

NTV

DISCUSSION

PAPER

21 NOVEMBER 2019

Predominant Aggressor
Identification and Victim
Misidentification

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Upholding the protected rights of Victorians, as defined under The Victorian Human Rights and Responsibilities Charter, is threatened by the misidentification of victims of intimate partner violence (IPV) as perpetrators. Misidentification and the consequential criminalisation of victims has become a common unintended consequence of reliance on legal systems to address problems associated with IPV (Braaf, 2007; Durfee, 2012; Erwin, 2004; Goodmark, 2018). Despite widespread recognition of the issue, evidence of misidentification from legal and victim services continues to emerge.

Failure to identify the person most in need of protection and failure to identify the person exerting the greatest harm to a partner are related concepts. In the present discussion, it is argued that a key driver of these issues is associated with failures to understand common perpetrator presentations, psychologies, and system manipulations (Reeves, 2017). These issues are not merely conceptual but are also reflected in the day-to-day operations of the intervention system. At the practice, policy, and institutional levels, perpetrators and their behaviour are an after-thought in the broader family violence (FV) response system. This is evidenced across policy, funding, and risk assessment and management practices – with risk assessment and management policy and practice tending to focus on vulnerability absent perpetrator dangerousness.

Contexts in which IPV is perpetrated are exceedingly complex, as are perpetrator motives and behavioural patterns. Despite popular commentary, perpetrators are extremely diverse - some are aware that their behaviour is abusive, others believe their behaviours are justified; some feel entitled and emboldened by society to control their partners and children, while others feel victimised and profoundly disempowered. Until the system is responsive to the heterogeneity of perpetrator psychologies, identities, motivations, and patterns of behaviour, it is likely that perpetrators that do not conform to the profile of popular perpetrator narratives will continue to be missed, and in worst case scenarios, their partners will be misidentified.

KEY MESSAGES

The system causes misidentification due to an over-reliance on justice responses.

Misidentification is caused by a confluence of factors, chief among them stereotypes about both victims and perpetrators.

A greater investment and emphasis is needed on perpetrator risks and profiles in order to better identify predominant aggressors.

There is some good work emerging in predominant aggressor identification, but more is needed.

Glossary

Predominant Aggressor: throughout the current paper predominant aggressor will be used to refer to the person who is exerting the greatest amount of harm and control over their partner or family member through any number of abusive behaviours including physical and sexual violence, threats, intimidation, emotional abuse, stalking and isolation. Predominant aggressors are also known as “primary aggressors” in some of the literature, however NTV has chosen the term predominant aggressor principally because primary aggressor has been subject to the misinterpretation that it refers to the person who “started” an IPV incident or used violence first. NTV has made this language choice in light of research that victims of IPV are rarely passive to the abuse to which they are subjected (Johnson, 2010), and may resist abuse in myriad ways, including violence, as a means of self-defence, defence of children, maintenance of dignity, or a result of trauma (Swan & Sullivan, 2009). NTV’s choice is in line with the decision of a number of U.S. jurisdictions to move the language of “predominant aggressor” (Erwin, 2004).

Family Violent Intervention Order (FVIO): A family violence intervention order (FVIO) protects a person from a family member who is using family violence including but not limited to IPV.

Family Violence Safety Notice (FVSN): A police officer can apply for a safety notice while they are at a family violence incident. A sergeant or higher-ranking police officer looks at the application. If they agree the victim (known as the affected family member) needs protecting, they can issue a safety notice.

Applicant: FVIOs may be applied for on an individual’s behalf by the police or may be applied for by the individual themselves. The party that applied for the FVIO is known as the applicant.

Respondent: a respondent in the context of a civil hearing for a protection order is the person who has been identified as using violence, abuse or coercion.

Perpetrator: For ease of understanding, “perpetrator” is used throughout the current paper to refer to a person identified as causing harm. NTV does not endorse the use of the term “perpetrator” in any direct engagement work with people identified as causing harm. NTV highlights the importance of avoiding globalising terms such as “perpetrator” in client-facing work, and instead focusing on judging behaviours rather than people.

Victim: For ease of understanding the term “victim” is used to refer to a person identified as being harmed or misidentified as causing harm. The term victim is contested as it is potentially disempowering. Some people who have experienced harm do not embrace the term and may prefer to identify as a “survivor” or may not identify at all with their experience of harm. NTV cautions against making assumptions about individual victim experiences and emphasises the need to respect the dignity and human rights of individuals by being driven by the preferences of each individual when undertaking client-facing work.

Intimate partner violence: behaviour within an intimate relationship that causes physical, psychological or sexual harm.

Family violence: behaviour within a family relationship that causes physical, psychological or sexual harm.

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Introduction

The use of the civil and criminal legal systems to address the problem of IPV arose in Australia in the 1980s and coincided with the trend towards pro and mandatory sentencing policies in the United States (U.S.) (McMahon & Pence, 2003). The turn towards civil and criminal legal mechanisms as the predominant response to IPV was largely due to criticisms from feminist-antiviolence activists concerning police inadequacies in enforcing the law in the context of IPV, as well as concerns about police complicity in cultures of patriarchal violence (Hirschel & Buzawa, 2002; Rajah, Frye, & Haviland, 2006). Consequently, most U.S. jurisdictions adopted pro or mandatory arrest laws in order to correct these perceived cultural and procedural shortcomings (Goodmark, 2018). Although most Australian jurisdictions have not moved in the direction of pro or mandatory arrest, most have nevertheless implemented policies that reduce the discretion of frontline police officers and compel police action where FV is identified (Diemer, Ross, Humphreys, & Healey, 2017).

