V (A Child) Re M (A Child) Re H (Children)* [2001] Fam 260 (CA), 266, contact proceedings.

³⁵⁷ *Yemshaw v Hounslow (Court of Appeal)*, (n 313) [15].

³⁵⁸ *R. v Raphael (Herbert)*, (n 279) 277, a criminal appeal against sentence.

to kill her and threw a mug of hot tea over her. Despite the court order, the deceased continued his violence which intensified after January 1989.”³⁵⁹

“On 21st May 2006 a young married woman, Sabia Rani, aged 19 years, a stranger in a foreign country, was found dead at her home in Leeds. She had been beaten to death, the victim of at least three distinct episodes of serious violence.”³⁶⁰

“By the end of January 2009 there were tensions in the relationship which led to occasional violence on the part of the appellant. Miss Dridi alleged that he pushed and punched her and threatened her with a knife. The appellant admitted to a consultant psychiatrist that he had given her what he described as “slaps, but not full on” on a few occasions.”³⁶¹

These statements reveal the attachment between ‘domestic violence’ and a very limited meaning of ‘violence’ as purely the infliction of physical injury.

Significantly, this attachment blurred the crucial line between violence in the context of intimate relationships and violence in non-intimate contexts. It simplified *all* forms of violence and reduced them to one single form. By this act of continuity the meaning of domestic violence was distorted and all other forms of violence were concealed.

In *Yemshaw v Hounslow*, the Court of Appeal and the Supreme Court discussed directly the question of whether violence by an intimate partner and violence by a third party are the same. Both courts held that violence is the same in all contexts. Lord Roger in the Supreme Court expressed a particularly clear view that the meaning of violence is the same in all contexts:

³⁵⁹ *R. v Ahluwalia (Kiranjit)*, (n 269) 891, a criminal appeal against conviction in murder by a woman who killed her husband after being a victim of his enduring violence.

³⁶⁰ *R. v Khan (Uzma)*, (n 270) [1]. A criminal appeal against conviction under section 5(1) of the Domestic Violence, Crime and Victims Act, 2004.

³⁶¹ *R. v Pithiya (Yatin)* [2010] EWCA Crim 1766, [4], a criminal appeal against sentence.

*“In my view, there is no doubt that violence means the same, whether it comes from a person associated with the victim or from a third party... The aim, it seems to me, may well be to ensure that the same standard is applied to violence within the home as to other violence and so to counter any suggestion that violence within the home is to be treated as being somehow of less significance than violence outside the home. Subsection (1A) makes it clear that any conduct that would count as violence outside the home counts as violence if it occurs within the home: the law does not give a discount to the perpetrator because of the domestic setting.”*³⁶²

The answer to this question was equally obvious to Lord Brown in the Supreme Court:

*“Another pointer to Parliament's intention is the fact that “violence” falls to be construed in the same way irrespective of whether the perpetrator is “a person associated with the victim” (sections 177(1A) and 178) or some other person.”*³⁶³

Although Lady Hale interpreted the concept of violence differently to the other judges, she still held that violence means the same in all contexts:

*“On the other hand, providing in sections 177(1A) and 198(3) that “violence is ‘domestic violence’ suggests that “violence” has a constant meaning. Hence, I would incline towards the view that it does. Nor would that be surprising. People who are at risk of intimidating or harmful behaviour from their near neighbours are equally worthy of protection as are those who run the same risk from their relations. But it may be less likely that they will suffer harm as a result of the abusive behaviour of their neighbours than it is in the domestic context. In practice, the threshold of seriousness may be higher.”*³⁶⁴

The legal equation of all forms of violence, regardless of context, conceals the foundation of coercive control that specifically characterizes the intimate form of

³⁶² *Yemshaw v Hounslow (Supreme Court)*, (n 294) [44].

³⁶³ *Ibid*, [51].

³⁶⁴ *Ibid*, [35].

violence. Furthermore, seeing domestic violence as the same as violence in all other contexts blurred the crucial role of patriarchal norms in the dynamics of a violent relationship. As discussed in the multidisciplinary chapter, the harm of coercive control is predominantly inflicted by men against their women partners. These gendered dynamics are not regarded as significant when intimate and non-intimate forms of violence are perceived as the same. The equation of two different forms of violence obscures the patriarchal foundation of the intimate form.

Moreover, the interpretation of ‘violence’ as the infliction of physical injury predominantly correlates with and is therefore based upon, men’s experience of violence. The continuity mechanism is therefore in charge of filtering a phenomenon directed against women through the lens of one experienced by men, providing an entirely inadequate base from which to understand it.

The continuity mechanism has dominated the entire legal discourse regarding domestic violence in another very significant way. The operation of the continuity mechanism – presenting domestic violence as physical force and injury – has been presented as an entirely obvious operation that does not require any explanation or justification and its taken-for-grantedness remains important in the ongoing development of the discourse.

What follows is a group of statements from civil judgments in which the concept of ‘violence’ was used with no further explanation and was presented as a concept that bears a known and unchallenged meaning:

*“The evil, the mischief, which Parliament sought to reduce and alleviate by this Act was violence, violence in the family”.*³⁶⁵

*“The object of the Act is to protect women and children from violence – a matter of vital concern to the community.”*³⁶⁶

³⁶⁵ *Davis v Johnson Court of Appeal*, (n 340) 199, an appeal against an injunction order issued under the Domestic Violence and Matrimonial Proceedings Act 1976.

³⁶⁶ *Ibid*, 203.

*“There are suggestions in the evidence that the husband has been prone to violence during the course of the marriage.”*³⁶⁷

Below are two examples that demonstrate the same expression of that operation from criminal appeal judgments against a sentence:

*“The complainant, a woman who is a year younger than he, and the appellant started a relationship about six years before the incident. He would often stay at her flat. They had only been going out for about eight months when he began to use violence on her, particularly when he had been drinking.”*³⁶⁸

*“The appellant, now 30, has a clear propensity to treat with violence those with whom he is in a relationship.”*³⁶⁹

The presentation of ‘violence’ as a concept that carries an obvious meaning is responsible for the presentation of domestic violence as an equally obvious and unequivocal phenomenon. This act of continuity restricts legal discourse in this area, leaving limited and narrow paths through which other possible meanings can develop.

The manner of its presentation is an unmistakable sign that the dominant meaning of domestic violence is entrenched in the deeper level of legal recognition. The phenomenon’s unquestionable presentation as physical violence is demonstrative of a doxic relationship between subjective and objective meanings and therefore of a perception that resides within the level of recognition. As shown in my analysis of the operation of the classification mechanism, these statements reveal a powerful connection between mechanisms of legal knowledge production and legal recognition.

³⁶⁷ *R v R (Breach of Order)*, (n 297) [2], a civil appeal regarding a breach of an injunction.

³⁶⁸ *R. v Whitaker (Ryan Paul)*, (n 285) [2].

³⁶⁹ *R. v Thompson (Stuart)* [2011] EWCA Crim 3278, [2].

The act of continuity was therefore responsible for clearing legal naming events from controversy and challenge, rendering them spaces that are largely free of struggle. Continuity was revealed to be a mechanism that operates as a gatekeeper – preventing the entrance of competing meanings into naming events and by that enabling the constant strengthening of the dominant meaning of domestic violence.

Continuity mechanism responsible for the splitting of legal discourse

The understanding of domestic violence as the infliction of physical injury has caused splits within legal discourse surrounding the phenomenon. The violent relationship is described through a process of extracting the component of physical violence from the entire relationship and emphasizing it above all other relevant facts. The physical violence component is often referred to as the ‘real’ or ‘actual’ violence:

“There are two affidavits by the wife...She alleges real violence but without particulars.”³⁷⁰

“It is true that there is evidence in the past, now some nine months ago, of actual violence...”³⁷¹

“He said there had been no allegations of actual violence post April 1998 when the order for staying contact was made.”³⁷²

“For the purpose of the adjourned hearing, the applicant made a fresh affidavit, disposing that the respondent had made life intolerable, not on this occasion by acts of violence, but by bringing friends to the house and playing cards all night and disturbing her. Though no acts of violence occurred, she did say that there had been

³⁷⁰ *Rennick v Rennick*, (n 277) 1456, a civil appeal under the Domestic Violence and Matrimonial Proceedings Act 1976.

³⁷¹ *Horner v Horner*, (n 290) 93, a civil appeal under the Domestic Violence and Matrimonial Proceedings Act 1976.

³⁷² *F-K (A Child) (Contact: Departure from Evidence)*, Re [2005] EWCA Civ 155; [2005] 1 F.C.R. 388, [27], a civil appeal against a decision regarding contact between a child and father.

threats of violence and also that the respondent had threatened to remove part of her property.”³⁷³

“In support of the first, and perhaps most important, of those grounds Mr Oliver has submitted that, although the appellant had been overbearing and oppressive towards his wife in the past, he had not previously used violence against her, nor had he used violence against his former wife, despite her infidelity.”³⁷⁴

Consequently, the relationship is described by splitting its ‘violent’ and ‘nonviolent’ elements.

*“The wife, on the advice of her solicitors, which cannot be criticised, applied to the magistrates’ court for an order under section 16 of the Domestic Proceedings (Magistrates Court) Act 1978 for an order that the husband should not use, or threaten to use violence against the applicant. An order was made by the court and a power of arrest was attached to it. Since that order was made, the husband has adopted a different tactic. He has been harassing the wife in various ways which probably fall outside the limited powers of section 16 of the Act, i.e., the wife probably cannot satisfy the magistrates that the husband has used violence or threatened to use violence against her person.”*³⁷⁵

In the instance below, splitting of the relationship meant that two different civil legal procedures and two different courts were required in order to protect the woman from a violent husband:

“The judge, took the view (for reasons which are not clear) that the application to him was simply a way of duplicating proceedings and building up the costs, whereas the proper course for the wife was to go back to the magistrates’ court. He does not appear to have appreciated, from reading his notes, the crucial point which is that the wife was suffering a form of harassment which it was doubtful that the magistrates

³⁷³ *Spencer v Camacho*, (n 354) 133, a civil appeal under the Domestic violence and Matrimonial Proceedings Act 1976.

³⁷⁴ *R. v Mitchell (Gary Francis)* (n 327) [16], a criminal appeal against a sentence.

³⁷⁵ *Horner v Horner*, (n 290) 92.

could control by reason of the more limited powers given to them by the 1978 Act, and so he was critical of the wife's solicitors. The result is that the wife has had to appeal to this court."³⁷⁶

The Court of Appeal acknowledged the intertwined nature of these issues:

*"It is perhaps a pity that there should be two courts sitting in the same area, dealing with very similar problems, but with significantly different powers."*³⁷⁷

The following statement is from a judgment given by the County Court in Basingstoke in 1986. The perpetrator in question, against whom there was a valid non-molestation order for the protection of his ex-partner, used different forms of controlling behaviour against her. Although these did not include physical violence, the County Court perceived them as extremely severe and sentenced the perpetrator to imprisonment for a period of three months for a breach of the non-molestation order.

*"The respondent is obsessed with the applicant. He finds it difficult to accept the relationship is over. He has great difficulty obeying the Court Orders. His attitude makes things worse. The significance of the breach is far reaching. The Respondent has caused the applicant a great deal of trouble. He is obsessed. ... The applicant is in substantial need of protection and I intend to see that she gets it.... I order that he be committed to prison for a period of three months".*³⁷⁸

An appeal against this decision was submitted to the Court of Appeal and accepted. In its sentence the Court of Appeal expressed its understanding that only physical violence can cause damage. The Court of Appeal accepted the appellant's argument that since there was no "actual assault" and "no damage was caused" the sentence given by the County Court was very severe.

³⁷⁶ Ibid, 92.

³⁷⁷ Ibid, 92.

³⁷⁸ *Parra v Rones* [1986] Fam. Law 262, 265.

“Mr Ailes has urged upon us with, if I may say so, great ability and persistence, that the sentence of three months for a contempt of this sort, in which no damage was caused, in which there was no actual assault and in which the contempt really simply consisted of being at the house and seeking admission, was an altogether excessive sentence and one with which this court ought to interfere.” ... “Speaking for myself, I think that in the circumstances the sentence was a severe one...”³⁷⁹.

The following are statements from a civil appeal against an order committing a man to prison for breaching an injunction. These statements exemplify the practice of describing a violent relationship by separating the physical violence component from all other components and then creating a hierarchy of harm that positions physical violence at its peak.

“He arrived at the former matrimonial home and instead of simply leaving what he had come to deliver, he persuaded one of the children to allow him to enter. Over the course of five hours he subjected the wife to a high degree of verbal aggression, pestering her and involving the children in some details of the breakdown of the marriage that were better left unsaid. More importantly, as the judge found, he grabbed the wife at one point, threatened to slit her throat and put his hand over her mouth.”³⁸⁰

The statement below is taken from a judgment on an appeal against a decision given by the Asylum and Immigration Tribunal and demonstrates the courts’ practice of stating clearly whether or not physical violence occurred and, if it did, emphasizing that occurrence when outlining the relevant facts of the case.

“There was a report from the Crime and Anti-Social Behaviour Service of Newham Borough Council that sets out a very graphic account of the appellant’s ill-treatment at the hands of her husband and mother-in-law. It includes, but is by no means limited

³⁷⁹ Ibid, 265.

³⁸⁰ *R v R (Breach of Order)*, (n 294) [3].

to, occasions of physical violence. Indeed, much of it describes other forms of ill - treatment.”³⁸¹

The following statements are extracted from a Court of Protection judgment regarding the capacity of a woman to decide to use contraception. It was relevant to the judgment to evaluate whether the dominating behaviour of the husband towards the wife prevents her from freely making various decisions. The court organised its judgment by distinguishing clearly between behaviour emblematic of coercive control and behaviour that the court called “actual” violence, and by this act constructed the distinction between the two as two separate phenomena.

The court detailed the controlling behaviour of the husband (Mr A) towards the wife (Mrs A):

“Miss S, Mrs. A's college course- coordinator, informed Miss G in October 2008 of concerns at the college about Mr. A's apparent controlling behaviour in respect of Mrs. A and about Mrs. A reporting that she was not happy at home. Miss S was concerned about Mr. A's travelling in to college with Mrs. A, handling her college fees and speaking to her (Mrs. A) as though she were a child... In addition, Mrs. A had told her (Miss S) and other staff members that she was not allowed to speak to Social Services.”³⁸²

Having detailed the control, isolation and intimidation that formed the man's pattern of controlling behaviour, the court states an intention to address, in addition, the separate allegations of “actual domestic violence”.

“Last on this issue of the relationship dynamic between Mr. and Mrs. A, it is I think unavoidable that I make a finding on Mrs. A's allegations against Mr. A about domestic violence.”³⁸³

³⁸¹ *AG (India) v Secretary of State for the Home Department* , (n 301) [8].

³⁸² *Re A (Capacity: Refusal of Contraception)* [2010] EWHC 1549 (Fam), [2011] Fam. 61, [17].

³⁸³ *Ibid*, [70].

*“These features have persuaded me, in spite of Mr. and Mrs. A's denials, that there have been at least some occasions of actual domestic violence (albeit, I suspect, of a relatively minor nature) and I so find. I regret I cannot be more specific than that.”*³⁸⁴

The following statement is drawn from a Supreme Court civil appeal judgment under the Hague Convention on the Civil Aspects of International Child Abduction 1980. It highlights once more the widespread practice of specifically drawing attention to acts of physical violence when detailing the relevant facts of the case:

*“The mother claims that they were all very frightened of the father because of his temper and his violent behaviour, especially towards their pets, although he was only once physically violent towards her.”*³⁸⁵

These statements demonstrate the tendency of the courts to present the entire relationship through the lens of physical violence and to divide that relationship accordingly. This process represents an additional act of splitting which works in conjunction with the dominant splitting act through classification, as previously outlined. It creates further obstacles to the possibility of the violent relationship being regarded as one entirety of which coercive control is the underlying conduct and harm.

These statements also reveal the exclusionary operation of the continuity mechanism as a mechanism of knowledge production. It is responsible for producing knowledge according to a specific template presented as unchallenged, which in turn prevents production of other possible templates and other meanings that do not correlate with the existing template.

The effects of the splitting of the discourse and the ensuing hierarchization of harms and conducts have been amplified by the use of different concepts to describe forms of conduct other than physical violence, an operation which preserves and reinforces

³⁸⁴ Ibid, [72].

³⁸⁵ *Re E (Children) (Abduction: Custody Appeal)* [2011] UKSC 27; [2012] 1 A.C. 144, [10].

the singularity of the meaning of the concept of ‘violence’ as the infliction of physical injury.

