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Unintended
Consequences
of Domestic Violence
Law

Gendered Aspirations
and Racialised Realities

palgrave
macmillan

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I dedicate this book to the Aboriginal and Torres Strait Islander women who inspired the research that underpins it, and to those who continue to inspire and challenge me.

Preface

In the early 1980s, when I was working in a community women's shelter in Queensland, Australia, there was no specific domestic violence law anywhere in the country. Due to feminist action within and outside government, every Australian state and territory had passed such legislation by the end of the 1980s. Those heady days of advocacy and action in the 1980s and 1990s resulted in the proliferation of policies and programs, new service models and, in particular, feminist inspired law and law reform. I was part of that movement and have worked towards addressing violence against women in community services, government policy and research institutions over the past 35 years. Therefore, my analysis of the unintended consequences of domestic violence law is a critique of my own work as much as it is a critique of others'.

My reflection on mainstream feminist advocacy and Aboriginal and Torres Strait Islander women's perspectives began in 1988, when Queensland released its Domestic Violence Task Force Report and I observed a gap between mainstream feminist and Indigenous women's responses to the report. I recall a statewide meeting at which about 20 women from across the state had gathered to discuss the report's recommendations, including the proposed domestic violence law. During the

discussion, an Aboriginal woman from far north Queensland quietly said “but our women use violence too”. We all nodded politely but said nothing and moved on: we simply did not know how to respond. In the following years, I observed similar reactions when Aboriginal and Torres Strait Islander women spoke of the relationship between violence and alcohol and over-crowded housing, and called for counselling of both parties, not just the men, to deal with domestic violence. Explicitly or implicitly, the response from the non-Indigenous women was generally the same.

The perspective of the Aboriginal and Torres Strait Islander women who raised these issues did not fit neatly within the mainstream feminist analysis of patriarchal power as the underlying cause of men’s violence against women. It seemed that the Aboriginal and Torres Strait Islander women’s advocacy was lost in translation and seldom had any impact on government policy or programs. These circumstances left me feeling uncomfortable, but also uncertain about what I, then a young and relatively inexperienced non-Indigenous woman, could do to address the issues raised by the Aboriginal and Torres Strait Islander women.

At the end of the 1990s, Aboriginal and Torres Strait Islander women conducted a taskforce investigation on violence against Aboriginal and Torres Strait Islander women, established by the Queensland Government. Their recommendations, including a call to government to consider restorative justice as an alternative to the criminal justice system, ran counter to mainstream feminist approaches. I resolved to educate myself about their perspectives and to use the resources and power available to me to assist Aboriginal and Torres Strait Islander women achieve their objectives, however I could.

In 2002, I was appointed Director of the Queensland Centre for Domestic and Family Violence Research in northern Queensland. There, and with Jackie Huggins, Shirley Slann, Harold Fatnowna and others, I established the annual Queensland Indigenous Family Violence Prevention Forum. These forums were powerful representations of Aboriginal and Torres Strait Islander women’s and men’s lived experiences, strengths, and innovation in addressing family violence. My resolve to use the resources available to me to support their advocacy strengthened. Concerned that mainstream feminist advocacy

was unintentionally harmful to Aboriginal and Torres Strait Islander women, I felt compelled to pursue the research that underpins this book. Following is a summary of the approach I took, aware that inadvertent racist practices can manifest in the research process.

Indigenous Research Methods

I employed key principles from the work of Indigenous scholars on Indigenous research methods to address the risk of racist practices. Indigenous methodologies have been developed primarily in response to non-Indigenous inquiry focused on Indigenous culture, history and practices. My research, focused on gender and race in the application of civil domestic violence laws, also required attention to an Indigenous worldview. As a non-Indigenous woman, I cannot claim to be using an Indigenist approach to the research, although Lester-Irabinna Rigney says that non-Indigenous researchers can draw on Indigenist research principles where its principles are upheld for Indigenous self-determination. I also do not have the ability to embrace fully Indigenous methodologies, which reflect Indigenous ways of knowing, doing and being, as expounded by Karen Martin, Aileen Moreton-Robinson, and Maggie Walter. However, my approach is consistent with the theoretical work of the Indigenous Australian scholars referred to above.

Moreton-Robinson's Indigenous women's standpoint method emphasises Indigenous women's ontology, epistemology and axiology, none of which I can emulate. My research, however, adhered to the iterative process of Moreton-Robinson's method, which focuses on deep listening, observation, talking, thinking, reading and writing. My interest in justice responses to domestic and family violence in Indigenous contexts emerged over many years of listening to, talking with and observing Aboriginal and Torres Strait Islander women in our mutual work. This includes work in community based domestic violence support services in the 1980s; work in Government policy, including administration of Queensland's domestic violence laws, in the 1990s and early 2000s; and my work with an Aboriginal and Torres Strait Islander Reference Group and participants at the annual Indigenous Family Violence Prevention

Forum that we initiated and convened together for 10 consecutive years. Over several years, I spent a considerable amount of time in deep reflection, immersing myself in what I heard and observed, in order to grasp the meaning fully. Moreton-Robinson looks for signs from her Goenpul epistemology and ontology for affirmation that she is ready to address the identified problem; I looked for signs and sought advice from the Aboriginal and Torres Strait Islander women who had challenged me and inspired this work.