This discussion paper seeks to identify some of the factors that contribute to the misidentification of victims and limit the system's capacity to identify and respond to predominant aggressors. By doing so, we hope to draw attention to the complexity of perpetrator behaviours, risks, and motives in order to reduce unintended harms caused by the system. We give particular focus to pro-active policing and prosecution of perpetrators in order to understand how these practices and policies may help or hinder more effective and just intervention systems (Day, Vlasis, Chung, & Green, 2019).

A number of theorists and advocates have identified the benefits of non-discretionary pro-prosecution policing responses to IPV on the basis that these policies compel the police and the state to take IPV seriously, reduce the potential for police corruption, limit discrimination in enforcement, and play a role in specific and general deterrence (Durfee, 2012; Hocror, 1997). There is some evidence that progress towards these goals is occurring in the Victorian context. For example, Diemer et al. (2017) have highlighted the effect of police reform, and in particular the introduction of the Code of Practice for the Investigation of Family Violence, 2004 (the Code) on the number of recorded incidents of IPV by Victoria Police. The authors cite a more than doubling of reports since the code's implementation, when in 2006/2007 rates of reports were 30,000, and by 2013/2014 this had increased to 65,000 (this rate has since risen again to 76,000 in 2017/2018). Such increases provide evidence of more responsive police practice in relation to IPV (and FV more broadly), and growing trust in the community of reporting IPV and FV to police.

Critics of the intervention system's reliance on law-enforcement to manage the problem of IPV have, however, argued that such policy strategies fail to address the socio-cultural and individual causes of IPV, and have led to much poorer outcomes for victims (Goodmark, 2018). Some critics have argued reliance on law-enforcement solutions to enhance victim safety and create perpetrator accountability have led to the disempowerment of victims, by effectively exchanging one form of patriarchal power (an abusive partner) for another (the state) (Frederick & Lizdas, 2010). Secondly, critics have asserted that an overcorrection has occurred in the intervention system, due to the well-intentioned ambition of being responsive to all incidents of IPV (Chesney-Lind, 2002). That is, that compelling police action in situationally ambiguous circumstances may result in predominant aggressors averting detection and result in victims being misidentified as perpetrators.

The research literature, specialist family violence practitioners, and Victoria Police have all highlighted the significant complexity of perpetrator risk assessment, particularly in situationally ambiguous circumstances. Such contexts often involve a confluence of factors including contradicting narratives, forensic evidence of mutual injuries, deficits in recall due to substance use or trauma, language barriers, individual officer bias, and myriad other factors. In these contexts, it is easy to see how an unintended consequence such as misidentification may occur, and thus why critics have urged slowing down automatic justice processes where there is ambiguity about the identification of the predominant aggressor.

The problem

The present discussion paper defines “the problem” faced by the Victorian intervention system as misidentification of victims of IPV as perpetrators. We do so because misidentification has been established as a significant global issue in jurisdictions that take pro-active prosecution strategies in the reduction of IPV (Hirschel, McCormack, & Buzawa, 2017). It should be noted however, that the research literature also highlights a number of other unintended consequences resulting from the system’s over-reliance on law enforcement to address IPV and other forms of FV. These consequences come from both Australian (Diemer et al., 2017; Reeves, 2017; Wangmann, 2009) and international contexts (Erwin, 2004; Goodmark, 2018; McMahon & Pence, 2003) and include:

- Harmful justice responses to victims and perpetrators in communities of colour
- Harmful responses to clients and perpetrators experiencing mental ill health or mental illness
- Lack of appropriate justice responses for LGBTIQ victims and perpetrators - including misgendering and overt discrimination
- Lack of investment and support for early intervention and community-based responses to IPV
- The re-framing of IPV from a socially and culturally embedded public health issue (that all community members play a part in preventing), to a law-and-order issue (that the justice system manages)
- Vexatious applications for protection orders leading to “systems abuse”
- The obscuring of harmful relationship dynamics which involve control and coercion that do not meet the threshold of criminality, but nevertheless cause victims significant harm
- Failures to account for the gendered, powered, patterned and relational contexts in which IPV occurs

These factors may or may not be related to any given incident of misidentification. For example, heteronormative stereotypes when applied to a relationship between two cis-gendered men may lead police to assess a more “masculine” appearing man as the predominant aggressor based on his relative physical size to his partner. This is a clear example of a general lack of appropriate responses to LGBTIQ victims and perpetrators resulting in misidentification, and biases such as these may cause a range of system-derived negative consequences. While these consequences are worth holding in mind, many are currently under-researched or not well understood in the Victorian context. For this reason, this paper specifically focuses on the negative consequences of misidentification.

The following section highlights research exploring the misidentification of victims and includes a number of case studies from the Victorian context to illustrate misidentification as a salient issue in Victoria. The paper will then go on to discuss some of the factors that have contributed to Victoria’s current state of affairs and offer some possible solutions to the problem.

Misidentification

Misidentification can be understood as falsely assessing victims of IPV as perpetrators by members of the justice system¹. The issue of misidentification has received considerable policy attention in Victoria, perhaps most prominently, as a recommendation (rec 41) in Victoria’s Royal Commission into Family Violence (RCFV)². Data provided to NTV from Victorian specialist family violence and legal services indicate that misidentification is still an ongoing issue of concern. Misidentification appears to occur most often when police struggle or do not attempt to assess a predominant aggressor. The case studies presented below indicate that police are more likely to fail to identify a predominant aggressor in situationally ambiguous circumstances, for example when both parties tell police they are the victim of the other. Additionally, case study data indicates that victims are more likely to be misidentified when police work demands are privileged over investigatory ones, or when trivial criminal information, such as a victim’s use of an illicit substance, supersedes IPV risk-relevant information.

Rises in the identification of female perpetrators of IPV has coincided with the adoption of non-discretionary policing processes across jurisdictions - this trend appears to be demonstrative of an unintended policy outcome rather than a genuine increase in the frequency of female IPV perpetration (Pattavina, Buzawa, Hirschel, & Faggiani, 2007). A particularly compelling argument for this theory is that similar increases have not been seen in the identification of male victims, as would be expected if increases in female arrests were merely a consequence of a more effective intervention system (Durfee, 2012; McMahan & Pence, 2003).