“Molestation” is one of the main concepts used in reference to non-physical-violence forms of conduct. The concept entered legal discourse around domestic violence primarily through section 1(1)(a) of the Domestic Violence and Matrimonial Proceedings Act 1976, which held that the court shall have the jurisdiction to grant an injunction which contains “a provision restraining the other party to the marriage from molesting the applicant”. The concept of “molestation” was thus integrated into the discourse and while it was understood to contain the concept of ‘violence’ within it, it was also perceived to be broad enough to include other conducts as well:

*“Violence is a form of molestation but molestation may take place without the threat or use of violence and still be serious and inimical to mental and physical health.”*³⁸⁶

‘Nuisance’ was used to direct the court regarding the circumstances which justify the granting of an injunction when there is no risk of physical violence:

*“The word “molesting” in section 1(1)(a) and (b) certainly includes acts and threats of violence. They no doubt cover a multitude of other things which I will not attempt to enumerate. When an injunction is granted under (a) or (b), it will, I think almost invariably be in respect of acts or threats of violence or possibly sometimes in respect of nuisance.”*³⁸⁷

The concept of ‘harassment’ is another main concept used along side ‘violence’ to describe non-physical-violent forms of conduct.

“The respondent (husband) had been behaving in a very peculiar manner prior to the separation, and had indeed on occasion been physically violent to the wife; but since then he has been harassing her in all kinds of ways – handing her threatening letters,

³⁸⁶ *Davis v Johnson, House of Lords*, (n 341) 334, an appeal decided by the House of Lords regarding an injunction according to the Domestic Violence and Matrimonial Proceedings Act 1976.

³⁸⁷ *Ibid*, 341.

intercepting her on the way to the station, and so on: the kind of conduct which makes life extremely difficult.”³⁸⁸

In the following statement, the court draws a connection between ‘molestation’ and ‘harassment’.

“For my part I have no doubt that the word “molesting” in section 1(1)(a) of the 1976 Act does not imply necessarily either violence or threats of violence. It applies to any conduct which can properly be regarded as such a degree of harassment as to call for the intervention of the court.”³⁸⁹

In a judgment given by the House of Lords in 1998, non-physical-violence behaviours were labelled as ‘harassment’ and clearly distinguished from ‘violence’.

“Burstow had a social relationship with a woman. She broke it off. He could not accept her decision. He proceeded to harass her in various ways over a lengthy period. His conduct led to several convictions and periods of imprisonment. During an eight month period in 1995 covered by the indictment he continued his campaign of harassment. He made some silent telephone calls to her. He also made abusive calls to her. He distributed offensive cards in the street where she lived. He was frequently, and unnecessarily, at her home and place of work. He surreptitiously took photographs of the victims and her family. He sent her a note which was intended to be menacing, and was so understood. The victim was badly affected by his campaign of harassment. It preyed on her mind. She was fearful of personal violence.”³⁹⁰

‘Abuse’ is the third concept used to describe non-physical harmful conduct and it too is understood to mean something other than ‘violence’, which is a word and concept assumed to be reserved for the description of physical violence:

³⁸⁸ *Horner v Horner*, (n 290) 92, an appeal under the Domestic Violence and Matrimonial Proceedings Act 1976.

³⁸⁹ *Ibid*, 2.

³⁹⁰ *R. v Ireland (Robert Matthew)*, *R. v Burstow (Anthony Christopher)*, (n 325) 155.

*“I am afraid he needs to understand that the society we live in now will do its utmost to protect women and children from violence and abuse. ”*³⁹¹

In later judgments the concept of ‘control’ is separated from the concept of ‘violence’:

*“Whilst Kerry was not a young child, and was not especially vulnerable, the Applicant had a history of relationships in which he had been violent and controlling. ”*³⁹²

Having designated a purely physical meaning to the concept of ‘violence’, the legal discourse became scattered as it attempted to accommodate non-physical-violent harms suffered by women. In splitting those harms into different categories and concepts, the legal discourse failed to reflect women’s experiences of the harms of domestic violence by male partners. Rather than reinterpreting the term in a more reflective way, legal discourse reinforced the original meaning of the historical concept of ‘violence’, cementing the position of physical violence at the peak of a hierarchy of harm continually reinforced by the use of different concepts to address non-physical-violence behaviours.

Through acts of classification the violent relationship is scattered into episodes. Through acts of continuity, it is scattered into distinct conducts and harms. As statements show, these two mechanisms are intertwined and operate symbiotically. Both are equally powerful and foundational in the construction of the legal meaning of domestic violence.

My analysis mirrors Foucault’s theory on the relationship between discipline and knowledge produced. We can see that through acts of naming, the meaning of domestic violence is constructed, and as part of that process, it is *multiplied* – one phenomenon becomes separate parts and phenomena. Following these acts of multiplication, the legal discipline is required to address those separate elements by,

³⁹¹ *R v R (Breach of Order)*, (n 294) [6], a criminal appeal against sentence.

³⁹² *R. v Locke (Simon Mark)*, (n 328) [29(1)], a criminal appeal against sentence.

for example, enacting corresponding legislation, providing separate procedures, and developing areas of expertise. In that way, the naming of domestic violence provides material for the legal discipline's growth. However, not only the naming influences the discipline but the discipline goes back to the name itself. By growing and developing according to the separate elements created through naming, the discipline gives these elements a tangible existence; it strengthens and reinforces them as realities.

Hierarchizing between degrees of physical violence

Physical violence is a form of conduct that can be easily assessed by law. The legal evaluation of physical violence in terms of evidence and proof is much simpler than evaluation of other forms of violence. It is a visible phenomenon and can therefore be assessed legally with little complication. Because its existence and severity are straightforwardly identifiable in legal terms, a further division is made between "severe" and "less severe" forms of physical violence. Judgments specifically note the degree of physical violence that has taken place. If the perpetrator has been physically violent in several episodes, those episodes will be presented in a hierarchy according to their gravity.

"The judge said there were two instances "of extreme violence of a horrifying nature".³⁹³

"The section could enable a married woman who had suffered serious violence to obtain urgent and almost instant relief in her local county court without pausing to consider with her solicitors what relief, if any, she might seek in the longer term".³⁹⁴

"He treated her with appalling violence: she was in fear of her life and fled to the premises on Sept 18, 1977, with the child."³⁹⁵

³⁹³ *Davis v Johnson Court of Appeal*, (n 340) 188, an appeal under the Domestic Violence and Matrimonial Proceedings Act 1976.

³⁹⁴ *Ibid*, 225.

³⁹⁵ *Davis v Johnson, House of Lords*, (n 341) 328, an appeal under the Domestic Violence and Matrimonial Proceedings Act 1976.

“Their life together thereafter was unsatisfactory because he assaulted her on a number of occasions. He of course, has not been a party to these proceedings but the assaults were, on her description, of some brutality. ”³⁹⁶

“In February 1986 Mr Clarke used substantial violence on Miss Holmes, as a result of which she sustained a broken nose, black eyes and swelling of her legs. In July 1986, the parties were living in a caravan and he threw a glass at her, as a result of which she sustained a cut to her ear, which needed stiches. The judge also found that there were other incidents of violence of a much lesser nature, such as pushing and shoving. A much more serious incident by Mr Clarke, that on that occasion in the course of an argument Mr Clarke threatened to kill her and tried to strangle her, forcing her to protect herself with a breadboard. ”³⁹⁷

“The recorder made the following findings in reaching his conclusion:

That there were other incidents I have no doubt. That they were not of a level such as to justify medical intervention is a comment, but it is rightly said that the Act does not become invoked only when there has been violence suffered by somebody to an extent necessary to call for medical intervention. ”³⁹⁸

These examples reflect yet another act of division at work within the legal discourse around domestic violence as well as the intertwined operation of the classification and continuity mechanisms. Together, the episodic understanding and the physical – violence meaning ascribed to domestic violence organise the discourse and dominate its order.

³⁹⁶ *R. v Broxbourne BC Ex p. Willmoth*, (n 266) 416-417, a civil procedure under the Housing Act 1985.

³⁹⁷ *Vikki Tracey Holmes v Craig Creighton Clarke*, (n 273) 1, an appeal under the Domestic Violence and Matrimonial Proceedings Act 1976.

³⁹⁸ *Amanda Jane Grant v Matthew John James*, (n 264) 3, an appeal under the Domestic Violence and Matrimonial Proceedings Act 1976.

In the statement below, the law's preoccupation with physical violence is reflected in the depth of detail in which each episode is described. The main space of the judgment is given over entirely to such details, at the expense of other crucially relevant elements, such as those capable of providing information on the harm of coercive control.

*“The appellant slapped the complainant across the face twice with the palm of his right hand, according to her witness statement. She tried to run from the house and to take her daughter with her, but he caught her and dragged her to the floor. He then kicked her again...”*³⁹⁹

*“This was a conviction resulting out of a protracted incident of domestic violence. After domestic exchanges of an altogether unremarkable kind, the appellant lost his temper with his partner, who he thought was not showing him love, grabbed her arm, swinging her around to face him and hit her across the face. He then pinned her against the wall and punched her face. When he stopped punching, he grabbed her by the throat and pinned her against the wall.”*⁴⁰⁰

The acknowledged harm

The hierarchy that arranges abusive conduct according to its degree of physical violence is also at work in the evaluation of harms.

Scholars pointed at the dominant legal understanding according to which the main harm inflicted on women in a violent relationship is physical injury⁴⁰¹. My analysis examines the role of continuity in the formation and enforcement of that understanding.

³⁹⁹ *Regina v Stephen Williams* (n 280) [3].

⁴⁰⁰ *Regina v Mark Cockburn* [2009] EWCA Crim 600, [3].

⁴⁰¹ Tuerkheimer, ‘Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence’ (n 257) pg. 973.

Statements reveal that physical injury is presented as the most severe harm inflicted in a violent relationship; the upper parameter according to which other forms of harm are evaluated. Non-physical forms of harm are often not noted at all:

“The judge noted the injuries, which he correctly characterised as “not minor”, involving severe bruising to the face, the closure of both eyes, extensive bruising to the ear and forearms, and he further noted that many of the injuries had been inflicted while the victim was on the ground.”⁴⁰²

“The judge also noted that there were no lasting physical injuries to the appellant's wife.”⁴⁰³

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴⁰² *R. v Parker (Kevin David)* [2009] EWCA Crim 1226, [2010] 1 Cr. App. R. (S.) 32, pg. 2, a criminal appeal against a sentence.

⁴⁰³ *Regina v Ali Abbass Khan*, (n 282) [12], a criminal appeal against a sentence.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In ruling on *Yemshaw v Hounslow*, both the Court of Appeal and the Supreme Court discussed whether physical harm was deserving of its deeming provision in the Housing Legislation. Lord Brown of the Supreme Court answered this question in the affirmative:

“If one considers just why it is that domestic violence (indeed, violence generally), in contradistinction to all other circumstances, has been thought to justify a deeming provision – a provision, that is, which deems it unreasonable that a probable victim of

[REDACTED]

future such violence should continue to occupy his or her present accommodation, the explanation would seem to me to lie partly in the obvious need for the speedy re-housing of those identified as being at risk of violence in order to safeguard their physical safety, and partly in the comparative ease with which this particular class of prospective victims can be identified...With the best will in the world I find it difficult to accept that there is quite the same obvious urgency in re-housing those subject to psychological abuse, let alone that it will be possible to identify this substantially wider class of prospective victims, however precisely they may be defined, with anything like the same ease.”⁴⁰⁸

In the statement above, the beginning of the paragraph leads the reader to think that Lord Brown is about to provide an explanation for what has been assumed without question so far – that physical harm deems a more urgent response than other harms in a violent relationship. However, Lord Brown tenders no actual justification for this assumption and instead explains that the reason is “obvious”. His words reinforce the operation of the continuity mechanism that allows established meaning to be presented and accepted as obvious and therefore already justified. It is this operation that preserves the dormant state of the discourse, leaving it unaware of potential controversy.

⁴⁰⁸ *Yemshaw v Hounslow (Supreme Court)*, (n 294) [57].

Signs of Discontinuity

Just as there were signs of discontinuity in the analysis of judgments according to the classification mechanism, I have found several signs of discontinuity in the analysis of judgments according to continuity.

Not every statement that differs from statements representative of the dominant discourse marks a sign of discontinuity. A sign of discontinuity is represented by several statements grouped into a unity – discourse, which competes with and challenges the dominant one. Some statements remain isolated: they stand on their own and cannot be affiliated to a group. These statements were not repeated after being written but were left isolated in the landscape of statements of their time. They did not encompass the conditions required to become discontinuous statements that can potentially lead to a change in the dominant discourse.

The following is an example of an isolated statement. It represents a naming event in which the continuity mechanism was entirely abandoned.

“I conclude that the mischief against which Parliament has legislated by section 1 of the Act may be described in these terms: conduct by a family partner which puts at risk the security, or sense of security, of the other partner in the home. Physical violence, or the threat of it, is clearly within the mischief. But there is more than that. Homelessness can be a great a threat as physical violence to the security of a woman (or man) and her children. Eviction – actual, attempted or threatened – is, therefore, within the mischief: likewise, conduct which makes it impossible or intolerable, as in the present case, for the other partner, or the children, to remain at home.”⁴⁰⁹

This statement represents a perception of physical violence as only one possible means by which the harm of domestic violence can be caused. It eschews the dominant practice of regarding violence as physical violence and makes a distinction between the underlying harm of a violent relationship and the various means that

⁴⁰⁹ *Davis v Johnson, House of Lords*, (n 341) 348, an appeal regarding an injunction issued under The Domestic Violence and Matrimonial Proceedings Act 1976.

cause that harm. The continuity mechanism plays no role in this naming event and its absence has enabled the emergence of a reflective understanding of the harms that require legal protection.

Even though the statement is included in a precedent given by the highest court, it remained an isolated statement and was not repeated in future judgments, which continued to correlate with and reinforce the dominant discourse. It was unable to redirect the discourse's future path.

The following is a remarkable statement written by Lady Hale in the Supreme Court in 2011. In the landscape of the 67 judgments I analysed, I read this statement as isolated – a statement standing on its own without any affiliation to other statements.

“Was this, in reality, simply a case of marriage breakdown in which the appellant was not genuinely in fear of her husband; or was it a classic case of domestic abuse, in which one spouse puts the other in fear through the constant denial of freedom and of money for essentials, through the denigration of her personality, such that she genuinely fears that he may take her children away from her however unrealistic this may appear to an objective outsider?”⁴¹⁰

The statement is remarkable and unique. It reflects a comprehension of coercive control as not merely a form of harm, but as the main, underlying harm of violent relationships. It is also remarkable when analysed as a possible judicial strategy on the part of Lady Hale, one that aims to initiate change in the legal response to domestic violence. Despite writing at a time when coercive control was not yet acknowledged in legal discourse, Lady Hale described it as the “classic case of domestic abuse” as if it had long been recognized and accepted.

Nonetheless, Lady Hale's choice to use the word ‘abuse’ and not ‘violence’ is significant. It seems that it renders the entire statement limited in its potential reach as it conforms to the division I focused on in the dominant-discourse section between

⁴¹⁰ *Yemshaw v Hounslow (Supreme Court)*, (n 294) [36].

physical and non-physical forms of behaviour. By using the word ‘abuse’ and not ‘violence’ Lady Hale allocated a different concept to address a non-physical conduct, and by that reinforced the meaning of the concept ‘violence’ as meaning physical forms of conduct.

After presenting the isolated statements identified in the judgments, I turn now to present statements that represent a potential sign of discontinuity.

I have identified a sign of possible discontinuity in statements written after 2005. These statements share common content that challenges and competes with the content of the dominant discourse shaped by the continuity mechanism.

The following statement reflects a shift in the role of the continuity mechanism that was not operated as a constructive mechanism able to construct meaning in this example. It is quoted from a criminal judgment on an appeal against a sentence.

“...we commend the judge for the care with which she described the lengthy period of controlling and aggressive behaviour marked by repeated acts of violence and properly described as sadistic, culminating in repeated brutal occurrences of rape.”⁴¹¹ ... The judge correctly focused upon the intimidation, coercion and breach of trust stemming from the relationship.”⁴¹²

The statement marks a shift in focus from physical violence to intimidation, coercion and breach of trust. Physical violence is not used as a lens through which to evaluate the relationship but its limited place is acknowledged.

The following statement, from an appeal against a decision given by the Asylum and Immigration Tribunal, is evident of a growing understanding that domestic violence includes other forms of conduct beyond physical violence.

⁴¹¹ *R. v Thompson (Stuart)*, (n 369) [13].

⁴¹² *Ibid*, [15].