From my engagement with Aboriginal and Torres Strait Islander women over the previous three decades, I saw that the experience of racialised women is not a sum of racism and sexism, as Kimberlé Crenshaw puts it. Feminist, critical race, and Indigenous epistemologies are central to my analytical framework, but they cannot be treated independently or as add-ons. A racially marginalised woman does not experience the barbs of sexism, merely as a *woman*; nor does she experience the barbs of racism, merely as *raced*. The shape of the barb and the harm it inflicts are produced within simultaneous multiple factors that are gendered, racialised, and classed and mutually constitute her identity and experiences.

Strengths and Weaknesses of the Research Design

The research design and data I used have considerable strengths. The quantitative dataset is the first of its kind in describing police and court activities associated with Indigenous and non-Indigenous men's and women's breaches of domestic violence orders (DVOs) and the antecedents. The sample draws from two regional cities, which service Indigenous communities that were formerly Aboriginal "missions"; these communities have rarely been included in research on domestic and family violence law. Police reports of the events that resulted in a breach of a DVO offer insight into the particular dynamics and experiences of victims and perpetrators of intimate partner violence, in these

cases. Further, the content analysis of the reports has for the first time considered sex and race in differentiating coercive controlling violence from fights.

Despite these strengths, the study is exploratory and cannot be generalised to a larger population. The police reports enable insights into the experiences of Indigenous and non-Indigenous men and women charged with breaching DVOs, and the different types of violence used. However, the reports are written by police for a particular purpose and they vary in detail. These constraints affect my findings. Further, the sample comprises people who breached a DVO, so inferences cannot extend to experiences of those named as respondents on civil DVOs who have not been charged with such breaches. Nevertheless, subsequent research by Professor Heather Douglas and Dr. Robin Fitzgerald, based on a Queensland-wide sample of DVOs and breaches, has corroborated my findings on the disproportionate enmeshment of Aboriginal and Torres Strait Islander peoples, particularly women, in the criminal justice system through civil DVOs.

My work here is intended as a contribution to bridging the gap between Indigenous and non-Indigenous perspectives and increased ability to recognise and respond to both gendered and racialised realities of women's experiences of violence. I am aware that calling for a paradigm shift in current responses to domestic violence will create some anxiety, and I hope that it will generate discussion and further analysis. Our efforts to deal with violence against women must do no harm and must be directed towards justice: the right response in the circumstances.

Sydney, Australia

Heather Nancarrow

Acknowledgements

Throughout the course of my doctoral research, on which this book is based, my work was supported by a small, dedicated group of Aboriginal and Torres Strait Islander people to whom I am eternally grateful. They are Dr. Jackie Huggins AM FAHA, Shirley Slann, Jenny Binsiar, Harold Fatnowna, Charles Passi and Pat Cora. I thank them all for their generosity, support and guidance, and I thank Jackie in particular for being a sounding board on the concepts emerging from my analysis of the interviews and police reports related to violence in Aboriginal and Torres Strait Islander communities. I also thank Jackie and Shirley for their collegiality and friendship which preceded and has extended beyond my research.

I acknowledge and extend my sincere gratitude to Professor Kathleen (Kathy) Daly and Professor Elena Marchetti, both of whom skillfully guided my M.A. (Hons) and my doctoral research, and more. Their scholarship on gender and race in justice responses has been influential on mine, and I aspire to achieve their standards of rigor in the research process and in the telling of the stories that transpire.

I thank the Queensland Police Service and the Queensland Department of Justice and Attorney General for the ethics approval for

my research and the clearance to publish it. I express my sincere gratitude to the staff who assisted me in accessing administrative data, and to the police prosecutors who participated in interviews. I also sincerely thank the domestic and family violence service providers who participated in interviews, and those who helped organise interviews and provided meeting rooms in which to conduct them.

Funding provided by the (then) Queensland Department of Communities, Child Safety and Disability Services, and in-kind support from Central Queensland University for the Queensland Centre for Domestic and Family Violence Research, enabled me in my role as Director at CDFVR to work on this and other research aimed at influencing policy and practice responding to domestic and family violence. I thank my friend and colleague, Annie Webster, who assisted me professionally and personally in so many ways as I grappled with the challenges of simultaneous full-time work, a doctorate and parenting.

My son, Fidel, provided graphic design for the book: he also understood my need to balance sole parenting with work and study throughout his childhood and adolescence, and I love him all the more for describing his childhood as idyllic! My nephew, Jesse King, and many friends and colleagues, including Professor Vickie Hovane, Dorinda Cox, Vanessa Swan, Paul Chambers, Karen Struthers, Tanya Modini, Louise Hicks, Chris Jackson, Professor Harry Blagg and Professor Heather Douglas, assisted in various ways that were important to me. Harry Blagg, Heather Douglas and Elena Marchetti have all referenced my unpublished doctoral thesis in their recent work, which I appreciate very much. Their earlier work was influential in my doctorate, and their more recent work is referenced in this book.