Although misidentification has most frequently been attributed to police errors, there is also evidence that misidentification can occur as a result of vexatious claims or misuse of court proceedings by perpetrators of IPV, known as “systems abuse” (Reeves, 2017). This kind of abuse has been systematically assessed in New South Wales (Wangmann, 2009) and can be defined

as a perpetrator's intentional misuse of judicial processes to avoid responsibility for their own behaviour as well as in an attempt to further coerce and control a victim. Though systems abuse has been less-well explored in the Victorian context, lawyers report to NTV that they observe systems abuse frequently (see Reeves, 2017, for an excellent exploration of the Victorian context).

Misidentification typologies

Research literature indicates that misidentification may result in dual arrests (two or more parties being arrested for the use of IPV), cross-orders (two or more parties being issued with civil protection orders), or the single arrest of victims. Each of these outcomes can lead to deleterious and long-lasting effects on victims and are associated with reluctance to report IPV victimisation to police in the future (Ulbrick & Jago, 2018). In Victoria, police have recognised the potential harm that dual arrests and cross orders may cause to victims of IPV and have introduced policy that aims to stop such practices.

This policy change is welcomed by NTV, especially in light of findings that women arrested for IPV offences are four times as likely to be dually arrested than men (Durfee, 2012). In a comparison study of men and women dually arrested for IPV offences, Feder and Henning (2005) found statistically significant differences between men and women arrestees. They found that male arrestees were more likely to have demonstrated a pattern of control and violence against their partner, and were more likely to have physically assaulted, injured, or threatened to kill their partner than female arrestees. Given this evidence, Victoria police's policy changes are to be commended, and are likely to go some way in reducing misidentification in Victoria. However, the policy changes are limited in that they do not address the problem of single arrest misidentification. A significant number of case studies provided to NTV by victim and legal services concerned the single arrest of victims and these are presented below³.

¹ Though misidentification may occur as a result of errors in assessment from other parts of the system (e.g. by counsellors or case managers) misidentification is most often understood as emerging from justice processes.

² The RCFV recommended that: "Victoria Police amend the Victoria Police Code of Practice for the Investigation of Family Violence to ensure that it provides suitable guidance on identifying family violence primary aggressors [within 12 months]. This includes: procedures for amending the Law Enforcement Assistance Program (LEAP) when a service provider or a Support and Safety Hub subsequently informs Victoria Police that a person is not the primary aggressor; [and] provision of details of specialist support available to assist in identifying the primary aggressor. Victoria Police should provide training at all appropriate levels on the amended requirements relating to identifying primary aggressors".

³ Caveat: although Victoria Police have moved away from the use of cross orders, NTV members continue to report receiving referrals involving cross orders.

Misidentification in Victoria

Women's Legal Service Victoria (WLSV) have undertaken extensive client case reviews and from an analysis of 600 cases, assessed between January until May 2018, they estimate that 10% of their clients are misidentified as predominant aggressors (Ulbrick & Jago, 2018). The characteristics of misidentified women in Victoria appear to be convergent with the characteristics of misidentified victims in other jurisdictions. In their analysis, WLSV found that 5 out of 8 clients were subject to abuse during the incident in which they were identified as the predominant aggressor (this abuse included threats, punching, kicking, choking, slapping, and physical restraint). One in 2 clients had suffered historical abuse from the other party, 1 in 4 were living with a mental illness, and 3 in 8 were at risk of homelessness. WLSV found that these episodes of misidentification had a chilling effect on subsequent reporting, thereby exposing victims to further harm, and potentially emboldening perpetrators to continue to use violence and abuse. One client reported:

“Police scare me now ... I needed to be protected [but] I don't feel like they protected me.”

This case review also revealed the overrepresentation of women from Aboriginal and Torres Strait Islander backgrounds, refugee women, and migrant women. They also found that women with a disability, mental illness and substance use issues were common among misidentified clients. Such designations have led to victims being arrested, issuance of FVIOs, children being removed from victims, and charges being laid against victims.

Case studies

NTV collaborated with WLSV, Victoria Legal Aid (VLA) and Domestic Violence Victoria in order to analyse common patterns of misidentification across Victoria. Each of the following case studies highlight procedural police errors and failures to account for the contexts in which incidences of IPV have taken place. In many of these cases, police have (mis)identified a predominant aggressor based on irrelevant or trivial information.

In each of these cases, women have been designated as an aggressor towards a male who has historically used violence against her, including extreme physical violence, sexual violence (one incident occurring in front of children), verbal abuse, starvation, imprisonment, and other forms of extreme coercion and control. Despite this, the victim has been nominated as the aggressor, in many instances for extremely spurious reasons including:

- Slamming a door in a police officer's face
- The other party called police
- The victim told the perpetrator that if he breached the order against him for her protection that he would go to prison and be killed
- The person was alcohol affected and the other party was not
- The person was drug affected and the other party was not

Each of these indicators have little to do with any evidence-informed assessment of IPV risk (Baldry & Winkel, 2008; Messing, Campbell, Sullivan Wilson, Brown, & Patchell, 2017; Singh, Grann, & Fazel, 2011), and although, for example, drug and alcohol misuse is related to risk of IPV perpetration (Messing et al., 2017), it is also extremely common among trauma-survivors (Douglas et al., 2010) and in Australian society more broadly. Therefore, the fact that an individual is intoxicated in isolation to other information adds little insight into IPV risk.