*“It is right to say – this is of some importance – that much of the appellant’s case involved threats or other forms of cruel treatment short of physical violence; but, as I have shown, the meaning of domestic violence within the Rule embraces just such forms of conduct. If the immigration judge was going to reject the whole case as to the events of domestic violence, whether involving bodily attack or not, much more penetrating reasoning would have been required.”*⁴¹³

However, a consequence of accepting that domestic violence includes different behaviours and not only physical violence is the strengthening of the categorisation of domestic violence into distinct phenomena: physical, sexual, and psychological violence. I explained this type of categorisation in the “Classification” part of my analysis. The strengthening of categorisation is apparent in the following statement taken from a judgment on an appeal against a decision by the Asylum and Immigration Tribunal:

*“HB’s domestic violence complaints about EM were that, from an early stage in their marriage, he engaged in different forms of domestic violence culminating in two particularly serious violent incidents...HB alleged that she suffered from several of the categories of domestic violence that I have listed over a period of many months in the so-called probationary period of her marriage and that it was the totality of all this violent and abusive behaviour, albeit finally triggered by the second incident of physical violence that occurred on 12 October 2008, that caused her marriage to break down.”*⁴¹⁴

In one sense, this statement represents a sign of the weakening role of the continuity mechanism, as physical violence is recognized not as domestic violence’s main harm or conduct but as just one form of violence among others. However, the consequence of this recognition is the reinforcement of the perception of domestic violence as a phenomenon that can be separated into many different categories of behaviour. Comprehension of the violent relationship as a set of separate phenomena – an

⁴¹³ *AG (India) v Secretary of State for the Home Department*, (n 301) [17].

⁴¹⁴ *R. (on the application of Balakoohi) v Secretary of State for the Home Department* [2012] EWHC 1439 (Admin), [67].

outcome of the combined operation of the classification and continuity mechanisms – disguises the underlying harm of the relationship.

The inclusion of other forms of behaviour under the domestic violence umbrella is not necessarily evidence of a weakened continuity mechanism. These other forms of behaviour can be still arranged into a hierarchy of harms that continues to position physical violence at its peak. In this way, physical violence remains established as the primary lens through which other harms are assessed and as the point of reference against which they are compared.

Signs of departure are also reflected in the evaluation of the severity of illegal conduct not through the physical-violence lens:

*“Again his conduct involved aggressive, controlling and harassing behaviour towards a former partner.”*⁴¹⁵

With regard to harm, whereas statements representing the dominant discourse exhibit a perception that physical injury is the harm most relevant to the legal procedure, the following statements, all from criminal judgments on appeals against sentence, indicate the beginning of a change in that perception.

*“Miss Gardiner has made two victim impact statements in which she has made it clear that as a result of the violence she suffered at the hands of the appellant she has lost her self-respect; she does not trust anybody and she feels vulnerable and alone.”*⁴¹⁶

“The effect of the appellant's behaviour towards the complainant has been profound. A victim impact statement sets out the devastating consequences of what he has done to her, not least upon her relationship with the children of the family, who had began copying the appellant's aggressive behaviour towards her and blamed her for the break up of the marriage. The children have been placed in care to manage their

⁴¹⁵ *R. v Said (Riad Mohammed)* [2007] EWCA Crim 1932, [6], a criminal appeal against a sentence.

⁴¹⁶ *R. v Murray (Robert Owen)*, (n 271) [9].

behavioural problems and in addition because of the complainant's concern that if they continued to live with her, they would reveal her whereabouts to the appellant. She feels desperate and alone. She is presently on antidepressant medication. She suffers from sleep deprivation and has repeated flashbacks of incidents where the appellant had been violent towards her."⁴¹⁷

In the Classification part of this chapter, I demonstrated that the evaluation of harm is organized according to an episodic understanding of domestic violence. In this part, I analyse the integral role of the continuity mechanism in that operation. The previous two statements exhibit a deeper level of understanding of the psychological harm inflicted in a violent relationship. This understanding is reached not only through a general acknowledgment that harm can be psychological and not exclusively physical but also, pivotally, through the inclusion of 'victim impact statements' in criminal procedures.

"The judge was therefore entitled to decide on the material before him that there was here a significant risk of serious harm, namely serious physical or psychological injury, occasioned by the appellant's commission of further specified offences."⁴¹⁸

"I say that, not because the individual injuries or some of these incidents could have been described as serious, but because of the cumulative effect on Marie over this period in both psychological and physical terms."⁴¹⁹

"You must realise that the effect of what you have done has had both a physical effect on the complainant and undoubtedly a psychological effect."⁴²⁰

While the statements above demonstrate a burgeoning acknowledgement of psychological harm, they also show that the legal distinction between physical and non-physical harms endures. All three statements differentiate between physical and psychological harm, a division driven by the entwined operations of the continuity

⁴¹⁷ *R. v Bentall (Andrew Peter)*, (n 284) [18].

⁴¹⁸ *R. v Miller (Darren)*, (n 326) [17].

⁴¹⁹ *R. v Pressdee (Robert Christopher)*, (n 325) [14].

⁴²⁰ *Regina v Stephen Williams* (n 280) [7].

and classification mechanisms. This system of separation is reinforced by every naming event in which it is implemented, a process that continually diminishes the possibility of coercive control being acknowledged as the underlying harm of the violent relationship.

The separation of physical and psychological harm not only conceals the harm of coercive control but also poses a risk that psychological violence will be evaluated as relatively less serious than physical violence. The following statement, however, reflects an acknowledgement that psychological violence is as serious as physical violence.

“Parliament has provided that it is not reasonable for someone to continue to occupy accommodation if it is probable that this will lead to her being subjected to violence in the form of deliberate conduct, or threats of deliberate conduct, that may cause her physical harm. So the person at risk is automatically homeless for the purposes of the 1996 Act. I can see no reason why Parliament would have intended the position to be any different where someone will be subjected to deliberate conduct, or threats of such conduct, that may cause her psychological harm. I would therefore interpret “violence” as including such conduct and the subsection as applying in such cases. To conclude otherwise would be to play down the serious nature of psychological harm.”⁴²¹

The statement recognizes the seriousness of psychological harm but it is nevertheless based on the operation of the continuity mechanism, utilizing and thereby reinforcing the clear distinction between physical and psychological harms. The preservation of this foundational distinction between types of harm strengthens and perpetuates a misleading and erroneous understanding of domestic violence.

In statements that reflect the dominant discourse, the concept of ‘violence’ is understood to bear an obvious meaning that does not require interpretation. I have argued that the persistence of the concept’s image of unquestionability and self-evidence has been enabled by the powerful impact of the continuity mechanism on the

⁴²¹ *Yemshaw v Hounslow (Supreme Court)*, (n 294) [46].

legal discourse regarding domestic violence. The interpretation of ‘violence’ was the central question confronting the Court of Appeal and subsequently the Supreme Court in deciding *Yemshaw v. Hounslow*. In the previous section of this part, I presented statements from these judgments that reinforced the dominant discourse. However, several statements attributed to Lady Hale mark a sign of discontinuity in the interpretation of the concept of ‘violence’.

*“In Danesh the first, and principal, reason given was that “physical violence” is the natural meaning of the word “violence”. I can readily accept that this is a natural meaning of the word. It is, for example, the first of the meanings given in the Shorter Oxford English Dictionary. But I do not accept that it is the only natural meaning of the word. It is common place to speak of the violence of a person's language or of a person's feelings. Thus the revised 3rd Edition, published in 1973, also included “vehemence of personal feeling or action; great, excessive, or extreme ardour or fervour; ... passion, fury”; and the 4th (1993), 5th (2002) and 6th (2006) Editions all include “strength or intensity of emotion; fervour, passion”. When used as an adjective it can refer to a range of behaviours falling short of physical contact with the person: see, for example, section 8 of the Public Order Act 1986. The question is what it means in the 1996 Act.”*⁴²²

*“However, it is not for government and official bodies to interpret the meaning of the words which Parliament has used. That role lies with the courts. And the courts recognise that, where Parliament uses a word such as “violence”, the factual circumstances to which it applies can develop and change over the years.”*⁴²³

*“ “Violence” is a word very similar to the word “family”. It is not a term of art. It is capable of bearing several meanings and applying to many different types of behaviour. These can change and develop over time.”*⁴²⁴

⁴²² Ibid, [19].

⁴²³ Ibid, [25].

⁴²⁴ Ibid, [27].

The importance of these statements lies not necessarily in their content but in their effect of breaking the automatic operation by which the concept ‘violence’ is applied. Lady Hale’s statements delegitimize the assumption that the concept’s meaning is natural and obvious.

These statements hold the potential to release ‘violence’ from its foundational meaning and yet they construct a new concept that is perhaps too open and fluid. Lady Hale’s construction is largely undefined and borderless and provides insufficient direction for a new interpretation of ‘violence’.

*“There is no comprehensive definition of the kind of conduct which it involves in the Housing Act 1996: the definition is directed towards the people involved. The essential question, as it was in Fitzpatrick, is whether an updated meaning is consistent with the statutory purpose – in that case providing a secure home for those who share their lives together. In this case the purpose is to ensure that a person is not obliged to remain living in a home where she, her children or other members of her household are at risk of harm. A further purpose is that the victim of domestic violence has a real choice between remaining in her home and seeking protection from the criminal or civil law and leaving to begin a new life elsewhere.”*⁴²⁵

An all-inclusive concept does not in practice guarantee the admission of coercive control because its interpretation remains dependent on a judge’s discretion and the applicable circumstances and statutory purposes. Coercive control can only be interpreted as violence, according to this borderless comprehension of the concept, if a judge regards it as relevant to the case in question.

These statements also fail to disturb the hierarchies of forms of violence that are at work in the dominant discourse. They stretch the concept of ‘violence’ to include forms of behaviour other than physical violence but do not provide direction for dislodging physical violence from its perceived position at the peak of the hierarchies that order conduct, harm, and risk.

⁴²⁵ Ibid, [27].

Furthermore, Lady Hale's statements do not take under consideration the ways in which the legal discourse has already adapted itself to the fixed interpretation of 'violence' as meaning only physical violence. As is described in the section of this part that analyses the dominant discourse, these statements were written at a time when the legal discourse had already begun to establish alternative concepts and procedures – such as molestation and harassment – for addressing and legislating against non-physical violence.

Conclusion

In this chapter I have analysed the role of the continuity mechanism in the construction of the legal meaning of violence against women by male partners. Statements representing the dominant discourse reveal a powerful form of continuity to have governed naming events and facilitated the discourse's foundational absorption of a preexisting meaning of 'violence' that understands the word to mean the infliction of physical injury. The mechanism of continuity created an attachment between domestic violence and a single, reductive meaning of 'violence'.

My analysis of statements revealed how through the continuity mechanism, the component of physical violence in a relationship is isolated and positioned as the most significant element of the judgment, creating a foundational division between the elements of physical violence and non-physical violence. Thus, the violent relationship, already split by the classification mechanism according to its violent episodes, is split once more according to the legal division between physical violence and non-physical violence.

Alternative concepts, such as 'molestation', 'harassment', 'nuisance', and 'abuse', were developed in order to address forms of violent behaviour beyond physical violence and served to deepen the split in the discourse and preserve its singular interpretation of the concept of 'violence' as behaviour involving physical force and physical injury.

The continuity mechanism, in a similar way to the operation of the classification mechanism, influenced the formation of hierarchies that measure conduct, harm and risk in the discourse. The act of continuity positions physical violence at the peak of those hierarchies and all other elements are evaluated in comparison to it.

I have also found the continuity mechanism to be responsible for subjecting the meaning of violence against women by male partners to a gendered perspective that does not reflect its reality. The use of physical force to inflict physical injury is an act that men can understand and relate to their own life experiences. But the dynamics of coercive control are based on and enabled by gender inequality.⁴²⁶ It is almost exclusively inflicted by men and directed against women and the reality of its harm is therefore unfamiliar to most men. The legal understanding of violence against women by male partners is accordingly subjected to and understood on terms that men understand. Through this act of attachment the entire phenomenon is seen through an unfit and misleading lens, giving rise to a distorted and unreflective meaning.

The result of the various operations of the continuity mechanism is that a violent relationship is assessed through the wrong set of tools and is further split and divided in the discourse. The mechanism's acts of splitting and of providing a misleading lens for the assessment of the relationship make the possibility of bringing the legal discourse closer to a truly reflective understanding of violence against women more remote.

I have identified several statements that indicate the possible weakening of the continuity mechanism without necessarily suggesting the existence of a competing discourse capable of challenging the dominant one. These statements revealed a growing awareness that violence against women by male partners is not necessarily limited to physical violence. However, the statements reveal that the discourse reacted to this weakening of the continuity mechanism not by producing a more reflective meaning of violence against women but by utilizing the classification mechanism to

⁴²⁶ Stark, 'Coercive Control : The Entrapment of Women in Personal Life' (n 184) ; Johnson, 'Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence Against Women' (n 149); Herman, 'Trauma and Recovery' (n 149).

strengthen the categorical understanding of the phenomenon. Statements that reject the meaning of domestic violence as only physical violence actually reinforce the notion that there are different forms of domestic violence because they categorize non – physical violent behaviours as if they were separate phenomena. Moreover, amongst these multiple phenomena, physical violence is still awarded special prominence within the discourse – the other phenomena are separate from it – and so its position as a reference point for the evaluation of other elements and their severity is reinforced. In that respect, these statements do not represent a weakening of the continuity mechanism but a different way of operating on the same grounds.

In that sense, the statements do not reflect the existence of a competing discourse and the naming events of which they are part are not struggles over accepted knowledge. Although they do represent a shift in knowledge, the knowledge at which they arrive still conforms to the foundational basis of the knowledge already accepted.

Very few statements reflect a possible sign that a competing discourse is beginning to emerge. These statements both abandon the continuity mechanism and refrain from constructing the meaning of violence against women as a set of distinct phenomena. These few statements reflect an understanding of coercive control as the essence of violence against women by male partners and recognize forms of violence to be the various means used to achieve it.

My analysis revealed that the continuity mechanism is in charge of clearing legal naming events of controversy and struggle. The dominant meaning of domestic violence as physical violence was constructed in clear zones that permitted its construction and its enduring prevalence in the discourse with almost no challenge. The potential struggle over meaning that could have taken place within these events was prevented by both the classification and continuity mechanisms that operate as the gatekeepers of the discourse and ordered the discourse in such a way that left no available paths for other possible meanings to pass through.

The analysis revealed that as an embedded mechanism of knowledge production, meaning that is produced through the operation of the continuity mechanism is readily embraced without question. This has allowed the legal discourse to apply it without

having to justify its meaning, which is presented as obvious and self-evident. The dominance of this perception is the continuity mechanism's most powerful legacy to the legal domestic violence discourse. The presentation of the legal meaning of the phenomenon as obvious concealed the crucial controversy regarding the meaning of violence against women and kept the discourse around that meaning in an essentially dormant state. Statements reveal that domestic violence is presented as meaning physical violence in much the same unquestionable way as it is presented as episodic in essence. This signals its status as knowledge that resides within the level of legal recognition and demonstrates the important dynamic that exists between legal recognition and mechanisms of knowledge production in everyday naming events. Analysis of statements illustrated how mechanisms of knowledge production and legal recognition enable and strengthen each other. However, when the manner of application of knowledge is challenged – the product of genealogical research – then a shift in potentially enabled and new possibilities of knowledge can emerge.

Part III: Translation

Translation is the act of processing an acknowledged social phenomenon in order to render it legal in its form and nature; to render a social phenomenon an integral part of legal discourse.

The act of translation can operate in three different ways: it can ignore or dismiss the social phenomenon, not allowing it any place in legal discourse; it can change the phenomenon's form, essence or meaning when enabling its entry into the discourse or it can accept it as it is and simply give it a legal name.

Through these operations, translation acts as a mechanism of legal knowledge production, able to influence and shape the meanings accepted into or excluded from legal discourse.

The analysis revealed the absence of coercive control from most judgments analysed. This absence is striking in light of the understanding that coercive control is many times the defining reality of a woman in a violent relationship and is a lethal harm, as detailed in the multidisciplinary chapter. The absence is a sign that coercive control is in Foucault's term a 'subjugated knowledge': knowledge that is marginalized or dismissed from the discourse to which it tries to enter. In the previous two parts of this chapter I have analysed the responsibility of the classification and continuity mechanisms in ordering the discourse in a way that can prevent coercive control from taking part in knowledge production events. The absence of coercive control is therefore a result of the classification and continuity mechanisms that operate as the gatekeepers of the legal discourse. The translation mechanism operates at the stage when coercive control found a way to pass through those gates and participate in legal naming events.