I sincerely thank each individual and agency referred to above (and others too numerous to mention) for their contributions to this work, though it cannot be taken to represent their views. I take full and sole responsibility for any errors of omission or commission.

Explanatory Notes

Reference to *Indigenous*

Many Aboriginal and Torres Strait Islander Australians oppose the use of the term *Indigenous* as a collective noun for the first peoples of Australia. I respect their wishes and regret that it has not always been possible to avoid the use of the term in this research. Successive State and Federal Government agencies have used it for administrative purposes and because of relatively small numbers of Aboriginal and Torres Strait Islander people appearing in data collections. Therefore, in the administrative court and police records that I use in my analysis, cultural identity for Aboriginal and Torres Strait Islander people is recorded as *Indigenous*. For consistency, I also use this term unless specifically referring to one group or the other. I apologise in advance for any offence caused to Aboriginal and Torres Strait Islander people by my use of this term. I provide further information on this topic in the glossary of key terms.

Pseudonyms and Coding

I use pseudonyms to protect the anonymity of the people charged with breaches of domestic violence protection orders (DVOs) and whose court and police records I used as case studies in this research. This approach compared to alternatives such as coding, raises up their humanity and confers dignity for those whose lived experiences I used to illustrate the racialised realities of legal responses to intimate partner violence. I assure anonymity in those case studies by removing reference to street names and similarly masking any other information that could result in recognition of individuals.

I use coding for the interviewees. I explain the coding protocol in the relevant section of Chapter 5.

Referencing Style

I have used the American Psychological Association (APA) Style Guide (6th Edition) for referencing, and EndNote (APA) to manage the formatting and insertion of references.

Consistency of Task Force and Taskforce

I use both Task Force and Taskforce for consistency with the respective investigation reports (e.g. Queensland Domestic Violence Task Force and Queensland Premier's Special Taskforce on Domestic and Family Violence).

Quotes and Edits to Quotes and Inverted Commas

I preserve the authors' spelling and punctuation when quoting directly.

I incorporate quotes of less than 40 words into a paragraph and use double quotation marks. I indent and italicise longer quotes. As much

as possible quotes are verbatim to convey a sense of the narrator. Some quotes required minor additions or deletions to provide context or simplify (without changing the meaning). I use square brackets to identify my additions and ellipses for deletions.

Consistent with APA, I use double inverted commas for direct quotes and single quotation marks for quotes within quotes.

Use of Italics in General and in Acts of Parliament and Legislative Bills

I italicise words I wish to emphasise, those I use ironically, and Latin terms (e.g. *de facto*).

I also use italics at the first mention of key terms (e.g. *domestic violence*) and I explain them in the glossary. I also italicise some terms which are used once only and explained in the thesis (e.g. *woman abuse*), but I do not include those in the glossary.

In accordance with APA and legal convention, Acts of Parliament (legislation) are italicised and Bills are not. The jurisdiction is included at the first mention of an Act or Bill in each chapter and the name of the jurisdiction it is not italicised in either an Act or a Bill [e.g. *Domestic Violence (Family Protection) Act 1989* (Qld) and Domestic Violence (Family Protection) Bill 1989 (Qld)].

Use of Commas and Semi-colons in Lists

In lists of three or more items, I separate the items with a comma, including a comma before the word “and” preceding the last item in the list. However, if a comma is required within one or more items in a list, I use a semi-colon to separate each item.

Numbers

Unless quoting directly, I write numbers 10 and above as digits and spell out numbers less than 10, except where the number relates to a measure (e.g. 2%, 4 years, 2 hours). I spell out numbers beginning a sentence. I use a comma only in numbers with five or more digits.

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Acronyms and Abbreviations

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AIC	Australian Institute of Criminology
ALRC	Australian Law Reform Commission
CCTV	Closed-Circuit Television
COAG	Council of Australian Governments
Cth	Commonwealth
CTS	Conflict Tactics Scales (Original)
CTS2	Conflict Tactics Scales (Revised)
DFYCC	Department of Families, Youth and Community Care
DVO	Domestic Violence Order
FASD	Foetal alcohol Spectrum Disorder
FLA	<i>Family Law Act 1975</i> (Cth)
IVAWS	International Violence Against Women Survey
NHMP	National Homicide Monitoring Program
NSW	New South Wales
NSWLRC	New South Wales Law Reform Commission
QAS	Queensland Ambulance Service
QCMC	Queensland Crime and Misconduct Commission
QDVSN	Queensland Domestic Violence Services Network
Qld	Queensland

QPS	Queensland Police Service
Tas	Tasmania
UK	United Kingdom
USA	United States of America
VLRC	Victorian Law Reform Commission

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