In the case study data NTV obtained from specialist victim and legal services, single orders were by far the most common. These data are discrepant from much of the international data, which suggests that misidentification occurs more frequently in cross order/arrest scenarios. This difference is likely explained by a movement away from issuing cross orders by Victoria police. As misidentification is an emergent issue in Victoria, further research is needed to understand just how convergent or discrepant Victoria is from other jurisdictions. From these data however, as well as from NTV's clinical experience in working with male victims of FV, misidentification of a single aggressor is more likely in cases where there is either no reported history of IPV, where a woman has used force as a means of self-defence, has a mental illness, is not proficient in English, or police perceive her to be uncooperative. Such factors are supported in a number of qualitative reviews on the subject of misidentification (e.g. Miller & Becker, 2019; Reeves, 2017).

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TABLE 1: Three examples of single order misidentification from Victoria

	Misidentified person (MP)	History	Incident	Police action
Case 1	Young woman in early 20s.	A history of reported family violence from PA against MP.	MP slapped PA and PA strangled MP. PA called police stating he was afraid he was going to kill MP.	Police arrived and issued MP with a Family Violence Safety Notice (FVSN) because she slapped the PA "first" (thus highlighting the issue with "primary aggressor" language). PA did not want order as he stated he was not afraid of MP, but police proceeded through several hearings before withdrawing due to submissions from Women's Legal Service Victoria (WLSV).
Case 2	CALD woman with no English.	A history of IPV from PA towards MP.	After PA used violence against MP, she called police.	Police did not seek the services of a professional interpreter and instead interviewed her through a family member who acted as an interpreter. As a result of this interview police took out a FVSN against the MP and MP was intimidated by PA in consenting to an order, at which point it was too late for victim support services to intervene.
Case 3	CALD woman recently migrated to Australia. Experienced extreme violence and coercive control from the outset of her marriage.	The MP had experienced an extensive history of unreported sexual abuse and coercive control since the marriage. The MP had been subject to ongoing sexual assault, financial deprivation and starvation from the PA.	The MP went to the kitchen to make herself something to eat after being deprived of food over a course of days. When the PA discovered the MP using the stove, he attempted to physically prevent her from doing so. A struggle ensued in which the PA was burnt by a pan. MP called police to report the incident, but PA drove himself to station and presented as victim before police arrived.	MP listed as respondent (perpetrator); police made an application for FVIO on the PA's behalf. Victim services became involved and legal advice was subsequently provided to MP which resulted in the application being withdrawn.

MP denotes misidentified person; PA denotes predominant aggressor

Factors that contribute to misidentification

What follows is a brief exploration of factors that have been associated with misidentification cases obtained from Victorian victim and legal services data. The proceeding set of factors is by no means an exhaustive list. However, this section is designed to highlight the complex and multifactorial nature of the problem of misidentification, with implications for both the theory and practice upon which the investigation and system response to IPV is based.

Police perspectives

Over the last five years, Victoria has seen significant policy reform and cultural change when it comes to addressing the problem of IPV. These reforms have primarily been driven by the agenda set in 2016 by the RCFV, however even before the RCFV, Victoria Police had sought to make IPV a priority issue - as evidenced in the development and introduction of the 2004 Police Code of Practice for the Investigation of Family Violence (the Code) (Diemer et al., 2017). Guidelines provided in the Code can be understood as a balance between prescriptive guidance and police discretion, attempting to correct for the biases and harmful cultures which led to a lack of enforcement in the past, while also allowing for responsive policing in complex and often dynamic IPV contexts.

Diemer et al. (2017) conducted interviews with police members in order to understand their views on the Code. Overall, members felt positive or very positive towards the Code, with 95% (n = 119) rating the power to lay criminal charges as "useful" or "very useful" and 89% (n = 111) of members rating the power to take out FVIOs out on behalf of victims as "useful" or "very useful". Members believed the least useful power in the Code was the ability to refer to community services, especially with regard to perpetrators. Only 36% (n = 45) of members believed the power to make referrals to community services for perpetrators was "useful" and 18% (n = 23) of members believed that such measures were "not useful". Police most commonly assessed referrals to human services as not useful due to a lack of feedback from services, and a lack of understanding about the purpose of referrals.

The authors also asked police members to identify any limitations in the Code. Police members identified that the code had limited utility in incidents of FV that involved adolescent perpetrators or CALD communities, suggesting there is a dearth of services for these families and adolescents. A minority of respondents also voiced frustrations with victims "wasting police time" by not cooperating in police prosecutions and "allowing" perpetrators to return home. Although the authors were careful to emphasise that such views represent a minority of respondents, this is nevertheless a concerning attitude within some parts of Victoria Police, as it demonstrates a lack of understanding of the dynamics of IPV and may result in victim blaming and biased policing.

Broadly, as police are often the first point of assessment of IPV, police perspectives and practices have wide-ranging implications for the ability of the service system to effectively integrate and effectively function. The Code has been designed in such a way that seeks to facilitate integration between police and other parts of the intervention system. This becomes especially important in cases where a victim may be misidentified. For example, without effective communication between police and FV services, the ability to reverse erroneous

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decisions may become hobbled. Furthermore, the concerted and costly efforts of all parts of the intervention system to achieve integration are potentially threatened by police cultures that value enforcement over problem solving (Murray, 2002). Lastly, there is significant evidence, even when perpetrators are correctly identified, that solely focusing on the punishment of perpetrators through law enforcement undermines behaviour change efforts, and the most effective responses to IPV perpetrators are integrated ones (Babcock, Green, & Robie, 2004). Indeed, although police are instrumental in supporting the safety of the community, including IPV victims, the actual causes of violent behaviour are better addressed in human services rather than via criminal legal systems (Andrews & Bonta, 2015). Punishment (especially imprisonment) absent opportunities to reflect on and change behaviour is likely to increase IPV recidivism rather than deter it (McGuire, 2002; Trevena & Poynton, 2016).