Coercive control was present in only few of the judgments analysed, which form the analysis and discussion that follows. I examine the manners by which coercive control was translated after being presented to legal discourse by non-legal actors, and I ask how these acts of translation constructed the accepted legal meaning of domestic

violence against women. I first analyse statements that reveal how coercive control was translated when presented by the women who experienced it. I then analyse statements that reveal how coercive control was translated when presented by non-legal professionals who participated in the procedures. These professionals include psychiatrists, psychologists and probation officers.

Translation I: coercive control presented by women subjects of legal procedures

What follows is an analysis of the acts of translation revealed when women subjects of legal procedures presented the courts with coercive control as a meaningful element in their experience of the violent relationship.

The following example is a statement from a judgment given on an appeal submitted under the Domestic Violence and Matrimonial Procedures Act 1976 against the County Court's refusal to attach a power of arrest to an injunction. This judgment, describes controlling behaviour as "peculiar" and "idiosyncratic".

*"The short facts are that these parties, who are by no means young, were married on 11th August 1979 and parted on 24th May 1981. The respondent (husband) had been behaving in a very peculiar manner prior to the separation, and had indeed on occasion been physically violent to the wife; but since then he has been harassing her in all kinds of ways – handing her threatening letters, intercepting her on the way to the station, and so on: the kind of conduct which makes life extremely difficult."*⁴²⁷

*"These cases of personal idiosyncratic behaviour require careful handling by the tribunal".*⁴²⁸

The woman's appeal was unanimously rejected on the basis of an evaluation deemed this type of behaviour insufficiently severe and dangerous to justify the issuance of a power of arrest:

⁴²⁷ *Horner v Horner*, (n 290) 92.

⁴²⁸ *Ibid*, 93.

*“But, it has been said many times, that to attach a power of arrest to an injunction is very serious because it exposes the husband to immediate arrest; it causes great problems for police officers who have to enforce it; it leads to the husband being kept in custody for a period up to 24 hours before being produced before a judge and it often involves a committal order to prison. Anything in this sphere which operates more or less automatically is to be deprecated. These cases of personal idiosyncratic behaviour require careful handling by the tribunal, careful in the sense of being both sensitive and firm. I would be against running any risk of an automatic enforcement of an order such as this on the facts of this case, so I would not attach a power of arrest.”*⁴²⁹

The previous example shows that a central dynamic of a violent relationship was translated into an *exceptional and peculiar form of behaviour* that is not acknowledged as ‘violence’ at all. The act of translation stripped the essence of coercive control of its meaning and evaluated the phenomenon as a form of behaviour neither severe nor dangerous. As a result, the risk presented to the appellant by her husband’s behaviour was misjudged and underestimated.

In the following judgment given on an appeal against conviction, an act of translation resulted in the significance of coercive control being ignored in circumstances in which it should have been regarded as crucial. The appellant was a wife who killed her violent husband and was subsequently convicted of his murder and sentenced to life imprisonment. In her appeal, she argued that her conviction should be reduced to manslaughter. The appellant’s testimony made clear that she had suffered as a result of her husband’s possessive behaviour:

*“She met the deceased, Malcolm Thornton, in a public house in May 1987. He was an ex-policeman...From the start she realised he was a heavy drinker and was jealous and possessive.”*⁴³⁰

⁴²⁹ Ibid, 93.

⁴³⁰ *R. v Thornton (Sara Elizabeth) (No.1)*, (n 329) 307.

The possessive behaviour element was not, however, granted any legal significance. After this single mention, the information was not repeated anywhere else in the judgment. It was even excluded from the grounds for the diminished responsibility argument put forward by the appellant's barristers. Her appeal was refused. This judgment illustrates that women's existential realities can be made invisible upon admission to the legal sphere through acts of translation that strip away their significance.

Six years later, in a different case but under very similar circumstances, an appeal against conviction was accepted and a retrial ordered based on the appellant's argument that at the time of her conviction, the Battered Women's Syndrome was not yet included in the Standard British Classification of Mental Disease and that the psychiatrists who participated in the trial did not, therefore, take into account the relevant elements that influenced the responsibility of the appellant.

*"The substance of the submission made on the appellant's behalf is this. It was not until 1994 that Battered Women's Syndrome was included in the standard British classification of mental diseases, although, prior to that date, it had been included in the American classification. In consequence, at the time of the appellant's trial in 1992 it would not have been a condition which would have been readily considered by practising British psychiatrists, save the relatively small number who had a particular experience and expertise in relation to that condition. Battered Womens' Syndrome is a variant of post-traumatic stress disorder. The essence of the case now sought to be made on behalf of the appellant, on the basis of the reports of Dr Mezey and Dr Ghosh, is that, at the time of the killing, the history of this appellant, and all the attendant circumstances, gave rise to the existence of Battered Women's Syndrome, which was capable of giving rise to, and did, in her case, give rise to, diminished responsibility for the killing in accordance with the provisions of section 2 of the Homicide Act."*⁴³¹

The previous two examples shed light on women's ability to influence legal procedures and to adapt them to their own reality. Until coercive control received

⁴³¹ *R. v Kathleen Hobson* [1998] 1 Cr. App. R. 31 (CA) , 33.

formal psychiatric acknowledgment, women were unable to render the legal discourse reflective of their existential reality; a situation that resulted in convictions of murder and life imprisonment sentences for women who killed abusive partners. Their accounts became valid and relevant only after they were accepted by the formal psychiatric discourse. Prior to this, the experience of coercive control was literally absent, even though it was the most pressing reality in the lives of women in violent relationships and the most relevant consideration that should determine their criminal liability.

I have examined criminal judgments on appeals against sentence for evidence of the presence of coercive control within sentencing considerations. In judgments from the year 2000 onwards, it is possible to identify the growing presence of coercive control in criminal judgments on appeals against sentence. However, statements reveal that its presence did not necessarily indicate that they bear any legal significance.

In the following example, coercive control was included in the factual background of the judgment but was not referred to anywhere else in the judgment and was not included as a sentencing consideration:

*“The appellant was married to Sandra Mitchell. They had a son aged 9. The marriage broke down due to the appellant's possessive and controlling behaviour.”*⁴³²

The Court of Appeal dismissed the offender's appeal against sentence and accepted the considerations considered by the County Court in sentencing him. Those considerations included factors relevant to the brutal incident for which the appellant was convicted, the fact that he pleaded guilty before the case management hearing and the conclusion of the Pre-Sentence Report which found the offender to be dangerous to women with whom he might become involved in intimate relationships. Coercive control was not seen as a sentencing factor by either court. The act of including coercive control as a background factor and not as a relevant consideration for the main question of the judgment ensures that the phenomenon remains legally insignificant.

⁴³² *R. v Mitchell (Gary Francis)*, (n 327) [3].

Another way by which coercive control was present without influencing the judgment explicitly is by including it as an underlying *explanation* of the dynamics in the relationship rather than as the unlawful conduct, harm inflicted or indicator of the presentation of risk:

*“what he had done was carry out a sadistic form of punishment on his partner over whom he had complete control by fear.”*⁴³³

However, in cases from 2010 onwards, coercive control *was* included as a consideration for sentencing or as an aggravated feature for aggravated sentences. The following statements were a part of considerations for evaluating the justification for sentences given to offenders.

*“The offences are seriously aggravated by the fact that he then targeted another lady with whom he entered into a relationship, whom we shall call S. He told his first partner, T, that he wanted to start a relationship with her and forced her to telephone the next lady to tell that lady that the previous relationship was over. We mention that because it demonstrates the controlling behaviour of this appellant.”*⁴³⁴

*“We commend the judge [crown court] for the care with which she described the lengthy period of controlling and aggressive behaviour marked by repeated acts of violence and properly described as sadistic, culminating in repeated brutal occurrences of rape.”*⁴³⁵

*“The judge correctly focused upon the intimidation, coercion and breach of trust stemming from the relationship.”*⁴³⁶

“However we find that there is clearly an element of control throughout on the part of the appellant. We accept that he has his own fragile emotional state but in our

⁴³³ *R. v Shuttleworth-Long (Darren)* [2006] EWCA Crim 1931, [11].

⁴³⁴ *R. v Thompson (Stuart)*, (n 369) [8].

⁴³⁵ *Ibid*, [13].

⁴³⁶ *Ibid*, [15].

judgment his controlling behaviour has continued to an extent thereafter through the attempt to pervert the course of justice. Clearly there is a very complex relationship between them even to this day."⁴³⁷

*"During the relationship, the Applicant was jealous and possessive, and there was evidence of controlling behaviour on his part".*⁴³⁸

These previous examples reveal that in recent sentencing judgments there exists evidence of a growing consideration of coercive control and a growing acknowledgement of its legal significance. The sentences handed out in these cases were based on factors not only pertaining to the incident for which the perpetrators were convicted but also to the coercive control exerted over their victims. Information presented by women regarding the coercive control they experienced was therefore granted legal significance as a relevant factor for sentencing through an act of translation.

Yet, the significance granted to or withheld from coercive control remained particular to each case and dependent on the discretion of each judge. Coercive control carried an eclectic and malleable meaning rather than a binding significance.

In the following judgment, for example, coercive control was accepted as an appropriate reason for reducing the appellant's sentence from a custodial sentence to a community sentence. The appellant successfully appealed against the eight-month prison sentence ruled against her for her conviction for perverting the course of justice for filing a complaint against her violent husband and then refusing to cooperate with the procedure because of pressure put on her by her husband and his family.

"Where a woman has been raped, and raped more than once by her husband or partner, the father of her children, the man in whom she is entitled to repose her trust, those very actions reflect, and are often meant to reflect, manifestations of dominance, power and control over her. When these features of a relationship

⁴³⁷ *R. v Ashbourne (Nigel Ian)* [2012] EWCA Crim 1092, [24].

⁴³⁸ *R. v Locke (Simon Mark)*, (n 328) [3].

between a man and a woman are established, it is an inevitable consequence that the woman who has been so ill-treated becomes extremely vulnerable.”⁴³⁹

The judge in this case recognized the meaning of coercive control and explained that this reality compels the sentencing court to be guided by “a broad measure of compassion for a woman who has already been victimized”:

*“Of course it is better for a truthful complaint to be pursued, but if the proposal that it should be withdrawn is not accepted, leading to a positive retraction and admission that the original truthful complaint was untrue, and the complainant is then prosecuted to conviction, the sentencing court, when assessing culpability, should recognise and allow for the pressures to which the truthful complainant in such a relationship has been exposed, and should be guided by a broad measure of compassion for a woman who has already been victimised.”*⁴⁴⁰

The act of translation at work in this judgment results in the acceptance of coercive control as an element of legal significance. But it is important to note that this acceptance came as the result of a judge’s subjective discretion and exercise of ‘compassion’, and not as a result of a legal precedent or a definitive acknowledgement of coercive control’s meaning.

In a criminal action under section 4 of the Protection from Harassment Act 1997 – the offence of putting a person in fear of violence - coercive control was interpreted as the unlawful conduct that was the basis for the conviction of the offender under that section.

*“In short the evidence given by the complainant at trial was that her relationship with the appellant had turned sour because of his controlling behaviour.”*⁴⁴¹

⁴³⁹ *R. v A* [2010] EWCA Crim 2913, [21].

⁴⁴⁰ *Ibid*, [22].

⁴⁴¹ *R. v DF* [2011] EWCA Crim 2168, [3].

Coercive control was the basis for this conviction because the specific judge accepted the argument that coercive control fulfills the criteria of the offence. However, in order to make the coercive control classifiable as unlawful conduct, the judge, in a process similar to that analyzed in the continuity part above, translated the behaviour into concepts other than ‘violence’:

*“The overwhelming thrust of the evidence was of threatening, intimidating and harassing conduct.”*⁴⁴²

The following two statements are taken from civil judgments. In the first case, heard by the Supreme Court in a child abduction case, a woman has moved with her daughters from Norway to England, arguing that the violence exhibited by the children’s father put her and her children under grave risk of harm. The woman’s accounts of that violence described classic coercive control behaviour:

*“She says that he was never physically violent towards her (apart from one incident when he knuckled her head), but that she always felt that he was on the verge of extreme violence and that if he was violent he would kill her. She recounts incidents of physical violence towards other people, and towards property, of ill-treatment of pets, killing the family’s cat, spraying the family’s budgies with bleach, and killing a rabbit which Tyler kept as a pet while they were away. She alleges that the father was domineering and controlling, buying the family’s food, keeping her short of money, and not wanting her to work outside the home. She says that the children were frightened of his anger, that he was rough with them and smacked them too hard, and she recounts one particular incident when he lost his temper with Livi and kicked her bottom with his workman boots so hard that she flew up into the air and landed in the snow. Tyler supports her mother’s claims.”*⁴⁴³

Though an act of translation, the court, in a judgment delivered by Lady Hale, stripped coercive control of its significance. The court did not find these allegations to be indicative of sufficiently severe harm or risk to justify a full trial and submission of

⁴⁴² Ibid, [6].

⁴⁴³ *Re E (Children) (Abduction: Custody Appeal)*, (n 385) [40].

evidence under The Hague Convention procedure. Although he denied all the allegations against him, the court accepted the father's undertakings not to use violence against the woman in the future and ordered her to return to Norway with their daughters.

*“Although the father does not accept that he has subjected either the mother or the children to any physical or emotional abuse, he has been prepared to make arrangements and give undertakings to reassure her. He would withdraw the complaint he had made to the police about the abduction; he would not use or threaten violence to, or harass or pester or molest the mother, or contact her save through lawyers; he would not remove or seek to remove the children from her care pending an order of the Norwegian court or by agreement”.*⁴⁴⁴

Through an act of translation, the essence of coercive control – its meaning and significance – was lost, and the behaviour, along with the harm and risk it presents, was misjudged, devalued and stripped of meaning.

In contrast, the following judgment manages to retain much of the meaning and significance of coercive control. The judgment is from a judicial review on a decision made by the Secretary of State for the Home Office to refuse a woman's request for indefinite leave to remain in the UK. The judge interpreted coercive control as the underlying harm of domestic violence and criticized the Secretary of State for overlooking it and focusing instead on incidents of physical violence.

A large part of the judgment is dedicated to the applicant's account of the violence she has experienced:

*“HB contended that EM started to subject her to domestic violence soon after they had married and that this continued throughout the rest of the time that their marriage subsisted. This domestic violence initially took the form of EM being very jealous, distrustful, overbearing and controlling in his behaviour towards her.”*⁴⁴⁵

⁴⁴⁴ Ibid, [41].

⁴⁴⁵ R. (on the application of Balakoochi) v Secretary of State for the Home Department, (n 414) [5].

Controlling behaviour, including acts of isolation, is presented as the core of the relationship:

*“By the time they moved into the matrimonial home, he had forced her to terminate her studies and he then prevented her from studying thereafter. He also prevented her from obtaining employment or from engaging in social activities outside the matrimonial home.”*⁴⁴⁶

*“As part of the jealous and controlling behaviour, he placed sound-recorders in their home to record her movements and to check on her visitors and on any telephone or other conversations that she had in his absence. He meanwhile continued with his course of study and maintained a social life outside the home whilst she was required to stay at home.”*⁴⁴⁷

Physical violence is understood as merely one means by which to achieve control and not as the essence of the relationship. An episode of physical violence is mentioned at the end of the woman’s account of the man’s violent behaviour but is not emphasized as its most severe manifestation:

*“His excessively controlling behaviour soon gave rise to continuous heated arguments during which he was extremely verbally aggressive and hostile towards her. By July 2008, this verbal aggression was coupled on various occasions with physical violence during which EM frequently hit her.”*⁴⁴⁸

The court was critical of the Secretary of State’s refusal of the claimant’s application for indefinite leave to remain. It was particularly critical towards the practice of considering only physical violence as domestic violence and ignoring the essence of the violent relationship, describing it as “irrational and perverse”.

⁴⁴⁶ Ibid, [5].

⁴⁴⁷ Ibid, [5].

⁴⁴⁸ Ibid, [5].

*“It is a particularly unfortunate consequence of the way that each refusal decision was taken that the only incident of alleged domestic violence that was considered was the last alleged violent incident. None of the preceding domestic violence in any of its alleged forms was considered as well.”*⁴⁴⁹

*“Thirdly, the findings of fact that no domestic violence occurred and that such domestic violence as did occur was confined to a single incident that occurred on 12 October 2008 and that that domestic violence, if it occurred, did not cause the marriage to break down because the marriage had already broken down before that date were irrational and perverse.”*⁴⁵⁰

In this judgment, the essence and significance of coercive control is, through acts of translation, preserved and implemented in a relevant way, according to its meaning.