The perfect victim

The concept of the perfect victim is widely proliferated in popular discourse and is the notion that victims who behave in particular ways, are of a particular social standing, and embody certain characteristics are more or less credible and deserving of acceptance and support. There are a number of indicators in the Australian community to suggest perfect victim discourses have an effect on perceptions of IPV victims. An example of the concept of deserving and undeserving victims can be seen in the 2017 National Community Attitudes Survey (NCAS) on violence against women. The study is a national general population survey that gauges community awareness of and attitudes towards violence against women. The survey revealed 30% of respondents believed if a woman sent a sexually explicit image to her partner then she was partially responsible if he shares it without her permission, and 21% of respondents endorsed women's public expressions of sexuality as a reason for men touching them without consent (Webster et al., 2018). These findings suggest that at least a portion of the general population believe that victims who engage in certain behaviours are at some level deserving of their abuse.

The academic literature attempts to expand on the notion of deserving and undeserving victims and argues that concepts of perfect victims are not only contingent on victim behaviours but are also highly racialised, classed, and gendered. In this literature, perfect victims are known as paradigmatic victims, and according to Larance, Goodmark, Miller, and Dasgupta (2018) the paradigmatic victim is cast in the popular imagination as a woman who would never fight back in response to abuse, and is characteristically weak, passive, dependent, and submissive to authority. In addition to these characteristics, the paradigmatic victim is also cast as white, straight, cis gendered, and middle class. Victims who do not conform to this profile are more likely to have their victim-status questioned than victims who do (Goodmark, 2012). American law professor, Shelby Moore, has argued the concept of victimhood is greatly influenced by racial and gendered categories, in which the concept of victimisation is tied to the idea of white womanhood and leads to the suspicion of victim experiences among women of colour (Moore, 1995). This view of IPV victims fails to capture the true extent of IPV victim identities, including Aboriginal and Torres Strait Islander women, queer and trans women, women of colour, gender diverse people, and men (Ristock, 2011). This notion also erases the many ways that victims of IPV resist the abuse to which they are subjected – including in some instances, by the use of force (Johnson, 2010; Larance et al., 2018; Wade, 1997). Failure to understand

the diverse identities and acts of resistance among victims of IPV may inadvertently lead to the misidentification of victims. NTV and other advocacy organisations also bear some culpability for the flourishing of the perfect victim narrative, due to our historical inability to centre the voices of women of colour – in particular Aboriginal women – in our advocacy. Some advocates have argued that the absence of an intersectional framework at the foundation of the intervention system has influenced the reliance on legal systems to address IPV in the first place and led to processes that bias victim assessment (Goodmark, 2018).

Perpetrator stereotypes

The other part of the perfect victim story is the archetypal villain. Most people only hear about IPV after it reaches its most extreme and tragic conclusion, the murder of an intimate partner. A public need to understand the wide spread murders of women and children by men known to them are often accompanied by simplistic narratives about the perpetrator. In these narratives, the perpetrator is usually cast as an aberrant and sadistic “monster” whose behaviour cannot possibly be explained or understood. If the perpetrator has social ties, with no obvious psychopathology, he may also be cast as a “good bloke” who must have “snapped”. Neither of these narratives are helpful in the prevention of IPV, nor do they add anything that assists the system to predict and recognise the likelihood of IPV or FV. As such, NTV strongly supports Jess Hill’s challenge to the FV intervention system when she asserts: “getting clear on what causes men to abuse... and how to prevent and stop it... is urgent” (Hill, 2019, p.106).

This task, for the most part, has been taken up by analysing broad socio-cultural factors that contribute to the reasons that men, in general, use violence against women, in general. While these social determinants of men’s violence against women are crucial foundational knowledge in the prevention and response to IPV, this level of analysis has limited utility in assessing risk in specific IPV situations. Such an approach tends to obscure the multifactorial determinants of IPV and may lead to an over-weighting of gender in risk assessment, while missing other empirically established factors that increase the risk of IPV perpetration (see Devaney, Lazenbatt, & Mahon, 2016; Holtzworth-Munroe & Meehan, 2004; Holtzworth-Munroe, Meehan, Herron, Rehman, & Stuart, 2000; Oram, Trevillion, Khalifeh, Feder, & Howard, 2014).

Throughout NTV’s 25-year history of working with men who have used IPV, we have observed perpetrators enter our services with a wide range of motivations, cognitive capacities, comorbid issues, and service system experiences. Historically, IPV interventions have dismissed this biographical diversity by focusing on the commonalities of IPV perpetrators, primarily the gender of perpetrators and their use of IPV (Pence & Paymar, 1993; Stark, 2007). This approach, while bringing important focus to the social and political drivers of IPV, nevertheless limits more precise understandings of perpetrators, their behaviours, and the system’s capacity to respond to them appropriately.

If the system is going to increase its capacity in identifying predominant aggressors and reduce misidentification, a more nuanced ecological analysis of perpetrators and their behaviours is needed. It is important that this nuance begins to enter both popular and specialist narratives about perpetrators, as such narratives tend to delimit both popular and professional understandings of IPV perpetrators. For example, if drug and alcohol counsellors defined IPV

as characterised by antisocial men, who believe women are inferior, and who control every aspect of women's lives, this may result in these professionals struggling to identify other more subtle forms of IPV enacted or experienced by their clients. While the perpetrator typology literature indicates that these antisocial and misogynistic perpetrators certainly exist, these characteristics are by no means typical of IPV perpetrators (see Holtzworth-Munroe & Meehan, 2004). Changing narratives about perpetrators of IPV from single-factor explanations to multifactorial explanations is essential for building more effective and responsive interventions. If our narratives are only focused on aberrant monsters that we cannot possibly understand, or good blokes who exhibit no warning signs, predominant aggressors will continue to be missed and victims will continue to be misidentified.