My analysis of statements so far reveals the relationship between translation as a mechanism of knowledge production and the production of accepted legal meanings. Through acts of translation, the significance of coercive control was diminished and as a consequence the dominant meaning of domestic violence as a physical-violence episodic phenomenon, was mainly reinforced. However, the statements reveal the space left for subjective discretion within the ordered legal discourse. In the absence of a binding precedent and through translatable, subjective discretion, coercive control received changing significances and meanings. Within that space of subjective discretion, few examples were found of judgments that retained the meaning and significance of coercive control. These few examples are indicative of the legal discourse being capable of comprehending the meaning of coercive control and rendering it a processable phenomenon within the legal system.

⁴⁴⁹ Ibid, [67].

⁴⁵⁰ Ibid, [116].

Translation II – coercive control presented by non-legal professionals

The following is an analysis of the acts of translation operated when courts are presented with the meaning of coercive control by non-legal professionals, particularly psychologists, psychiatrists and probation officers.

The analysis of statements reveals that many times the participation of non-legal professionals in the proceedings reinforced the *absence* of coercive control from legal discourse.

In the judgments I analysed, psychiatrists and psychologists presented the courts with reports that correlate with the dominant understanding of domestic violence in their own disciplines, as was described in Chapter III – the episodic physical violence phenomenon, which also correlate with the dominant understanding of domestic violence in legal discourse presented so far.

In Chapter III, I presented the discourse in the disciplines reviewed – sociology and the mental health field – as including two main different meanings of domestic violence: domestic violence as an episodic phenomenon and domestic violence as coercive control. I have noted that the episodic understanding was accepted by the discourses as an obvious meaning without much challenge while the second meaning developed at a much slower pace and is based on women's accounts of the harm they have experienced in violent relationships.

My analysis revealed that many times non-legal professionals who participated in legal procedures were affiliated to the first stream of meaning. In many of the judgments analysed, legal actors and non-legal actors shared the same understanding of domestic violence. As a result, the dialogue between them did not allow for the consideration of different perspectives but only strengthened the existing perception of each party. The courts in these judgments were not considering extra-legal understandings but actually strengthening their own assumptions.

These multidisciplinary meetings that strengthened embedded perceptions contributed to the absence of coercive control from legal discourse. They did not create sites of

struggle over knowledge production, since all actors from all disciplines shared the same understanding of domestic violence. The following examples demonstrate the process of *reinforcement of meaning* that takes place when courts are presented with psychiatric or psychological reports.

The following statements are from a judgment on an appeal submitted by a woman convicted of the murder of her violent partner. The woman's appeal to have her conviction reduced to manslaughter was refused.

In the part "Classification" under the section "Signs of Discontinuity" I quoted the following statement showing that coercive control was included in the factual background of the judgment:

*"She met the deceased, Malcolm Thornton, in a public house in May 1987. He was an ex-policeman...From the start she realised he was a heavy drinker and was jealous and possessive."*⁴⁵¹

In that procedure, three psychiatrists were asked to assess the woman's mental condition at the time of the killing in order to determine her legal liability. Not one of them considered the potential impact of coercive control on her mental state.

*"In due course a report upon her mental condition was prepared for the Crown by Dr. Brockman and two reports were prepared for the defence, the first by Dr Bullard, a consultant psychiatrist, and the second by Professor Sydney Brandon of the department of psychiatry, University of Leicester. All the psychiatrists agreed that the appellant suffered from a personality disorder, which amounted to abnormality of the mind and that this was due either to retarded development of her personality or to inherent causes."*⁴⁵²

The following statement is from a judgment in a contact proceeding regarding contact between a child and a father who was violent towards the child's mother. A

⁴⁵¹ *R. v Thornton (Sara Elizabeth) (No.1)*, (n 329) 307.

⁴⁵² *Ibid*, 311.

psychiatrist was asked to submit a report that evaluated the mental health of the mother. Although the mother testified on the father's possessiveness towards her, this information was absent from the report submitted by the psychiatrist, who understood domestic violence according to the episodic meaning stream.

*"The mother's case is that the father was both jealously possessive of her and violent towards her."*⁴⁵³

*"On 1 December 1999, Dr Jawad, a consultant adult psychiatrist, reported on the mother's mental health. He interviewed the mother on the day of his report. She told him about both the telephone incident and the baseball bat incident."*⁴⁵⁴

*He did not think her account exaggerated. He was impressed by the fact that she had denied being sexually abused by the father, and had given him "a very clear account of two episodes of violence that keep recurring in form of intrusive thoughts."*⁴⁵⁵

In each of the two previous cases, psychiatric reports were accepted by the courts despite the absence of information regarding coercive control from their findings. Evidently, the courts did not attribute significance to the absence of coercive control from these reports or to the discrepancies between the women's accounts of domestic violence and the psychiatrist's findings.

The statements that follow illustrate that even when non-legal professionals *do* present evidence of coercive control, acts of translation cause the phenomenon to be reconstructed legally as an eclectic element of malleable, non-binding meaning.

My findings correlate with Rosemary Hunter's argument that experts' testimonies able to challenge the legal understanding of domestic violence raise the greatest problems of admissibility.⁴⁵⁶

⁴⁵³ *F-K (A Child) (Contact: Departure from Evidence), Re*, (n 372) [9].

⁴⁵⁴ *Ibid*, [47].

⁴⁵⁵ *Ibid*, [24].

⁴⁵⁶ Hunter, 'Gender in Evidence: Masculine Norms vs. Feminist Reforms', (n 276) pg. 141.

Statements reveal the courts to react to professionals' account of coercive control in very similar fashion to how they react to the accounts of women who are the subjects of procedures. Judges applied their discretion in deciding what significance, if any, should be applied to coercive control.

The example below is from a judgment on a local authority's appeal for a care order and the removal of a child (B) from his parents' custody unless the mother is able to separate from the violent father. The court disagreed with the local authority's social workers' opinion that the father's controlling behaviour towards the mother represented significant enough harm and danger to B as to justify the granting of a care order. As a result of an act of translation, the coercive control acknowledged as a crucial element by the social workers was ignored by the courts.

*"The plan lurched off the rails later that month when, during a fraught week between 19 and 26 July, the mother described to one of the workers at Monkwood House her sense of despair at her relationship with the father and her determination to escape from his unreasonable controlling personality. She did leave for a women's refuge, but within 24 hours she was back again and the relationship crisis was seemingly overcome. However, it led the local authority to reverse their proposals for B's future. At a planning meeting on 7 August they decided to seek judicial sanction for B's immediate removal from his parents."*⁴⁵⁷

Despite being the reason for the local authority's initiation of care proceedings, coercive control is absent from the judgment after this solitary mention. The judgment instead places its focus entirely on evidence supporting the presence of physical violence. In its evaluation of the potential danger and harm faced by the mother and B, the court completely ignores the impact of coercive control. The controlling behaviour identified as dangerous by social workers was not perceived as a relevant consideration in the court's judgment.

"There is one incident referred to in the record of what the mother was saying in late July when she says that she was slapped by the father during a car journey and B was

⁴⁵⁷ *Re H (A Child) (Interim Care Order)* [2002] EWCA Civ 1932, [2003] 1 FCR 350, [5].

a passenger and it might have led to some sort of accident. If that is the high point I do not think much of the crossfire submission.”⁴⁵⁸

Through an act of translation and in the absence of a binding precedent, coercive control was stripped of meaning. As a consequence, an assessment of the risk faced by the child and mother was undertaken on the basis of incomplete and misunderstood information.

The following are statements from two judgments on appeals against sentence. In each case, non-legal professionals have presented the court with the understanding that coercive control is a crucial element that should be received as a significant consideration. However, in the process of translating coercive control from a non-legal into the legal language, the courts integrated the phenomenon in a partial way that positioned it at the margins of the discourse.

In the first judgment the court restated the probation officer’s report, which outlined the central importance of power and control to the case.

*“In my view this offence sits within the context of power and control in that Mr Graham was unable to accept that his marriage was over and wanted to exact his revenge.”*⁴⁵⁹

The court quoted this part from the report and accepted the probation officer’s final conclusion. However, the court refrained from referring to the power and control element anywhere else in its judgment. It did not include power and control amongst the aggravating features upon which it based its final decision. The aggravating features that *were* considered pertained to elements connected to the violent offence of which the offender was convicted.

⁴⁵⁸ Ibid [40].

⁴⁵⁹ *Attorney-General's Reference No 12 of 2009* [2009] EWCA Crim 1438, [2010] 1 Cr App R (S) 54, [11(2.6)].

In a similar way, in the second judgment, both the wife and the probation officer presented the court with coercive control as a most relevant feature in the offender's violence.

*"In due course the appellant became possessive and controlling."*⁴⁶⁰

*"The defendant's wife, in her witness statement, portrays a very ruthless man whose only focus appears to have been the control of his wife with violence, and his own sexual gratification."*⁴⁶¹

A statement quoted from the probation officer's pre-sentence report:

*"... This attempt at manipulating these court proceedings, in my view, demonstrates the power and controlling behaviour that is described in the witness statement."*⁴⁶²

The brief extract from the probation officer's report is the judgment's sole reference to coercive control. The element of coercive control, perceived as centrally important by a non-legal professional, was afforded a peripheral place in the judgment.

In the previous two examples, through integrating the element of coercive control in the judgments only through quotations from reports, the court granted it a very limited and partial significance. The message conveyed in both judgments is that coercive control is relevant only from a non-legal point of view. It is not considered a 'material' fact of the case and a relevant factor in sentencing.

In the following judgment on an appeal against sentence, a sharp contrast was present between the probation officer's and the psychiatrist's reports submitted to court regarding the dangerousness of the offender. The probation officer's pre-sentence report was based on an understanding of control as the underlying element of domestic violence, capable of indicating harm and future risk. She perceived the

⁴⁶⁰ *R v MA* [2012] EWCA Crim 1646 [3].

⁴⁶¹ *Ibid*, [16].

⁴⁶² *Ibid*, [16].

relationship in question as an entirety and generated conclusions from its dynamics as a whole:

*“She pointed out that the complainant had suffered years of domestic abuse prior to the rape and in consequence of the background she was of the opinion that the defendant was likely to continue to present a significant risk of harm towards both the complainant and any other woman with whom he may form a relationship.”*⁴⁶³

*“[The appellant] attempted to minimise his actions by claiming that the victim consented to sex, which appears to have been used in this case, in order to control and dominate the victim. ... Consequently I have assessed this defendant as presenting a high level of risk to the victim. Further his partners in future relationships are also likely to be at risk of serious harm.”*⁴⁶⁴

In contrast, the psychiatrist reached the conclusion that the offender did not necessarily present a risk to any woman with whom he entered into a relationship and was skeptical about whether the offender presented a future risk to the victim. The psychiatrist based his conclusion on his finding that the offender did not suffer from a recognised mental condition. He did not consider coercive control to be an indicator of present and future dangerousness:

*“21 The psychiatric report was less condemnatory. The conclusions of Dr Williams were expressed having reviewed the appellant on a number of occasions since February 2005 when the appellant was first remanded in custody. Dr Williams considers that the appellant does not suffer from a depressed or psychotic state, nor does he suffer from an organic or non-organic personal disorder.”*⁴⁶⁵

The court quoted Dr Williams’s report in its judgment:

“ I am not of the view that [the appellant] has a mental illness at the current time and

⁴⁶³ *R. v Bentall (Andrew Peter)*, (n 284) [20].

⁴⁶⁴ *Ibid*, [20].

⁴⁶⁵ *Ibid*, [21].

*there is little evidence to suggest that his mental state was abnormal at the time of the offence ... “there continues to be a possible, specific risk of reoffending towards his wife, although he has denied this, though I am not of the view that there is evidence to suggest that he is a danger to females in general. A caveat to this might be if he formed a further relationship with a female, and she became involved with another man. This could provide a setting where violence, possibly sexual violence, could occur.”*⁴⁶⁶

The court accepted the probation officer’s final conclusion regarding the dangerousness of the offender and not the psychiatrist’s conclusion:

*“We recognise the risk posed by the appellant is not towards women in the community generally but towards the complainant in this case and, if he is unable to locate her, any other female with whom he forms an intimate relationship.”*⁴⁶⁷

However, even though the court adopted the probation officer’s final conclusion, the same previous practice of translation was revealed here as well. The court did not repeat the element of coercive control anywhere else in the judgment and so it remained an element that was integrated into the judgment only through quoting the probation officer’s report. Coercive control remained a consideration relevant only from a non-legal point of view and was located externally, not part of the actual considerations in the final judgment.

The following statements are from a judgment on an appeal against sentence, within which a contradiction existed once more between two reports regarding the offender’s dangerousness. Although both professionals agreed that the offender was dangerous, this conclusion was reached according to different rationales. The pre-sentence report submitted by the probation officer analysed the offender’s behaviour entirely in terms of coercive control as demonstrated in the following parts of the report, which were quoted in the judgment:

⁴⁶⁶ Ibid, [21].

⁴⁶⁷ Ibid, [30].

“It is my assessment that Mr Zelder's behaviour bears the hallmarks of a violently controlling man who has lost the power over his victim. The loss of his relationship appears to have enraged him to the point of almost killing Ms Johnson. Given the injuries sustained, and the fact that Mr Zelder left her unconscious, this would lead me to believe that he had little care whether she lived or died. Again, the threats against [her] initially gave him his desired outcome of Ms Johnson dropping the charges against him, keeping her within his control by placing her in fear of her life...It would seem that though he was not convicted, Mr Zelder appears to have demonstrated a pattern of abusive behaviour against Ms Johnson...Of particular concern are his aggressive, controlling behaviour and his power over Ms Johnson, resulting in her becoming unconscious. I find it unlikely that the defendant experienced a momentary loss of control as had this occurred, it would have been expected that he phone an ambulance, rather than leave her in a dangerous state. Though these offences highlight power and control over his victim, Mr Zelder denied such behaviour or intentions to harm his partner.”⁴⁶⁸

By contrast, the clinical psychologist based his report, quoted in the following part of the judgment, on an entirely different understanding of domestic violence:

“In Mr Zelder's case dangerous situations may appear if he is in a relationship, where his needs would not be met (increased frustration), if his freedom is limited and responsibilities increased, if he is under pressure by any figure of authority or is expected to do something he does not want to do, and if he sustains a narcissistic injury or experiences rejection and/or failure.”⁴⁶⁹

The court ignored the vast discrepancy between the two reports and did not include coercive control in the factors that based its decision to uphold the offender's sentence.

⁴⁶⁸ *R. v Zelder (Mitchell)*, (n 281) [11].

⁴⁶⁹ *Ibid*, [12].

“He [the sentencing judge] spelled out in his sentencing remarks the aggravating factors. They included the fact that the victim came closer to death than any other case seen by the pathologist, the cunning way in which the appellant sought to lay a false trail immediately after the attempted murder so as to prevent any assistance coming to the victim that evening, the fact that he himself made no attempt to summon medical assistance, despite knowing or believing that his victim was still alive when he left the premises on that night, and the fact that he left the victim's four year old son alone in the flat with the victim overnight, as well as the subsequent attempts to intimidate the victim so as to avoid the consequences of his actions.”⁴⁷⁰

This case shows coercive control being marginalized once more upon translation to the legal language. The judgment mentions it only in quoting a non-legal professional's report and its significance is consequently diminished.

Below are statements from another judgment in which two non-legal professionals submitted to court two contradicting reports. In this case, two psychiatrists have reached opposing conclusions as to the dangerousness of the offender. The first, Dr Falkowski, has concluded that the offender was not dangerous:

“Although the offence of which he has now been convicted is extremely serious, the likelihood of his committing a similar offence again in the future is low.”⁴⁷¹

The second psychiatrist, Dr Olumoroti, has reached the conclusion that the offender was dangerous on the basis of the offender's controlling behaviour in the relationship:

“Dr Olumoroti stated: “Mr Pithiya has shown that he has negative attitudes towards women who he has been in relationships with and tendencies to hurt their feelings without necessarily considering the impact on them. There is also a tendency to be controlling and to be passively aggressive, which he demonstrated with his

⁴⁷⁰ Ibid, [16].

⁴⁷¹ *R. v Pithiya (Yatin)*, (n 361) [20]. The offender was convicted of arson of his partner's flat with intent to endanger her life.

*relationship with his ex-partner, Miss Dridi and also during his interview with the police and my assessment of him at the prison.*⁴⁷²

The stark contradiction between the conclusions of the psychiatrists suggest that the identification of coercive control is crucial to any accurate evaluation of the dangerousness and future risk presented to women by violent partners.

Importantly, and unlike previous judgments presented, the court took note in its judgment of Dr Falkowski's failure to recognize the relevant dynamics of the relationship:

*"We observe that Dr Falkowski did not address the nature of the appellant's relationship with Miss Dridi or his attitude to women."*⁴⁷³

The court adopted Dr Olumoroti's conclusion regarding the dangerousness of the offender but, in an identical operation of translation to that detected in previous examples, refrained from repeated mention of the issue of controlling behaviour in listing its reasons for imposing a sentence of imprisonment for public protection.