Theoretical debate surrounding IPV

For as long as IPV has been on the public policy radar, its precise nature has been characterised by a contentious debate (Hegarty, Bush, & Sheehan, 2005; Reeves, 2017). Capturing the parameters of the full debate is out of scope for the present discussion, however, it is important to highlight some of the definitional and methodological issues surrounding foundational understandings of IPV – as these points of tension have come to shape different responses to IPV across jurisdictions.

The construction and testing of theory

Within the social and natural sciences, a theory is commonly defined as a statement or a group of statements that explain the "how" or "why" of something that exists in the world (Christensen, Turner, Johnson, & Turner, 2015, p.85). These statements or assumptions are then constructed into hypotheses, empirically tested, supported or reshaped, and tested again in a continuous and iterative process. The two theories that have been most widely proposed and tested in IPV research, are known as the family violence and the feminist perspectives. These two theories, based on their underlying assumptions and empirical findings, have offered up competing definitions of the nature of IPV. Confusingly, in Victoria, the definition under legislation accords with the feminist perspective, yet IPV most often falls under the umbrella term of "family violence". In the IPV-debate however, the family violence and feminist perspectives are at odds (see Devaney et al., 2016).

The nature of IPV has been empirically tested through various methods, with each method corresponding primarily with either the feminist or family violence theory. Ascribing either the feminist or family violence theory has guided the choice of data sources used to test the respective theories. Feminist scholars have tended to measure IPV by utilising police, agency, and hospital data, while family violence scholars have tended to rely on general population surveys.

On one side of the debate, family violence scholars define IPV as an act of violence carried out with the intention of causing an intimate partner physical pain. According to the family violence perspective, IPV is equally likely to be perpetrated by women as men (Archer, 2000; M. Straus, Gelles, & Steinmetz, 2006). Feminist scholars on the other hand, define IPV as a pattern of behaviours that may include physical, sexual, and emotional abuse, in which one partner is consistently afraid of the other, which tends to be characterised by a pattern of male perpetrators and female victims (Dobash & Dobash, 1992; Hegarty et al., 2005).

Johnson (1995) has argued persuasively that the data captured by agencies are different from data captured by general population surveys. Johnson asserts that feminist scholars who utilise agency data are measuring relationships characterised by coercive control and more severe and ongoing violence that is asymmetrically perpetrated by men. On the other hand, family violence scholars that utilise random samples of the general public, are measuring IPV that is characterised by conflict, may be intermittent, expressive, and perpetrated by both men and women.

This claim is supported in Johnson's analysis of the National Family Violence Survey (NFVS), one of the largest general population surveys of family violence in the world⁴. Johnson emphasises that out of 182 victims of "wife beating" captured in the survey, only four had been assaulted 65 times or more (the average for shelter populations). Johnson argues that this is because IPV is not unitary, and that experiences of victims captured by general population surveys are quite different from those captured in shelters (see Johnson, 2010). Johnson's analysis of the NFVS also finds that women rarely engage in violence that is coercive. He argues in his later work, that when women use force, they tend to do so in self-defence, retaliation, or as a conflict tactic (Johnson, 2010). Though it should be noted that theories and definitions of women's use of force in relationships are not widely researched or well understood, Johnson's assertion is largely supported by the emerging literature on the subject (e.g. Larance et al., 2018; Miller & Becker, 2019; Swan & Sullivan, 2009).

As discussed above, assuming that perpetrators of IPV all have the same characteristics and motivations is likely to lead to erroneous risk assessments, and in some cases, the misidentification of victims. Likewise, it is dangerous to assume that all IPV is the same. This is one of the reasons that conflict-based assumptions about the nature of IPV coupled with an incident-based criminalisation approach has unintended consequences. Such an approach tends to create hierarchies of violence, treating physical violence as more serious than psychological aggression, because physical violence corresponds with the crime of assault and psychological aggression has no such corresponding crime. The second and most salient point, when it comes to the misidentification of victims, is the tendency of such approaches to lead to assumptions of gender equivalence, due to the fact that one incident of yelling can be measured as IPV, whether it is a part of a pattern of control or is an intermittent expression of frustration (Hegarty et al., 2005).

⁴ Full data sets can be found at: <<https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/8OEUUU>>

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From the feminist perspective, simply measuring whether one partner raised their voice to the other does not indicate whether IPV has occurred, as feminist scholars and advocates define IPV as a pattern of behaviours which impact on a victim's space for action, such as a victim's ability to make choices for themselves and degree of fear. IPV often has nothing to do with conflict between partners, but is an attempt by one partner to control the other (Stark, 2007). Understanding these contextual aspects of IPV is crucial in the assessment of predominant aggressors. If a "conflict tactic" is assessed in isolation from larger contextual variables such as the power held by each party, level of autonomy, or level of fear, IPV is not being measured, but rather, conflict is. Even the researchers most associated with the family violence perspective do not recommend measuring occurrences of IPV separate to these broader contextual factors (Straus, Hamby, Boney-McCoy, & Sugarman, 1996). Failure to do so has been associated with the misidentification of women who have used force in response to patterns of systematic abuse they have endured from a partner (Goodmark, 2018; Rajah et al., 2006; Swan & Sullivan, 2009).

Attempts to solve the problem

The wrongful arrest of victims has been highlighted in the U.S. virtually since warrantless arrest powers were extended to IPV in the 1970s and 1980s (Goodmark, 2018). In response, primary aggressor laws have been enacted in the majority of U.S. states with mandatory arrest laws. Primary aggressor laws seek to lessen the likelihood of victims being unjustly arrested and to ensure that police appropriately assess a single perpetrator (as misidentification is widely understood to be associated with dual arrests).

Criteria to consider when identifying predominant or primary aggressors varies across jurisdictions, but according to Hirschel et al. (2017) the most common criteria are:

- Comparative extent of injuries
- Prior domestic violence history
- Likelihood of future injury

Most U.S. states mandate that frontline police officers "shall consider" (Hirschel et al., 2017, p.11) these indicators, with some states also including criteria such as the welfare of children, the comparable physical size of the two parties, and evidence from witnesses.

In order to assess the effect of these laws on patterns of arrest, Hirschel et al. (2017) undertook an analysis of 10 years (2000-2009) of IPV incident data across 37 U.S. jurisdictions. Their analysis found that jurisdictions with mandatory arrest laws had higher rates of arrest than jurisdictions with discretionary arrest guidance. They also found that states with primary aggressor laws showed reduced dual arrests, however these states also exhibited a 25% reduction in overall rates of arrest for IPV-associated crimes from 2000 – 2009.

Hirschel et al. (2017) emphasise that it is important to assess not just the aggregated data, but also the specific policies and legislation associated with primary aggressor laws and guidance. Some jurisdictions have enshrined primary aggressor identification in legislation, while others have simply instated primary aggressor guidance at the policy level. The authors showed that in jurisdictions where compliance did not attract a consequence, dual arrests were more likely. Perhaps most crucially, the authors found a significant correlation between mandatory arrest laws and the use of dual arrests, suggesting that when police had any apprehension about who may have been the predominant aggressor, they would rely on dual arrests.

The authors emphasise that while overall primary aggressor laws have had the intended effect of reducing the occurrence of dual arrests compared to jurisdictions without these laws, reduction of arrests in general appeared to be an unintended consequence of dual arrest laws. The authors hypothesise that in jurisdictions in which police struggle to identify predominant aggressors, but are mandated to do so, in order to avoid misidentifying a victim, police may avoid designating a predominant aggressor altogether. This was particularly evident in same-sex IPV cases: female couples were 31.9% less likely to attract a single arrest, and 30.7% of male couples were less likely to attract a single arrest. The lack of single arrests among same-sex couples is compounded by the increased likelihood of dual arrests among these cohorts: female couples being 39.1% more likely and male couples being 52.8% more likely to be subjected to dual arrests (Hirschel et al., 2017). These figures suggest that dual arrest statutes and policies are far more effective at combatting misidentification among heterosexual couples than same sex couples.

Like many U.S police forces, Victoria Police have implemented guidance against both dual arrests and cross orders. This development is a step in a positive direction, however, as emphasised in Hirschel et al. (2017) guidance is likely to be less effective than legislation in producing substantive changes in police practices. Such laws and policies also risk a decrease in prosecutions of IPV broadly and are unlikely to improve responses to IPV in same-sex relationships. The solutions to police misidentification cannot be solved purely through policy change or even legislative change. Tackling misidentification is likely to require a combination of policy, legislative, training, and supervisory changes - with a need to emphasise improved responses to Aboriginal and Torres Strait Islander families, CALD communities, and LGBTQI communities, as these are the cohorts overrepresented in case study data from Victoria and international jurisdictions.

The role of Victoria Police

Victoria Police continue to emphasise that a significant contributory factor in misidentification cases are demands on police time. This is why the recent development of Victoria Police's Screening Assessment for Family Violence Risk (VP-SAFvR; McEwan, Shea, & Ogloff, 2018) is much needed. VP-SAFvR is a triage instrument embedded in the newly developed Victoria Police Family Violence Report (2019). Inclusion of VP-SAFvR in the new report is likely to enhance the efficiency of police resource allocation and thus free up time for more thorough and robust risk assessment and management tasks.

The VP-SAFvR was developed by analysing every FV (not just IPV) incident reported to Victoria Police between July 2013 and June 2014 ($n = 65,154$). Included in the development of the instrument were data from a diversity of family and intimate relationships, covering the breadth of relationship-types in the Victorian community. Utilising such representative data is likely to go some way in making the instrument generalisable to all relationship types among Victorians. The design of the tool is, however, not designed to decide who in a given dyad the predominant aggressor is likely to be, nor the level of risk they pose. Indeed, the tool is designed to screen cases out rather than screen cases in. According to the authors:

"VP-SAFvR is best used to screen out relatively lower risk cases rather than as a way of identifying those who are at high risk of future family violence" (McEwan et al., 2018, p.601)

In accordance with new police procedures, cases not screened out by frontline officer's using VP-SAFvR will be allocated to Family Violence Investigation Units (FVIUs). These units are made up of intelligence officers and specialist detectives to investigate cases that have been assessed as likely to need more than one police response. Such a design has the potential to ensure that police time is not wasted and create greater efficiency in police responses. However, from NTV's understanding, police procedures dictate that police are required to designate perpetrators and victims before undertaking interviews when utilising the family violence report. This leaves in place the key point at which misidentification is likely to occur.

As has been demonstrated throughout the present paper, in situationally ambiguous environments, where frontline officers hold uncertainty about who is and who is not the predominant aggressor, are also likely to be the circumstances in which victims are misidentified. A possible solution to this issue is utilising the newly developed FVIUs in coordination with other parts of the integrated response system so that a more thorough investigation can be undertaken prior to designation of victims and perpetrators. This would require considerable changes to both community services and police procedures in responding to IPV incidents where there is doubt about who the predominant aggressor may be.

Perpetrator dangerousness

As has been rightly reiterated in popular commentary, the question we as a society ask after incidents of IPV should not be "why doesn't she leave?" but "why doesn't he stop?" NTV phone counsellors hear from victim survivors on a weekly basis asking this very question. It is a difficult and complicated question to answer. Nonetheless, there are a number of pat responses to it within popular discourse. Perhaps the number one "reason" given to explain why a perpetrator

doesn't stop using violence or abuse is, "he is making a choice". Such responses offer victim survivor's cold comfort and reveal that as an intervention system, we have more understanding of how to help victims leave (addressing the first question) than to support perpetrators to stop using violence (addressing the second question). Simply stating that a perpetrator of violence uses violence because he chooses to, provides only a superficial lens through which to understand a perpetrator's risk or motives. Such proclamations are both circular in reasoning⁵ and offer limited insight into the actual causes of violence that underly acts of abuse.