In the following judgment, the act of translation brought about a different outcome in terms of the acceptance of coercive control into legal discourse. As in the previous examples, the court was presented with two contradicting reports regarding the offender's dangerousness: a psychiatrist contended that the offender was not dangerous while the probation officer found him to be highly dangerous.

*"11 In a subsequent psychiatric report dated 28 November, Dr Forrester set out a number of risk factors which can be summarised in this way: of ten relevant historical risk factors, six were absent; of five clinical risk factors, four were absent; and of five current risk factors, three were absent."*⁴⁷⁴

⁴⁷² Ibid, [21].

⁴⁷³ Ibid, [21].

⁴⁷⁴ *Regina v Moses Brown* [2010] EWCA Crim 1103, [11].

In sharp contrast, the probation officer's assessment was that the offender presented a substantive risk to the victim and to other women with whom he might form relationships. Dynamics of power and control were among the foundations of the probation officer's conclusion.

*"The report suggested that there was a moderate risk of being reconvicted within two years, but there were several elements to the current offence, such as power, control, humiliation and premeditation which exacerbated its grave nature. The conclusion was that he presented a substantial ongoing risk to the victim and to women with whom he might seek to form a relationship. That assessment was qualified in the sense that it was said to be a borderline assessment."*⁴⁷⁵

*"The addendum to the pre-sentence report was produced after the second psychiatric report, and the author of the pre-sentence report still concluded that he posed a sufficient risk to justify a finding of dangerousness."*⁴⁷⁶

The court accepted the probation officer's conclusion regarding dangerousness over that of the psychiatrist:

*"This is a very serious case of domestic violence, even though the victim has her own residence. I have no doubt that your partner, your victim in this case, remains at significant risk of serious harm by way of physical injury from you in the future."*⁴⁷⁷

Unlike the judgments in previous examples, this court made repeated reference to controlling behaviour in its judgment and included it as an aggravating feature in justifying sentence.

"It is clear to me that you displayed an extremely controlling attitude towards your victim from the Saturday, through Saturday night, the early hours of Sunday morning when the attack was taking place, through the rest of the Sunday and Monday and it

⁴⁷⁵ Ibid, [13].

⁴⁷⁶ Ibid, [14].

⁴⁷⁷ Ibid, [18].

being Tuesday before she left, with your words ringing in her ears, 'Don't make me come looking for you'. It was in fact her son's girlfriend who eventually called for the ambulance, she did not."⁴⁷⁸

It is clear, however, that through an act of translation, coercive control was misunderstood by the judge who interpreted it along the lines of the dominant episodic understanding of domestic violence, as a harm that can be measured between beginning and end points and thus failing to capture the essence of coercive control as the underlying harm of the entire relationship.

Conclusion

In this part I have examined the role of acts of translation in constructing the accepted legal meaning of violence against women by male partners.

I examined the courts' reactions to coercive control when it was presented to them as a defining element of the violent relationship by either the women who were subjects of the legal proceedings or by non-legal professionals asked by the courts to submit reports.

As explained in the multidisciplinary chapter, an understanding of coercive control as the meaning of violence against women according to women's accounts was becoming increasingly prevalent in non-legal fields. The ensuing gap between legal knowledge and the broadened knowledge of other disciplines enabled me to see clearly the reactions of the courts when presented with the meaning of coercive control by non-legal actors.

My analysis has revealed that the women who were the subjects of these proceedings were unable to overcome the barriers of legal discourse that have prevented them from rendering the legal meaning of domestic violence reflective of their reality and experience. They were unable to deliver the actuality of the harm of coercive control and have it received and acknowledged. Statements revealed that in a similar way,

⁴⁷⁸ Ibid, [17].

non-legal professionals that understood domestic violence as coercive control, were also unable to overcome the legal discourse's barriers and to adapt the legal meaning of domestic violence adapted to their disciplinary knowledge.

I identified three modes with regard to the integration of coercive control within legal discourse: total absence; presence but with no legal significance afforded; and partial acceptance.

The striking absence of coercive control from most judgements is a result of the classification and continuity mechanisms' operations, which order the legal discourse in a way that prevents coercive control from being acknowledged and understood by the discourse. It is also the result of non-legal professionals who are asked by courts to submit their reports and who understand domestic violence as an episodic phenomenon. These non-legal professionals strengthen the dominant legal understanding of domestic violence and consequently reinforce the absence of coercive control from legal discourse.

I noticed the growing *presence* of coercive control in some judgments, but not necessarily a growing acknowledgement of its significance. Through acts of translation, coercive control was marginalized to parts of the judgment that were not part of the ratio but external to it. Women's accounts of coercive control were marginalized as mere 'background' to the relevant facts and professionals' accounts were marginalized as meaningful only from a non-legal point of view. Courts did not attribute them with legal significance in giving reasons for their conclusions.

In several judgments, however, coercive control was *partially accepted*. Statements from those judgments reveal that coercive control was granted different legal significances in different judgments. The analysis showed that this difference was the product of the exercise of judicial discretion. Coercive control was variously recognized in judgments as a relevant sentencing consideration, as a conduct amounting to a violation of section 4 of the Protection from Harassment Act 1997 and, in an immigration proceeding, as a form of domestic violence that justified the granting of indefinite leave to remain. At the same time coercive control was receiving these acknowledgements, it was also being dismissed and stripped of

meaning in other judgments. As a result, coercive control became an element without a clear and steady significance. Without an established precedent to secure its significance and meaning, coercive control remained on the margins of legal considerations in domestic violence cases, subject to the courts' discretion, despite women's attempts to render legal meanings reflective of their realities and non-legal professionals' attempts to influence legal meanings according to their disciplinary knowledge.

An important conclusion to be drawn from this analysis is that the rules and order of legal discourse, the bricks that underlie the legal meaning of domestic violence, are much stronger than the ability of women to render legal meanings reflective of their own realities and operate to dismiss these realities from being acknowledged. Likewise, in encounters between non-legal professionals and the courts, professionals are for the most part unable to alter legal meanings in a significant way.

Statements reveal a difference between the operations of classification and continuity on the one hand and translation on the other. Classification and continuity mechanisms organize and order the discourse in a way that can prevent coercive control or other meanings that do not comply with that order from finding an available path to participate in the naming event. They are therefore the 'gatekeepers' of the discourse, responsible for clearing legal naming events from controversy. The translation mechanism on the other hand operates when coercive control has found a way to pass through the 'gates' and become part of a naming event. At that point, acts of translation are responsible for the level of significance it receives or refused.

The overall image that has emerged from my analysis of statements according to the translation mechanism is of a closed and rigid legal discourse, loyal to its own rules and order, that leaves very little room for challenge and controversy over accepted meanings, even those that represent a grave harm. However, the very few examples identified in which the meaning and significance of coercive control were retained, are evident of the ability of the legal discourse to integrate the meaning of coercive control within the domestic violence discourse and to render it a phenomenon that can be processed through the legal system.

Conclusion

The aim of my research is to contribute to socio-legal thought on how legal meanings are formed and become accepted. Its aim is also to reflect on the existing foundation of legal responses towards women who suffer and are under a grave risk from their male partners' violence.

In order to understand the ways in which legal meanings are formed and become accepted as legal knowledge, I investigated the relationship between discourse mechanisms of knowledge production and meanings accepted or excluded by legal discourse. I reflected upon the ability of women who are the subjects of legal proceedings to take part in that process and to shape meanings in order to render them reflective and adapted to their own reality. I also intended to shed light on the ability of actors from non-legal disciplines to alter accepted legal meanings according to their own disciplinary knowledge.

I explored the relationship between mechanisms of knowledge production and accepted legal knowledge by illuminating the act of legal naming: the act of granting a legal name to a social phenomenon or giving legal meaning to a name already given. The case study of my research is the legal naming of violence against women by male partners. I analyzed 67 judgments given by courts in England between 1972 and 2012, in which courts named violence against women by male partners or constructed, altered or reinforced the meanings of the names granted.

In the first chapter, I presented the theoretical framework of my research and in the second I set its methodology. The third chapter is a multidisciplinary review of the meanings of violence against women by male partners accepted by sociology and the mental health fields and the fourth is an analysis of the judgments.

My theoretical chapter is divided into four parts. The first three parts are interrelated dimensions that provide the tools with which to analyse the dynamics of legal naming events.

The first dimension of the theoretical chapter explored the nature of legal naming events as social struggle, a reflection of societal power dynamics. It drew on Foucault's theory on the relationship between power and knowledge. Central to this part of the chapter was the definition of the terms 'genealogical research' and 'subjugated knowledge' and the explanation of their relevance to my research. This first part of the theoretical chapter provided me with the tools through which to explore the nature of legal naming events as struggle and competition between social actors and interests.

The second dimension provided the tools with which to identify and consider the underlying level of *legal recognition* and its importance and operation in legal naming events. I tailored a theoretical framework with which to understand the level of legal recognition from theories by Irigaray, Butler and Bourdieu. Each theorist provided an angle from which to regard the level of recognition. Through Bourdieu's fields theory and his definition of the concept of 'habitus', I could identify the separate dimension of *legal recognition*. All three angles completed each other and created a framework that enabled me to reflect on the importance of legal recognition in naming events and on the relationship and dynamics that exist between legal recognition and mechanisms of legal knowledge production.

The third dimension of the theoretical chapter was aimed at providing me with the tools with which to understand the role and impact of the *legal discipline* when I analyse the dynamics in legal naming events. I reflected on this role by addressing three questions: the implications of a discipline conducting an act of naming; the influence of the struggle between disciplines on the act of naming; and the influence of the unique characteristics of the legal discipline over the act of naming.

The three interrelated dimensions – struggle over knowledge production, legal recognition, and the legal discipline – are central to my analysis of legal naming events.

In the fourth and final part of the theoretical chapter, I considered the social significance of names. I detailed six contradictory effects of naming on society. My

goal was to reveal the crucial social significance of naming as a context for my analysis of legal naming events.

In the second chapter, I presented the methodology of my research. I explained my decision to select violence against women by male partners as the case study and described the process of selecting the 67 judgments that form its empirical data. I presented my method of analysis, which consists of four foundational concepts – statement, discourse, history and discontinuity and three tools of analysis – classification, continuity and translation. The concepts are the foundational bricks of my method. Each analytical tool is a discourse mechanism of knowledge production. I analysed statements found within the 67 judgments according to these three discourse mechanisms, in order to investigate what they could reveal about the relationship between the mechanisms and accepted or excluded legal knowledge.

The purpose of the third chapter was dual. Its first aim was to identify the existence of *discourses which surround meanings* attributed to violence against women by male partners in non-legal disciplines, in order to be able to analyse legal naming events as struggle between discourses. I reviewed literature around the meanings attributed to domestic violence in the sociological and mental health fields and found two very different discourses that surround understandings of the phenomenon to exist within each. These two meanings became pivotal to my analysis of legal naming events.

According to the first meaning, violence against women by male partners is a phenomenon that is episodic in its essence: distinct violent episodes constitute the phenomenon itself. Texts from both disciplines revealed that this understanding of domestic violence was the first meaning to be attached to the phenomenon. Texts also revealed that this meaning was assumed rather than justified on the basis of research. It was perceived as obvious and passed unquestioned into the disciplines' discourses.

According to the second meaning, violence against women is essentially coercive control. Texts from both disciplines revealed coercive control to be the core and defining element of violence against women by male partners. Coercive control was revealed as a lethal harm inflicted on women and as the central indicator for the evaluation of the danger they face. This meaning was not applied unquestionably like

the episodic understanding but rather learned from the accounts of women who experienced violence from their male partners.

It is important to note that I do not perceive these meanings to be the only possible meanings of domestic violence. I am aware that women who suffer or suffered from domestic violence can define their realities and harms in many and in different ways. My methodology, however, was aimed at uncovering a struggle between *discourses* – and as such it uncovered only the meanings around which discourses were formed.

I took with me two main understandings from the multidisciplinary chapter to my analysis of legal naming events. The first is that the understanding of violence against women by male partners as coercive control is based on *expertise* since it was founded and developed upon the accounts of women who experienced it. The second is the understanding that coercive control is not only the underlying nature of a violent relationship but is also a grave harm and the central indicator for the evaluation of present and future risk faced by women. It is for these reasons that coercive control must be seen as pivotal to legal understanding of domestic violence. To fail to acknowledge violence against women as coercive control is to leave women unprotected in the face of a life-threatening danger.

The second purpose of the multi disciplinary chapter was to provide a reference point against which to compare the legal discipline with regard to its openness or closedness to different meanings. I will discuss later on in the conclusion what the comparison can tell us about the legal discipline's willingness to acknowledge 'non-legal' knowledge in legal naming events.

In the fourth chapter, I analysed statements from the 67 selected judgments. The chapter was divided according to the three discourse mechanisms that were the tools of my analysis.

In summary, my analysis in the first part of the fourth chapter, "Classification", revealed statements affiliated to a dominant discourse. These statements were affiliated to each other through their shared content according to which domestic violence is an episodic phenomenon. This meaning is identical to the first meaning

identified in the multidisciplinary chapter. The analysis uncovered the constitutive role of the classification and division mechanism in forming and reinforcing that accepted meaning. Through the constant operation of this mechanism in legal naming events, the violent relationship experienced by women as one whole is repeatedly divided into separate elements. It is first divided according to episodes, which are perceived as the defining elements of the phenomenon, and then, these episodes are classified into categories – physical, sexual, psychological violence and harassment – which are also perceived as separate phenomena. Through these repeated acts of division, classification and breaks, the relationship comes to be understood as those scattered elements and its entirety completely disappears.

My analysis of statements revealed that the division and classification mechanism operated to produce knowledge that came to be accepted as part of legal recognition; as part of the underlying level of perception, that determines what is liable and what can be said within legal discourse. Violence against women as a set of episodes and of separate phenomena was presented and accepted as obvious and unquestionable. Presenting and accepting knowledge as acceptable is a crucial sign that this knowledge resides on the level of legal recognition.

The classification and division mechanism operated to both produce knowledge along the lines of knowledge that is part of legal recognition and to constantly strengthen it and reinforce it in everyday legal naming events. The episodic meaning became foundational to the discourse, able to set the rules that govern what can be said and accepted. Consequently, all questions addressed in judgments, including questions regarding the severity of harm and dangerousness, were answered by referring to the episodic understanding and by looking at the particulars of the episodes as encapsulating sufficient information able to provide the answers to these questions. Crucially, the discourse came to be ruled and ordered by this foundational understanding while coercive control, a grave harm and the most relevant indicator in predicting dangerousness, was left with no path by which to enter the discourse and compete to change the accepted meaning of domestic violence. Coercive control is a harm that can be seen only when the episodic understanding is abandoned because it is a harm that stems from the relationship as an entirety. It is therefore impossible for coercive control to be acknowledged and accepted in a discourse ruled by the episodic

meaning. In most legal naming events I examined, the episodic understanding became stronger and more deeply embedded in legal recognition. In setting the rules of the legal discourse, the classification mechanism prevented the admittance of coercive control and ensured that legal naming events became zones that did not permit internal discursive struggle. In the enforced absence of competing understanding, reinforcement of the episodic meaning went unchallenged in most naming events.

I found very few signs of discontinuity in the Classification part, as I looked for evidence for potential disturbance of the dominant discourse. A few statements reflected an acknowledgement that the violent relationship should be looked at as an entirety and several statements represented a growing recognition that controlling behaviour bears legal significance. But these signs were very limited in number and reach and did not represent a complete abandonment of the episodic perception. While some statements imbued coercive control with a degree of legal significance, none acknowledged it as a grave legal harm in itself or as a central indicator of dangerousness. However, although their reach was limited, the existence of these signs of discontinuity was, in itself, significant for several reasons. First, by the fact of their discontinuity, these statements illuminated the dominant discourse from which they deviated. Second, through discontinuous statements I was able to understand the power of the classification mechanism's role in the presentation and acceptance of knowledge as obvious and unquestionable since only with regard to those statements did the court feel compelled to explain and justify its stance. Conversely, the assessment of harm and dangerousness according to the episodic meaning was never explained but presented by the court as taken for granted. Only when the court evaluated the relationship as an entirety did it explain its departure from the "normal". Finally, the mere existence of discontinuous statements made clear that there is no inherent barrier to the legal comprehension and processing of coercive control.

In the second part of the fourth chapter, I analysed the relationship between the continuity mechanism and accepted or excluded legal meanings. Statements revealed a foundational act of continuity to have played a constitutive role in forming the legal meaning of violence against women by male partners. The legal understanding was constructed by attaching the phenomenon to the already foundational concept of

‘violence’, as understood from non-intimate contexts: the use of physical force to inflict bodily injury.