Without a robust understanding of the causes of violence and abuse, we are unable to make predictions about future behaviour, and without an ability to predict future behaviour, we are unable to undertake evidence-informed risk assessments (Baldry & Winkel, 2008). Neither victim survivors, nor any of us who work in the intervention system should be satisfied with the explanation of men's violence against women simply being down to free will or choice. We should endeavour to understand what sits behind these choices, how we might steer men away from making such choices, and how the system might be designed to intervene earlier and more effectively.

As has been argued throughout this discussion, the identification of predominant aggressors is fundamentally tied to understanding the nature and causes of violence. Over the last few years, there has been extensive discussions in the FV intervention system about the need to "pivot to the perpetrator", yet there are few policy initiatives that would enhance the system's capacity to effectively make this pivot. It is vital that as a system, and at all levels, including policy, practice, and institutional, that we move away from perpetrator stereotypes and slogans and instead grapple with the full human complexity of perpetrators, their choices, and behaviours. Though perpetrator dangerousness is notoriously fraught (see Kozol, Boucher, & Garofalo, 1972), deeper understandings of not only the risks that perpetrators pose, but also where opportunities for early and effective intervention might lie, offer a direction through which to enhance predominant aggressor assessment and reduce instances of misidentification.

Currently, in the IPV response field, the Ontario Domestic Assault Risk Assessment (ODARA) offers the most consistent means of predicting if a perpetrator is likely to re-perpetrate, with an average 66% predictive validity (Messing & Thaller, 2013). However, risk assessments are contingent on a number of factors including the setting, predictive outcomes, overall goals, and data sources used for development (Litwack, 2001; Messing & Thaller, 2013; Singh et al., 2011). Thus, it cannot be assumed that an instrument such as ODARA would be suitable for use in Victoria, and if it was, it may only be suitable for one part of the intervention system (e.g. case managers). Nevertheless, Messing and Thaler's review of IPV assessment instruments offer a useful starting point from which to build understandings of IPV perpetration risk. It is important to be mindful that whether a risk assessment is based on actuarial factors or structured clinical judgements, instruments do not undertake risk assessments, people do. Thus, translation for different practitioners who fulfil different roles in the system is vital.

⁵ A particular behaviour (effect) cannot be used as evidence that a person chose to behave in such a way (cause). Or as Bandura has argued: "intention cannot be inferred from actions; otherwise, it would provide a circular explanation in which the same event is taken as evidence of both cause and effect. Intention must be defined independently of the behaviour it regulates" (Bandura, 1986, p.468).

PACT

NTV has begun the development of a predominant aggressor assessment tool, known internally as the Predominant Aggressor Communication Tool (PACT). The tool was developed as a means for counsellors to communicate issues of concern about clients both within their teams and directly to clients themselves. The tool has been developed in order to identify clients who are likely to be the predominant aggressor in their relationship. PACT was developed within the context of a counselling team working with men identified as victims of various forms of FV - including heterosexual and same-sex IPV. The impetus for the development of PACT was a number of experienced counsellors' assessments that a proportion of clients accessing the service as a victim, were likely to have been incorrectly assessed and were, in fact, the predominant aggressor in their relationships⁶.

PACT is currently at a preliminary stage of development. Nevertheless, the tool has achieved reasonable inter-rater reliability, with numerous counsellors and supervisors coming to agreement on the tool's central constructs. NTV are currently systematically reviewing the factors in the instrument that have been arrived at through structured clinical judgements. There are a number of limitations to the tool in its current state which NTV's research is attempting to address:

- **Generalisability (validity):** PACT was developed from counselling conversations with a number of male clients from various locations, both urban and rural, across the state of New South Wales. PACT is based on the professional judgements of a number of experienced counsellors rather than any kind of objective or validated measure. PACT does not have a grounding in the research literature, and it is therefore possible that the indicators contained in PACT represent unique characteristics of the small population with whom PACT was developed and will not be generalisable across individuals, time, or contexts.
- **Reliability:** PACT is limited by the sheer number of indicators contained in the tool. There are currently 32 indicators within the tool, which is likely to become unwieldy for practitioners to use. These 32 indicators are also likely to be related to similar theoretical constructs (e.g. lack of empathy for partner). PACT requires further development to reduce the number of indicators contained in the tool and in order to identify the salient constructs in predominant aggressor identification.

⁵ These situations sometimes involved circumstances where violence was bi or even tri-directional, and circumstances where the client was the sole aggressor but had been assessed by NSW police as the sole victim.

NTV remain invested and hopeful in the development of PACT, we believe that the instrument holds promise for use in other counselling, case work, and human services settings. PACT (in its current form at least) is unlikely to translate to justice and police settings, however, over time, PACT may be built on and translated into other settings.

Conclusion

The present discussion paper has highlighted how reliance on civil and criminal legal systems to address issues associated with IPV have caused unintended system harms, with a particular focus on misidentification. Empirical evidence has been provided to support the link between non-discretionary policing approaches and misidentification in both Victoria and international jurisdictions.

Misidentification is complex and is likely the result of policy and practice errors in both justice and human services settings. There is also some evidence to suggest that foundational understandings of IPV and the expert and popular assumptions that emerge from these understandings are related to erroneous predominant aggressor assessments.

The thrust of this discussion has argued that greater policy, institutional and financial investment is needed to develop an understanding of perpetrator risks, motivations, behaviours and protective factors. Without a complex understanding of the nature of violence and violence perpetration, assessments of predominant aggressors are likely to be limited and misidentification is likely to continue.

Members' information

NTV welcomes hearing from its members. What do you think it will take to support appropriate predominant aggressor identification across the various parts of the system? What work are you and others already doing, or contributing to, in order to address this in your region?

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