Following this foundational act of continuity, the classification and division mechanism operated to further scatter the violent relationship between physical violent and non-physical violent conducts and to hierarchize the groups created. Various legal concepts, such as ‘molestation’, ‘nuisance’, ‘harassment’ and ‘abuse’ were used to address non-physical violent behaviour. Adding to the classification operations presented in the first part, these statements analysed according to continuity, presented an utterly scattered and dispersed image of a violent relationship.

My analysis of statements in the continuity part revealed that the understanding of violence against women as primarily physical violence was as strong a foundational layer in the construction of its legal meaning as the episodic understanding analysed through the classification and division mechanism. The episodic understanding and the physical violence understanding were revealed by my analysis to be symbiotically connected as two elements that reinforce and complete each other in the construction of the legal domestic violence. The perception of domestic violence as physical violence became as deeply embedded in legal recognition as the episodic understanding, operating in the discourse as a ‘regime’ that constantly ensures its own ascendancy by monitoring legal naming events. The physical violence element within the legal meaning of domestic violence is an element that rules and orders the discourse, determining which content can enter through the discourse’s gates. Consequently, in an operation identical to that of the episodic understanding, this element served to preclude the possibility of challenge and competition in legal naming events. The construction of the legal meaning of violence against women therefore took place in ‘clear zones’ where controversy was not permitted.

Dominant statements reinforcing the understanding that violence against women is attached to physical violence were presented in much the same way as statements aligned with the episodic understanding: as obvious and unquestionable. They were not explained nor justified but were nevertheless accepted without reservation. The ability to present a meaning as unquestionable is a product of the use of the continuity

mechanism. Since the continuity mechanism is a technique that is repeatedly used in processes of knowledge production, its operations are accepted more readily. Knowledge produced through this mechanism, like knowledge produced through the classification mechanism, is more readily assumed to be reliable. Because the meaning of domestic violence was produced through the operation of the continuity technique, it was accepted without question, and the legal discourse was consequently put in a dormant state – awaiting but unable to receive the essential questions that could challenge it.

The unchallenged transmission of this meaning is a clear indicator of its enmeshment in the embedded layer of legal recognition. My analysis of both the classification mechanism's production of the episodic understanding and the continuity mechanism's production of the understanding of domestic violence as mainly physical violence, revealed a strong connection to exist between mechanisms of knowledge production and the level of legal recognition. Through mechanisms of knowledge production, knowledge enmeshed in legal recognition was presented as obvious and by that presentation it was strengthened and reinforced. In a discourse based on the episodic and physical violence elements, there was no path through which coercive control, a phenomenon that cannot be comprehended through episodic or physical violence lenses, could enter. Consequently, the discourse prevented a grave harm from being recognized.

By creating a connection between violence against women by male partners and physical violence, the phenomenon became subjected to and named through a lens of the wrong reality, one that men are more familiar with. Understanding violence against women by male partners as physical violence subjects a gendered phenomenon experienced mainly by women to a different phenomenon experienced by men. The result of the link between domestic violence and physical violence is the existence of an erroneous set of judgment tools by which violence against women is understood and judged in legal discourse.

I identified several statements as presenting a possible sign of a shift in the dominant discourse. These statements represented a rejection, to some extent, of the act of continuity that attached understanding of violence against women by male partners to

the concept of violence as understood in non-intimate contexts. But very few statements represented a real shift away from the perception that physical violence is the indicator through which harm and dangerousness can be assessed. Some statements, by including other forms of violence in the meaning of domestic violence, actually served to perpetuate the discourse's splitting of violent and non-violent conduct and reinforce the perceived position of physical violence as the element capable of indicating severity of harm and dangerousness.

In the third part of the fourth chapter, I examined the effect of the act of translation on the legal meaning of violence against women by male partners. In this part I analysed the reactions of courts when presented with accounts of coercive control by women who were the subjects of legal proceedings or by the non-legal professionals who submitted their reports as part of the proceedings. The analysis made clear that women were unable to render the accepted legal meaning of domestic violence reflective of their own reality and that non-legal professionals were similarly unable to alter it in a way that reflected their disciplinary knowledge.

Coercive control was absent from most judgments, an absence that is mostly the result of the operations of the classification and continuity mechanisms as explained above. It is also the result of reports submitted to courts by non-legal professionals who understood domestic violence as an episodic phenomenon, and therefore strengthened the existing legal understanding of domestic violence rather than challenged it. By strengthening the dominant meaning they contributed to the absence of coercive control.

Although I noted the growing presence of coercive control in judgments, that presence rarely translated into the attainment of legal significance. Women's accounts of coercive control were quoted in judgments as background to the relevant facts and professionals' accounts of coercive control were presented as relevant only from the point of view of their discipline and not from a legal point of view.

In several judgments, coercive control presented by women or non-legal professionals did receive legal acknowledgement. But the degree of acknowledgement differed from case to case. In several cases it was included as a sentencing consideration. In

one case it was the basis of a criminal conviction under section 4 of the Protection from Harassment Act. And in another it was accepted as a form of domestic violence, which justified granting the woman who suffered from it the status of indefinite leave to remain. In none of the judgments, however, did the acceptance of coercive control form part of a binding precedent that would guide later courts. Its varying significance was the outcome of the exercise of judicial discretion. While its acknowledgment is a sign that coercive control can be legally understood and processed, the absence of coercive control from most judgments and the malleability of its significance, confirm that it is far from being accepted into legal discourse.

I turn now to reflect on the final conclusions that can be generated by considering the analysis of all three mechanisms as one whole.

I divide my conclusions into three parts, according to the three dimensions of the theoretical chapter: the nature of legal naming events as struggle, the embedded level of legal recognition, and the stance of the legal discipline towards different meanings presented to it by non-legal actors.

I first reflect on the nature of legal naming events as struggle. My analysis reveals that classification and division, continuity, and translation act as mechanisms that operate to exclude social meanings and to produce, maintain and strengthen an accepted legal meaning. These mechanisms have been revealed to be very powerful in legal discourse and exclusionary in their practice. The classification and continuity mechanisms were able to produce knowledge that was readily accepted as obvious. The knowledge produced by these mechanisms became the foundation of the domestic violence discourse and dictated its rules and order. As a result, coercive control, was revealed as ‘subjugated knowledge’ – a meaning that did not correlate with the accepted meaning, could not find a way to enter that discourse and participate in legal naming events, despite being a meaning generated by women’s own accounts of domestic violence that was already accepted and embraced by other disciplines.

The analysis revealed that legal naming events are, for the most part, ‘clear’ zones: a social struggle does not take place in them since any controversy is mostly blocked at

the gates of the discourse. In the absence of statements with the potential to challenge it, the smooth strengthening of the accepted legal meaning of domestic violence went unimpeded in most legal naming event I analysed. There was almost no trace in the judgments of the existence of a controversy that takes place in other disciplines between domestic violence as an episodic phenomenon and domestic violence as coercive control. Some controversy found in judgments, like the acceptance that domestic violence includes forms of violence other than physical violence, actually conformed to the foundations of the dominant discourse and consequently reinforced them. Through these operations, discourse mechanisms were revealed as able to produce, maintain and strengthen the dominant meaning.

Classification and continuity have been revealed as mechanisms that operate symbiotically: they complete each other and each is based on the other's operation. They work in conjunction with the translation mechanism to clear legal naming events from controversy and challenge, an operation that has contributed to the law's lack of acknowledgment of a lethal harm inflicted on women. The classification and continuity mechanisms produced a meaning of violence against women constructed on the twin foundations of episodes and physical violence. The translation mechanism has operated on the basis of that accepted meaning and through various acts has either ignored the presence of coercive control or actively diminished its significance. I observed a difference between the mechanisms with regard to their respective effects on naming events. Classification and continuity act to prevent coercive control from participating in naming events in the first place. They act as the 'gatekeepers' that keep those events free of struggle. Translation is in operation in situations where coercive control, in one way or another, has found its way into the naming event. At that point, the mechanism of translation acts to marginalize it by ignoring it, dismissing its significance, or channeling it according to the paths dictated by classification and continuity.

The analysis revealed that legal naming events are responsible for the *multiplication* of domestic violence to many elements and phenomena. Through operations of classification, continuity and translation, violence against women by male partners became many separate elements. The relationship was separated into incidents and to different phenomena: physical, psychological, sexual violences and harassment. My

analysis therefore mirrors Foucault's theory on the relationship between a discipline and knowledge produced. In naming events, domestic violence is divided to different elements. In turn, the legal discipline is required to address those separate elements and by addressing them, it grows. The growth of the discipline then goes back to the naming itself since by addressing those parts the legal discipline confirms their existence and validity.

The analysis enabled me to reflect on the dynamics between knowledge that resides at the level of legal recognition and the mechanisms of knowledge production that operate in everyday legal naming events. Statements revealed that the accepted meaning of violence against women by male partners was enmeshed in the level of legal recognition, a status attested to by two crucial indicators: the manner in which the meaning was accepted as obvious despite never being explained or justified; and its power within the discourse, as evidenced by its ability to govern all legal questions asked with relation to the violent relationship. Through study of statements I was able to see the intertwined dynamics at work between legal recognition and discourse mechanisms. Legal recognition determined what could be said in the discourse, and what would be acknowledged as valid and bearing legal significance. Consequently, mechanisms of knowledge production operated in a way that made it inevitable that the knowledge produced in each event will correlate with knowledge enmeshed in legal recognition. The image that emerged was of a tightly ordered discourse with clear rules of what is accepted and what is not. The dynamics uncovered reflect the theoretical framework on the level of legal recognition presented in the first chapter. The acceptance of a meaning as obvious and unquestionable is a reflection of what Bourdieu termed 'habitus', what Irigaray referred to as the transparent layer of recognition and what Butler referred to as the violent norm that leaves women without the ability to render their life visible. The embedded layer of recognition is transparent; it operates underneath a legal proceeding that is seen as fair and just but which is in fact actively preventing women from having their reality seen and acknowledged.

All three mechanisms construct the legal meaning of domestic violence against women. My analysis therefore mirrors Butler's theory of 'juridical systems': through the operation of discourse mechanisms and the connection between mechanisms and

legal recognition, the woman who suffers from domestic violence is *formed* by the law and not represented by it.

The analysis of statements, together with the review undertaken in the multidisciplinary chapter, enabled me to compare the legal discipline's stance towards meanings presented to it by non-legal actors to other disciplines' openness to receiving alternative meanings. Law's attitude towards external meanings proved to be a relevant factor able to shed light on the dynamics of legal naming events.

The comparison between law, sociology, and the mental health field generated the understanding that of the three disciplines, law is by far the most closed to external meanings. While all three disciplines initially adopted the episodic, physical violence meaning of violence against women by male partners, only law clung to that meaning and the legal discourse closed around it, preventing the development of other possibilities of meaning. In the other two disciplines, a competing discourse *was* able to emerge and take place alongside the first, dominant discourse. This meant that the meaning of domestic violence as coercive control was able to develop and become a well-grounded body of knowledge that could coexist with the first discourse. In my analysis of judgments, however, I found only a single, dominant discourse to exist. The few discontinuous statements were not strong enough to represent a competing, coexisting discourse. The legal discipline, unlike the sociological and mental health fields, did not permit the development of a competing discourse capable of challenging the first one.

Authors from both the sociological and mental health fields openly addressed the controversy between meanings in their disciplines and in doing so enabled a dialogue between the competing discourses to take place. But this thirty-year long controversy went entirely unacknowledged in judgments. Non-legal professionals participating in legal proceedings did not address the controversy or the dialogue between discourses in their reports. Courts displayed no awareness of the controversy's existence in their judgments. The lack of legal recognition for a controversy foundational to other disciplines is an indicator of the shallow and superficial dialogue between law and other disciplines.

The two different meanings of domestic violence that are found in both sociology and the mental health field represent discourses that differ from each other in a meaningful way. The first discourse produced its meaning of violence against women through disciplinary knowledge. The discourse was based on the perception that the discipline holds the prerogative to name and to construct meaning according to its knowledge. On the other hand, the competing discourse's meaning was produced according to women's experience and not disciplinary knowledge. It is based on the perception that the power to name does not belong to the discipline but that the discipline should reflect lived realities of people who should name their own realities. By clinging to the first meaning of violence, law is stating that the power to name should belong to the discipline, or alternatively, it reflects an approach of indifference toward the question whether that meaning reflects women's realities or not. This conclusion correlates with Bourdieu's fields theory and his realization that a field would thrive to preserve in its hands the power to name since it is a powerful privilege that impacts directly its strength in social space.

Bourdieu described the legal discipline as operating between two forces. On the one hand, in order to preserve its legitimacy, the legal discipline is required to adopt social meanings held by dominant parts of society. On the other hand, in order to remain a distinct field in social space, it must preserve its unique practices, procedures and language. Therefore, according to that theory, through analysis, one could locate law's operation on a continuum on which complete self-determination is at one end and complete receptiveness is at the other. My analysis of statements brought me to the conclusion that on that continuum, law's operations are located nearer the self-determination end. Both forces were revealed in the analysis. Law's receptiveness towards social meanings was revealed by its adoption of a meaning accepted by large parts of society – the physical violence episodic meaning of domestic violence. Its receptiveness was also shown in the manners by which courts attributed differing significances to coercive control rather than completely dismissing it. On the other hand –the meaning accepted by law served as a foundation and a regime for a discourse that tightly closed itself around it. The meaning ordered and ruled the discourse, allowing only understandings that correlate with it to participate in naming events. Even though coercive control received different significances in some cases, it was still largely marginalized. My analysis therefore revealed that the force of self-

determination was much stronger than the force of receptiveness in legal naming events.

The comparison between the disciplines led me to conclude that the statements I analysed revealed a discourse that is unique to the legal discipline and not one that transcends the legal discipline's borders. What renders the discourse unique is not the meaning at its basis, since this meaning is shared by other disciplines as well, but the tightness of that discourse and the operations used to maintain and strengthen its rules and order.

The analysis revealed the relationship between a name and a discourse that develops on the basis of that name. The act of naming legally domestic violence not only concealed but also prevented a harmful reality from being granted legal existence. By giving one phenomenon the name 'domestic violence', another phenomenon was rendered non-existent.

At the beginning of 2015, section 76, entitled "Controlling or coercive behaviour in an intimate or family relationship" was added to the Serious Crimes Act 2015. For the first time, coercive behaviour was named by the legal system and even acknowledged as a criminal offence. My analysis, which did not find a competing discourse that was able to challenge the dominant one, brings me to conclude that the new legislation is a product of an external political effort and not of a growing legal realization of the meaning of coercive control.

I see this acknowledgement as a very positive step towards the legal system recognizing the harm inflicted on women in violent relationships because it introduces a new statement to challenge the dominant discourse. However, in my view, the new offence will not bring about the required change without awareness to the current foundations of legal discourse and the operations of discourse mechanisms. Within the existing discourse structure, the offence of coercive control could be processed by the classification act that scatters the violent relationship into different forms of conduct. Coercive control could be classified as another separate category to be added to those already acknowledged: physical, sexual, psychological violences and harassment. Furthermore, the continuity mechanism could operate to under evaluate

coercive control by comparing it to physical violence, the harm that is positioned at the top of the hierarchy of harms inflicted in a violent relationship. The under evaluation of coercive control as a serious harm is already expressed in the short maximum imprisonment sentence carried by the offence:

“(11) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.”

In my view, while the new legislation, in introducing new knowledge to the legal discipline, represents a very positive step forward, it does not challenge the foundations of the discourse that it has entered. But it has the potential to do so. The legal discourse has shown itself to be able to acknowledge and process the harm of coercive control. The courts’ crucial first acts of interpreting the new section must be based on an awareness of the significance of coercive control on the one hand and on the problematic foundations of the legal domestic violence discourse on the other. In order to bring about the required change in legal responses to violence against women by male partners, it is necessary for the discipline to be aware of the meaning enmeshed in legal recognition and of the operations of discourse mechanisms in strengthening that meaning and excluding others.

Since classification, continuity and translations are mechanisms that are inherent to the production of knowledge, they cannot be abandoned. However, through awareness, these mechanisms can be operated in a relevant and effective way, and in Butler’s words, in a less violent way. The classification mechanism must be operated in order to make the crucial distinction between ‘common couple violence’ and coercive control. The continuity mechanism should be operated to thoroughly understand the harm of coercive control by comparing it to other harms of captivity, caused in non-intimate contexts. That way, through the effective and relevant operations of those mechanisms, a reflective legal discourse would develop, one that

comprehends the harm of women in violent relationships and one that will render the legal system reflective to their realities.

My research investigated the role and responsibility of discourse mechanisms in the legal naming of domestic violence. I observed that crucial forms of social exclusion take place within legal proceedings that outwardly appear fair and just; ones that guarantee the participation of all parties. These foundational forms of exclusion are operated through mechanisms of knowledge production that operate within legal discourse and define its rules and order. They can only become visible once the relationship between legal recognition, the production of legal knowledge and social power is acknowledged.

Bibliography

- Anidjar G, 1997, '14/On the (Under) Cutting Edge: Does Jewish Memory Need Sharpening?' *Jews and Other Differences: The New Jewish Cultural Studies*.
- Bell M and others, 2008, 'Assessing the Risk of Future Psychological Abuse: Predicting the Accuracy of Battered Women's Predictions' 23 *Journal of family violence* 69-80.
- Bourdieu P, 1985, 'The Social Space and the Genesis of Groups' 14 *Theory and Society* 723-744.
- 1986 - 1987, 'The Force of Law: Toward a Sociology of the Juridical Field' 38 *Hastings Law Journal* 814.
- 1989, 'Social Space and Symbolic Power' 7 *Sociological Theory* 14-25.
- Bourdieu P and Thompson JB, *Language and Symbolic Power* (Polity Press 1991).
- Bourdieu P, Wacqant, L.J.D *An Invitation to Reflexive Sociology* (Polity Press and Blackwell Publishers 1992).
- Bourdieu P and Zanotti-Karp A, 1968, 'Structuralism and Theory of Sociological Knowledge' 35 *Social Research* 681-706.
- Brown J, 1997, 'Working Toward Freedom from Violence: The Process of Change in Battered Women' 3 *Violence Against Women* 5-26.
- Browne A, 1993, 'Violence Against Women by Male Partners: Prevalence, Outcomes, and Policy Implications' 48 *Am Psychol* 1077-1087.
- Butler J, 1988, 'Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory' 40 *Theatre Journal* 519-531.
- *Gender Trouble* (Routledge 1990).
- Cantor C, 2007, 'Traumatic Entrapment, Appeasement and Complex Post-Traumatic Stress Disorder: Evolutionary Perspectives of Hostage Reactions, Domestic Abuse and the Stockholm Syndrome' 41 *Australian and New Zealand journal of psychiatry* 377-384.
- Carrado M and others, 1996, 'Aggression in British Heterosexual Relationships: A Descriptive Analysis' 22 *Aggressive Behavior* 401-415.
- Cohen JM, 1995, 'Regimes of Private Tyranny: What Do They Mean to Morality and for the Criminal Law' 57 *University of Pittsburg Law Review* 757.
- Cohen LJ, 1994, 'Psychiatric Hospitalization as an Experience of Trauma' 8 *Archives of psychiatric nursing* 78-81.

- Coombe RJ, 1989, 'Room for Manoeuver: Toward a Theory of Practice in Critical Legal Studies' 14 *Law & Social Inquiry* 69-121.
- Daly M, *Beyond God the Father: Toward a Philosophy of Women's Liberation* (Beacon Press 1985).
- De Beauvoir S, *The Second Sex* (Malovany-Chevallier. CBaS tr, Alfred A. Knopf 2010).
- DeKeseredy WS, 2000, 'Current Controversies on Defining Nonlethal Violence Against Women in Intimate Heterosexual Relationships: Empirical Implications' 6 *Violence Against Women* 728.
- Dezalay Y and Madsen MR, 'The Power of the Legal Field: Pierre Bourdieu and the Law' in *An Introduction to Law and Social Theory* (Hart Publishing, Oxford 2002).
- Dobash RE and Dobash R, *Women, Violence, and Social Change* (Routledge 1992).
- *Violence Against Wives : A Case Against Patriarchy* (Open Books 1980).
- Du Bois B, 'Passionate Scholarship--Notes on Values, Knowing and Method in Feminist Social Science' in Gloria Bowles RDK (ed), *Theories of Women's Studies* (Routledge and Kegan Paul 1983).
- Dutton MA, 1992, 'Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome ' 21 *Hofstra Law Review* 1191-1242.
- Dutton MA and Goodman LA, 1994, 'Posttraumatic Stress Disorder among Battered Women: Analysis of Legal Implications' 12 *Behavioral sciences & the law* 215-234.
- Ebert A, 2004, 'The Experience of Mental Death: The Core Feature of Complex Posttraumatic Stress Disorder' 24 *Clinical psychology review* 617-635.
- Edleson JL, 1999, 'Children's Witnessing of Adult's Domestic Violence' 14 *Journal of Interpersonal Violence* 839-870.
- El Bassel N and others, 2005, 'Relationship Between Drug Abuse and Intimate Partner Violence: A Longitudinal Study Among Women Receiving Methadone' 95 *American journal of public health* 465-470.
- Ellsberg M, 2008, 'Intimate Partner Violence and Women's Physical and Mental Health in the WHO Multi-Country Study on Women's Health and Domestic Violence: An Observational Study' 371 *Lancet* 1165-1172.

- Eriksson M, 2013, 'Tackling Violence in Intimacy: Interacting Power Relations and Policy Change' 61 *Current Sociology* 171-189.
- Ewing CP and Aubrey M, 1987, 'Battered Woman and Public Opinion: Some Realities about the Myths' 2 *Journal of family violence* 257-264.
- Erskine J, 1999, 'If It Quacks Like a Duck: Recharacterizing Domestic Violence as Criminal Coercion' 65 *Brooklyn Law Review* 1207.
- Farley M and others, 1998, 'Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder' 8 *Feminism & Psychology* 405-426.
- Felstiner WL, Abel RL and Sarat A, 1980-1981, 'The Emergence and Transformation of Disputes: Naming, Blaming, Claiming' 15 *Law and Society Review* 631-654.
- Filby L and Thane P, *Unequal Britain: Equalities in Britain Since 1945* (Bloomsbury Publishing 2010).
- Foucault M, *The Archaeology of Knowledge* (Smith AMS tr, Tavistock 1972).
- *Power/Knowledge Selected Interviews and Other Writings In 1972-1977* (Gordon C ed, Knopf Doubleday Publishing Group 1980).
- 'The Order of Discourse, Inaugural Lecture at the College de France, 2 Dec 1970' in Shapiro M (ed), *Language and Politics* (Basil Blackwell Publisher 1984).
- Foucault M, 'Nietzsche, Genealogy, History' in Rainbow P (ed), *The Foucault Reader*, (Penguin Books 1991).
- Foucault M, *The Will to Knowledge, The History of Sexuality: Vol 1* (Hurley R tr, Penguin Books 1998).
- *Society Must Be Defended, Lectures at the College de France 1975-1976* (Macey D tr, Penguin Books 2003).
- Franco M, 2007, 'Posttraumatic Stress Disorder and Older Women' 19 *Journal of Women & Aging* 103-117.
- Geertz C, *Local Knowledge, Further Essays in Interpretive Anthropology* (Basic Books 1983).
- Gelles RJ, *The Violent Home. A Study of Physical Aggression between Husbands and Wives* (Beverly Hills, London: Sage Publications 1972).
- Gelles RJ, 1985, 'Family Violence' 11 *Annual Review of Sociology* 347-467.
- Gelles RJ and Straus MA, *Intimate Violence* (Simon and Schuster 1989).

- Gordon L, *Heroes of Their Own Lives : The Politics and History of Family Violence* (Virago, 1989 1988).
- Graham WJ CO, *Measuring Maternal Health: Defining the Issues* (London School of Hygiene and Tropical Medicine 1990).
- Hegel GWF, 1977, 'Phenomenology of Spirit. 1807' Trans. AV Miller. Oxford: Oxford UP.
- Herman JL, *Trauma and Recovery* (Basic Books 1992).
- Howard LM and others, 2010, 'Domestic Violence and Severe Psychiatric Disorders: Prevalence and Interventions' 40 *Psychological Medicine* 881-893.
- Hudson WW and McIntosh SR, 1981, 'The Assessment of Spouse Abuse: Two Quantifiable Dimensions' 43 *Journal of Marriage and Family* 873-888.
- Humphreys C, 2003, 'Mental Health and Domestic Violence: 'I Call it Symptoms of Abuse'' 33 *British journal of social work* 209-226.
- Humphreys C and Humphreys S, 2004, 'Domestic Violence and the Politics of Trauma' 27 *Women's studies international forum* 559-570.
- Hunter R, 1996, 'Gender in Evidence: Masculine Norms vs. Feminist Reforms' 19 *Harvard Women's Law Journal* 127.
- 2006, 'Narratives of Domestic Violence' 28 *Sydney Law Review* 733.
- 'Alternatives to Equality ' in Hunter R (ed), *Rethinking Equality Projects in Law: Feminist Challenges* (Hart Publishing 2008).
- *Domestic Violence Law Reform and Women's Experience in Court* (Cambria Press 2008).
- Irigaray L, *The Irigaray Reader* (Blackwell Publishers 1991).
- Johnson MP and Ferraro KJ, 2000, 'Research on Domestic Violence in the 1990s: Making Distinctions' 62 *Journal of Marriage and the Family* 948-963.
- Johnson PM, 1995, 'Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence Against Women' 57 *Journal of Marriage and the Family* 283-294.
- Jones DM, 1994, 'No Time for Trumpets: Title VII, Equality, and the Fin de Siècle' *Michigan Law Review* 2311-2369.
- Kurz D, 1989, 'Social Sciences Perspectives on Wife Abuse: Current Debates and Future Directions' 3 *Gender and Society* 489-505.

- Lacey K and others, 2013, 'The Impact of Different Types of Intimate Partner Violence on the Mental and Physical Health of Women in Different Ethnic Groups' 28 *Journal of Interpersonal Violence* 359-385.
- Lacey N, *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (Hart Publishing 1998).
- Langhinrichsen-Rohling J, 2010, 'Controversies Involving Gender and Intimate Partner Violence in the United States' 62 *Sex Roles* 179-193.
- Lawson J, 2012, 'Sociological Theories of Intimate Partner Violence' 22 *Journal of Human Behavior in the Social Environment* 572-590.
- Leissner O, 1997, 'Naming the Unheard Of' 15 *National Black Law Journal* 109, 153 n. 176.
- MacKinnon C, *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press 1987).
- Mackinnon C, *Toward a Feminist Theory of the State* (Harvard University Press 1989).
- Mahoney MR, 1991, 'Legal Images of Battered Women: Redefining the Issue of Separation' *Michigan Law Review* 1-94.
- Marx K, *A Contribution to the Critique of Political Economy* (Ryazanskaya S tr, Lawrence and Wishart Translated from the German edition of 1859 on 1971.).
- Mautner M, 2010-2011, 'Three Approaches to Law and Culture' 96 *Cornell Law Review* 839.
- McCauley J, 1995, 'The Battering Syndrome - Prevalence and Clinical Characteristics of Domestic Violence in Primary Care Internal-Medicine Practices ' 123 *Annals of Internal Medicine* 737.
- Meier JS, 1992, 'Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice ' 21 *Hofstra Law Review* 1295-1366.
- Merry SE, 1992, 'Culture, Power, and the Discourse of Law' *New York Law School Law Review* 210.
- Miller JB, *Toward a New Psychology of Women* (Beacon Press 2012).
- Milz AM, 2006, 'But Names Will Never Hurt Me: *El-Hakem v. BJJ, Inc.* and Title VII Liability for Race Discrimination Based on an Employee's Name' 16 *Temple Political & Civil Rights Law Review*. 283.

- Newman D, 2000, 'Existentialism and the Law-Toward a Reinvigorated Law and Literature Analysis' *Saskatchewan Law Review* 87.
- Nuessel FH, *The Study of Names: A Guide to the Principles and Topics* (Greenwood Press Westport, CT 1992).
- Pagelow MD, 1992, 'Adult Victims of Domestic Violence: Battered Women' 7 *Journal of Interpersonal Violence* 87-120.
- Pagelow MD and Pagelow LW, *Family Violence* (Praeger 1984).
- Palmen J E, 2010, 'Battered Woman Syndrome Eleventh Annual Review of Gender and Sexuality Law: Criminal Law Chapter' 11 *Georgetown Journal of Gender and Law* 59-76.
- Parktal A, 2012, 'Lost Chances and Prosperous Present? The Traumatic Past and Estonian Life Today' 17 *Journal of loss & trauma* 350-357.
- Pence E and Paymar M, *Power and Control: Tactics of Men who Batter: An Educational Curriculum* (Minnesota Program Development Incorporated 1990).
- Poole DM, 1983, 'On Merit' 1 *Law & Inequality* 155.
- Rainbow P and Dreyfus HL, *Michel Foucault: Beyond Structuralism and Hermeneutics* (Harvester Wheatsheaf 1982).
- Rose D and others, 2011, 'Barriers and Facilitators of Disclosures of Domestic Violence by Mental Health Service Users: Qualitative Study' 198 *British journal of psychiatry* 189-194.
- Selden S, 2001, 'Practice of Domestic Violence, The' 12 *UCLA Women's Law Journal* 1.
- Seligman MEP, *Helplessness : On Depression, Development, and Death* (W. H. Freeman; New York : trade distributor, Scribner 1975).
- Shepard MF, Campbell, James A., 1992, 'The Abusive Behavior Inventory: A Measure of Psychological and Physical Abuse' 7 *Journal of Interpersonal Violence* 291-305.
- Smart C, *Feminism and the Power of Law* (Routledge 2002).
- Smith PH, 1999, 'Beyond the Measurement Trap - A Reconstructed Conceptualization and Measurement of Woman Battering' 23 *Psychology of Women Quarterly* 177-193.

- Smith PH and others, 2002, 'A Population-Based Study of the Prevalence and Distinctiveness of Battering, Physical Assault, and Sexual Assault in Intimate Relationships' 8 *Violence Against Women* 1208-1232.
- Stark E, *Coercive Control : The Entrapment of Women in Personal Life* (Oxford University Press 2007).
- Steinmetz K and Straus A, 'Violence in the Family' in *Violence in the Family* (Dodd, Mead & Company, Inc 1974).
- Straus MA, 1979, 'Measuring Intrafamily Conflict and Violence: The Conflict Tactics (CT) Scales' 41 *Journal of Marriage and Family* 75-88.
- Straus MA, Gelles RJ and Smith C, *Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8,145 Families* (Transaction Pub 1995).
- Thompson L and Walker AJ, 1989, 'Gender in Families: Women and Men in Marriage, Work, and Parenthood' 51 *Journal of Marriage and the Family* 845-871.
- Tolle E, *A New Earth: Awakening to your Life's Purpose* (Penguin 2005).
- Tuerkheimer D, 2004, 'Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence' 94 *Journal of Criminal Law and Criminology* 959-1032.
- Walker LE, 1977, 'Learned Helplessness and Battered Women' 2 *Victimology* 525-534.
- *The Battered Woman* (1st edn, Harper & Row 1979).
- *The Battered Woman Syndrome* (Springer Publishing Company 1984).
- *Terrifying Love : Why Battered Women Kill and How Society Responds* (1st edn, Harper & Row 1989).
- *The Battered Woman Syndrome* (2nd edn, Springer 2000).
- *The Battered Woman Syndrome : With Research Associates* (3rd edn, Springer Pub. Co. 2009).
- Wandor M, *Once a Feminist : Stories of a Generation* (Virago 1990).
- Wildman SM, 2000, 'Ending Male Privilege: Beyond the Reasonable Woman' 98 *Michigan Law Review* 1808.
- Wolfe DA and others, 1985, 'Children of Battered Women: The Relation of Child Behavior to Family Violence and Maternal Stress' 53 *Journal of Consulting & Clinical Psychology* 657-665.

Yllo KA, 'Through A Feminist Lens: Gender, Power, and Violence' in R.J. G and R D (eds), *Current Controversies on Family Violence* (Sage Publications 1993).
Young IM, *Justice and the Politics of Difference* (Princeton University Press 1990).

Other Sources:

Association AP, Diagnostic and Statistical Manual of Mental Disorders: DSM-IV-TR (American Psychiatric Publishing, Inc. 2000).

The International Classification of Diseases, 9th Revision, Clinical Modification, (Ann Arbor: Comm on Profess & Hosp Act 1991).

Project DAI, The Power and Control Wheel (2013). On 14.6.2013 The Domestic Abuse Intervention Project provided me with a written permission to include the Power and Control Wheel in my dissertation.

Report from the Select Committee on Violence in Marriage, session 1974-75, together with the proceedings of the Committee Vol.1, (1974).

Duquette D, 'Hegel's Social and Political Thought',
<http://www.iep.utm.edu/hegelsoc/>

Tariq A, 'Where Has all the Rage Gone' The Guardian (22 March 2008).

Leibowitz Y, Genesis Encounters (1986) http://www.23tv.co.il/1932-he/mefgasy_beresit.aspx.